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**City of Kingston**

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Regarding: **ERO number 019-6196**

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

The creation of affordable, accessible, and safe housing is a crisis in Ontario and actions are required to address this. Heritage conservation and housing are not, however; as the Report of the Housing Affordability Task Force may be seen to indicate, oppositional constructs or adversarial in their intents. The adaptive reuse of heritage buildings and the appropriate use of in-fill and new housing developments that are scaled and designed in consideration of their surrounding neighborhoods are an environmentally responsive, timely and sustainable way of providing more housing across Ontario.

Through this submission the staff from the City of Kingston's Heritage Services Department offer comment on the proposed legislative and regulatory amendments through schedule 6 to Bill 23. Given the brevity of the commenting timeline this submission represents City staff comments only and does not represent a position of Council. Bill 23 amends the *Ontario Heritage Act* with the stated intent of helping to remove barriers to housing development by updating how heritage properties are identified and conserved by municipalities and the Province of Ontario. There are several key themes in these amendments around which we organize our comments, and these are reviewed in the sections that follow.

**Changes to the Municipal Heritage Register:** The changes introduced in Bill 23 related to the Municipal Heritage Register are not without significant impacts, especially as the required information to be shared on the register has not been provided. At present the City of Kingston has its register available to the public, where the register shares the property address and provides some limited notes on the property and the category of protection. If the information required to be shared were to include, as is anticipated, the relevant designation by-laws and/or updated statements of cultural heritage value/interest then significant work will need to be done to prepare these documents and update them to meet the current accessibility standards for municipalities.

Bill 23 additionally introduces that properties that are included on the register must meet a new test for inclusion; this test would require that even a “listed” property meet certain prescribed criteria. The new criteria have not been defined; however, it is anticipated that they will align with the criteria already established for the designation of individual properties under section 29 of the *Ontario Heritage Act*. These criteria are defined through O. Reg. 9/06. The City of Kingston has over 300 “listed” properties on its heritage register. These properties will need to be reassessed based on the criteria once defined. It is expected that this will be a resource intensive process and introduce a redundancy into staff workflows as it will force a detailed consideration of all listed properties within a prescribed timeline as opposed to the current process which sees staff provide detailed consideration in-response to specific requests to demolish or remove.

There are not enough Heritage planning staff at the City to support this process and budgetary constraint is a reality for all municipal departments. In short, there is neither staff resource, nor budget to address these changes. The outcome will be a loss of heritage properties across the City, confusion amongst “listed” property owners, and a distraction of staff focus to “re-listing or defacto designating” properties already on the register with little to no anticipated correlation to increased housing supply. The seemingly arbitrary two-year timeline introduced regarding these required changes only further compounds the concerns noted above and ensures heritage loses to be the likely outcome, as does the 5-year timeline prohibiting a property from being added back onto the registry.

Further, the removal of properties from the register does not remove their heritage value or the City’s potential interest in designating them in the future. Once these properties are removed from the register perspective purchasers will have additional challenges when making an informed purchase decision and could be dismayed to later discover that the City intends to relist the property or designate the property. This adds uncertainty and a lack of transparency for new homeowners and adds additional burdens to municipal staff who will need to message the unclear intents of the mandated listing/delisting cycle.

The bill will also allow all property owners of listed properties to object to the listing of their property regardless of when the property was listed. Dealing with these new and retroactive objections will be an additional drain on staff time and resources. The grounds for objections need to be clearly defined and limited to matters of heritage and/or the to-be-defined listing criteria.

## **Changes in Relation to Criteria for Designations and Heritage Conservations Districts (HCDs):**

The changes introduced in Bill 23 related to the designation of individual properties and HCDs include that properties will need to meet additional criteria for a designation to be advanced. This change is expected to be implemented through forthcoming changes to O. Reg 9/06. Requiring all properties to meet additional criteria raises concerns about equity and representation within municipal designations. The current regulation criteria disproportionately favour the protection of specific kinds of properties and increasing the number of these criteria that must be met for designation will act as a further barrier to a more diverse, equitable and inclusive approach to property designations and protections. The same concern exists for the criteria used to assess the advancement of listed properties.

The changes introduced in Bill 23 related specifically to HCDs include the creation of a process to repeal and amend an HCD or an HCD plan. Clear direction on how and when an HCD or HCD plan can be amended is welcomed as presently the *Ontario Heritage Act* does not provide any clear direction in this regard. We hope that the process will be transparent and limited in scope and frequency, as the value of HCD plans is in ensuring the stable character of a district while appropriately managing growth. If changes and amendments are frequently allowed it will destabilize the districts and create confusion for developers, property owners and the community.

In Kingston our rich inventory of heritage buildings and our three HCDs are part of a broader community ecosystem, defining community character and contributing to regional tourism and community vitality. Frequent alterations to HCDs could result in rapid changes in this landscape and will have associated economic impacts. Introducing specific criteria for the creation of HCDs and HCD plans could be assistive in regularizing the approach to these conservation tools across Ontario. Care must be taken in defining these criteria, including meaningful public consultation, to ensure that the criteria do not discriminate against the designation of the cultural heritage landscapes, or further marginalize and remove the cultural heritage connections to underrepresented community histories.

## **Changes in relation to “Prescribed Events” under the *Planning Act*:**

Setting aside what was introduced through Bill 108, Bill 23 effectively restricts Council from issuing a notice of intent to designate if a property, subject to a “prescribed event” under the *Planning Act*, is not already included on the heritage register. This restriction essentially removes acts of discovery as reasons to advance designations and assumes that at the time of application the City is fully aware of all heritage considerations on all properties. It also perpetuates the false assumption that heritage properties are inherently “blocks” to development and sidelines the value of adaptive reuse as an appropriate means of generating new housing.

In response to Bill 23 staff will need to spend time and resources to scan for emerging developments such that they can move to list or designate the property within the timelines established by Bill 23 and in advance of prescribed events. Community development and heritage

are better served by the continued process as established through Bill 108, which allows for discovery and establishes a reasonable timeline for heritage protections to be advanced if appropriate.

**Changes in relation to Provincially Designated Properties:** Bill 23 introduces amendments to section 25.2 of the *Ontario Heritage Act* and provides the Ministry designated to administer the statute with further powers to remove publicly owned properties from municipal heritage processes where goals related to the development of transit, housing, health and long-term care or other forms of infrastructure are considered to have over-riding importance. It also extends powers to the Lieutenant Governor to offer exemptions. These removals and exemptions can also be applied retroactively. Some of Kingston's most significant heritage properties are those currently protected through the Provincial Standards and Guidelines. The threshold for these powers of exemption or removal should be transparent and high, such that they are only used in the most exceptional of circumstances. The protections offered through the Standards and Guidelines are significant and uphold the contributions these properties make to the collective history and heritage of Ontario. To allow for the frequent removal of these properties from heritage processes would be an exceptional move resulting in exceptional losses.

The changes introduced through schedule 6 to Bill 23 will have tremendous impacts on how we protect and conserve heritage within the Province of Ontario and in Kingston specifically. We appreciate the opportunity to provide these comments and remain interested in any opportunities moving forward to assist in developing strategies and implementing regulations that will improve the protections and processes of the *Ontario Heritage Act*. There are ways to support more homes to be built faster that do not place our valued cultural heritage resources at risk.

Sincerely,  
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