



Greater Ottawa Home Builders' Association
Association des constructeurs d'habitations d'Ottawa

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November 21, 2022

Paula Kulpa
Heritage Branch
Ministry of Citizenship and Multiculturalism
400 University Avenue, 5th Floor
Toronto, ON M7A 2R9

Re: ERO #019-6196 Proposed Changes to the Ontario Heritage Act and its regulations: Bill 23 (Schedule 6) - the Proposed More Homes Built Faster Act, 2022

Dear Ms. Kulpa,

Please accept the below from the Greater Ottawa Home Builders' Association (GOHBA) and its members as a submission to the government's request for feedback on Proposed Changes to the Ontario Heritage Act and its regulations: Bill 23 (Schedule 6) - the Proposed More Homes Built Faster Act, 2022 (ERO #019-6196).

GOHBA is supportive of the government's efforts to address our housing affordability and supply crisis by reducing the ability to use the heritage registry and designation process to frustrate the development of new housing.

Currently, it is too easy for neighbours, city staff or councillors to add properties to the registry to delay new housing proposals, especially for intensification / missing middle projects.

As the Ontario Housing Affordability Task Force observed in its report, municipalities are under significant "pressure to designate buildings with little or no heritage value as "heritage" if development is proposed and bulk listings of properties with "heritage potential" are also standing in the way of getting homes built."

We provide comments and additional suggestions on ERO #019-6196's specific proposals below, as well as provide a few further options that the government could consider to improve the overall heritage registry and designation process.

1. Changes affecting the Standards and Guidelines for Conservation of Provincial Heritage Properties

- **MCM is looking to promote sustainable development that respects the land and buildings that are important to its history and local communities while streamlining approvals and working to support priority provincial projects by proposing changes to the processes and requirements for ministries and prescribed public bodies governed**

by the Standards and Guidelines for Conservation of Provincial Heritage Properties (S&Gs) issued under the authority of Part III.1 of the *Ontario Heritage Act*.

- MCM is proposing to introduce an enabling legislative authority that provides that the process for identifying provincial heritage properties under the S&Gs may permit the Minister of Citizenship and Multiculturalism to review, confirm and revise, the determination of cultural heritage value or interest by a ministry or prescribed public body respecting a provincial heritage property. This process for Ministerial review would be set out through a revision to the S&Gs and may be applied to determinations made on or before the change comes into effect. If Bill 23 is passed, the ministry would develop and consult further on the proposed process under the S&Gs.
- MCM is proposing to introduce an enabling legislative authority so the Lieutenant Governor in Council (LGIC) may, by order, provide that the Crown in right of Ontario or a ministry or prescribed public body is not required to comply with some or all of the S&Gs in respect of a particular property, if the LGIC is of the opinion that such exemption could potentially advance one or more of the following provincial priorities: transit, housing, long-term care and other infrastructure or other prescribed provincial priorities.

GOHBA supports the government's efforts to revise the Standards and Guidelines for Conservation of Provincial Heritage Properties so that the Minister can review, confirm and revise, a determination of cultural heritage value or interest.

This will allow for a better balance of provincial and municipal housing goals with conserving and commemorating key heritage properties.

Request #1: Confirm changes to Section 25.2 Prevail

Section 26.1 of the Ontario Heritage Act is not proposed to be revised by Bill 23 but it appears it may conflict with the changes proposed to section 25.2.

Section 26.1(2) says this section prevails over 25.2. If that is the case, then declaration of provincial interest may not prevail as intended by section 25.2

It is recommended that 26.1(2) be revised to confirm 25.2 prevails, if this is the intention.

2. New requirements for municipal registers and the inclusion of non-designated properties on the municipal register

MCM is proposing clear and transparent requirements to improve municipal practices around the inclusion of non-designated properties on a municipal register through several changes that would encourage increased information sharing and timely decision making. These proposals include the following legislative changes:

- **Requiring municipalities to make an up-to-date version of their municipal register available on a publicly-accessible municipal website. MCM is proposing that, if passed, proclamation of this amendment would be delayed by six months to allow municipalities time to make the necessary changes to their website.**
- **Allowing for property owners to use the existing process under the OHA for objecting to the inclusion of their non-designated property on the municipal register regardless of when it was added to the municipal register.**
- **Increasing the standard for including a non-designated property on a municipal register by requiring that the property meet prescribed criteria. MCM is proposing to have the criteria currently included in *O. Reg. 9/06* (Criteria for determining cultural heritage value or interest) apply to non-designated properties included on the municipal register and is proposing that the property must meet one or more of the criteria to be included, which would be facilitated through a regulatory change. MCM is further proposing that this requirement would apply only to those non-designated properties added to the municipal register on or after the date the legislative and regulatory amendments come into force.**
- **Removal from the register**
 - **If council moves to designate a listed property but a designation bylaw is not passed or is repealed on appeal, the property would have to be removed from the municipal register. MCM is further proposing that this requirement would apply where the applicable circumstance outlined in the proposed amendment occurs on or after the legislative amendments, if passed, come into force.**
 - **Non-designated properties currently included on a municipal register would have to be removed if council does not issue a notice of intention to designate (NOID) within two years of the amendments coming into force.**
 - **Non-designated properties included on the register after the proposed amendment comes into force would have to be removed if council does not issue a NOID within two years of the property being included.**
 - **If removed from the register under any of the above three circumstances, the property cannot be relisted for a period of five years.**

GOHBA supports the enactment of the above requirements for the inclusion of non-designated properties on municipal registers as they introduce needed transparency and provide a mechanism for the removal of non-designated properties which will eventually bring many properties out of heritage register purgatory.

A public listing of properties on a municipal register is especially welcome as the current registry causes a significant amount of uncertainty for intensification, as a home builder may not find out that a building is on a track for designation until there is an application to demolish.

GOHBA also welcomes the above changes to the register to mandate that municipalities' either move to designate a property or release a property within a reasonable timeframe, as well as focus municipal resources on heritage properties that are of higher priority.

These measures also help fulfill the Ontario Housing Affordability Task Force recommendation #16 *Prevent abuse of the heritage preservation and designation process by: a) Prohibiting the use of bulk listing on municipal heritage registers.*

Most critically, this will help prevent the registry from being used – as it is currently – as a catchall database of properties that can be used at a whim to hamper new housing.

Request #2: No Force or Effect for Failure to Remove Property from the Register

While the proposed timelines are helpful, we recommend the inclusion of a provision in the proposed subsection 27(14) stating:

4. If the council of the municipality fails to remove the property from its register in accordance with this subsection, the inclusion of the property on the heritage register shall be of no force or effect.

3. **An increase in the threshold for designation of individual properties and new limitations on designation for properties subject to proposed development**
 - **MCM is proposing to provide further rigour in the designation process by increasing the threshold by requiring that a property meet two or more of the criteria prescribed in regulation. This change would be achieved through a regulatory amendment to *O. Reg. 9/06: Criteria for Determining Cultural Heritage Value or Interest*. MCM is further proposing that this requirement would apply only to properties where the notice of intention to designate (NOID) is published on or after the date the regulatory amendment comes into force.**
 - **The *More Homes, More Choice Act, 2019* amended the *Ontario Heritage Act* to establish a new 90-day timeline for issuing a NOID when the property is subject to prescribed *Planning Act* events. This new timeline was intended to provide improved certainty to development proponents and to encourage discussions about potential designations at an early stage, avoiding designation decisions being made late in the land use planning process. MCM is proposing to provide increased certainty and predictability to development proponents by requiring that council would only be able to issue a NOID where a property is included on the municipal heritage register as a non-designated property at the time the 90-day restriction is triggered. Therefore, if a prescribed event occurs with respect to a property, a NOID may only be issued if the property was already included in the municipal register as a non-designated property on the date of the prescribed event. The 90-day timeline for a municipality to issue a NOID following a prescribed event would then apply. This restriction would only**

apply where the prescribed event occurs on or after the date the legislative amendment comes into force.

GOHBA supports the government's efforts to establish a more rigorous process to designate heritage properties, which should make municipalities more transparent and accountable for new designations, as clear criteria should have the effect of reducing the arbitrariness exercised currently by municipalities in heritage matters.

These measures also help fulfill the Ontario Housing Affordability Task Force recommendation #16 *Prevent abuse of the heritage preservation and designation process by: b) Prohibiting reactive heritage designations after a Planning Act development application has been filed.*

It will be critical that new regulations are clear and precise so that municipalities do not abuse ambiguous language against the government's intentions.

Request #3: Set Standard of Significance when considering each of the Criteria for Determining Cultural Heritage Value or Interest

Current interpretation and application of the *Ontario Heritage Act*, together with the Provincial Policy Statement, 2020 ("PPS"), has led to significant development delays and cost impacts on development.

Proponents can consult with a municipality, spent hundreds of thousands of dollars on reports to submit a full application, and then a municipality takes its legislated 90 days to evaluate if a building should be designated under Part IV.

Municipalities can freeze a site even after a proponent has consulted with staff in advance of a rezoning application and had been given a preliminary decision that a property is not designated nor identified as having any heritage value prior to application.

While the Minister's proposed amendment to increase the threshold by requiring that a property meet two or more of the criteria prescribed under Ontario Regulation 9/06 is welcomed, given the breath of the criteria as drafted, this amendment alone will not be sufficient to remove barriers to critical projects while ensuring the continued protection of heritage resources.

Section 2.6.1 of the PPS directs that "Significant built heritage resources and significant cultural heritage landscapes shall be conserved". "Significant" is defined as: "resources that have been determined to have cultural heritage value or interest. Processes and criteria for determining cultural heritage value or interest are established by the Province under the authority of the *Ontario Heritage Act*".

“Built heritage resource” is further defined to include a property that is either designated or simply listed on a register.

These definitions provide no measurable standard for determining significance under the PPS. Rather, it directs that a property meets the significance threshold and should be conserved, if it satisfies any criteria under the *Ontario Heritage Act* including listing.

Pursuant to O. Reg. 9/06, the criteria for determining cultural heritage value or interest are extremely broad and subjective and are regularly applied in a manner that was not originally intended. Any property in Ontario could be potentially captured, even if two or more criteria are required to be met.

Further amendments to O. Reg. 9/06 are required to insert a standard of significance when considering each of the criteria for determining cultural heritage value or interest, and an objective definition of “significant” should be added to the PPS that provides a measurable standard – such as being designated pursuant to the Ontario Heritage Act.

The government should also consider additional amendments to state that in order for a property to be designated, it must meet at least one of the criteria in each of the three separate categories of criteria under O.Reg. 9/06. In other words, the property must: 1) have design value or physical value; and 2) have historical value or associative value; and 3) have contextual value.

The PPS should be further amended to differentiate between listed and designated properties.

4. Changes to Heritage Conservation Districts

- **MCM is proposing to increase rigour in the process of identifying and protecting heritage conservation districts (HCD) by requiring municipalities to apply prescribed criteria to determine a HCD’s cultural heritage value or interest. This would include a requirement for HCD plans to explain how the HCD meets the prescribed criteria. MCM is proposing to have the criteria currently included in O. Reg. 9/06 (Criteria for determining cultural heritage value or interest) apply to HCDs and is proposing that the HCD must meet two or more of the criteria in order to be designated, which would be achieved through a regulatory amendment. MCM is further proposing that this requirement would apply only to HCDs where the notice of the designation bylaw is published on or after the date the legislative and regulatory amendments come into force.**
- **MCM is also proposing to introduce a regulatory authority to prescribe processes for municipalities to amend or repeal existing HCD designation and HCD plan bylaws. The proposal would help create opportunities to align existing HCDs with current government priorities and make HCDs a more flexible and iterative tool that can better facilitate development, including opportunities to support smaller scale**

development and the “missing middle” housing. If passed, MCM would consult on the development and details of the amendment and repeal processes at a later time.

GOHBA supports the government’s efforts to establish more a rigorous process for heritage conservation districts. As noted for other items, this would make municipalities more transparent and accountable for new designations, as well as focus municipal resources on higher priority areas.

It is important to ensure that a heritage conservation district designation is not used to freeze a community in a moment of time and restrict future investment and intensification. In determining the criteria to apply to the identification of HCDs, the economic needs of communities, such as the current housing crisis, must be given priority consideration before redevelopment is discouraged through HCD identification.

Care must also be taken to ensure HCD identification and protection is limited to prescribing the “look and feel” of HCDs and is not used as a tool for regulating standards of development that are properly prescribed by the municipal zoning bylaw, such as height and density.

Request #4 Permit for Demolition or Removal of Building or Structure on Designated Property Only Where It Would Affect a Listed Heritage Attribute

Bill 23 proposes to remove some of the language that was introduced by the *More Homes, More Choice Act, 2019* in respect of situations where a landowner seeks to demolish or remove *any structure or building* (rather than heritage attribute) on the property, to remove the statement that a permit is required “whether or not the demolition or removal would affect a heritage attribute described in the heritage conservation district plan”.

GOHBA believes the intention is to permit the demolition or removal of a structure or building, that would not affect a heritage attribute described in an HCD plan, without a requiring a permit. However, even after removing this language, this provision continues to appear to hold the same meaning on a plain reading:

Pre-Bill 23 – (Not yet in effect, introduced in 2019)	Bill 23 – Proposed Amendment
<p>42(1) No owner of property situated in a heritage conservation district that has been designated by a municipality under this Part shall do any of the following, unless the owner obtains a permit from the municipality to do so:</p> <p>[...]</p> <p>4. Demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property, whether or not the demolition or removal would affect a heritage attribute described in the heritage conservation</p>	<p>42(1) No owner of property situated in a heritage conservation district that has been designated by a municipality under this Part shall do any of the following, unless the owner obtains a permit from the municipality to do so:</p> <p>[...]</p> <p>4. Demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property.</p>

district plan that was adopted for the heritage conservation district in a by-law registered under subsection 41(10.1).	
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We recommend suggesting that it be explicitly stated that a permit is only required for the demolition or removal of structure or building where it would affect a listed heritage attribute.

Further Options

We respectfully submit some additional options that the government could consider to improve the overall heritage registry and designation process:

- a. Include the filing of a site plan application among the prescribed events that would require a municipality to move to designate the property within 90 days. Currently, the prescribed events are limited to OPA, ZBA and subdivision applications. This would be a relatively simple addition to s.1(1) of O.Reg. 385/21.
- b. Provide that for heritage permit applications under sections 33 (alteration) and 34 (demolition/removal) of the OHA, there be a similar requirement as under the Planning Act for municipalities to advise whether the applications are complete within 30 days, failing which the applicant can bring a preliminary motion before the Tribunal to determine completeness of the application. Through Bill 108, municipalities were given 60 days to respond regarding completeness of the applications and, even more importantly, there is effectively no recourse for an applicant if the municipality claims the application is incomplete and the applicant disagrees. This would only require copying the framework for this process for already set for planning applications into OHA.
- c. Revert to the pre-2005 amendments to the OHA whereby a municipality could not prevent the demolition of a building on a designated property, but could only delay the demolition for a period of 6 months – during which time the municipality could presumably attempt to negotiate with the landowner to retain all or a portion of the building or, alternatively, could expropriate the property (with compensation) and bring the property into public ownership so that the broader public bears the cost of maintaining the heritage resource, rather than an individual property owner.

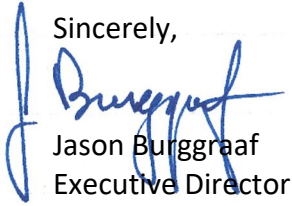
This would help fulfill the Ontario Housing Affordability Task Force recommendation #17 (Requiring municipalities to compensate property owners for loss of property value as a result of heritage designations, based on the principle of best economic use of land).

- d. Prescribe criteria guiding the standards that may be regulated through an HCD plan in order to encourage objective and measurable requirements that need to be met in order to obtain a permit under Part V of the Act. This would reduce delays and uncertainty arising from subjective opinions on the “look and feel” of a designated HCD.

Thank you for the opportunity to provide comments on the government's proposals.

We are pleased to answer questions or provide further information as requested.

Sincerely,

A handwritten signature in blue ink, appearing to read "Burggraaf", is written over the printed name and title. The signature is stylized and cursive.

Jason Burggraaf
Executive Director