

# The Many Changes to the Ontario Heritage Act

AMCTO Zone 5

October 25, 2024

# Overview

- Legislative Changes and Heritage Protection in Ontario
- Strategies for Heritage Conservation





## Bill 23

- Bill 23 was passed in late 2022 and made significant changes to large aspects of the land use planning process
- This included updates to the Ontario Heritage Act
- OHA updates came into effect on January 1, 2023



# Bill 23 Overview – Heritage Impacts

- Bill 23 made substantial changes to processes for preserving heritage properties through amendments to the Ontario Heritage Act
- In general, the amendments are intended to more closely align the heritage preservation with wider land use planning processes
- Many of the amendments significantly challenge municipal ability to preserve heritage properties in conjunction and consultation with the community
- Most major heritage matters (designations, listings, policy development) are a responsibility of Council

# Listing

**Listed Properties:** Properties that are listed on a municipal heritage register have a demolition restriction placed on them. Property owners must give a municipality 60 days notice prior to demolishing a listed property and permission may be refused

## Amendments:

- Any property owner may object to a listing using the process under the 2019 amendments to the Act, no matter when it was listed on the Register. Municipal requirements for requesting removal of a property from the Register listed prior to 2021 no longer apply.
- Listed properties must now meet at least one criteria under Ontario Regulation 9/06 in order to be eligible for listing on the Register. This does not apply to properties which are listed prior to the amendments coming into force

## Amendments (cont'd)

- If a Council moves to designate a listed property, and the by-law is not passed or is repealed on appeal, the property must be removed from the Register
- Non-designated properties currently on the Register must have a notice of intention to designate issued within two years of the amendments coming into force or must be removed from the Register
- Non-designated properties listed on the Register after the amendments come into force must have a notice of intention to designate issued within two years or be removed from the Register
- Properties removed from the Register can not be relisted for five years if one of the above scenarios applies

# Listings

## Changes Since Bill 23:

- Bill 23 gave municipalities until January 1, 2025 to review their heritage registers and designate their heritage properties
- In summer 2024, the province passed Bill 200 which extended the deadline to review heritage registers until January 1, 2027 and address “legacy” listed properties
- On this date, listed properties that have not been designated and were listed before Bill 23 came into effect will automatically be removed from municipal heritage registers



# Individual Property Designation

**Individual Designations:** Properties designated by by-law under Part IV of the Ontario Heritage Act for their individual heritage value

## Amendments:

- The threshold for designation is being increased so that a property must meet 2 of the 9 O. Reg. 9/06 criteria in order to be eligible for designation
- The 2019 amendments to the Act created a 90-day time limit for a notice of intention to designate to be issued when certain types of Planning Act applications are made for a property. These amendments retain the timeline but require that a property must be listed on the municipal Heritage Register prior to the receipt of the Planning Act application in order to be eligible for designation



# Heritage Conservation Districts

**HCDs:** Heritage conservation districts are designated under Part V of the OHA and typically include multiple properties that, taken together, have cultural heritage value as a cultural heritage landscape

## Amendments:

- The establishment of criteria for the designation of districts. The new criteria are based on Ontario Regulation 9/06 where 25% of the properties in a district must meet at least two of the prescribed criteria to be eligible for designation.
- Introduction of regulation to prescribe processes to repeal or amendment HCD designations and plans which are currently lacking. The processes have not yet been established and MCM had indicated they will consult on these processes.

# Alignment with Provincial Policy

- Provincial and local land use planning policies require municipalities to identify, evaluate and conserve its significant heritage resources
  - PPS (2020) and now PPS (2024)
  - Previously Growth Plan for the Greater Golden Horseshoe (2019)
  - Municipal OPs and other cultural/land use planning strategic documents/policies
- Bill 23 amendments more closely aligns heritage preservation with land use planning in general
- Previously, many municipalities had taken a lighter touch approach, with a focus on listing
- The province is directing municipalities to take a more aggressive approach in order to fulfil these policy requirements through increased designations

# Major Implications

- Municipalities can no longer use listing as a long-term protection strategy for heritage properties
- The province has effectively directed municipalities to designate listed properties
- The bar for protecting a property through heritage designation has become higher and harder to achieve

# Strategies: Kawartha Lakes Example

- Different municipalities have taken different approaches to addressing their listed properties
- Kawartha Lakes' approach has been fairly aggressive compared to a lot of other municipalities in Ontario, particularly around owner consent





# Prioritizing Properties for Designation

- In early 2023, the City's Heritage Register included 289 listed properties
- Strategy for designation presented to Council in early 2023 identifying how to allocate staff resources to prioritize certain designations
- Preference for pursuing individual designations as opposed to HCD designations
- The approach taken by CKL was to not ask for permission to designate, except around residential properties
- This responded to a willingness by Council to protect properties in downtowns but a concern around homeowner participation for residential properties

# Owner Consent

- The Ontario Heritage Act does not require consent from an owner to designate a property under Part IV or Part V of the Act
- Municipalities may not request or require consent from an owner as a requirement for designation (Tremblay vs. Lakeshore, 2003)
- Consideration must be based solely on whether or not a property fulfils the criteria under Ontario Regulation 9/06
- The designations being undertaken in response to Bill 23 are at provincial direction
- Should an owner object to a proposed designation, there is a clear process under the Act for objections.
- Objections are first heard by Council before proceeding to the Ontario Land Tribunal

# Priorities for Part IV Designation

- Properties with the highest chance of redevelopment are being prioritized:
  - Properties with a known or anticipated risk of demolition and redevelopment
  - Commercial and industrial properties
  - Institutional properties
  - Landmark and unique properties with extremely high and demonstrable cultural heritage value
  - City-owned properties
- Residential properties are being considered as a low priority as they are generally at the lowest risk of redevelopment but may be considered where there is a threat or an owner request

# Process

- Heritage evaluation reports are prepared by staff and reviewed by the Municipal Heritage Committee at their monthly meetings
- Properties are reviewed by Council and the notice of intention to designate is sent to the property owners
- Objection period; objections are returned to Council under the cover of a staff report
- Passage of designation by-law and notice of designation is issued to the property owner
- Appeal period; appeals proceed to the Ontario Land Tribunal



# Addressing Appeals and Objections

- CKL has currently had seven objections to designations to Council of which one is proceeding to the Ontario Land Tribunal
- Major objection from the school board around the designation of several operating elementary schools
- Staff present the objection to Council with the owner's rationale for objection and the staff and municipal heritage committee recommendation as to whether the designation should proceed
- Typically, staff will recommend a designation proceed if the property fulfils the O. Reg 9/06 criteria as designation is a community benefit
- The current OLT appeal has not been resolved

# Working With Property Owners

- It is preferred, but not necessary, if the property owners are involved in some way
- The notices sent out to property owners include correspondence inviting them to meet with staff to discuss what designation looks like for their property and to participate in the designation process
- Extremely low uptake and public participation in the Bill 23 designation process
- There are also owners of properties that the City has an existing relationship with and we typically work with them more closely on designations

# Working With Council

- CKL Council had typically only designated properties in the past where there was an owner request
- Implementing a mandatory designation strategy required educating them around the OHA, how it worked and the role of heritage in the land use planning process





## Case Study: 242 Kent Street West

- Operating elementary school in Lindsay (Central Senior Public School)
- Built between 1910 and 1911 to replace a Victorian elementary school and designed by Toronto-area architect James Ellis
- Property was listed in 2019
- Significant heritage value: fulfils 7 of the 9 O. Reg. 9/06 criteria





## Case Study: 242 Kent Street West

- CHER prepared by staff in spring 2023 and reviewed by the MHC
- Council issued the NOID in June 2023 and received the objection from the school board in August
- The school board was aware the property was coming forward for designation





## Case Study: 242 Kent Street West

- Council received the objection in October 2023 including: objection letter from the school board and rationale for designation from staff
- Council ultimately chose to proceed with designation and pass a by-law because of the community value of the property and to ensure future development controls on this property
- School board chose not to appeal to the OLT





## Conclusion

- Legislative changes to the OHA has significantly altered municipal heritage preservation strategies
- Different municipalities have taken different approaches to address these changes and balance Council priorities with provincial direction

