



## Town of Niagara-on-the-Lake

1593 Four Mile Creek Road  
 P.O. Box 100, Virgil, ON L0S 1T0  
 905-468-3266 www.notl.com

**REPORT #:** CDS-23-101 **COMMITTEE DATE:** 2023-05-29  
**REPORT TO:** Municipal Heritage Committee **DUE IN COUNCIL:** 2023-06-27  
**SUBJECT:** Bill 23 Implications – A Workplan for Priority Designations from the Heritage Register

### 1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 Council endorse the workplan for priority designations of properties on the Town's Heritage Register as outlined; and
- 1.2 Council direct Staff to implement the workplan.

### 2. EXECUTIVE SUMMARY

- Bill 23, the *More Homes Built Faster Act, 2022* ("Bill 23") has implemented changes to the *Ontario Heritage Act* (the "OHA") as of January 1, 2023.
- Changes to the OHA include a 2-year time limit for retaining 'Listed' properties on the Town's Register of Properties of Cultural Heritage Value or Interest (the Town's "Heritage Register"). The Town must take steps to designate these properties, or they will be removed from the Heritage Register, and cannot be re-Listed for 5 years.
- Listing on the Heritage Register provides interim protection from demolition, but once removed, properties are no longer afforded protection from demolition.
- The Town has almost 200 properties that are Listed (non-designated) on the Heritage Register.
- Staff are proposing a workplan with a phased approach. Phase I would move individual property designation for properties that are of high value to a community and which are likely to meet the criteria for designation. Phase II would consider a more strategic approach to designation within each community, including establishing a Working Group, and consideration for Part V designation as a Heritage Conservation District where it may be appropriate

### 3. PURPOSE

The purpose of this report is to provide background on changes to the OHA implemented through Bill 23, which took effect on January 1, 2023. While Bill 23 made various changes to the OHA, this report will specifically address the policy changes to Section 27, Part IV, governing the Town's Heritage Register.

Specifically, changes to Section 27 include the implementation of a maximum 2-year timeframe for properties to remain on the Municipal Register. After 2 (two) years on the

Municipal Register, if a property has not been designated under the OHA, the property is removed, and cannot be readopted to the Municipal Register for a period of 5 (five) years.

In response to these policy changes, the Town will need to consider a process for prioritizing properties for designation under Part IV of the OHA. This report outlines the process for designating a property under the OHA and outlines a phased workplan to begin to consider how best to prioritize designations.

**4. BACKGROUND**

Section 27 of the OHA requires the clerk of each municipality to keep a Register of all the properties within a municipality that are of cultural heritage value or interest. The Heritage Register includes properties that are designated under Part IV (individual property designation) and Part V (Heritage Conservation District designation) of the OHA. The OHA also allows for “non-designated property” (or “Listed” property) to be included. Listing on the Heritage Register affords some protection for properties that are deemed to have heritage value (importance). A description of the types of properties included on the Heritage Register is provided below.

Listed (non-designated) property	<p>Listed properties are those properties that have been assessed and deemed to have cultural heritage value, but which are not designated.</p> <p>These properties are afforded limited interim protection from demolition, but changes/alterations to these properties are not regulated.</p>
Part IV, Section 29 (individual property) designation	<p>Part IV designated properties have been fully assessed and been designated through a designation by-law specific to the property. The Designation By-law sets out a statement of heritage value and provides a list of heritage attributes.</p> <p>Changes (alterations/demolition) to the heritage attributes of these properties must follow best practice in heritage conservation and require MHC review and Council consent.</p>
Part V (Heritage Conservation District) designation	<p>Part V designated properties are within a Heritage Conservation District.</p> <p>Changes (alterations/demolition) to these properties must follow the policies and guidelines established in the Heritage Conservation District Plan, and require MHC review and Council consent.</p>

According to the Ontario Heritage Tool Kit, the Heritage Register is generally understood to be a document for consultation when development permits or proposals are submitted to consider whether properties are eligible for heritage designation. The Heritage Register is also an educational tool, to alert property owners to the fact that their property is considered to contain cultural heritage value.

Listing on the Register also provides interim protection (60-days) from demolition.

Prior to recent changes to the OHA, a property did not need to be fully assessed against the criteria for designation. Now, a property may be Listed only if it meets the following two criteria:

- a) the council of the municipality believes the property to be of cultural heritage value or interest; and
- b) the property meets at least one of the prescribed criteria for designation.

#### **4.1 Changes to Section 27 of the OHA for Listed Property**

Town processes will need to change in response to Bill 23 changes to the policies governing 'Listed' properties. Changes include:

- The requirement to remove a Listed property from the Heritage Register two years from the date that it is added to the Heritage Register. For properties already Listed on the Heritage Register as of January 1, 2023, the two-year timeframe for removal commenced on January 1 and properties will be removed from the Register as of January 1, 2025.
- Once removed from the Heritage Register, a property may not be re-listed for 5 years
- A Listed property must also now be removed from the Heritage Register if Council has served notice of intention to designate the property under Section 29 and any of the following occurs:
  - a) Council withdraws the notice of intention to designate;
  - b) Council does not pass a by-law designating the property within 120 days; or
  - c) Council passes a by-law designating the property but the by-law is repealed.

#### **4.2 Purpose of Designation**

The province indicates that our cultural heritage is what we value from the past, and what we want to preserve for future Generations. Designation under the OHA is one tool to conserve the heritage value of a property. The designation process regulates whether and how owners are permitted to make any changes to a property.

There are seven key steps in the process for designation of an individual property under Section 29 of the OHA, as noted here and outlined in the flow chart in **Appendix I**:

- 1) Identifying the property as a candidate for designation;
- 2) Researching and evaluating the property;
- 3) Serving a notice of intention to designate, with an opportunity for objection;
- 4) Passing the designation bylaw;
- 5) Appeals and coming into force;
- 6) Listing the property on the Municipal Register; and
- 7) Including property on the Ontario Heritage Trust register.

#### **4.3 The Process for Evaluation Prior to Designation**

Anyone, including property owners, a municipal heritage committee, municipal staff, local historical societies or residents' associations, may propose the designation of an individual property.

Properties considered for individual designation must undergo a rigorous evaluation and must meet at least 2 (two) of the following criteria for designation established by the province in Ontario Regulation 9/06 as outlined here<sup>1</sup>:

#### Criteria for Determining Cultural Heritage Value or Interest

1. The property has design value or physical value because it is a rare, unique, representative or early example of a style, type, expression, material or construction method.
2. The property has design value or physical value because it displays a high degree of craftsmanship or artistic merit.
3. The property has design value or physical value because it demonstrates a high degree of technical or scientific achievement.
4. The property has historical value or associative value because it has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community.
5. The property has historical value or associative value because it yields, or has the potential to yield, information that contributes to an understanding of a community or culture.
6. The property has historical value or associative value because it demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
7. The property has contextual value because it is important in defining, maintaining or supporting the character of an area.
8. The property has contextual value because it is physically, functionally, visually or historically linked to its surroundings.
9. The property has contextual value because it is a landmark.

An in-depth explanation of the criteria for designation is provided in **Appendix II**.

Careful research and an evaluation of the candidate property must be done before a property can be recommended for designation. The evaluation should determine whether a property meets two or more of the criteria for designation, and fully explain how the criteria are met. The evaluation also identifies the heritage attributes or physical features that support the heritage value of the property. Heritage attributes can include physical materials, forms, location and spatial configurations that together characterize the heritage value. The heritage attributes are the elements of a property that must be maintained in order to conserve heritage value.

Evaluation further considers the “heritage integrity” of a property, where integrity represents how well the surviving physical features (heritage attributes) continue to represent or support the heritage value of the property. Physical conditions are also considered. Properties that appear in a deteriorated state may still maintain all or part of their heritage value. Determining at what point repair and reconstruction erode the integrity of the heritage attributes, must be weighed against the heritage value held by the property.

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<sup>1</sup> Ontario Heritage Act at s 1(2), Ontario Regulation 9/06 – Criteria for Determining Cultural Heritage Value or Interest <https://www.ontario.ca/laws/regulation/060009>

The research and evaluation of each property is documented in a report, such as a Cultural Heritage Evaluation Report, that contains sufficient information to understand the property and provide a record of the evaluation process and articulate the results of the evaluation. The information from this evaluation forms the basis for a designating by-law for the property.

#### **4.4 Who Can Undertake an Evaluation?**

An MHC is appointed to advise Council on matters related to heritage conservation, including matters related to the OHA. The Committee can assist in identifying potential heritage properties, compiling the Heritage Register and using criteria for evaluating heritage value.

An evaluation can be undertaken by someone who has demonstrated knowledge and expertise in an area. The identification and evaluation of heritage properties may require a variety of expertise, including people with knowledge and expertise in specific areas.

Anyone undertaking an evaluation of a property should have the following qualifications:

- a) An understanding of the Ontario Heritage Act framework;
- b) knowledge of the cultural heritage of the community;
- c) expertise, qualifications and/or experience in the identification, evaluation and documentation of cultural heritage resources, relevant to the type of resource being considered; and,
- d) recent experience in the identification, evaluation and conservation of cultural heritage resources (e.g., within the last three to five years)

The Town has many experienced professionals including those that sit on Town Committees, volunteers and those that are part of local heritage advocacy groups. In addition, the Town can rely on the expertise of the Niagara-on-the-Lake Museum Staff. The Museum serves as the Town Historian and has provided a substantial level of support, research and expertise over the years to Town Staff and the MHC.

## **5. DISCUSSION / ANALYSIS**

### **5.1 The Town's Heritage Register**

The Town's Heritage Register was adopted by Council in 2008. As part of the 2008 adoption process, Town Staff prepared a draft statement of heritage value and an initial list of heritage attributes for each property. The formulation of the draft statements considered the criteria for designation.

Over the years, Council has adopted additional properties to the Heritage Register, including over a dozen properties in St. Davids on June 11, 2019. However, no large-scale review of the Heritage Register has been undertaken since 2008, due to limitations on Staff time and resources. On January 20, 2020, Council readopted the Heritage Register to reaffirm the Heritage Register in its entirety.

As of May 2023, the Town's Heritage Register contains 428 properties. From the list of 428 properties on the Heritage Register, 7 (seven) of these properties are designated under both Parts IV and V of the OHA. The chart below provides an outline of the properties on the Heritage Register categorized according to status under the OHA:

Listed (Non-designated)	198
Part IV (Individual) Designation	77
Part V (Heritage Conservation District) Designation	160

It is the 198 Listed properties on which this report is focused. Staff are aware that there may be other properties that warrant Listing on the Heritage Register, however this report will focus on those that have already been Listed as some background research has already been prepared for these properties. The Town’s Heritage Register, current as of April, 21 2023, is attached as **Appendix III**.

### **5.2 Previous Individual Property Designations**

Staff have typically undertaken 1-3 designations per year. Those designations were generally owner initiated meaning objections to the designation process were not anticipated, and therefore, no additional Staff time or costs to the Town were likely to be incurred at a Tribunal hearing. Designations by a third-party have occurred for other properties in Town over the last several years. In these circumstances, the Town has hired heritage consultants to prepare a Cultural Heritage Evaluation Report to fully assess the heritage value and heritage attributes of the property.

### **5.3 Priority Designations Moving Forward**

To begin the process for moving designations, Staff are recommending a phased approach, first to kickstart the process immediately, and secondly, to allow for time to more strategically approach designations over the course of Fall 2023 through to 2024. It is Staff’s opinion that Phase I and II can generally run concurrently, however, Phase II will require more substantial preparation time to implement.

#### **Phase I: The Kickstart**

The Town’s Heritage Register does not prioritize properties to be considered for designation. Phase I is envisioned as a way to identify those properties that strongly contribute to the identity and sense of place within Niagara-on-the-Lake, and which are highly likely to meet the criteria for designation.

Recommended steps include:

- 1) Consult with the MHC, the Town Historian and community heritage groups to identify an initial list (perhaps 20-30 properties) that are a priority for individual designation. The development of this list will consider:
  - a. Properties whose loss due to demolition, neglect or inappropriate alteration would result in the substantial loss of a piece of Niagara-on-the-Lake history or identity; and
  - b. Properties that are likely to meet at least 2 (two) criteria for designation, and for which some background research is already prepared/available, whether through the Town Historian or other qualified sources.
- 2) Staff to reach out to property owners to advise that their property is being considered for designation, and to inquire whether the owner is interested in designation and in contributing further historical information on the property. An educational information

sheet can be prepared and included for the owner outlining the process and implications of designation, as well as the benefits of designation;

- 3) Staff to consult with the Museum on available background research for each property;
- 4) Staff to consider any responses from owners and to bring a report to MHC for advice on which properties should be pursued for Part IV designation; and
- 5) If designation is to be pursued, MHC and Council to recommend to Staff to prepare designating by-laws for the properties and initiate the process for individual designation.

### **Phase II: Strategic Designation**

Phase II will take more time in preparation. Staff are recommending that members of the MHC, or others qualified in the heritage field as recommended by the Heritage Planner and MHC, connect with residents of specific communities to walk through the Town's neighbourhoods and identify/map/photo document properties on the Heritage Register that should be considered for designation, whether individual or as a Heritage Conservation District. It is recommended that a Working Group of the MHC be established to provide on-going guidance for Phase II. All information collected should pass through the Working Group Committee.

Any requests for information from the Museum, as the Town Historian, are to be provided to Staff who will communicate the requests, as necessary, to the Town Historian.

Recommended steps include:

- 1) A Working Group of the MHC be established in July 2023. Town Staff to work with the Working Group on an on-going basis;
- 2) Town Staff and the Working Group to connect MHC members (or other qualified residents) with resident experts in each community/neighbourhood;
- 3) The MHC member and resident expert should collaboratively identify, map and photo document (from public property) any Heritage Register properties that should be considered for individual designation. Also consider the neighbourhood or community as a whole and whether a Heritage Conservation District would be more appropriate;
- 4) Provide documentation to the Working Group and Town Staff for consideration and for priority rating for designation;
- 5) Staff to contact property owners to advise that their property is being considered for designation, and to inquire whether the owner is interested in designation and in contributing further historical information on the property. An educational information sheet can be prepared and included for the owner outlining the process and implications of designation, as well as the benefits of designation;
- 6) Staff to consult with the Museum on background research for each property;
- 7) Staff to consider any responses from property owners and to bring a report to MHC for advice on which properties should be pursued for Part IV designation; and
- 8) If designation is to be pursued, MHC and Council to recommend to Staff to prepare designating by-laws for the properties and initiate the process for individual designation.

## Timelines

June 2023	Adopt the approach for prioritizing designations
July 2023	PHASE I <ul style="list-style-type: none"><li>• Consult with MHC, community groups and Town Historian on list of properties for designation</li></ul> PHASE II <ul style="list-style-type: none"><li>• Establish a Standing Committee for the MHC to assist in guiding the Priority Designation Process</li><li>• Consider which communities to study and identify resident experts in the community</li></ul>
Q3 2023	PHASE I <ul style="list-style-type: none"><li>• Bring the list of potential properties for designation to MHC</li><li>• Town Staff to consult with Town Historian on background research</li></ul> PHASE II <ul style="list-style-type: none"><li>• Connect MHC Members with resident experts to begin identification process within specific communities</li></ul>
Q4 2023	PHASE I <ul style="list-style-type: none"><li>• Initiate individual designations</li></ul> PHASE II <ul style="list-style-type: none"><li>• Review properties proposed for priority designation</li></ul>

## 6. STRATEGIC PLAN

The content of this report supports the following Strategic Plan initiatives:

### Pillar(s)

1. Protect Distinctive Community Assets

### Objective(s)

- 1.1 Preserve unique community elements

### Tactic(s)

- 1.1 b) Support residences and businesses in protecting their valuable heritage assets

## 7. OPTIONS

- 7.1 Option 1: Recommend to Council that the phased approach proposed by Staff be initiated immediately, with fine-tuning of steps as necessary throughout the process (**Recommended**)
- 7.2 Option 2: Recommend to Council that the approach to priority designations be substantially redeveloped leading to delays in implementation (*Not Recommended*)



## **8. FINANCIAL IMPLICATIONS**

If a heritage consultant is required to prepare any Cultural Heritage Evaluation Reports then costs will be incurred by the Town.

## **9. ENVIRONMENTAL IMPLICATIONS**

Not applicable.

## **10. COMMUNICATIONS**

The Working Group for priority designations will prepare written minutes of discussions and any recommendations to the MHC for discussion and endorsement.

## **11. CONCLUSION**

This report outlines a workplan for considering and commencing the designation of properties that are Listed on the Town's Heritage Register. It is requested that the MHC provide input on the proposed workplan and recommend to Council that the workplan be implemented.

## **12. PREVIOUS REPORTS**

Not applicable.

## **13. APPENDICES**

- Appendix I – Designation Flow Chart
- Appendix II – Designation Criteria Explanation
- Appendix III – Heritage Register April 2023

Respectfully submitted:



**Denise Horne, MA, Dipl. Heritage  
Conservation, CAHP  
Heritage Planner**