ACO RESPONSE TO BILL 108 - PROPOSED AMENDMENTS TO THE ONTARIO HERITAGE ACT

Proposed Change	Ministry Rationale	Ministry Anticipated Outcome	Heritage Sector Response
1. Provincial Direction Require the council of a municipality to consider any principles that may be prescribed by regulation when exercising decision making under prescribed provisions of Parts IV or V of the OHA. <u>Comment</u> Presumably the prescribed provisions will be councils' powers to designate property and to approve alteration, demolition and removal of designated property under Parts IV and V, but they could also include listing powers.	Lack of clearly articulated provincial policy objectives to guide what municipalities should consider when protecting properties under the OHA can result in an inconsistent interpretation and application of the OHA.	Allow the Province to better guide heritage conservation in Ontario, by providing principles that facilitate a more consistent approach to municipal decision making under the OHA, and a better understanding of how the legislation is to be applied.	• Requiring municipal councils to consider "principles" reflects a paternalistic attitude on the part of the province that is unprecedented in enabling legislation. • The principles will at best be general statements about, say, encouraging the adaptive reuse of heritage property. At worst they may require consideration of circumstances specific to property owners such as potential financial impacts, which could seriously impede designation decisions. • In any case the introduction of another "step" in the designation decision-making process will consume additional municipal time/resources with no clear benefits. This in itself may tend to inhibit designation. • There is no point in introducing such principles. The place for the province to "better guide heritage conservation" is in provincial guidance material and updating the Ontario Heritage Toolkit.

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2. "Listing" on the Register Require a municipality to provide notice to a property owner within 30 days after their property has been "listed" on the register. Provide a right of objection to the municipality by the property owner. Provide improved guidance to municipalities on “listing” best practices to support implementation.	"Listing" refers to the process of adding a property of potential heritage value to the municipal register without designating. Requires owners to give 60 days’ notice before demolishing. In the context of listing, the OHA is silent on how potential heritage value is determined, resulting in a lack of consistency across municipalities. There are no notification requirements.	A more predictable and level playing field for adding “listed" properties the register. Giving notice to property owners once a property is "listed" and allowing objections to council will make this process more effective by reducing and resolving any disagreements early on in the listing process. Notification will provide a rationale for why the property is listed and information on the 60 day demolition restriction.	• As originally enacted in 2005, listing had no legal implications and was intended as a planning tool to help municipalities and owners identify properties that were of cultural heritage value and that could potentially be subject to heritage designation; however, in 2006 the 60-day notice requirement was added. • It seems reasonable then that owners be given notice of listing. The Ontario Heritage Toolkit guidance material already recommends owner notification in advance of listing as a best practice and most municipalities do this. • The proposals here require notice of listing after-the-fact. What is troubling is that they allow for open-ended objections to listing, i.e. at any time by any owner. This could result in multiple objections over time by current/future owners, imposing an undue administrative burden on the municipality and potentially impeding listing initiatives. • The proposal should be amended to provide time limits on objections.

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3. Designation by-laws Require designation by-laws to comply with requirements prescribed by regulation, including requirements related to describing the cultural heritage value or interest of the property and its heritage attributes.	Criteria for determining if a property has cultural heritage value or interest are in regulation, but little direction is provided on the content of designation by-laws.	Better direction for municipal staff, councils and their heritage committees that result in more consistent and clear by-laws and more effective protection of heritage attributes. Increased clarity for proper owner/ development proponents on what changes can be made to a protected property.	• In drafting the Notice of Intention to Designate and the final designation by-law, a municipality must currently provide: a) a statement explaining the cultural heritage value of the property and b) a description of its heritage attributes. As proposed, municipalities would have to comply with new regulations setting out requirements for both of these, as well as "such other requirements as may be prescribed." • This is a heavy-handed and unnecessary effort to standardize the content of designation by-laws. The Ontario Heritage Toolkit already provides guidance on this subject. Review by the Conservation Review Board has also been effective in checking inappropriate content in by-laws. • The only misuse that has been identified as problematic is the inclusion of non-physical features such as use in descriptions of heritage attributes. This could be simply addressed by amending the Act's definition of heritage attributes to clarify that they are physical features, and through Toolkit updates.

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4. Timelines for Designation under Part IV New 90-day time limit for a municipality to issue a notice of intention (NOI) to designate, where certain events have occurred on the property (by regulation, these are anticipated to include certain applications under the Planning Act), subject to limited exceptions as prescribed by regulation. New 120-day time limit for a municipality to pass a designation by-law after issuing a NOI, subject to limited exceptions as prescribed by regulation.	A NOI to designate voids any existing permits on a property, and the property is treated as if designated. There is currently no legislated timeline by which a municipality must issue a NOI to designate or to make a decision to designate a property once all objections to that notice have been addressed. The lack of time limits can leave properties in limbo, which can cause issues if a development application is in process.	This will result in any NOI to designate being issued early on in the process when a land use planning development application is in progress on a property. NOI deemed withdrawn if the municipality does not pass a by-law within 120 days of the NOI. More timely and predictable processes for reaching decisions, resulting in fewer disagreements between municipalities and development proponents. Would allow for limited exceptions that will be set out in regulation, for example, when councils or municipal heritage committees are not sitting, or if new, relevant information is discovered.	• This provision appears to be a response to scenarios where development applications under the Planning Act are unreasonably delayed as a result of the municipality designating the property late in the approvals process. • While the introduction of time limitations is appropriate, the special situation(s) that would trigger a 90-day limit, and exceptions to them, are not spelled out and addressed in the Act. By pushing unspecified “events” to the regulations this proposal adds further uncertainty and perplexity to what is already a complicated process. • The simple solution is to spell out in the Act itself the types of development application that would require a 90-day limitation on designation and the limited exceptions.

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5. Streamlined Appeals New right of appeal to the local Planning Appeal Tribunal (LPAT) from final decisions related to designation by-laws passed by a municipality, as well as from final municipal decisions on applications for alteration under Part IV. For designation by-law related decisions - Conservation Review Board (CRB) preliminary objection process to be replaced with a 30-day period to object to the municipality before a final decision is made (e.g, 30 days after a NOI is issued).	The CRB reviews a number of matters as set out in the OHA (designation, alteration of protected properties, etc.); however, their recommendations are not binding on council decisions. Other matters, such as demolition, are referred to the LPAT, whose orders are binding. Having multiple appeals can lead to confusion and frustration for municipalities and property owners.	Having one tribunal hear all planning and related heritage matters will help to streamline processes and create consistency with appeals under the Planning Act. Having objections on designation decisions heard by the municipality allows property owner and public concerns to be considered as part of the municipal decision-making process. The record of objections would also inform any subsequent LPAT decisions.	• The designation of individual properties would be substantially revised to provide a two-stage objection process. In the first stage any person could object to a notice of intention to designate (NOID) and the council would have to consider the objection and decide whether to proceed to pass a designation by-law. Where a by-law is passed, any person could appeal to the Local Planning Appeal Tribunal for a final, binding decision. Similar changes are made to the designation amendment and de-designation provisions of the Act. • There is no acknowledgement that these changes will effectively eliminate the Conservation Review Board, which will be left with only very minor functions. • The change to giving a provincial tribunal final say on designation represents a fundamental change to Ontario's heritage protection regime, which goes back to the passage of the OHA in 1975. It runs directly contrary to the concept of heritage as something of significance to a community that should be determined by the community. • This change is likely to inhibit valid designations of cultural heritage property across the province. Municipal councils will be less likely to designate in the face of owner opposition because of the formality, expense, delay and uncertainty

			of the LPAT process relative to that of the Conservation Review Board. • Under the bill's proposals property owners will already have the right to challenge how designations are applied to their property through the appeal of both alteration and demolition/removal decisions to the LPAT for a binding decision. The similar ability to appeal designations in the first instance represents a significant and unnecessary tilting of the playing field in the property owner's favour. • The workability of the change is also highly dependent on appropriate staffing and training of LPAT members in the field of cultural heritage. • With respect to the two-stage objection process, having "two kicks" at a designation might be mitigated by providing that only a person who objects in the first round would be able to launch an appeal to the LPAT. • With respect to alteration appeals, under section 33, these will follow virtually the same process as demolition/removal under section 34 with the same right of appeal to the LPAT. • This is an overdue change that recognizes that many alterations involve major, significant changes to designated property, and that alterations to property designated under Part IV should be treated consistently with alterations to property in HCDs designated under Part V.

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6. Complete applications New 60-day timeline for a municipality to notify whether or not an application for alteration or demolition is complete. If deemed incomplete, the municipality may ask for additional information. If the municipality fails to provide any notice within 60 days, then the 90-day period to make a final decision begins immediately following the end of the 60-day period. By regulation, municipalities will be able to establish minimum information and material that must be included in an application. Where those requirements are not set out, prescribed minimum requirements set out by the province in regulation may apply.	The OHA requires "notice of receipt" to be served for alteration/demolition applications but does not specify a required time by when notice shall be served. There are limited statutory requirements on the content of the application.	Legislated timelines would provide predictability for municipal staff, property owners and developers. Each Municipality would be able to set out requirements for the content of applications.	• These changes should help expedite the heritage approvals process and are modelled on recent amendments to planning procedures in the Planning Act.

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7. Demolition Clarify that demolition or removal under section 34(and certain other similar sections) of the Act includes demolition or removal of heritage attributes, as well as demolition or removal of a building or structure. Clarify that alter does not include demolition or removal for purposes of certain sections of the Act. Prescribe in regulations as to which sections in the Act this applies	Currently the Act defines “alter” but does not define demolition or removal of a building or structure.	Municipalities, developers and LPAT members would have a better understanding of the distinction between alteration and demolition to help reduce disagreements that can cause approval delays, especially when dealing with more complex proposals.	• As proposed, the demolition or removal of a heritage attribute of a designated property, building or structure will not be considered an alteration and will be treated in the same way as demolition or removal of buildings/structures. • The purpose of this change is unclear. As proposed, alteration under section 33 and demolition/removal under section 34 will follow virtually identical processes with the same right of appeal to the LPAT. The question then is why does it matter whether the removal of, say, a building cornice is a demolition as opposed to an alteration? • The only apparent benefit may be that, in theory, fines would be increased for illegal changes of this kind as they would fall under the penalty provisions for demolition/removal ($1M as opposed to $50k). • On the other hand, it would appear that restoration costs could not be recovered in this scenario, as this remedy is available (under s. 69 (5.1)) only for illegal alterations. • The latter result appears to be unintentional and should be corrected.

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8. Provide enhanced ministry guidance on cultural heritage landscapes	Cultural heritage landscapes are areas that have cultural heritage value or interest. They may be a single property or multiple properties and can include features such as structures, archaeological sites or natural elements (e.g. parks, cemetery, battlefield, downtown). There is confusion about what cultural heritage landscapes are and how they should be protected.	Clearer process to identify and choose appropriate tools to protect cultural heritage landscapes, while allowing for sustainable and compatible development. More uniformity and consistency in how cultural heritage landscapes are addressed under the Planning Act and the Ontario Heritage Act.	• Provincial guidance material on cultural heritage landscapes is long overdue and will be most welcome.