

## Attachment A - Comments on Bill 23, Schedule 6 *Ontario Heritage Act*

Proposed Change	Implications	Recommendation/Questions
<p><b>Section 27 - Accessible Register on Website</b></p> <p><b>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.</b></p>	<p>Municipalities must already keep a register that lists all properties designated under Part IV of the Act and they may also include properties that have not been designated, but that the municipal council believes to be of cultural heritage value or interest.</p> <p>Many municipalities already maintain an online copy of the register on their websites and/or mapping applications.</p> <p>This is a positive amendment, but may disadvantage or encumber smaller municipalities that lack sufficient resources to maintain an up-to-date online version of their register.</p>	<p>OAHP agrees that requiring a municipal heritage register to be on a website is a necessary change to increase transparency and also public education about cultural heritage resources within their community.</p> <p>This will require that MCM communicates with AMO/Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) to ensure that it is clear that this is a duty of the clerk to –and an obligation under the OHA–to maintain the register.</p>

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<p><b>Section 27 – Listing Criteria for Register</b></p> <p><b>3b.) 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.</b></p> <p><b>Criteria may be prescribed for listing</b></p>	<p>This amendment will result in a significant amount of uncertainty and unnecessary work for municipalities, homebuilders, and property owners.</p> <p>The Bill, as proposed, takes a very narrow view of the role of Municipal Heritage Registers in conserving our collective heritage and simplifies their role to being one of blocking development. This is a false dichotomy.</p> <p>There are many different understandings of the purpose of Municipal Heritage Registers. Some communities see a register as purely demolition control for a “sober second thought”, others as a less formal type of recognition that is less threatening or encumbering for property owners than designation. Some see it as a precursor to designation. And some see it as a bureaucratic obligation only.</p> <p>The proposed amendments suggest it is</p>	<p>OAHP has no objection to prescribed criteria for listed properties but would want to have input on the type and scope of the criteria (if O. Reg. 9/06 is not used) as well as the rigour of evaluation required.</p> <p>An outstanding issue is that there has been no clear provincial guidance on the purpose of the register under Section 27. OAHP recommends that the MCM provides clarity on this matter.</p> <p>This proposed update should only apply to new listings and not be retroactive to all existing listed properties.</p> <p>It is unclear what the role of <i>listing</i> will be if the criteria for listing and designation is the same. What would prevent municipalities from going to designation directly (excepting a <i>prescribed event</i>)? Clarity is requested.</p>

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	<p>only as a precursor to designation, which is not the universal application.</p> <p>Municipalities across Ontario have maintained heritage registers in their current form since 2006 and have used these registers not only as a tool in the development process, but also as a mechanism to recognize, protect and honour places of significance. This is especially the case in some small and rural municipalities.</p> <p>In some communities, inclusion on a register is a precondition of local community heritage grants, and listing allows owners and homebuilders to access these critical funds without having to go through the entire process for designation under Section 29 Part IV.</p> <p>Further, it is unclear what the new prescribed criteria will be, or what should</p>	<p>This amendment requires additional capacity (that doesn't exist) in both the public and private sectors and may increase timelines and additional barriers when other tools need to be (or could be) applied. What assistance and guidance will MCM provide with this process?</p>

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	<p>be used in the interim if O.Reg. 9/06 is proposed to be updated.</p>	
<p><b>Section 27 – Expanded Objections</b></p> <p><b>7), (13) Objection</b></p> <p><b>All owners of listed properties would be able to file a notice of objection to having their property included on the City’s Heritage Register regardless of when it was added to the municipal register.</b></p>	<p>This change would allow all owners of properties listed prior to July 1, 2021</p> <p>the ability to object to their inclusion on the Register and will increase municipal and private sector workload beyond current capacity to address enquiries as well as reports to Council on any objections.</p> <p>It creates an unnecessary redundancy in appeal rights and will likely increase costs to property owners and homebuilders if they need to provide a case because a property should not be</p>	<p>OAHP does not support applying the ability to object to a listing retroactively to previous property listings.</p> <p>Consider amending the legislation to limit the number of times an objection can be submitted or set a minimum time period between objections.</p> <p>Will municipalities be provided with financial or technical support to convert their listed properties to designated properties? Or will the result be that the cost and work will be downloaded to homebuilders and owners?</p>

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	<p>included. This may include legal advice and/or consultants to prepare a 3rd party assessment.</p> <p>Some municipalities have spent significant amounts of money on the development of their registers. This will result in a direct loss of this time and money.</p> <p>The amendment is silent on the grounds for which an owner can object to the listing of their property on the Register.</p>	<p>OAHP recommends that additional clarification be provided regarding the grounds for which an owner can object to the listing of their property. It is further recommended that the grounds for objection be limited to those related to the property's cultural heritage value and if it meets the prescribed criteria.</p>

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<p><b>Section 27 – Two Year Maximum Timeframe for Listed Properties</b></p> <p><b>(15), (16) Removal of non-designated property</b></p> <p><b>Listed properties must be removed from the Register If Council does not give a notice of intention to designate the property on or before the second anniversary of the day the property was included in the register.</b></p> <p><b>Properties included on the Register as of the day before the More Homes Built Faster Act, 2022 comes into force must be removed from the Register If Council does not give a notice of intention to designate on or before the second anniversary</b></p>	<p>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>.</p> <p>The rationale for two- and five-year time limits is not provided and the timeframes do not appear to have a basis in any MCM policy or guidance, or any other provincial documents, including the Task Force on Housing Report.</p> <p>Similarly, removal from the Register is required if Council passes a Notice of 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</p>	<p>What are the two- and five-year timeframes based upon, and are they realistic at a time of municipal and private sector recovery post COVID-19 when both sectors are still struggling to recruit and retain? For example, although Official Plans at a local level are meant to be updated every five years, this timeline is routinely considered unrealistic and ignored. Will support and guidance be provided to address these timelines?</p> <p>The requirement to remove properties from the Register if not designated within two years of legislation approval is ill-conceived, contrary to heritage conservation planning and management best practices 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.</p> <p>This amendment unfairly targets all</p>

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<p><b>of the Act coming into force.</b></p> <p><b>(17) Consultation not required</b></p> <p><b>Consultation with the Municipal Heritage Committee is not required if a property is removed from the Register because the two-year time period has elapsed.</b></p> <p><b>(18) Prohibition re including property in register, subs.</b></p> <p><b>Properties removed from the Register under subsections 14 – 16 may not be listed again for a period of five years.</b></p>	<p>above actions and this should not result in automatic removal from the Register.</p>	<p>municipalities, especially smaller and rural municipalities which do not have the necessary staff and volunteer resources. A one-size fits all approach fails to adequately account for the needs and desires of communities which have developed highly cooperative and locally-based solutions and programs which seek to engage local property owners and homebuilders.</p> <p>Heritage property registers are central to many heritage planning programs throughout the world. The Province of Ontario has traditionally advocated for the development of municipal heritage registers as a means to document these resources in the community (including in the MCM's <i>Ontario Heritage Toolkit</i>). It is unclear why this shift is occurring and clarity needs to be provided.</p>

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		<p>OAHP recommends the inclusion of a mutual-consent provision in the amended Act to waiver the removal of a property from the register. It is suggested that, similar to heritage permits, a new clause be included as follows:</p> <p><i>Notwithstanding the foregoing, if both a municipality and an owner of a property protected under this section agree to retain the property on a heritage register, the property shall not automatically be removed. The municipality must retain this agreement on file.</i></p>



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<p><b>Section 29 - Individual Designation</b></p> <p><b>(1.2) Limitation</b></p> <p><b>If a property is subject to a prescribed event Council may not give notice of intention to designate the property if it has not already been listed.</b></p>	<p>Not all properties are included on municipal heritage registers in Ontario. This amendment requires municipalities (including smaller and rural municipalities) to regularly undertake and update inventories, placing properties—even where no development is likely to occur—proactively on the municipal heritage register rather than addressing them in the event of a prescribed event as per the process outlined in Bill 108.</p> <p>OAHP further cautions that existing registers may not include the cultural heritage resources of underrepresented communities. These properties are more likely to have been missed in historic and/or large-scale surveys or on older inventories that may have lacked public consultation. This amendment may further marginalize the heritage of underrepresented communities.</p>	<p>This amendment does not take into account the implications if “new and relevant information” –per O.Reg.385/21—were to be discovered part way through a development application and the property was not already listed. How will this be reconciled?</p> <p>OAHP recommends the inclusion of a mutual-consent provision in the amended Act to waive the requirement for a property to be listed prior to designation in the case of a prescribed event. It is suggested that a new clause be included.</p> <p>OAHP recommends a review of O.Reg.9/06 criteria, based on consultation with heritage professionals.</p> <p>OAHP further recommends that MCM give consideration to more regular use of Section 34.5, Part IV of the OHA in cases where new and relevant information is discovered and the resource is determined to be of</p>

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	<p>This concern is further exacerbated by the proposed increase in the threshold for designation under Section 29, Part IV from one to two criteria (O.Reg.9/06) which disadvantages less architecturally significant cultural heritage resources that have strong associations with underrepresented histories and people.</p>	<p>provincial or national significance. This should be used even if a prescribed event has occurred. This would be important to the protection of cultural heritage resources of under-represented communities. OAHP further recommends that MCM develop a process that is publicly posted to initiate such a designation.</p>

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<p><b>Section 41</b></p> <p><b>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,</b></p> <p><b>(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.</b></p> <p><b>41.1(5.1) Content of Plan</b></p> <p><b>Where criteria have been prescribed for the purposes of clause 41 (1) (b), the statement</b></p>	<p>MCM is proposing to increase rigour in the process of identifying and protecting heritage conservation districts (HCDs) 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</p>	<p>OAHP supports the increased rigour and use of prescribed criteria to evaluate Heritage Conservation Districts. The challenge with using O. Reg 9/06 is that it does not translate easily to cultural heritage landscapes or even not architecturally based resources with enough granularity or specificity to be useful. Rather than using O.Reg. 9/06 –which is primarily designed for single properties—a new regulation should be developed that addresses both HCDs and cultural heritage landscapes. OAHP formally requests to be part of this consultation.</p>

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<p>referred to in clause (5) (b) of this section must explain how the heritage conservation district meets the prescribed criteria</p>	<p>force.</p>	

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<p><b>Section 41</b></p> <p><b>41(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.</b></p> <p><b>41(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.</b></p> <p><b>41.1(13) If the council of a municipality wishes to amend a by-law passed under subsection</b></p>	<p>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.</p> <p>The definitions of repealing vs amending are unclear, as are the triggers for the repeal or amendment of HCD Plans and By-laws.</p> <p>We urge caution regarding updating to align with “government priorities” as those</p>	<p>OAHP supports a transparent process to update the HCD plans. OAHP requests to be a participant in consultations on the process to amend or repeal existing HCD designation and HCD plan by-laws.</p> <p>Consider only permitting changes to HCDs as part of a periodic review process (e.g., five years) as opposed to ad-hoc amendments. This will discourage incremental changes based on activities on individual properties.</p> <p>Clear processes for amending HCD plans must distinguish between changes to HCD boundaries and changes to design guidelines, objectives, and attributes. Explicit guidance must be provided on where changes to a plan (i.e., boundaries) might be considered repealing parts of a plan rather than amending.</p> <p>Given the gravity of completely repealing an HCD, the bar for achieving this should be</p>

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<p><b>(2), the council of a municipality shall do so in accordance with such process as may be prescribed.</b></p> <p><b>41.1 (14) If the council of a municipality repeals a by-law passed under subsection (2), the council of a municipality shall do so in accordance with such process as may be prescribed.</b></p>	<p>may change over time, the continued changing of HCD plans to react to these changes will create uncertainty for homebuilders, owners and community members.</p>	<p>high and involve significant consultation.</p>

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<p><b>Part III</b></p> <p><b>(7) Exemption re compliance</b></p> <p><b>The Lieutenant Governor in Council 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 heritage standards and guidelines approved under this section 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 of the following provincial priorities:</b></p> <ul style="list-style-type: none"> <li>● <b>Transit.</b></li> <li>● <b>Housing.</b></li> <li>● <b>Health and Long-Term Care.</b></li> </ul>	<p>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 2010 <i>Standards and Guidelines for Conservation of Provincial Heritage Properties</i> (S&amp;G) 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.</p> <p>The ability to circumvent S&amp;Gs at the provincial level is contrary to good planning practice that balances all interests when developing a property. Resources of cultural heritage value or interest have previously been identified as a matter of provincial importance and</p>	<p>Strongly advise before moving forward on any review of the S&amp;Gs, consultation should be undertaken with key stakeholders including OAHP, heritage experts in ministries and prescribed bodies including MTO, IO, etc. As presented, the wording is too vague and the consequences are not clear.</p> <p>If this proposed change is to proceed, at minimum there should be a process developed that is transparent and has checks and balances. The threshold for the use of these powers should be high. It should only be considered for exceptional circumstances and not as a matter of course.</p>

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<ul style="list-style-type: none"> <li>● <b>Other infrastructure.</b></li> <li>● <b>Such other priorities as may be prescribed.</b></li> </ul>	<p>should not be viewed as a conflict for these priorities. Heritage conservation is a way to manage change in a way that addresses existing buildings and landscapes and can enhance the proposed changes to properties and communities. The S&amp;Gs enables the conversation to happen to balance heritage and other provincial priorities - it allows for potentially more innovative solutions.</p> <p>The wording is too vague and the consequences are not clear. The amendment introduces significant uncertainty and has potential for unintended consequences.</p> <p>Which parts of the S&amp;Gs that could be individually affected is also uncertain. The suggestion that some parts of the S&amp;Gs could be not applied to a property may have unintended consequences as</p>	



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	<p>sections are not independent and may be directly tied to the policies of individual ministries or prescribed public bodies.</p> <p>Indigenous consultation is also included in the S&amp;Gs and a parallel process would have to be developed to address Duty to Consult obligations with respect to the heritage management of provincial properties.</p> <p>The S&amp;Gs are a trigger for archaeological assessments on provincial properties and the only such trigger on properties where archaeological sites do not already exist. Not conducting archaeological assessments may run the risk of violating Part VI of the OHA should any previously unknown archaeological sites be impacted. Archaeology is also a mechanism for addressing the potential for human remains on a property.</p>	

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<p><b>Part III</b></p> <p><b>(3.1) Minister's review of determination</b></p> <p><b>Minister can review determination of whether a property has cultural heritage value of interest for provincially owned properties or provincially occupied properties.</b></p>	<p>MCM is proposing to introduce an enabling legislative authority that provides that the process for identifying provincial heritage properties under the S&amp;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&amp;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&amp;Gs.</p> <p>It is unclear if the ability to review, confirm and revise the determination of cultural heritage value or interest mean the ability to remove the designation of a property under Part III? If so, this introduces</p>	<p>Any review of the S&amp;G should be undertaken with key stakeholders including OAHP, heritage experts in ministries and prescribed bodies including MTO, IO, etc.</p> <p>If this proposed change is to proceed, at minimum there should be a process developed that is transparent and involves additional, or acknowledges existing, consultation. The threshold for the use of these powers should be high. It should only be considered for exceptional circumstances and not as a matter of course.</p>

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	<p>significant uncertainty around significant provincial heritage properties that are often landmarks in communities (e.g., courthouses, jails, parks, and other key properties).</p> <p>The documentation for provincial heritage properties and the determination of cultural heritage value process has been well established, for properties research, consultation with indigenous communities and local stakeholders and discussions within and between heritage experts. It is unclear how the process would be able to supersede the expert work and local consultations that go into making cultural heritage value determinations.</p> <p>If certain patterns emerge in how these powers are deployed by the Minister, these will effectively replace the S&amp;Gs and heritage criteria as unwritten rules governing the heritage evaluation process</p>	

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	for provincial properties.	