CHO - PCO
Community Heritage Ontario
Patrimoine communautaire de l'Ontario

Bill 23, the More Homes Built Faster Act
Proposed Changes Affecting the Conservation of Ontario's Cultural Heritage Resources

Response from Community Heritage Ontario

Community Heritage Ontario (CHO) is the province-wide, non-profit umbrella organization of municipally appointed heritage committees (MHC). There are currently over 150 MHCs in the Province comprised of more than one thousand volunteers responsible for providing advice and recommendations to Councils on local heritage matters. CHO's mission is to advocate for heritage in Ontario; support the development of MHCs; and to further the identification, preservation, interpretation and wise use of community heritage, locally, provincially and nationally.

Although CHO supports some of the proposed changes, there are a number of proposals which will have adverse impacts on heritage conservation in Ontario. These concerns are summarized below, while the following pages detail our response to each specific proposal affecting heritage conservation.

Key Concerns

General Comments

- Overall, the previous and proposed changes to the Ontario Heritage Act have made this a very complex and difficult to understand piece of legislation especially given the reliance on volunteer members of the community to implement it in many parts of the province.
- The time period allotted for review of the current changes and the timing of the release of the proposed legislation has been extremely challenging and should be extended to allow proper consultation.
- The conservation of heritage resources is not an impediment to expanding the supply of housing in the province; in fact, there are numerous examples where the conservation of heritage resources has resulted in an increase in the supply of housing.
- The effect of a number of the proposed changes would in effect impede the protection of Ontario's cultural heritage resources.

Ontario Heritage Act

- The ability to allow property owners of all existing listed properties to object years after they have been listed in the heritage Register
- The removal of all existing listed properties from the Register after two years from proclamation if they have not been designated and not allowing them to be re-listed for an additional five years
- Unspecified evaluation criteria for including a property on the Register, and
- Increasing the threshold criteria for evaluation for individual property designation and for creating heritage conservation districts.

Planning Act

- Removal of Site Plan Control for developments with less than 10 residential units
- Limit site plan control by removing the ability for municipalities to regulate exterior architectural details and landscape design
- No longer require public meetings for plans of subdivision

Detailed Comments on Specific Proposals
Ontario Heritage Act – Schedule 6

Proposal: Section 27 - Accessible Register on Website

The proposal requires the clerk of the municipality to ensure that the information included in the register is accessible to the public on the municipality's website.

Commentary:	**Recommendation:**
• Many municipalities already have their Registers publicly available on their website. • However, some municipalities will require additional time and resources to introduce this requirement, and this should be reflected in the legislation	CHO supports the proposed change subject to an appropriate period to allow the requirement to be phased-in.

Proposal: Section 27 – Listing Criteria for Register

Subsection 27 (3) would require that non-designated property must meet the criteria for determining whether property is of cultural heritage value or interest, if such criteria are prescribed. The Ministry is 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.

Commentary:	**Recommendation:**
• Many municipalities already use the criteria from Regulation 9/06 to assist when listing properties • Criteria would assist in determining a degree of cultural heritage value or interest and would all for objective assessments • It is unclear if the new prescribed criteria will be the same as 9/06 This should only apply to new listings and not be retroactive to all existing listed properties which would be a considerable workload undertaking	CHO supports the concept of prescribed criteria for listed propertied but would appreciate having input on the type and scope of the criteria (if Reg. 9/06 is not used) CHO agrees that the requirement should only apply to new listed properties and not be retroactive to existing listed properties as this would be a considerable undertaking for many municipalities and their MHCs.

Proposal: Section 27 – Expanded Objections

Subsection 27 (13) would provide that, in addition to applying to properties included in the register on and **after July 1, 2021**, the objection process set out in subsections 27 (7) and (8) would now apply to all non-designated properties on the register.

Commentary:	**Recommendation:**
• This change would allow all owners of properties <u>listed prior to July 1, 2021</u> the ability to object to their inclusion on the Register for any reason. • Creates an unnecessary redundancy in appeal rights as municipalities have no mechanism to prevent alterations or	CHO does not support introducing the ability to object to a listing retroactively to previous property listings. CHO suggests amending the legislation to require any objection to relate to the property's cultural heritage value and to limit number of times an

demolition of a listed property once notice or a permit has been submitted except through designation under Part IV of the Act. The property owner has the right to object as part of the designation process, and the ruling of the OLT is binding on Council. The logic for this change in unclear as it relates to housing affordability. • May increase municipal staff workload beyond current capacity to address enquires as well as reports to Council on any objections.	objection can be submitted or set a minimum time period between objections.

Proposal: Section 27 – Two Year Maximum Timeframe for Listed Properties New subsections 27 (14), (15) and (16) specify circumstances that require the removal of non-designated property from the register. New subsection 27 (18) prevents a council from including such non-designated property in the register again for five years. Consultation is not required with the heritage advisory committee when properties are removed from the Register under these circumstances	
Commentary: • Heritage property registers are the backbone of heritage planning programs throughout the world. • Up to this point, the Province of Ontario has been advocating the development of municipal heritage registers as a means to document these resources in the community, to be transparent with property owners and allow protection to be introduced (if deemed appropriate) when the property is threatened with demolition. • According to **the Provincial Heritage Tool Kit,** a register: o Recognizes properties of cultural heritage value in a community o Fosters civic identity and pride by drawing attention to the heritage and development of a community o Promotes knowledge and enhances an understanding of a community's cultural heritage o Provides easily accessible information about cultural heritage value for land-use planners, property owners, developers, the tourism industry, educators and	**Recommendation:** CHO strongly objects to this proposal as it would have a major adverse impact on heritage conservation in Ontario and the efforts of municipalities to protect there heritage resources while serving no useful purpose in improving the supply and affordability of housing in Ontario. The requirement to remove properties from the Register if not designated within two years of legislation approval is ill-conceived, contrary to universally accepted heritage protocols and should be abandoned (including the five year limit on returning properties to the Register) so as to prevent the loss of significant cultural heritage resources that are not yet designated.

the general public ○ Is 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 • Removal from the Register would be required if Council passes an Intention to Designate, but the by-law is not passed within the prescribed timeframe or is withdrawn by Council – there may be legitimate reasons for the above actions and should not result in automatic removal from the Register. • Listed Properties that are not designated within the two year timeframe (from when they are added to the Register or, for existing listings, from the date the Act comes into force) are <u>automatically removed from the Register</u> and cannot be placed back on the Register for <u>five years</u>. What purpose does this serve? Who does this benefit? Why was two years selected? Why was five years chosen? - the cultural heritage resource is still a cultural heritage resource even after these arbitrary dates have occurred. • This change does not take into account the number of listed properties in the municipality, the municipal resource implications (financial, workload, volunteer commitment) that would be required to research/review and prepare designation reports. • Designating properties where there is no threat of loss is counter- productive and may lead to an excessive number of appeals to the Ontario Land Tribunal further burdening the system. Most municipalities have designated properties only if there is a threat of loss through demolition or the property is part of a development application. And this has been a very successful approach. • Provincial properties which are listed and cannot be designated, would also be removed from the municipality's register after two years.	

Proposal: Section 29 – Designation Criteria

Although not addressed in the Act*, the Ministry 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 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.

* This change would be achieved through a regulatory amendment to O. Reg. 9/06 Criteria for determining cultural heritage value or interest.

Commentary:	**Recommendation:**
• Raising the bar to require two or more criteria to be met could exclude a number of simple/local heritage resources that help tell the story of a community and deserve to be protected for future generations. • Making it harder for communities to preserve valued places is problematic, cannot solve the housing crisis but will certainly lead to loss of heritage valued by the local community • Designation should reflect what is important to the local community from a heritage perspective and this may be different across Ontario • It is unclear if the regulation criteria is planned to be modified in any manner which would require extensive consultation with the heritage community.	CHO does not support requiring a property to meet two or more critiera. A property should need to only **meet one or more** of the criteria prescribed in Regulation 9/06 as the objective is to demonstrate that some aspect of cultural value or interest is reflected in the property (often a significant property may only meet one criteria) In addition CHO recommends that previously approved designation by-laws should not be affected by any change to meet an enhanced threshold for designation, **including if the designation by-law is merely being amended to modify a specific attribute or correct the legal description of the property.**

Proposal: Section 29 – Property Must be Listed Prior to a Prescribed Event

Currently, the Act provides that, if a prescribed event occurs (OPA, ZBA, Subdivision application), a notice of intention to designate a property under that section may not be given after 90 days have elapsed from the prescribed event, subject to such exceptions as may be prescribed.

The proposal would also provide that the municipality may give a notice of intention to designate the property **only if the property was included in the register under subsection 27 (3) as of the date of the prescribed event**

Commentary:	**Recommendation:**
• The Act has never required listing a property on the Register to qualify a property for designation. To be designated, it only had to meet the criteria Reg. 9/06 • Not all properties are inventoried and included on Registers in Ontario – this amendment would require a municipality to undertake a complete inventory and place all properties on the Register (only to see them be removed in two years if not	CHO does not support the requirement that a property must be listed on the register prior to a prescribed event (OPA, ZBA, Subdivision application) given that due to available municipal resources and staffing/volunteers, not all cultural heritage resources are included on municipal registers and in some cases are only identified when a development application is submitted. .

designated) • Requiring listing prior to the prescribed event also eliminates the possibility of preventing the demolition of cultural heritage resources on the subject properties using Part IV designation unless the property is listed.	

Proposal: Section 41 – Heritage Districts Subsection 41 (1) of the Act currently permits a council of a municipality to designate, by by-law, the municipality or any defined area of it as a heritage conservation district, if there is in effect in the municipality an official plan that contains provisions relating to the establishment of a heritage conservation district. The proposal would also require the identified heritage district to meet criteria for determining whether they are of cultural heritage value or interest, if such criteria are prescribed.	
Commentary: • This proposal is unnecessary given that the Act already requires that the heritage conservation district plan must provide a statement explaining the cultural heritage value or interest of the district. • Appears to wish to make district designation more demanding • The criteria (specific to district designation) have not been developed or shared so it is difficult to provide any comment	**Recommendation:** Given that the criteria have not be released for comment, CHO suggests this section of the legislation not be approved at this time. CHO would like to review any proposed criteria.

Proposal: Section 41 – Amending a Heritage District Plan New subsections 41 (10.2) and (10.3) require a council of a municipality wishing to amend or repeal a by-law made under the section to do so in accordance with such process as may be prescribed; similar rules are added to section 41.1. (which deals specifically with the heritage conservation district plan)	
Commentary: • The change is welcomed as the Act was silent on how a heritage conservation district was to be amended or repealed. • This would include any boundary changes or changes to the heritage conservation district plan (including the repeal of an existing plan and introduction of a new plan).	**Recommendation:** CHO supports the proposed changes outlining that a heritage conservation district by-law can be amended or repealed subject to a public review and comment on the prescribed process.

Proposal: Provincially Owned Heritage Properties Section 25.2 of the Act currently permits the Minister to prepare heritage standards and guidelines for the identification, protection, maintenance, use and disposal of property that is owned by the Crown or occupied

by a ministry or prescribed public body and that has cultural heritage value or interest.

The new proposal - 25.2 (3.1) provides that the process for identifying such properties, as set out in the heritage standards and guidelines, **may permit the Minister to review determinations made by a ministry or prescribed public body.**

Further proposed changes in 25.2 (7) would exempt the Crown, a ministry or a prescribed public body from having to comply with the heritage standards and guidelines in respect of a particular property, if the Lieutenant Governor in Council is of the opinion that such exemption could potentially advance one or more provincial priorities, as specified.

Commentary:	**Recommendation:**
• This change could impact the protection and conservation of provincially owned cultural heritage resources in local communities if the Minister believes the heritage resource is affecting other provincial priorities which are identified as o 1. Transit. o 2. Housing. o 3. Health and Long-Term Care. o 4. Other infrastructure. o 5. Such other priorities as may be prescribed.	CHO notes that the Province should protect, conserve and maintain cultural heritage resources in its ownership (which are often also of heritage value to a local community), abide by the Standards and Guidelines and consider the conservation of heritage resources as a provincial priority. At minimum, if the government proposes to not comply with the heritage standards and guidelines, it should commit to consultation with the local municipality in which the resource resides to further assess the value/significance and possible options for conservation.

Planning Act
Schedule 9 of Bill 23
(Proposed changes that could affect cultural heritage resource conservation)

Proposal: Changes to Site Plan Approval
To limit the scope of site plan control by removing the ability to regulate architectural details and landscape design aesthetics

Commentary:	**Recommendation:**
• If the property is within a heritage conservation district, design and architectural details/materials can be influenced using Ontario Heritage Act tools such as policies and guidelines in a such heritage conservation district plan • However, the inability to use site plan control to regulate design and architectural details may require the introduction or enhancement of design policies in heritage district plans. • Outside of heritage districts, this change could impact the conservation of cultural	From a heritage perspective, CHO supports the retention of the ability to regulate architectural details and landscape design as part of Site Plan Control as it provides a valuable mechanism to enhance Ontario's urban environment and create a high-quality built environment. **At minimum, these features should be retained if the development involves the incorporation of a cultural heritage resource.** CHO recommends an exception be added to Section 41 (4.1.1) for when it would be appropriate to regulate architectural details and landscape design aesthetics – "…or the development involves

heritage resources where the resource is being retained in conjunction with new development where the proposed architectural details or materials negatively affect the resource.	the incorporation of a cultural heritage resource".

Proposal: Changes to Site Plan Approval The proposed change would restrict a municipality's ability to apply site plan control for developments of up to 10 residential units anywhere in the municipality (except for land lease communities)	
Commentary: • Some municipalities use Site Plan Control for single detached and other small scale residential projects in heritage conservation districts (in combination with Heritage Act approvals) - this allows tree protection and servicing/grading to be addressed and securing a financial security and Agreement to ensure compliance. • Municipalities have also used Site Plan Control to ensure heritage buildings are appropriately addressed in new plans of subdivision (as a condition of approval) including when a heritage building is relocated (to ensure proper siting and placement of lot features)	**Recommendation:** Municipalities should have the ability to utilize Site Plan Approval for low rise residential development in heritage conservation districts and in special circumstances (such as when a cultural heritage resource is being conserved outside of a heritage conservation district). This allows the heritage resource or new infill unit to be suitably sited on the property given its immediate context as well as address, tree conservation, servicing, and driveway and garage placement.

Proposal: Changes to Plan of Subdivision The proposal would remove public meeting requirement for draft plans of subdivision	
Commentary: • Would deprive members of the public/heritage advocates the ability to express their concern in person if a cultural heritage resource was not being included in the plan or was being incorporated in a manner that was not appropriate from a heritage perspective. • A municipality could still choose to hold a public meeting (but it would not be mandatory)	**Recommendation:** CHO suggests public meetings should be required if the plan of subdivision involves property on which a cultural heritage resource is located to demonstrate how the resource is being addressed.

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