



November 18, 2022

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

**Re: 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)**

Dear Paula,

Thank you for the opportunity to comment on the proposed legislative and regulatory amendments to the *Ontario Heritage Act* through ERO 019-6196. As you are no doubt aware, the City of Ottawa has one of the largest heritage registers in Ontario, capturing properties of local, provincial, national and international significance. As such, the proposed amendments will have a dramatic impact on all facets of the City's heritage program.

The City of Ottawa recognizes that heritage conservation in Ontario and beyond is at a crossroads as the field grapples with fundamental issues such as systemic racism, reconciliation and climate change, but the solution is not to completely disregard the fundamentals of the *Ontario Heritage Act*. Jurisdictions across the country and beyond are embarking on exercises that recognize the inherent issues in current practice and seek to update frameworks to be more inclusive and to take a more flexible approach to conserving significant places. The City of Ottawa is also taking on this work but we continue to strongly believe that historic places that tell a diverse range of stories are fundamental to building livable cities and are not mutually exclusive of providing new housing for Ontarians. For example, in the past year alone, Ottawa City Council has approved hundreds of units of new housing in HCDs and incorporating individually designated buildings. Heritage properties are frequently leveraged in development proposals, with the support of City staff to develop new homes while reflecting our collective history.



The City is primarily concerned with three items in the proposal:

- The proposed timelines related to non-designated listings under Section 27
- The proposed regulatory amendment to increase the threshold for designation under Section 29 and the potential diversity, equity and inclusion impacts.
- The proposed implementation timeline of January 1, 2023.

Detailed comments are provided in the attached document on these and other areas. We have made several suggestions whereby the legislation could be improved to allow more flexibility where there is mutual agreement between the property owner and the municipality. We hope that the Ministry will take these suggestions into account.

Finally, should the legislative and regulatory amendments be adopted effective January 1, 2023, the City strongly urges the Ministry to prioritize the update of and consultation on the Ontario Heritage Tool Kit. We look forward to contributing to this process. If you have any questions or require clarification I can be reached at (613)-580-2424, ext. 21586 or by email at Lesley.collins@ottawa.ca

Sincerely,

A handwritten signature in black ink that reads 'L. Collins' with a stylized flourish at the end.

Lesley Collins, MCIP RPP, CAHP

Program Manager, Heritage Planning Branch

ERO 019-6196

City of Ottawa Comments

Overall Comments:

- The City of Ottawa strongly objects to the proposed amendments to Section 27 and believes it will result in a lack of transparency regarding heritage resources, create more uncertainty for property owners and developers, more delays and more objections and appeals to the OLT. It will not serve to streamline the development process nor will it result in more homes built faster.
- The City of Ottawa strongly objects to an arbitrary increase in the threshold for designation without a holistic review and update of Reg. 9/06. Increasing the threshold from one to two criteria seems arbitrary and has significant potential impacts on municipalities who wish to address diversity and inclusion through their designation programs.
- The City of Ottawa requests additional time beyond the proposed January 1, 2023 implementation date for the proposed legislative and regulatory amendments. It has been less than 18 months since the most recent changes to the Ontario Heritage Act were implemented and municipalities are still adjusting process and procedures to address these changes. Rushing this to a January 1st implementation will lead to a focus of the program in 2023 on administrative re-alignment and proactive designations, and significantly reduce the City's ability to support the development review program and its ambitions to improve approval timelines.
- Updates to the Ontario Heritage Toolkit have become even more important in light of the proposed changes.
- Comments on all proposed legislation and regulatory changes are provided below in order by subsection of the Act to be amended.

Definitions

Deletion of new definition of "Alter"

Note: On a day to be named by proclamation of the Lieutenant Governor, section 1 of the Act is amended by adding the following subsection: (See: 2019, c. 9, Sched. 11, s. 1 (2)) Definition of "alter" in certain provisions (2) Despite subsection (1), for the purposes of sections 33, 34.5, 69 and such other provisions as may be prescribed, the definition of "alter" in subsection (1) does not include to demolish or to remove and "alteration" does not include demolition or removal. 2019, c. 9, Sched. 11, s. 1 (2).

Comments:

- The City of Ottawa strongly supports the deletion of this alternate definition of alter.

Part IV Changes

New Section 27(1.1)

(1.1) The clerk of the municipality shall ensure that the information included in the register is accessible to the public on the municipality's website.

Comments:

- The City of Ottawa supports the requirement to have the heritage register online.

New subsection 27(3)- prescribe criteria for listing

Non-designated property

(3) Subject to subsection (18), in addition to the property listed in the register under subsection (2), the register may include property that has not been designated under this Part if,

(a) the council of the municipality believes the property to be of cultural heritage value or interest; and

(b) where criteria for determining whether property is of cultural heritage value or interest have been prescribed for the purposes of this subsection, the property meets the prescribed criteria.

(3.1) If property is included in the register under subsection (3), the register shall contain, with respect to such property, a description of the property that is sufficient to readily ascertain the property.

Comments:

- The City of Ottawa does not object to prescribing criteria for listing. However, there will need to be clarity from the Ministry regarding the documentation required for listing versus designation through an updated version of the Tool Kit
- Further clarity is needed regarding the threshold for listing properties on the Register as non-designated listings. The ERO suggests that the threshold for designation under Part IV will be raised to two instead of one criteria, will this also apply to listed properties?

New subsection 27(7) (13) Objections

(7) The owner of a property who objects to a property being included in the register under subsection (3) or a predecessor of that subsection shall serve on the clerk of the municipality a notice of objection setting out the reasons for the objection and all relevant facts. 2019, c. 9, Sched. 11, s. 6.

Application of subss. (7) and (8)

(13) In addition to applying to properties included in the register under subsection (3) on and after July 1, 2021, subsections (7) and (8) apply in respect of properties that were included in the register as of June 30, 2021 under the predecessor of subsection (3).

Comments:

- The revised Ontario Heritage Toolkit will be crucial in providing guidance to municipalities on dealing with objections to listings.

New Subsections (15), (16)

Same

(15) In the case of a property included in the register under subsection (3) on or after the day subsection 3 (4) of Schedule 6 to the More Homes Built Faster Act, 2022 comes into force, the council of a municipality shall remove the property from the register if the council of the municipality does not give a notice of intention to designate the property under subsection 29 (1) on or before the second anniversary of the day the property was included in the register.

Same

(16) In the case of a property included in the register under a predecessor of subsection (3), as of the day before subsection 3 (4) of Schedule 6 to the More Homes Built Faster Act, 2022 comes into force, the council of a municipality shall remove the property from the register if the council of the municipality does not give a notice of intention to designate the property under subsection 29 (1) on or before the second anniversary of the day subsection 3 (4) of Schedule 6 to the More Homes Built Faster Act, 2022 comes into force.

Comments:

- The City of Ottawa strongly objects to a two-year time limit on non-designated listings, such a time limit is arbitrary and unnecessary. The City of Ottawa has listed approximately 4600 properties on its Heritage Register since 2013. In nine years, the City has received 53 notices of intention to demolish. Of those 53 notices, Council has only issued one Notice of Intention to Designate. It is clear that the Heritage Register is not an impediment to housing development in Ottawa. Working with owners of listed properties on retention will no longer be a

viable option for municipalities as the interim protection offered by the listing will be lost. Municipalities will by default more frequently turn to designation.

- Currently, the municipal register is the official list or record of cultural heritage properties that have been identified as being important to the community. Without continuity from year to year, the Heritage Register's function will shift away from this role because it cannot comprehensively reflect properties with cultural heritage value. This shift will fundamentally change how municipalities identify heritage properties and will likely turn municipalities toward a two-list system: 1) a hidden, internal-only property list as well as 2) an official Heritage Register on their website.
- It is operationally impossible for municipalities to evaluate all listed properties for significance in a two-year period. Inevitably, significant heritage resources will most certainly be lost, despite the direction in the PPS for municipalities to conserve them.
- The City of Ottawa anticipates an increase in the number of appeals before the OLT in the years ahead, as a result of the two-year time limit. Appeals risk delaying housing projects and, at the same time, adding exponentially to their cost.
- The two-year time limitation will reduce the transparency of heritage conservation processes. The time limit essentially caps the number of non-designated properties that can be listed on a register at one time to the number of properties a municipality's staff can feasibly move to designate. Rather than having a predictable process where listing is proactive and demolition is delayed until a property can be assessed against Regulation 9/06, municipalities will now likely move to quickly list properties prior to the triggering of a prescribed event to retain the right to designate and preserve the protections granted under section 27 (9). This reduces transparency and predictability for developers and other applicants, as heritage processes and approvals not planned for due to a property's initial lack of heritage status may complicate project budgets, approvals, and timelines.
- The City of Ottawa suggests that an amendment to the proposed legislation could be made to allow for a property to remain listed on the Register after the two year timeline where there is a mutual agreement between the municipality and the property owner. This would be in alignment with other clauses of the OHA that allow for extension of timelines when all parties are in agreement.

New subsection 27(18)

Prohibition re including property in register, subss. (14) to (16)

(18) If subsection (14), (15) or (16) requires the removal of a property from the register, the council of the municipality may not include the property again in the register under subsection (3) for a period of five years after the following date:

- 1. In the case of subsection (14), the day any of the circumstances described in paragraphs 1, 2 and 3 of that subsection exist.*
- 2. In the case of subsection (15), the second anniversary of the day the property was included in the register.*
- 3. In the case of subsection (16), the second anniversary of the day subsection 3 (4) of Schedule 6 to the More Homes Built Faster Act, 2022 comes into force.*

Comments:

- The City of Ottawa objects to this five year moratorium on re-listing of the properties. This timeline is arbitrary and presumes that cultural heritage value disappears after a set time frame. This provision will result in the loss of many significant cultural heritage resources.
- Considering the multi-year timeframe of development projects, this change will result in problematic real estate speculation where a developer purchases lands not listed on the Heritage Register but that were previously listed and may be listed again in the future. This uncertainly will create risk for all stakeholders.
- Removing properties for a five-year period will essentially hide these heritage properties from the public for at least five years, eroding transparency and accountability that municipalities currently offer. This shift seems to contradict the direction in 27.1 (1) that ensures that heritage property information included in the register is accessible to the public on the municipality's website.
- The City of Ottawa suggests an amendment to the proposed legislation, to allow a willing owner to agree to re-listing during the five years regardless of previous status on the Heritage Register

New subsection 29 (1.2)

Limitation (1.2)

The following rules apply if a prescribed event has occurred in respect of a property in a municipality:

- 1. If the prescribed event occurs on or after the day subsection 4 (2) of Schedule 6 to the More Homes Built Faster Act, 2022 comes into force, the council of the municipality may give a notice of intention to designate the property under subsection (1) only if the*

property is listed in the register under subsection 27 (3), or a predecessor of that subsection, as of the date of the prescribed event.

2. The council may not give a notice of intention to designate such property under subsection (1) after 90 days have elapsed from the event, subject to such exceptions as may be prescribed.

Comments:

- The City of Ottawa objects to the proposed change, as many significant resources will be lost as a result. Municipalities cannot at the same time predict every property that will be proposed for development and work within the two year time limits proposed for listings. This provision will lead to rapid listing at the pre-consultation stage, taking owners and municipal councils by surprise.
- The City of Ottawa suggests an amendment to the legislation to allow for the listing pre-requisite to be waived where both the owner and the municipality agree.

Increased threshold for designation under Section 29

- The City of Ottawa strongly objects to the arbitrary increase of the threshold for designation from one to two criteria. The existing criteria, in Reg. 9/06 were prepared through extensive consultation and represented best practice at the time of their implementation. The City would strongly support consultation on updated criteria to better reflect the diversity of historic places across Ontario. Only after a review of the criteria should the threshold be considered to be increased.
- Increasing the threshold for designation, while at the same time putting time limits on listing of properties will make it more difficult for the City to fulfill its Official Plan policy to promote equity and inclusivity by recognizing, protecting and honouring sites of cultural heritage value associated with the diverse historical experiences, and to prioritize the identification of underrepresented historic places. The current legislation assigns significantly more value to the contributions of architecture and well documented, mainstream associative histories rather than allowing municipalities to recognize their diverse histories and geography.
- If the threshold is raised, clarity is needed from the Ministry regarding the intention of the change. As noted in the Tool Kit, there are nine criteria arranged in three categories. Is the intention to require that the property meet criteria in two categories or two of the nine criteria in any categories?

Part V Changes

New Subsection 41(1)

Designation of heritage conservation district

41 (1) The council of the municipality may, by by-law, designate the municipality or any defined area or areas of it as a heritage conservation district if,

(a) there is in effect in the municipality an official plan that contains provisions relating to the establishment of heritage conservation districts; and

(b) where criteria for determining whether a municipality or an area of a municipality is of cultural heritage value or interest have been prescribed, the municipality or any defined area or areas of the municipality meets the prescribed criteria.

Comments:

- The City of Ottawa supports applying criteria to the designation of new HCDs. However, the existing 9/06 criteria may not be the appropriate criteria as they were developed in relation to individual designations. There are other criteria which may be appropriate to consider in relation to HCDs such as social and cultural criteria. The City suggests that a new set of criteria should be developed to apply to the designation of HCDs and would welcome the opportunity to be involved.
- Once the prescribed criteria are determined, the City of Ottawa would also welcome additional guidance on how they should be applied in the updated Tool Kit.

New Subsection 41 (10.2) and (10.3)

Amendment of by-law (10.2)

If the council of a municipality wishes to amend a by-law made under this section, the council of a municipality shall do so in accordance with such process as may be prescribed, which may require the municipality to adopt a heritage conservation district plan for the relevant district.

Repeal of by-law (10.3)

If the council of a municipality wishes to repeal a by-law made under this section, the council of a municipality shall do so in accordance with such process as may be prescribed.

Comments:

- In principle, the City of Ottawa believes the addition of a process for making amendments to an HCD bylaw to be positive and beneficial. However, it will be

critical to provide clarification on many details including: what happens to the existing bylaw; what are any new notice requirements, what would be the appeal opportunities; are there different requirements for pre-2005 HCDs vs. post-2005 HCDs in terms of plan requirements.

- The City of Ottawa also sees the benefit of including a minor amendment process or ability to delegate authority for minor amendments such as clerical errors or update administrative details such as mapping including in plans to reflect changes over time.
- The City of Ottawa would welcome the opportunity to participate in the consultation on the regulation related to this amendment.

Amendment of Subsection 42(1)

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 district plan that was adopted for the heritage conservation district in a by-law registered under subsection 41 (10.1).~~

Comments:

- The City of Ottawa strongly supports the deletion of the portion of the previously proposed paragraph 4. However, we continue to have significant concerns with same sentence that remains in paragraph 3.
- The City continues to be of the opinion that by linking the requirement for a permit to registered designation by-law, this may facilitate a number of challenges for pre-2005 HCDs that may not have registered by-laws. Accordingly, we anticipate this could result in an increase in appeals to the OLT, which risk delaying housing projects and, at the same time, adding exponentially to their cost.