

CULTURAL HERITAGE LANDSCAPE CONSERVATION PLAN BY-LAW
(DRAFT – December 12, 2017)

THE CORPORATION OF THE TOWN OF OAKVILLE

BY-LAW NUMBER 2017-XXX

A by-law to govern cultural heritage landscape conservation plans within the Town of Oakville and to delegate certain powers to designated officials

WHEREAS the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended, provides that no owner of a protected heritage property shall alter or permit the alteration of a protected heritage property that is likely to affect the property's heritage attributes unless the owner applies to the Council of the local municipality and receives Council's consent in writing to the alteration;

WHEREAS the Council of The Corporation of the Town of Oakville is authorized by subsection 11(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, to pass by-laws respecting matters within the sphere of jurisdiction for culture, parks, recreation and heritage;

WHEREAS the Town Council is required by subsection 3(5) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, to make all decisions affecting a planning matter consistent with the provincial policy statement issued under subsection 3(1) of this Act and in conformity with provincial plans;

WHEREAS Town Council, pursuant to its obligations under subsection 3(5) of the *Planning Act*, seeks to be consistent with provincial policy which requires that significant cultural heritage landscapes be conserved such that their cultural heritage value or interest pursuant to the *Ontario Heritage Act* is retained, and recognizes conservation plans as a means of achieving conservation;

WHEREAS the Town Council is authorized by subsection 15.1(3) of the *Building Code Act, 1992*, S.O. 1992, c. 23 and section 35.3 of the *Ontario Heritage Act*, as amended, to pass by-laws prescribing standards for the maintenance of property and conservation of the heritage attributes of property;

WHEREAS the Town Council deems it desirable to enact a by-law to require that conservation plans be prepared to govern protected heritage properties containing significant cultural heritage landscapes within the Town and assist Council with ensuring that Town decisions on any proposed alteration to a protected heritage property retains the cultural heritage value or interest of the property;

WHEREAS the Town Council, consistent with provincial policy, deems it desirable to ensure that, in the event of conflict between a provision of this by-law and a provision in any other by-law passed under the *Municipal Act, 2001*, the provision that ensures that cultural heritage resources are conserved shall prevail, subject to the fundamental paramountcy of matters that protect the health, safety and well-being of persons;

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COUNCIL ENACTS AS FOLLOWS:

**PART 1
INTERPRETATION**

1.1 DEFINITIONS

1.1.1 In this By-law:

“**Act**” means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

“**Alter**” means to change in any manner and includes to restore, renovate, repair, or disturb, and “**alteration**” has a corresponding meaning;

“**Building**” means a building as defined in the *Building Code Act, 1992*, as amended;

“**Built heritage resource**” means a building, structure, monument, installation or any manufactured remnant that contributes to a property’s cultural heritage value or interest as identified by a community, including an Aboriginal community. Built heritage resources are generally located on property that has been designated under Parts IV or V of the *Ontario Heritage Act*, or included on local, provincial and/or federal registers;

“**Conserved**” (or “**conserve**”) means the identification, protection, management and use of built heritage resources, cultural heritage landscapes and archaeological resources in a manner that ensures their cultural heritage value or interest is retained under the *Ontario Heritage Act*. This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment. Mitigative measures and/or alternative development approaches can be included in these plans and assessments;

“**Conservation plan**” means, in respect of a cultural heritage landscape, a document that, consistent with the stated cultural heritage value or interest of the protected heritage property or properties containing the landscape,

- (a) Specifies the specific boundaries of the cultural heritage landscape;
- (b) Describes the features contributing to the property’s cultural heritage value or interest, and the inter-relationships between or among the features that contribute to the cultural heritage value or interest;
- (c) Categorizes future actions that are anticipated to occur on the property or properties and categorizes them as follows:
 - (i) Category A: Exempt from heritage review as the action does not alter the property or affect its heritage attributes;

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- (ii) Category B: Alteration that is likely to affect the property's heritage attributes and may impact on the property's cultural heritage value or interest; or
 - (iii) Category C: Alteration that is likely to affect the property's heritage attributes and impact the property's cultural heritage value or interest;
- (d) Prescribes the landscape-specific considerations and documentation to determine the appropriate category;
 - (e) Prescribes, for Category B and C alterations, the landscape-specific information required to (i) assess heritage impacts, (ii) review whether the relevant cultural heritage value or interest is retained, and (iii) where applicable, identify appropriate conditions of approval, including monitoring;
 - (f) Where available, describes the condition of the cultural heritage landscape in relation to the cultural heritage landscape's cultural heritage value or interest and heritage attributes; and
 - (g) Identifies stakeholders who have an interest in the plan, and the means of consulting stakeholders to implement the plan;

“Council” means the municipal council of the Town;

“Cultural heritage landscape” means a defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Aboriginal community. The area may involve features such as structures, spaces, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. Examples may include, but are not limited to, heritage conservation districts designated under the *Ontario Heritage Act*; villages, parks, gardens, battlefields, mainstreets and other streets of special interest, golf courses, farmscapes, neighbourhoods, cemeteries, historic roads and trailways, viewsheds, natural areas and industrial complexes of heritage significance; and areas recognized by federal or international designation authorities (e.g. a National Historic Site or District designation, or a UNESCO World Heritage Site);

“Cultural heritage value or interest” means:

- (a) In the case of a protected heritage property created on or after April 28, 2005, the cultural heritage value or interest stated in applicable notices, by-laws, designations or orders under the *Ontario Heritage Act*; or
- (b) In the case of a protected heritage property created before April 28, 2005, the cultural heritage value or interest that is set out in, or can be reasonably inferred from, applicable notices, by-laws, supporting documentation for a by-law, designations or orders under the *Ontario Heritage Act*;

“Designated Official” means the Director of Planning Services for the Town and the designate or designates of this individual;

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“Feature” includes, in relation to a cultural heritage landscape, a building, structure, space, natural element, or view that has or contributes cultural heritage value or interest to the landscape or is a heritage attribute of the landscape;

“Fee” means the fee set out in the Town of Oakville Annual Rates and Fees Schedule approved by Council as part of the annual budget approval process;

“Heritage Act” means the *Ontario Heritage Act* R.S.O. 1990, c. O.18, as amended;

“Heritage attributes” means the principal features or elements that contribute to a protected heritage property’s cultural heritage value or interest, and may include the property’s built or manufactured elements, as well as natural landforms, vegetation, water features, and its visual setting (including significant views or vistas to or from a protected heritage property), as identified:

- (a) In the case of a protected heritage property created on or after November 26, 2002, in applicable notices, by-laws, designations or orders under the *Ontario Heritage Act*; or
- (b) In the case of a protected heritage property created before November 26, 2002, in, or as can be reasonably inferred from, applicable notices, by-laws, supporting documentation for a by-law, designations or orders under the *Ontario Heritage Act*;

“Heritage condition assessment” means an independent assessment of and written report on the condition of a protected heritage property in relation to its cultural heritage value or interest and heritage attributes;

“Inspector” means an individual appointed by the Town as an inspector under this by-law or any employee of the Town who is authorized to enforce by-laws within the Town;

“Natural element” includes soil, landforms, water, water features, and vegetation, whether designed or wild;

“Officer” means an individual authorized by the Town to enforce by-laws within the Town and includes municipal law enforcement officers;

“Property” means real property and includes all buildings and structures and other features thereon;

“Protected heritage property” under this by-law means:

- (a) property designated under Part IV of the *Ontario Heritage Act*;
- (b) property designated under Part V of the *Ontario Heritage Act*; and
- (c) property subject to a notice of intention to designate under section 29 of Part IV of the *Ontario Heritage Act* for having cultural heritage value or interest;

“Structure” means a building or other manufactured thing erected on land by humans that is distinct in visual form and materials from natural elements and includes any structure designated under the *Building Code*, as amended.

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“Town” means the Corporation of the Town of Oakville;

“Water feature” means a pond, lake, stream, creek or wetland, but does not include any other feature.

1.2 INTENT AND PURPOSE

- 1.2.1 The intent and purpose of this By-law is to promote the conservation of cultural heritage resources by authorizing the preparation, approval, administration and enforcement of conservation plans for cultural heritage landscapes located on protected heritage property in the Town.

**PART 2
APPLICATION AND PROHIBITIONS**

2.1 APPLICATION

- 2.1.1 This By-law applies to all cultural heritage landscapes contained or included in or on a protected heritage property in the Town.
- 2.1.2 This By-law does not apply to any part of a protected heritage property that does not contain or include a cultural heritage landscape.
- 2.1.3 For cultural heritage landscapes described in section 2.1.1, Council shall require the preparation of a conservation plan forthwith on its own initiative or by the owner unless Council directs otherwise.
- 2.1.4 Any alteration of a cultural heritage landscape in or on a protected heritage property shall be in accordance with:
- (a) the conservation plan; and
 - (b) any other requirements for Town approval of the alteration under section 33 of the *Ontario Heritage Act*, this By-law, and any other applicable Town by-law.

2.2 PROHIBITIONS

- 2.2.1 No person shall alter a cultural heritage landscape contained in a protected heritage property without having a conservation plan for the property.
- 2.2.2 No person shall alter a protected heritage property that contains a cultural heritage landscape in a way that is contrary to the conservation plan for the property.
- 2.2.3 No person shall alter a protected heritage property that contains a cultural heritage landscape in a way that is likely to affect the heritage attributes of the property without ensuring compliance with this By-law, including the general conditions applicable to any alteration.

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2.2.4 No person shall fail to obey an order issued under section 6.2 of this By-law.

PART 3
CONSERVATION PLAN APPROVAL AND AMENDMENT

3.1 CONSERVATION PLAN APPROVAL

- 3.1.1 Upon an application from a property owner or owners or on Council's own initiative, the Designated Official shall set terms of reference for the preparation of the required conservation plan.
- 3.1.2 The terms of reference for conservation plan preparation shall identify the person(s) responsible for preparing the plan, the studies or documents required to prepare the plan, and the anticipated consultation process to prepare the plan.
- 3.1.3 Once the Designated Official has approved terms of reference for conservation plan preparation, the person(s) responsible shall prepare the plan in accordance with the terms of reference.
- 3.1.4 Upon receipt of a conservation plan for approval, Council may approve the plan if Council is satisfied that the plan was prepared in accordance with the approved terms of reference.

3.2 APPLICATION TO AMEND

- 3.2.1 Subject to section 3.2.3, an owner of a protected heritage property subject to a conservation plan may at any time apply to amend the conservation plan for the property.
- 3.2.2 The person requesting the amendment shall deliver to the Designated Official a complete application containing:
- (a) a written request with reasons for the amendment;
 - (b) all documents prepared in support of the amendment; and
 - (c) payment of the applicable fee.
- 3.2.3 Notwithstanding section 3.2.4, the Designated Official may refuse to process an application to amend a conservation plan that seeks to amend the whole or any part of the plan where the plan was subject to a Council decision in the 12 months prior to the application for amendment.
- 3.2.4 Subject to section 3.2.3, upon receipt of a complete application to amend the conservation plan, the Designated Official shall proceed to review and decide upon the application within 90 days of receipt of a complete application, unless Council directs otherwise.

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- 3.2.5 Any decision by the Town in respect of a proposed amendment to a conservation plan shall be consistent with retaining the cultural heritage value or interest of the protected heritage property pursuant to the *Ontario Heritage Act*.
- 3.2.6 Where, pursuant to section 3.2.5, the Designated Official concludes that the proposed amendment is consistent with retaining the cultural heritage value or interest of the protected heritage property, the Designated Official shall approve the amendment.
- 3.2.7 Where, pursuant to section 3.2.5, the Designated Official concludes that the proposed amendment to the conservation plan is not consistent with retaining the cultural heritage value or interest of the protected heritage property, the Designated Official shall refuse to approve the amendment, notify the applicant in writing of such refusal, provide reasons for the refusal, and advise that, on the request of the applicant, the application will be presented to the Heritage Committee for review and to Council for a final decision.
- 3.2.8 Where, pursuant to section 3.2.6, an applicant wishes to request that Council decide on the application, the applicant shall deliver written notice of this request to the Designated Official within 21 days of the date of the notice of refusal received from the Designated Official.

PART 4
ASSESSMENT OF THE CONDITION OF PROTECTED HERITAGE PROPERTY

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- 4.1.1 As early as practicable, but no later than one year after a property has become a protected heritage property that is subject to Part 2 of this By-law, Council shall require the preparation of an initial heritage condition assessment of the cultural heritage landscape by the owner of the protected heritage property or on Council's own initiative.
- 4.1.2 Following preparation of the initial heritage condition assessment, the assessment shall be submitted to the Heritage Committee for review and to Council for final approval.
- 4.1.3 Once accepted and approved by Council, the initial heritage condition assessment shall be included in the conservation plan that is subject to Council approval or deemed to be included in the conservation plan if one then exists.
- 4.1.4 Based on the initial assessment or, as applicable, the most current assessment, the property owner shall ensure that the property retains or improves its assessed heritage condition in relation to all of the assessed cultural heritage value or interest or heritage attributes.
- 4.1.5 Council shall require the owner of a protected heritage property that is subject to Part 2 of this By-law to prepare and submit to Council a new heritage condition assessment every five years unless Council directs otherwise.
- 4.1.6 Upon approval of a new heritage condition assessment, Council shall ensure that the new condition assessment replaces the initial or, as applicable, previous assessment in the conservation plan.

PART 5
PROPOSALS TO ALTER THE PROTECTED PROPERTY

5.1 APPLICATION TO ALTER

- 5.1.1 Where the Town receives an application to alter a cultural heritage landscape on protected heritage property, the Designated Official shall first determine whether there is a conservation plan in place for that protected heritage property.
- 5.1.2 Where there is no conservation plan in place for the protected heritage property, then Council requires that the application be accompanied by a conservation plan prepared and approved pursuant to Part 3 of this By-law, along with any other information Council may require under section 33 of the *Ontario Heritage Act*, before a notice of receipt of the application is served on the applicant.
- 5.1.3 Where there is a conservation plan in place for the protected heritage property, then the Designated Official shall review the application together with any other information Council may require under section 33 of the *Ontario Heritage Act* to determine whether:
- (a) what is proposed is a Category A action. If so, the action is exempt from heritage review and approval and the applicant shall be informed by the Designated Official accordingly; or
 - (b) what is proposed is a Category B alteration or a Category C alteration that is likely to affect the heritage attributes of the property. If so, then the Designated Official shall:
 - (i) ensure that the alteration is reviewed for its effects on heritage attributes;
 - (ii) ensure the alteration is assessed for its consistency with retaining the cultural heritage value or interest of the cultural heritage landscape on the property;
 - (iii) where the application is for a Category B alteration, decide whether to:
 - (A) approve the alteration, including the attachment of any conditions of approval to conserve the property's cultural heritage value or interest and heritage attributes; or
 - (B) refuse the alteration, attach reasons for the refusal, and refer the application to the Heritage Committee and to Council; or
 - (iv) where the application is for a Category C alteration, refer the application to the Heritage Committee and to Council and attach a report that provides an overall recommendation on whether to approve or refuse the application, and any recommendations regarding conditions of approval to

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conserve the property's cultural heritage value or interest and heritage attributes if Council approves the alteration.

- 5.1.4 Any decision by the Town in respect of a proposed alteration that is likely to affect the heritage attributes of a protected heritage property shall ensure that the decision retains the cultural heritage value or interest of the property pursuant to the *Ontario Heritage Act*.

**PART 6
ENFORCEMENT**

6.1 INSPECTIONS

- 6.1.1 An Inspector or Officer may, upon producing proper identification, enter upon any protected heritage property at any reasonable time without a warrant for the purpose of inspecting the property to determine:

- (a) Whether the condition of the property conforms with the requirements of the conservation plan and this By-law; or
- (b) Whether an order made under this By-law has been complied with.

- 6.1.2 For the purposes of an inspection of a protected heritage property, an Inspector or Officer may:

- (a) Require the production for inspection of documents or things, including drawings or specifications, that may be relevant to the property or any part thereof;
- (b) Inspect and remove documents or things relevant to the property or any part thereof for the purpose of making copies or extracts;
- (c) Require information from any person concerning a matter related to a property or part thereof;
- (d) Be accompanied by a person who has special or expert knowledge in relation to a property or part thereof;
- (e) Alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection; and
- (f) Order the owner of the property to take and supply, at the owner's expense, such tests and samples as specified in the Order.

- 6.1.3 The Town may charge the owner of a protected heritage property a fee to conduct an inspection, including increased fees for multiple inspections.

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- 6.1.4 An Inspector or Officer who, after inspecting a protected heritage property, is of the opinion that the property is in compliance with the conservation plan, may issue a Certificate of Compliance to an owner who requests one and who pays the applicable fee.
- 6.1.5 Where an Inspector or Officer has reasonable grounds to believe that an offence has been committed by a person, the Inspector or Officer may require the name, address and proof of identity of that person, and the person shall supply the required information.
- 6.1.6 It shall be an offence to obstruct or permit the obstruction of such an inspection by an Inspector or Officer under this By-law.

6.2 ORDERS

- 6.2.1 If an Inspector or Officer is satisfied that a contravention of this By-law has occurred, the Inspector or Officer may make an order requiring the property owner or the person who caused or permitted the contravention of this by-law to discontinue the activity, and the order shall set out,
- (a) the municipal address or the legal description of the property;
 - (b) reasonable particulars of the contravention; and
 - (c) the period within which there must be compliance.
- 6.2.2 If an Inspector or Officer is satisfied that a person has caused or permitted the performance of an alteration in contravention of the provisions of this by-law, the Inspector or Officer may make an order requiring that the owner obtain approval for the alteration or requiring the owner to carry out the work needed to correct the contravention. Such order shall set out,
- (a) the municipal address or the legal description of the land;
 - (b) reasonable particulars of the contravention and of the approval to be sought or the work to be done, and the period within which there must be compliance with the order; and
 - (c) a notice stating that if the approval is not sought or the work is not done, as the case may be, in compliance with the order within the period it specifies, the municipality may have the work done at the expense of the owner pursuant to section 446 of the *Act* as amended .
- 6.2.3 An Order or Notice under this By-law may be served by:
- (a) delivering it personally to the owner and/or the person conducting work on the owner's property;

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- (b) sending it by registered mail to the last known address of the owner, which service shall be deemed five (5) days after mailing;
- (c) posting it on the owner's property;
- (d) sending a copy by facsimile transmission to the person's last known facsimile transmission number; or
- (e) sending a copy by e-mail transmission to the person's last known e-mail address.

6.2.4 If the Town is unable to effect service on the owner under section 6.2.3, a placard containing the terms of the order or notice may be placed in a conspicuous place on the property and the placing of the placard shall be deemed to be sufficient service of the order.

6.3 WORK DONE BY MUNICIPALITY

6.3.1 If any work required by an order under this by-law is not done within the specified period, the Town, in addition to all other remedies it may have, may do the work at the owner's expense and may enter upon land, at any reasonable time, for this purpose in accordance with section 446 of the *Act*.

6.3.2 A municipal corporation or person acting on its behalf is not liable to compensate the Owner, Occupant or any other person by reason of anything done by or on behalf of the municipality in the reasonable exercise of its powers under section 6.3.1.

6.3.3 Pursuant to subsection 446(3) of the *Act*, the municipality may recover the costs of doing a matter or thing under section 6.3.1 from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes..

6.4 OFFENCES AND PENALTIES

6.4.1 Every person who contravenes this By-law is guilty of an offence;

6.4.2 Every offence under this by-law is designated as a continuing offence.

6.4.3 Pursuant to section 429 of the *Act*, every person who commits an offence under this by-law is liable

- (a) on a first conviction, to a fine of not less than \$500.00 and not more than \$100,000.00, and
- (b) in the case of a continuing offence, on conviction for each day or part of a day that the offence continues, a minimum fine shall not exceed \$500.00 and a maximum fine shall not exceed \$10,000.00. However, despite subsection 6.4.3(a) above, the total of all of the daily fines for the offence is not limited to \$100,000.00.

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PART 7
CONFLICTS, PARAMOUNTCY & MISCELLANEOUS

7.1 CONFLICTS AND PARAMOUNTCY

7.1.1 Nothing in this By-law changes the application or requirements of

- (a) section 33 of the *Ontario Heritage Act*; or
- (b) sections 15.7, 15.9, 15.10 or 35 of the *Building Code Act, 1992*.

7.1.2 Where there is a conflict between any provision of this By-law and any provision of a conservation plan approved under this By-law, the requirements of this By-law shall prevail to the extent of the conflict.

7.1.3 Where there is a conflict between the requirements of this By-law and the decision or requirements of section 33 of the *Ontario Heritage Act*, the requirements of section 33 of the *Ontario Heritage Act* shall prevail to the extent of the conflict.

7.1.4 Subject to section 7.1.5, nothing in this By-law changes the application or requirements of other Town by-laws to a property in the Town.

7.1.5 Notwithstanding section 7.1.4, where a provision of this by-law conflicts with a provision of any other Town by-law made under the *Act* or the *Building Code Act, 1992*, then the provision that provides the greater protection of the cultural heritage value or interest prevails unless the conflicting provision provides greater protection of the health, safety and well-being of persons, in which case, the conflicting provision providing greater protection of the health, safety and well-being of persons, shall prevail.

7.2 MISCELLANEOUS

7.2.1 In the event that any section, clause, provision or part of this By-law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-law and all other provisions or parts thereof shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

7.2.2 References in this By-law to any legislation or by-law means as may be amended or replaced from time to time, and include any regulations thereunder.

7.3 SHORT TITLE

7.3.1 This By-law may be cited as the *CHL Conservation Plan By-law*.

7.4 COMING INTO FORCE

7.4.1 This by-law shall come into force and effect the day it is passed by Council.

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PASSED this XX day of YY, 2017

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