



**Ontario**  
Home Builders'  
Association

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**ERO Number: 019-6196**

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

**The Ontario Home Builders' Association (OHBA)**

The Ontario Home Builders' Association (OHBA) is the voice of the residential construction industry in Ontario. OHBA represents over 4,000 members including builders, developers, professional renovators, trade contractors and many others within the residential construction sector.

The OHBA is coordinating our public policy response with regards to Bill 23, the *More Homes Built Faster Act, 2022* with input from members across Ontario. OHBA is proudly affiliated with the Building Industry and Land Development Association (BILD), the West End Home Builders' Association (WEHBA) and the Greater Ottawa Home Builders' Association (GOHBA).

**Previous Industry Positions on the *Ontario Heritage Act***

**PREVIOUS INDUSTRY POSITIONS ON ONTARIO HERITAGE ACT**

OHBA with the support of 27 local associations including BILD, GOHBA and OHBA have provided the governments with significant recommendations to modernize the *Ontario Heritage Act* including:

- January 2020 – OHBA comments on proposed OHA regulations - *More Homes, More Choice Act, 2019* (Bill 108):
- November 2020 - ERO 019-1348 - Proposed OHA regulations - *More Homes, More Choice Act, 2019* (Bill 108):

Our associations were broadly supportive of recent changes to *Ontario Heritage Act* regulations and note that the province clearly recognizes that constraints on housing supply through the

*Ontario Heritage Act* must be considered. Municipal Councils must balance their decisions and consider adequately recognizing property owners' interests. Heritage legislation should not be weaponized as a tool to promote NIMBYism. Furthermore, decisions should be more predictable in the determination of heritage value.

### **Changes affecting the Standards and Guidelines for Conservation of Provincial Heritage Properties**

OHBA supports the objective to promote sustainable development that respects, the land and buildings that are important to our history and local communities while streamlining approvals and working to support priority provincial projects including housing.

If Bill 23 is passed, the Ministry of Citizenship and Multiculturalism (MCM) intends to develop and consult further on the proposed process under the S&Gs. This will allow for a better balance of provincial and municipal housing goals with conserving and commemorating key heritage properties. OHBA would like to request confirmation that changes to Section 25.2 Prevail, as 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. OHBA recommends that section 26.1(2) be revised to confirm 25.2 prevails, should that be the government's intention.

New requirements for municipal registers and the inclusion of non-designated properties on the municipal register are welcome as the enactment of 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 uncertainty about their heritage status on the register.

The MCM is proposing clear and transparent requirements to improve municipal practices around the inclusion of non-designated properties on a municipal register. These proposals include the following legislative changes OHBA is supportive of:

- OHBA is supportive of requiring municipalities to make an up-to-date version of the information on their municipal register available on a publicly-accessible municipal website. The 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. We believe this is a reasonable time period to achieve this. 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.
- OHBA is supportive of 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.
- OHBA is supportive of increasing the standard for including a non-designated property on a municipal register by requiring that the property meet prescribed criteria, as further discussed below. The 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 registry following a process is also a welcome change and will help address continued uncertainty. We are supportive of the changes proposed, subject to our further comments below.
  - 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.
  - 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.

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. In a January 2020 letter, the OHBA recommended and supported a 90-day NOID to commence from the date of a complete application. This new timeline provides improved certainty about potential designations at an early stage, avoiding designation decisions being made late in the land use planning process.

OHBA is generally supportive of the proposal to provide increased certainty 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. OHBA would like to request an additional provision added to the legislation specifying that *“If the council of the municipality fails to remove the property from its register in accordance with this section, the inclusion of the property on the heritage register shall be of no force or effect.”* With that said, new requirements for non-designated properties on the municipal register need further clarity.

### ***New requirements for non-designated properties on the municipal register need further clarity***

While OHBA is supportive of increasing the standards for listing property on a municipal register by requiring that the property meet one or more of the prescribed criteria, this may have the result of effectively removing the distinction between listing and designation. Listing a property is intended

to provide a means for quick, interim protection, subject to further evaluation of the property in the future. Any prescribed criteria for listing a property must ensure that the merits of designation are not pre-determined, as there is no appeal of a heritage listing.

### **Recommendation that the two-year limit on listing prior to designation be subject to the potential for the owner and municipality to agree otherwise**

While imposing timelines for a municipality to designate a listed property and preventing a municipality from designating a property that has not already been listed will have some positive impact, it is anticipated that these changes may also have the unintended consequence of encouraging an increase in designations prior to the expiry of the two-year limitation period, particularly if the criteria for designation are not further refined. While leaving properties on the heritage registry indefinitely is not ideal, if an owner is in agreement, there can be benefit and efficiency to deferring consideration of the merits of a potential designation until the time of redevelopment, rather than requiring an owner to incur costs in objecting to a potential designation in advance of any proposed development.

### **Changes to Heritage Conservation Districts**

Increasing the rigour in the process of identifying and protecting heritage conservation districts is important to ensure they are 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.

### **Increase in the threshold for designation of individual properties**

OHBA is generally supportive of an increase in the threshold for designation of individual properties and new limitations on designation for properties subject to proposed development. This would prevent abuse for political purposes or for the purpose of stopping housing. 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.

Current interpretation and application of the *Ontario Heritage Act*, together with the Provincial Policy Statement, 2020 (“PPS”), has led to significant development delays and impact on development. 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 breadth 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. OHBA therefore proposes that rather than simply requiring two more of the criteria be satisfied, 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.

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. The PPS should be further amended to differentiate between listed and designated properties. Our detailed recommendations for amendments to O. Reg. 9/06 are as follows:

## **ONTARIO REGULATION 9/06**

### **criteria for determining cultural heritage value or interest**

#### **Criteria**

**1. (1)** The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).

(2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria **in each of the three categories** for determining whether it is of cultural heritage value or interest **and it is significant to a community**:

1. The property has design value or physical value because it,
  - i. is a rare, unique, **and** representative or early example of an **early** style, type, expression, material or construction method,
  - ii. displays a high degree of craftsmanship or artistic merit, or

- iii. demonstrates a high degree of technical or scientific achievement; and
- 2. The property has historical value or associative value because it,
  - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,
  - ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
  - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community; and
- 3. The property has contextual value because it,
  - i. is important in defining, maintaining or supporting the character of an area,
  - ii. is physically, functionally, visually or historically linked to its surroundings, or
  - iii. is a landmark. O. Reg. 9/06, s. 1 (2).

#### **Transition**

[2.](#) This Regulation does not apply in respect of a property if notice of intention to designate it was given under subsection 29 (1.1) of the Act on or before January 24, 2006. O. Reg. 9/06, s. 2.

#### **Recommendation for new approach to heritage policy in “Transit Nodes”**

OHBA recommends a new approach in recognition of the substantial public infrastructure investments in and around transit stations and the significant public interest in optimizing these investments and realizing higher density mixed use development in these areas in a timely manner. We therefore propose amendments to the *Ontario Heritage Act* (“OHA”) that are intended to ensure that municipal heritage designations do not undermine or delay the achievement of these important public policy objectives.

First, the proposed amendments would add “transit node” as a new defined term, to mean land that is within a Major Transit Station Area or a Protected Major Transit Station Area as delineated in a municipality’s official plan or land that is designated as transit-oriented community land under the *Transit-Oriented Communities Act, 2020*.

Second, the amendments would provide the Minister (the specific Minister to be determined) with the authority to make orders, in respect of any land within a transit node, to: i) deem one or more properties currently designated, either individually under Part IV of the OHA or as part of a heritage conservation district under Part V of the OHA, to no longer be considered to be so designated for the purposes of the OHA; and ii) prohibit municipalities from designating one or more properties under either Part IV or Part V of the OHA. Our detailed recommendations for amendments to the OHA are as follows:

1. Amend section 1 to add the following definition:  
 “transit node” means land that is within a major transit station area or a protected major transit station area as delineated in a municipality’s official plan or land that is designated as transit-oriented community land under subsection 2(1) of the *Transit-Oriented Communities Act, 2020*.
2. Add a new section to the Act as follows:
  - X.(1) The Minister may, by order,

- (a) in respect of any land within a transit node, deem a property that is designated under Part IV to not be designated under Part IV, whereupon the property is no longer considered to be designated under Part IV for the purposes of this Act;
- (b) in respect of any land within a transit node, deem a property that is included in an area designated as a heritage conservation district under Part V to not be included in an area designated as a heritage conservation district under Part V, whereupon the property is no longer considered to be included within an area designated as a heritage conservation district for the purposes of this Act.
- (2) For clarity, an order made under subsection (1) may apply to one or more properties within a transit node.
- (3) An order made under subsection (1) is effective as of the date stated in the order, which may be a date that is earlier or later than the date the order is made.
- (4) The Minister shall cause a copy of an order made under subsection (1) to be served on the owner of the property affected by the order, on the Trust, and on the clerk of the municipality in which the property is situated.
- (5) The Minister shall cause a copy of an order made under subsection (1) to be registered against the property affected in the proper land registry office.
- (6) An amendment to any order made under subsection (1), or the revocation in whole or in part of such an order, may be initiated by the Minister or on request to the Minister by any person. If an order made under subsection (1) is amended or revoked, subsections (2), (3), (4) and (5) apply with necessary modifications.

3. Add a new section to the Act as follows:

X.(1) The Minister may, by order,

- (a) in respect of any land within a transit node, prohibit the council of a municipality from giving notice of an intention to designate or designating a property under Part IV, whereupon any action taken by a municipality in contravention of the order is of no effect;
- (b) in respect of any land within a transit node, prohibit the council of a municipality from designating any area as a heritage conservation study area or a heritage conservation district under Part V, whereupon any action taken by a municipality in contravention of the order is of no effect.
- (2) For clarity, an order made under subsection (1) may apply to one or more properties within a transit node.
- (3) An order made under subsection (1) is effective as of the date stated in the order, which may be a date that is earlier or later than the date the order is made.
- (4) The Minister shall cause a copy of an order made under subsection (1) to be served on the clerk of the municipality to which the order applies.
- (5) An amendment to any order made under subsection (1), or the revocation in whole or in part of such an order, may be initiated by the Minister or on request to the Minister by any person. If an order made under subsection (1) is amended or revoked, subsections (2), (3) and (4) apply with necessary modifications.

### **Housekeeping and Commencement**

Schedule 6 of the proposed *More Homes Built Faster Act, 2022* also includes proposed minor housekeeping amendments. Included among them are repealing the alternative definition of “alter” in subsection 1(2) of the OHA, which was intentionally never proclaimed, and a change within the amended, but not proclaimed, section 42 of the OHA that would facilitate bringing into

force the remaining sections of Schedule 11 from Bill 108 that were not proclaimed in 2021. MCM is further proposing a transition provision in regulation clarifying that these amendments to section 42, which would speak specifically to the demolition or removal of an attribute within an HCD, would apply where an application for a heritage permit was received by the council of a municipality on or after the date these legislative amendments from Bill 108 come into force.

Furthermore, public listing of properties on a municipal register should have clear and simple criteria to remove uncertainty and ambiguity for intensification. OHBA 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. OHBA is supportive of a quick implementation period and for bringing the legislative and regulatory amendments into force on January 1, 2023.

OHBA is supportive of a quick implementation period and for bringing the legislative and regulatory amendments into force on January 1, 2023.

### **Additional Recommendations**

- Include the filing of a site plan application among the prescribed events that would require a municipality to move to designate a 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. The Ontario Home Builders' Association had also proposed (during Bill 108 consultations) 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. Unfortunately, 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.
- Consider reverting 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 negotiate with the landowner to retain all or a portion of the building or, alternatively, could expropriate the property (with compensation to the owner) 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 recommendation would generally be in keeping with Recommendation 17 of the *Housing Affordability Task Force*: "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".

### **Conclusion**

The Provincial Government has a duty to protect the public interest. Now is the time for bold action on housing in Hamilton and across Ontario. The Greater Golden Horseshoe is Canada's primary economic engine and is the fastest growing region in North America. It is critical that there is a

holistic provincial planning framework to provide a broad, long-term, and comprehensive plan that promotes prosperity, employment growth and an appropriate supply of housing. Through the changes in the Growth Plan (2019 and 2020), the Housing Supply Action Plans 1.0 and 2.0 and now Bill 23 and the Housing Supply Action Plan 3.0, the current Provincial Government has moved to restore balance in housing choice and permit the ability to provide housing that meets the aspirations of Ontario families, while balancing the need to continue to urbanize and achieve transit-oriented communities. After a decade and a half of policies that produced the current housing supply crisis, it will take time and a determined continued effort to turn things around.

It is important that the province work in collaboration with municipalities and stakeholders to ensure that the *Ontario Heritage Act* is appropriately managing properties of cultural heritage value or interest while serving broader provincial priorities.

We thank the Ministry for the opportunity to comment on these proposals. We also recognize that there is still more work to do and OHBA as a critical housing stakeholder in the housing sector may provide further comments at a later date. We look forward to continuing engaging with the Ministry in order to ensure these proposals are aligned with the goals of improving housing attainability.