

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

## **Comments Submitted to the Environmental Registry of Ontario**

As a practicing heritage professional I appreciate the opportunity to comment on the proposed changes to critical legislation in Ontario. Periodic revision to the Ontario Heritage Act is key to ensuring it reflects national and international best practices, and remains an effective and efficient means by which to conserve the cultural heritage of this province.

Some of the proposed changes represent positive refinements in how the Ontario Heritage Act operates and should be recognized as such. Generally speaking, these include the requirements for municipalities to keep an up to date version of their municipal register accessible; requirements for non-designated property to meet prescribed criteria in order to be included on the register; and requirements for new HCDs to meet prescribed criteria.

However a number of concerning proposals represent fundamental changes to the ways that heritage properties are identified and conserved in Ontario. Some of these changes seem arbitrary in nature and will negatively impact governments' and communities' ability to identify and conserve cultural heritage. These changes also carry unintended consequences that may result in unnecessary increases in regulation and restriction on property owners. Please find below some specific comments on these items of concern.

### **1.0 Regarding two year limits for non-designated properties included on the heritage register**

#### 1.1 Proposed Changes:

- 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.

#### 1.2 Comment:

These proposed changes represent a fundamental change in the way that municipal heritage registers are used by municipalities. Effectively, registers would no longer serve as a repository for non-designated and designated properties. They would instead function as a list of designated properties, with a smaller rolling list of properties that will either be designated or removed within two years.

Inevitably, the proposed amendment will result in the designation of a significant number of properties across the province that have hitherto been non-designated, but identified through inclusion on the register. Designation represents a far more rigorous form of regulation: it is more costly to property owners in terms of money and time, and restrictive in what changes can be made to a property. Under the proposed amendment municipalities will need to designate important properties they do not want to come off the register, inevitably imposing these new burdens onto countless Ontarians whose properties have been effectively managed, often for decades, through listing alone.

The proposed amendment implies that non-designated properties on the register are simply those that have not been designated yet, and renders obsolete the long-standing use of non-designated inclusion as a status unto itself. This effectively removes a popular and non-invasive mechanism from municipalities' toolkits, which to reiterate, identifies properties of cultural heritage value or interest while minimizing costs and other regulatory requirements for property owners. The change would also affect municipalities' abilities to include property owned by provincial and federal governments on heritage registers.

This proposed temporary status for non-designated properties contradicts other parts of the proposed changes: requiring municipalities to demonstrate a higher standard for listing properties while simultaneously making it more difficult to retain listed properties on the register is logically inconsistent, counter-productive and inefficient for municipalities.

The basis and justification for a two year review period is unclear. For many municipalities it may be challenging to feasibly designate all listed properties within a two year period. In practice, many properties may be removed from municipal registers owing to a lack of municipal resources, rather than insufficient cultural heritage value or interest. With this in mind, the five year period under which properties cannot be re-listed may serve to be punitive and obstructionist to municipalities, further undermining their ability to identify and conserve cultural heritage resources.

### 1.3 Recommendation

These proposed amendments will negatively impact communities' and municipalities' abilities to identify and conserve cultural heritage properties, while at the same time imposing stronger regulations onto property owners. It is therefore recommended that amendments requiring all non-designated properties to be struck from the register be removed from Bill 23.

## **2.0 Regarding an increase in the threshold for designation of individual properties**

### 2.1 Proposed Changes:

- 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.

## 2.2 Comment:

Ontario's heritage framework is premised on values-based conservation, whereby a place's heritage significance is determined according to the nature and strength of its particular values. As currently written, the Ontario Regulation 9/06 criteria present a framework into which values must fit to be designated under the Ontario Heritage Act. However the ultimate determination of significance is based on the nature and strength of the particular values.

While meeting two criteria can be considered a higher threshold in a numeric sense, it is not inherently indicative of increased significance within a values-based system. Public and private sector professionals have experience in applying the criteria, and determining significance based on the quality and strength of its values, not using quantitative metrics. As such, a requirement to meet two criteria in order to designate represents a potentially artificial threshold - one that is at odds with the system of values-based conservation, and one that undermines trained professionals' ability to determine whether a property should be considered significant and designated under the Ontario Heritage Act.

A requirement for meeting several criteria may also impact the ability to designate Cultural Heritage Landscapes under the Ontario Heritage Act. Some Cultural Heritage Landscapes, (particularly associative-category landscapes, most often associated with Indigenous communities) are distinguished by an absence of physical artifacts or monuments. Associative landscapes are integral to the very concept of cultural landscapes as developed by UNESCO, and are reflected in cultural landscape practice throughout the world. However many associative landscapes may not qualify for designation in Ontario, given a requirement for meeting multiple criteria.

The proposal to create a higher threshold for designating individual properties will negatively impact communities' and municipalities' abilities to identify and conserve cultural heritage properties by creating an arbitrary and artificial new threshold for designation, undermining professionals trained in determining significance, and making it harder to designate sites without obvious physical or built resources, including cultural heritage landscapes.

## 2.3 Recommendation

It is recommended that the proposed requirement for meeting two criteria be removed. If an increased threshold is desired, this should be articulated in terms of the O. Reg. 9/06 criteria themselves. This means providing clearer instructions on interpreting the criteria, providing an opportunity to articulate thresholds for significance within a values-based conservation framework.

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