

Implementing Bill 23 – Update on Amendments to the Ontario Heritage Act

Date: November 15, 2023

To: Planning and Housing Committee

From: Chief Planner and Executive Director, City Planning

Wards: All

SUMMARY

This report provides an update on the City of Toronto's phased implementation of the Province's Bill 23, the More Homes Built Faster Act, 2022, amendments to the Ontario Heritage Act (the "Act"). The amendments were proclaimed into force on January 1, 2023 and as previously reported, have immediate and long-term implications for the conservation of heritage properties in the city.

The amendments introduced accelerated timelines for listings and designations within the planning process and placed new restrictions on the maintenance and use of the Heritage Register. If subsections 27(14), (15) or 16 of the Act require the removal of a property from the Heritage Register, a five-year moratorium on re-listing properties applies in that circumstance.

During the first phase of the Bill 23 implementation, the City amended the Municipal Code and delegated new administrative authority to the Chief Planner and Executive Director, City Planning to ensure timely responses to prescribed events within the new timelines so that Council are not precluded from making informed decisions with respect to land use planning and heritage conservation. City staff also introduced process improvements to align the listing of heritage properties within the City's response to Bill 109, the development review operating model supported by Concept 2 Keys, and the new mandatory preapplication process for planning applications. These changes have allowed the City to continue to list and designate properties on the Heritage Register and respond to applications involving heritage properties within prescribed time limits.

The second phase of Bill 23 implementation will address changes to the Act that will have a long-term impact on the City's Heritage Register, such as the two-year timeline to review existing properties in the Heritage Register and the five-year moratorium on re-listing a property, if removed pursuant to subsections 27(14), (15) or (16) of the Act. These changes have significant implications for the approximately 4000 properties that are currently listed on the Heritage Register and will affect the way the City uses the

Heritage Register moving forward. As part of phase two, staff have begun conducting a City-wide review of the Heritage Register and prioritization of listed properties for designation and, subject to the availability of resources, some of the listed properties will be designated by the first provincial expiry deadline, January 1, 2025.

This report provides an update on phase one implementation and describes the approach that staff are taking to implement phase two.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning recommends that:

1. City Council request the Chief Planner and Executive Director, City Planning to report back to Planning and Housing Committee in the second quarter of 2024 with an update on the phase two implementation of the Bill 23 amendments to the Ontario Heritage Act, including recommendations on future phases of work.

FINANCIAL IMPACT

There are no financial implications resulting from the adoption of this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the information as presented in the Financial Impact Section.

DECISION HISTORY

At its meeting of October 27, 2020, City Council considered a report from the Chief Planner and Executive Director, Amendments to the Municipal Code: Chapter 103 – Heritage, and Chapter 27 – Council Procedures and authorized amendments to Chapters 27 and 103 of the Municipal Code to implement the changes to the Ontario Heritage Act made through Bill 108, the More Homes, More Choices Act 2020.

[Agenda Item History - 2020.PH17.11 \(toronto.ca\)](#)

At its meeting of March 29, 30, and 31, 2023, City Council considered a report from the Chief Planner and Executive Director summarizing amendments to the Ontario Heritage Act resulting from Bill 23, the More Homes Built Faster Act, 2022, and as an initial first phase response amended Chapter 103 (Heritage) to delegate additional administrative powers to the Act to the Chief Planner and Executive Director, City Planning.

[Agenda Item History - 2023.PH2.11 \(toronto.ca\)](#)

COMMENTS

Bill 23 Phase One Implementation - Development and Growth

Heritage conservation contributes to a sense of place, economic prosperity, and the promotion of healthy and equitable communities. Recently, the Province made significant changes to how the City can conserve its heritage resources through amendments to the Act enacted through Bill 23, the More Homes Built Faster Act (2022). These changes followed the Bill 108, the More Homes, More Choices Act (2020) which also significantly changed the heritage conservation framework. Nevertheless, the identification and conservation of heritage properties remains an integral component of land use planning and heritage conservation is an area of Provincial interest in provincial policy as implemented through the City's Official Plan.

The Bill 23 amendments had both immediate and longer-term implications for heritage conservation in Toronto. Many of the immediate implications impacted how the City processes new and existing development applications that include heritage properties. For instance, the amendments restrict Council's ability to designate a property under Section 29 of the Act when it is subject to a development application if the property is not already listed on the City's Heritage Register at the time of a "prescribed event." A prescribed event is defined by a regulation made under the Act and is triggered early in the development review process through the submission of certain planning applications.

The City's phase one implementation of Bill 23 focused on ensuring that heritage staff could continue to respond to heritage-related development applications within the time frames of the amended Act, the City's mandatory pre-application process, the Bill 109 timelines and in accord with the development review operating model rolled out with the support of Concept to Keys. Despite the new time limitations on listing heritage properties, listing remains an essential conservation tool within the planning process. Under the Act, if a certain Planning Act prescribed application is made, the property must be listed earlier in the planning process in order for Council to consider designation. As part of the planning process, the identification of a heritage property in the Register provides a flag for applicants to seek to conserve the property as part of a proposed development. Furthermore, where a property is listed in the Heritage Register it triggers the submission of a Heritage Impact Assessment as part of a complete application.

For these reasons, staff have continued to recommend to Council that certain properties be listed in the Heritage Register in advance of a prescribed event occurring and have also introduced a streamlined and expedited listing process. This process involves preparing consolidated listing reports on a regular basis for the Toronto Preservation Board, Committee, and Council. To date staff have listed 56 properties in 2023.

Council also delegated focused administrative authority to the Chief Planner and Executive Director to list properties in the Register when they meet at least two of the Provincial Criteria for holding cultural heritage value or interest (the amended Act only requires listed properties to meet one criterion), and when they are subject to privately

initiated Official Plan Amendment, Zoning By-law Amendment, and/or Draft Plan of Subdivision application. This delegation was necessary to cover intervals between meetings in the Council reporting cycle that are insufficient to allow Council to consider heritage properties for listing within the planning process. To date, the Chief Planner and Executive Director has used this authority on two occasions.

Bill 23 Phase Two

While implementing phase one of the City's response to Bill 23 to ensure that the City can respond to development applications and conserve heritage properties, staff have also been laying the groundwork for phase two implementation, including the prioritization of listed properties for designation under Part IV, Section 29 of the Act. These tasks have included auditing the existing Heritage Register and reviewing development potential where listed properties are located.

In addition to prescribing when and how Council can designate properties under the Ontario Heritage Act, Bill 23 also has significant longer-term implications such as new limitations to how long a property can remain listed in the Register without being designated. The City has two years to review the properties that were listed in the Heritage Register as of January 1, 2023. This review must be completed by January 1, 2025. Similarly, each time a property is listed in the Heritage Register after January 1, 2023 the City will have two years to review that property from its listing date. If the properties are removed from the Heritage Register pursuant to subsections 27(14), (15), or 16 of the Act, those properties cannot be re-listed for a period of five years.

Heritage Register 1973-2023

The City of Toronto's Inventory of Heritage Properties (today known as the Heritage Register) began long before amalgamation. The former City of Toronto began its Register in 1973 as a response to the era of unprecedented growth and redevelopment which was then facing much of the downtown core. Through the efforts of the Toronto Historical Board, a survey of the Old City of Toronto was conducted, resulting in the creation of the first Heritage Inventory, which included approximately 750 properties. Over the next few decades, the survey areas were broadened, and subsequent lists of properties were added.

With the arrival of the Ontario Heritage Act in 1975, the City's Heritage Inventory was repurposed as a record of listed and designated properties. Similar work was undertaken in the other former municipalities of Etobicoke, York, North York, East York, and Scarborough and by the time of amalgamation each municipality had its own Heritage Inventory of properties that held cultural heritage value in their communities. In 2000 the heritage inventories of the current City of Toronto's former municipalities – Etobicoke, York, North York, East York, Scarborough, and Toronto – were added and consolidated into a single inventory.

Since its amendment in 2005 the Act has enabled municipalities to list undesignated properties on a heritage register. The Ontario Heritage Toolkit states that "Listing a property of cultural heritage value or interest is the first step a municipality should take in the identification and evaluation of a property that may warrant some form of heritage conservation, recognition, and/or long-term protection such as designation." The City's Official Plan describes how the City will identify properties with cultural heritage value, including listing them on the Heritage Register.

Since its inception, the Heritage Register was intended to:

- Recognize properties of cultural heritage value in a community.
- Foster civic identity and pride by drawing attention to the heritage and development of a community.
- Promote knowledge and enhance an understanding of a community's cultural heritage.
- Provide easily accessible information about cultural heritage value for land-use planners, property owners, developers, the tourism industry, educators, and the general public.
- To be a central element of a municipal cultural plan that begins with mapping local cultural resources and then leverages these resources for economic development and community building (which is being addressed through the Toronto Heritage Survey).

Non-designated listed properties do not have any protection under the Act, except insofar as an owner must give Council at least 60 days' notice of their intention to demolish or remove a structure on the property. Owners who wish to demolish are required to follow the Notice requirements under the Act as further described in the City of Toronto's Municipal Code. Following further research and evaluation, staff may recommend designation of the property under Part IV of the Act and, if the property is the subject of a development application, seek appropriate conservation.

Today, the City of Toronto's Heritage Register contains over 11,000 listed and designated properties, spread across every ward and corner of the city. In recent years, through the City's ongoing Toronto Heritage Survey, staff have been undertaking Cultural Heritage Resource Assessments, typically in conjunction with planning studies. Staff have developed a rigorous survey methodology, inclusive of new and enhanced engagement tools that are designed to gather a wider range of community voices and have tested new approaches through the Division's existing study work program. Of the 3,977 properties listed on the Heritage Register, 1,266 were identified in this way through planning studies.

An additional source of listed properties on the Heritage Register is through the designation of Heritage Conservation Districts (HCDs). HCDs are an important and powerful part of the heritage planning framework in Ontario and within the City of Toronto. They serve to ensure that historically significant neighbourhoods and areas are protected and reflect Toronto as a place and people through their cultural heritage values and characteristics. The City has an active HCD program with a number of Districts under study or under appeal before the Ontario Land Tribunal (the "Tribunal").

Unlike appeals under the Planning Act, an HCD cannot come into force until all appeals have been resolved or dismissed.

Appeals can take years to resolve, leaving district properties vulnerable, so the City has adopted the practice of listing contributing properties in the Register. These listings need to be maintained throughout the appeal period which can be lengthy. For instance, the City designated the Historic Yonge Conservation District in March of 2016, and the associated by-law remains under appeal at the Tribunal. Similarly, Council Designated the King-Spadina Heritage Conservation District in October 2017 which was appealed to the Tribunal with a hearing scheduled to be heard by the Tribunal in January 2024. Given the extensive intervals between the designation of Heritage Conservation Districts and their consideration by the Tribunal the City has used listing as a tool to ensure that the heritage properties are considered during redevelopment. 570 of the properties currently listed in the Register are within HCDs that are under study or before the Tribunal.

Between the planning studies and HCD related listings, just under 50% of the 3977 properties on the City's Heritage Register have been added within the past ten years. And, because the values of our City are constantly evolving, Heritage Registers will always continue to grow within an iterative process. Unknown heritage properties will continue to be discovered through the systematic study of the Toronto Heritage Survey.

The listing of heritage properties on the Heritage Register within growth-related studies provides transparency for the community and landowners without the City needing to advance designation under Section 29 of the Act. Bill 23, however, will likely result in fewer listings with less transparency, unlisted properties will be vulnerable to demolition, and designations will be accelerated throughout the City.

Given new limits to listings, within Bill 23 phase two implementation staff will identify and move forward with priority designations and will establish a new framework for survey work and property identification.

Heritage Register Audit

In response to the requirements of the Bill 23, the More Homes Built Faster Act, 2022, a comprehensive audit of the City of Toronto's Heritage Register has begun. The first step of this process included a complete review and updating of the nearly 4,000 non-designated (listed) properties contained in the Register. With the help of the City's Community Preservation Panels, entries were confirmed and property details, including date of construction and architect, were updated and inconsistencies within the fifty-year-old records were rationalized and corrected. Additional information, including building typologies and sub-typologies, was also recorded by staff thereby enriching the data for future analysis. By converting the Heritage Register into a working dataset, complete with a host of highly useful metrics, the audit has resulted in the creation of an invaluable tool for City Planning's implementation of Bill 23.

Development Potential Model

Central to the City's Heritage Register Review and the efforts to prioritize properties for designation, the interplay of heritage properties and development potential citywide has been identified as an area of focus. To these ends, staff have created a model for listed properties that overlays Official Plan designation, Secondary Plan Areas, Development Pipeline, Major Streets, MTSA/PMTSAs, and Building/Demolition Permits in an effort to determine the likelihood of these properties being subject to a 'prescribed event.' The addition of this information to the Heritage Register allows for deeper analysis, including the overlaying of heritage attributes with development potential data – a key tool in the City's Heritage Register Review and ongoing Bill 23 prioritization efforts.

Phase Two Implementation

Prioritization of nearly 4000 listed properties for designation is a significant task. To this end staff have engaged the services of ASI Inc. a firm with extensive experience in delivering complex cultural heritage projects both in Toronto and across the province.

With the assistance of ASI, phase two includes the review and optimization of the City's designation practices and process to ensure they are aligned with Bill 23 and other recent legislative changes. This work will be informed by a sector scan of best practices in other municipalities across the province. Phase two will also include the exploration of alternate approaches to designation under Section 29 of the Act to ensure the long-term conservation of heritage properties and will recommend an approach for the City to monitor properties that were listed before January 1, 2023 and that are undergoing the City-wide Heritage Register review.

A key component of phase two will be the creation of prioritization principles and framework that will be used to designate listed properties. The prioritization framework will also be informed by the sector scan, best practices, a gap analysis of the existing Heritage Register and through outreach and engagement.

The outreach and engagement program will be integral to the creation of the prioritization principles and framework. Through a robust engagement program, the team will reach out and seek advice from the City's Toronto Preservation Board as well as a technical advisory committee. Staff will engage with our traditional partners and stakeholders such as the City's Community Preservation Panels, Heritage Toronto, ACO TO, BIAs, residents associations and community heritage organizations. Staff will continue the work of the Toronto Heritage Survey and undertake indigenous consultation and will consult broadly with those in the community that have not necessarily been involved in heritage conservation discussions to date and seek their feedback. Through the outreach and engagement process staff will finalize the prioritization principles and framework, and will prioritize the listed properties for designation.

Designation of Listed Priority Properties

In this initial phase of the Heritage Register review, staff are assuming that not all of the City's listed heritage properties meet the new Provincial criteria for designation. Therefore the City-wide review of the Heritage Register will assist with prioritizing properties for designation. Certain properties that may be removed from the Heritage Register whether by Council voluntarily or pursuant to subsection 27(14), (15) or 16 of the Act, may be eligible for designation, but it is unlikely that the City will be able to designate all of those properties recommended for designation before January 1, 2025. The City typically designates between 50 and 75 properties under Section 29 each year. The designation process requires rigorous research and evaluation of each property by heritage professionals to ensure that they meet the Provincial criteria as the Act includes both an objection process and potential appeals to the provincially appointed Ontario Land Tribunal. The Tribunal has the power to hear appeals and make binding decisions on the merits of designation.

At the appeal, the Tribunal will only admit opinion evidence from witnesses that they qualify as experts in their respective fields. The City's Heritage Planning staff have specialized qualifications, expertise and experience in heritage planning and are regularly qualified as expert witnesses and give opinion evidence before the Tribunal. A rigorous research evaluation process supported by expert witnesses is critical to ensuring that Council's designations are effectively supported in appeals.

Since the implementation of Bill 23 the City has designated 64 properties under Section 29 of the Ontario Heritage Act that are the subject of development applications. Of these, 40 were previously listed. Staff will continue to review development applications for listed properties, and where appropriate, will continue to recommend listed properties for designation. This practice will continue alongside phase two work.

Also, as part of phase two ASI will recommend ways for City staff to optimize the City's designation process and propose a methodology to designate properties in the context of Bill 23. As most of the City's staff research capacity is dedicated to responding to ongoing development applications within the mandated timelines it is anticipated that additional outside resources will be required to evaluate and designate the listed properties for designation.

Formerly Listed Properties Beyond January 2025

Staff anticipate that not all the properties will meet the Provincial Criteria and certain properties will be prioritized for designation by January 1, 2025. For heritage properties removed from the Heritage Register in accordance with subsections 27(14), (15) or (16) of the Act, a five-year limitation will be in place on relisting these properties. Whether a property is removed from the Register under subsections 27(14), (15), or (16) of the Act or by other means, such properties can still be designated subject to any planning application's "prescribed event", as applicable. Beyond January 1, 2025, formerly listed properties that were removed in accordance with subsections 27(14), (15), or (16) of the Act will continue to be reviewed by staff, and designations will be recommended to Council utilizing the prioritization framework established through phase two. This

prioritization framework will continue to inform the City's heritage conservation priorities including the City's ongoing Toronto Heritage Survey program.

CONCLUSION

The Bill 23 amendments to the Ontario Heritage Act have had significant implications for the conservation of heritage properties in Toronto. A rationale for these specific amendments has not been articulated by the Province and it is not clear how these changes will further the conservation of heritage properties within the City, especially given the limitations already imposed by prescribed events. Changes to the longevity and purpose of municipal heritage registers is an even more radical change to conservation practice in Ontario, especially as it pertains to fostering community values, civic and cultural identities, social cohesion, a sense of place and economic prosperity.

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SIGNATURE

Gregg Lintern, MCIP, RPP
Chief Planner and Executive Director

ATTACHMENTS

Attachment 1: Heritage Planning Summary Statistics

Properties Listed by Council on the City's Heritage Register

2019	58
2020	1003
2021	84
2022	262
2023 (to Date)	40

Properties individually Designated by Council under Part IV of the Act

2019	64
2020	49
2021	45
2022	83
2023 (to Date)	57

Properties Subject to Council's Intention to Designate

2023 (as of report date)	6
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List of Heritage Studies Active or Completed, 2018 - 2022	Status	Date Completed
Heritage Conservation Districts (HCDs)		
Garden District HCD (Approved by OLT)		2021
St. Lawrence Neighbourhood HCD (Approved by OLT)		2021
West Annex Phase 1 (Madison Avenue) HCD (Approved by OLT)		2019
Historic Yonge HCD	Under Appeal	2016
King Spadina HCD	Under Appeal	2017
Parkdale Main Street HCD	Under Appeal	2022
Baby Point HCD Plan	Active	Study (2018)
Bloor West Village HCD Study	Active	
Cabbagetown Southwest HCD Plan	Active	Study (2019)
Casa Loma HCD Study		2018
Kensington Market HCD Plan	Active	
West Annex Phase II HCD Study	Active	
West Queen West HCD Plan	Active	
West Toronto Junction HCD Study	Active	
Weston II HCD Study	Active	
Planning Studies		
Bloor Street Study CHRA (St. Helen's Ave to Perth Ave)		2021
Bloor-Yorkville CHRA	Active	
Danforth Avenue CHRA (Phase 1)		2018
Danforth Avenue CHRA (Phase 2)		2022
Don Mills Crossing CHRA		2019
Dundas-Roncesvalles CHRA		2020
Exhibition Place Cultural Heritage Landscape Assessment		2019
Geary Avenue CHRA		2021
Jane-Finch CHRA	Active	
King-Parliament CHRA		2020
Laird in Focus CHRA		2019
Little Jamaica CHRA	Active	
Main-Danforth CHRA		2019
Mount Dennis CHRA		2022
Queen Street East - Leslieville CHRA		2021

Scarborough Centre CHRA	Active	
University of Toronto CHRA		2022
West Queen West		2020
Toronto Heritage Survey (THS)		
Dundas-Carlaw		2022
Forest Hill		2020
Ossington Avenue		2020
THS - Phase One and Heritage Planning Process Update		2022
Others		
Developing a Cultural Districts Plan		2021
University Avenue Cultural Heritage Landscape	Active	