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OHBA comments on proposed OHA regulations under the *More Homes, More Choice Act, 2019* (Bill 108):

The Ontario Home Builders' Association (OHBA) and our network of 29 local associations are strongly supportive of the *More Homes, More Choice Act, 2019* (Bill 108) and the *Housing Supply Action Plan*. We believe that the visionary plan will remove barriers to providing more housing for the current and future residents of Ontario. As OHBA stated in our May 2019 legislative submission, now is the time for bold leadership to fix a generational housing supply challenge that is making both home ownership and rental housing unaffordable.

OHBA and BILD appreciated the opportunity to meet with Ministry of Heritage, Sport, Tourism and Culture Industries on January 17, 2020 to discuss potential new Regulations under the *Ontario Heritage Act* (OHA), associated with amendments passed through the *More Homes, More Choice Act, 2019*, as set out in the document entitled "Ontario Heritage Act – New Regulations" that the Ministry staff circulated in advance of our meeting. OHBA and BILD have a number of specific comments responding to the ministry consultation on the proposed regulations:

Context

The *Housing Supply Action Plan* and Bill 108 have clear goals and objectives to streamline approvals and cut red tape to create more housing supply and choice. We were pleased to see that in the Proposed Regulations Ministry staff acknowledged that one of the aims of the OHA amendments is to support increasing housing supply; however, the proposed regulations do not appear to be guided by that objective, or at least the connection is not made readily apparent. OHBA recommends that any proposed regulatory amendments or Environmental Registry posting that occur have strong and clear language to directly connect the objectives of the regulatory amendments to the *Housing Supply Action Plan*.

Proposed Principles

It is unclear how the proposed principles would assist in meeting the stated objective to "support increasing housing supply". It appears that the proposed principles are not designed to increase housing supply, but rather have a primary objective of protecting heritage properties. A stronger connection to the objectives of the *Housing Supply Action Plan* is required.

OHBA notes that the first proposed principle refers to properties being “protected and conserved for community benefit and for all generations”. It is unclear what the reference to “protected” is intended to mean, but presumably something different than “conserved”. From our perspective, this language is problematic from a legal perspective; “conserved” is a term that is better understood among heritage professionals and is already defined in the PPS, yet “protected” is an undefined term.

Further, there is no reference to the consideration of impacts on property owners and/or impacts on increasing housing supply among the proposed principles. OHBA recommends that any principles to guide municipal decisions on proposed designations and/or applications by property owners under the OHA should include consideration of potential impacts on the property owner(s).

In addition, given that conservation of cultural heritage is considered a “planning matter” for the purposes of the *Planning Act*, and identified as one of many provincial policy objectives in the PPS, there needs to be recognition that any decision under the OHA must also consider other relevant provincial planning objectives. These objectives include support for increasing housing supply, where appropriate, and economic development objectives, among others.

Furthermore, given recent experience with municipalities attempting to use the OHA to regulate land use, a stated principle should be that the designation process under the OHA is not to be used for regulating land use. Finally, in addition to municipally-initiated heritage designations and applications by property owners for alteration and demolition, OHBA recommends that the proposed principles should also apply to applications by property owners to repeal a designation.

By-law Requirements

The proposal to require that within a heritage designation by-law, a statement of cultural heritage value or interest must include an explanation of how it meets the criteria in Ontario Regulation 9/06 and how the identified heritage attributes support the cultural heritage value of the property is a welcomed proposal. OHBA believes that it will support the objective of increasing accountability and transparency.

Timelines for Issuing a Notice of Intention to Designation and Designation Decisions

OHBA recommends that the 90 day timeline to issue a Notice of Intention to Designate (NOID) should commence from the date of complete planning applications, rather than issuance of public notice. This would be consistent with the timeframe for municipalities to make a decision on rezoning applications, which is 90 days from the date of a complete application. OHBA further recommends that the 90 day time should also apply to site plan applications under section 41 of the *Planning Act* and section 114 of the *City of Toronto Act, 2006*.

For each of the two categories of timelines discussed with the Ministry (90 day timeline to issue a NOID; and 120 day timeline to pass a designation by-law), the proposed exceptions are far too permissive and open-ended. For example, what constitutes an “election period” or a “summer recess”, and recognizing that other 90-day provisions in the OHA (i.e. to make decisions on alteration or demolition applications) do not have such exceptions. Similarly, *Planning Act* timelines for municipalities to make decisions on development applications are not suspended during Council recesses. For transition, the same 90 day period should apply to planning applications in process at the time of proclamation.

OHBA further notes that if the 120 day period to make a designation decision lapses and municipalities can then re-issue the NOID, this completely defeats the purpose of the amendment and could simply leave

properties in limbo indefinitely. OHBA recommends that if the 120 period lapses, municipalities should be precluded from issuing a new NOID for some significant period of time.

Furthermore, there is no apparent reason to allow 1 year for a designation decision on any outstanding NOIDs – rather, the same 120 day period should apply after proclamation.

Timelines Regarding Complete Applications Under the OHA

Regarding the 60 day timeline for a municipality to confirm whether or not an application for an alteration or demolition is complete, OHBA is concerned with allowing municipalities an unfettered ability to establish requirements for complete applications under the OHA, particularly where there is no right to have an independent third party make a preliminary determination (as in the case of *Planning Act* applications, with preliminary motions to the Local Planning Appeal Tribunal (“LPAT”) to determine completeness and/or the reasonableness of municipal requirements). Thus, absent any right to an independent third party review, any opportunity for municipalities to establish complete application requirements should require that they first be set out in an Official Plan by way of a new amendment to establish such requirements.

Appeals

Recognizing that you Ministry will be working with the Ministry of the Attorney General to coordinate the transfer of various types of appeals under the OHA from the Conservation Review Board (“CRB”) to the LPAT, OHBA recommends that for matters at the CRB at the time of proclamation, they should be transferred to the LPAT and be subject to the Bill 108 OHA amendments, unless a hearing on the merits has already commenced or been completed by the CRB.

Our industry continues to face a variety of inter-related challenges that affect our ability to build the necessary supply of new housing to meet growing demand for the people of Ontario. The *More Homes, More Choice Act, 2019* (Bill 108) is a bold, visionary piece of legislation that addresses a number of barriers impacting the cost of delivering new housing supply and the speed of the approvals process that often limits new housing supply.

It is important that the Ministry of Municipal Affairs and Housing and other impacted Ministries, including the Ministry of Heritage, Sport, Tourism and Culture Industries carefully consult with impacted stakeholders on opportunities to improve the regulatory framework impacting housing supply. OHBA appreciates the consultation on the proposed regulations under the OHA, associated with amendments passed through the *More Homes, More Choice Act*. OHBA applauds the provincial government for recognizing constraints on housing supply and for their determination to reduce red tape in order to make it easier to live and do business in Ontario.

We thank you again for the opportunity to provide this initial feedback on the Proposed Regulations, and we look forward to reviewing the more detailed, plain language overview of the proposed regulation content and transition rules that we understand is expected to be posted for public comment in the coming weeks.

Sincerely,



Michael Collins-Williams, MCIP, RPP
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Ontario Home Builders' Association