

Comments on Bill 23 – Attachment A
Impact on Markham Heritage Planning Program

Proposed Change	Implications	Recommendation
PLANNING ACT – Bill 23, Schedule 9		
<p>Enable and expedite additional residential units in existing residential areas</p> <p>The proposed changes would allow, “as-of-right” (without the need to apply for a rezoning) up to 3 units per lot in many existing residential areas (i.e., up to 3 units allowed in the primary building, or up to 2 units allowed in the primary building and 1 unit allowed in an ancillary building such as a garage).</p> <p>The proposed changes would also prohibit municipalities from:</p> <ul style="list-style-type: none"> - imposing development charges (regardless of unit size), - parkland dedication or cash in lieu requirements, - applying minimum unit sizes or - requiring more than one parking space per unit in respect of any second unit in a primary building and any unit in an ancillary structure 	<ul style="list-style-type: none"> • This would allow property owners to add new units within their existing homes. Major exterior changes to existing structures or construction of new ancillary buildings would still require planning approvals (compliance with municipal zoning by law for matters such as scale and massing) and Ontario Building Code requirements. • Could result in more backyard units in traditional amenity areas and possible modification to exterior of buildings to provide separate access or egress in heritage conservation districts. • Could result in hard surface changes - for additional vehicle parking. • Some may raise concerns about potential impacts on neighbourhood character 	No Comment
<p>Site Plan Approval - Restrict a municipality’s ability to apply site plan control for developments of up to 10 residential units anywhere in the municipality (except for land lease communities)</p>	<ul style="list-style-type: none"> • Markham uses Site Plan Control for single detached and other small scale residential projects in heritage conservation districts (in combination with Heritage Act approvals) - this 	Municipalities should have the ability to utilize Site Plan Approval for low rise residential development in heritage conservation districts and in special circumstances (such as when a cultural heritage resource is being conserved

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	<p>allows tree protection and servicing/grading to be addressed and securing a financial security and Agreement to ensure compliance.</p> <ul style="list-style-type: none"> • Markham also uses Site Plan Control to ensure heritage buildings are appropriately addressed in new plans of subdivision • Markham uses Site Plan Control to ensure relocated buildings to Markham Heritage Estates subdivision – Canada’s only heritage subdivision are sited appropriately • If this is approved and Site Plan Control is removed as a development review tool, Markham will have to completely re-design how it addresses the above scenarios and will have to explore using a Development Agreement or if the property is designated (individually or a district), using an enhanced Heritage Permit process that includes new fees to offset the loss of revenue from the current SPC process, 	<p>outside of a heritage conservation district). This allows the heritage resource or new infill unit to be suitably sited on the property given its immediate context as well as address, tree conservation, servicing, and driveway and garage placement.</p> <p><u>Recommended Change:</u> Section 41 (1.2) Subject to subsection (1.3), the definition of “development” in subsection (1) does not include the construction, erection or placing of a building or structure for residential purposes on a parcel of land if that parcel of land will contain no more than 10 residential units unless the development involves a designated cultural heritage resource or is within a heritage conservation district.</p>
<p>Site Plan: Limit the scope of site plan control by removing the ability to regulate architectural details and landscape design aesthetics</p>	<ul style="list-style-type: none"> • Outside of heritage districts, this could impact the conservation of cultural heritage resources where the resource is being retained in conjunction with new development where the proposed architectural details or materials negatively affect the resource. 	<p>The retention of the ability to regulate architectural details and landscape design should not be removed from Site Plan Control as it provides a valuable mechanism to enhance Ontario’s urban environment and create a high-quality built environment. At minimum, these features should be retained if the development involves the</p>

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	<ul style="list-style-type: none"> Markham could still influence neighbourhood character in a more targeted manner through the use of Ontario Heritage Act tools such as heritage conservation districts May require more robust urban design policies and guidelines in heritage conservation district plans to address architectural details and materials if the municipality cannot rely on this being regulated through Site Plan Approval. 	incorporation of a cultural heritage resource. <u>Recommended Change:</u> Section 41 (4.1.1) The appearance of the elements, facilities and works on the land or any adjoining highway under a municipality's jurisdiction is not subject to site plan control, except to the extent that the appearance impacts matters of health, safety, accessibility or the protection of adjoining lands, or the development involves the incorporation of a cultural heritage resource.
Plan of Subdivision: Remove public meeting requirement for draft plans of subdivision	<ul style="list-style-type: none"> Would deprive members of the public/heritage advocates the ability to express their concern in person if a cultural heritage resource was not being included in the plan or was being incorporated in a manner that was not appropriate from a heritage perspective A municipality could still choose to hold a public meeting (but it would not be mandatory) 	Public meetings should be required if the plan of subdivision involves property on which a cultural heritage resource is located to demonstrate how the resource is being addressed.
ONTARIO HERITAGE ACT- Bill 23, Schedule 6		
Section 27 - Accessible Register on Website Each municipality must keep a register that lists all property designated under Part IV of the Act and also all property that has not been designated, but that the	<ul style="list-style-type: none"> Markham's Markham Register of Property of Cultural Heritage Value or Interest is already a publicly accessible register on the City 's website. 	Support the change.

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municipal council believes to be of cultural heritage value or interest. New subsection 27 (1.1) requires the clerk of the municipality to ensure that the information included in the register is accessible to the public on the municipality's website.		
<p>Section 27 – Listing Criteria for Register Subsection 27 (3) is re-enacted to require that non-designated property must meet the criteria for determining whether property is of cultural heritage value or interest, if such criteria are prescribed.</p> <p>* The Ministry is proposing that this requirement would apply only to those non-designated properties added to the municipal register on or after the date the legislative and regulatory amendments come into force.</p>	<ul style="list-style-type: none"> • Markham has used the criteria from Regulation 9/06 when listing previous properties and used its own similar criteria prior to the adoption of 09/06 • It is unclear what the new prescribed criteria will be (likely 9/06) • This should only apply to new listings and not be retroactive to all existing listed properties which would be a massive workload undertaking 	No objection to the concept of prescribed criteria for listed properties but would want to have input on the type and scope of the criteria (if Reg. 9/06 is not used) and that the application should only apply to new listed properties.
<p>Section 27 – Expanded Objections Current subsection 27 (13) is re-enacted to provide that, in addition to applying to properties included in the register on and after July 1, 2021, the objection process set out in subsections 27 (7) and (8) apply to non-designated properties that were included in the register as of June 30, 2021.</p>	<ul style="list-style-type: none"> • This change would allow all owners of properties <u>listed prior to July 1, 2021</u> the ability to object to their inclusion on the Register. • May increase staff workload beyond current capacity to address enquires as well as reports to Council on any objections. • Creates an unnecessary redundancy in appeal rights. The City has no mechanism to prevent alterations or demolition of a listed property once notice or a permit has been submitted except through designation under Part IV of the Act. The property owner 	<p>Do 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>

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	<p>has the right to object as part of the designation process, and the ruling of the OLT is binding on Council. The logic for this change is unclear as it relates to housing affordability, in fact it would potentially allow owners of listed properties to maximize the resale value of the properties by attempting to 'de-list' prior to sale.</p>	
<p>Section 27 – Two Year Maximum Timeframe for Listed Properties</p> <p>New subsections 27 (14), (15) and (16) specify circumstances that require the removal of non-designated property from the register. New subsection 27 (18) prevents a council from including such non-designated property in the register again for five years.</p> <p>Consultation is not required with the heritage advisory committee when properties are removed from the Register under these circumstances</p>	<ul style="list-style-type: none"> • Removal from the Register is required if Council passes an 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 above actions and should not result in automatic removal from the Register. • 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>. What purpose does this serve? Who does this really benefit? • Why two years? Why five years in purgatory? - the cultural heritage resource is still a cultural heritage resource even after this arbitrary date has occurred. 	<p>Heritage property registers are the backbone of heritage planning programs throughout the world and up to now, the Province of Ontario has been advocating the development of municipal heritage registers as a means to document these resources in the community, to be transparent with property owners and allow protection to be introduced (if deemed appropriate) when the property is threatened with demolition.</p> <p>The requirement to remove properties from the Register if not designated within two years of legislation approval is ill-conceived, contrary to universally accepted heritage protocols 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>

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	<ul style="list-style-type: none"> • This change does not take into account the number of listed properties in the municipality, the resource implications (financial, workload, volunteer commitment) on both large and small municipalities that would be required to research/review and prepare designation reports. • Designating properties where there is no threat of loss is counter-productive and may lead to an excessive number of appeals to the Ontario Land Tribunal from many municipalities further burdening the system. • In Markham, we primarily have only designated properties if there is a threat of loss through demolition or the property is part of a development application. And this has been a very successful approach. The changes appear to be a calculated attempt to swiftly remove all listed cultural heritage resources within a short period of time. • If this is approved, it could lead to municipalities having a separate inventory of formerly listed buildings of cultural heritage value that is not transparent and not readily accessible to the public. 	
Section 29 – Designation Criteria	<ul style="list-style-type: none"> • Raising the bar to require two or more 	A property should need to only meet one or

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<p>Although not addressed in the Act*, the Ministry is proposing to provide further rigour in the designation process by increasing the threshold by requiring that a property meet two or more of the criteria prescribed in regulation. This requirement would apply only to properties where the notice of intention to designate (NOID) is published on or after the date the regulatory amendment comes into force.</p> <p>* This change would be achieved through a regulatory amendment to O. Reg. 9/06 Criteria for determining cultural heritage value or interest.</p>	<p>criteria to be met could exclude a number of simple/local heritage resources that help tell the story of a community and should be protected for future generations.</p> <ul style="list-style-type: none"> • Making it harder for communities to preserve places is misguided, cannot solve the housing crisis but will certainly lead to loss of heritage valued by the local community • Designation should reflect what is important to the local community from a heritage perspective and this may be different across Ontario. • It is unclear if the regulation criteria is planned to be modified in any manner which would require extensive consultation with the heritage community 	<p>more of the criteria prescribed in Regulation 9/06 as the objective is to demonstrate that some aspect of cultural value or interest is reflected in the property (often a significant property may only meet one criteria)</p> <p>Existing designation by-laws should not be affected by any change to meet an enhanced threshold for designation, including if the designation by-law is merely being amended to modify a specific attribute or correct the legal description of the property.</p>
<p>Section 29 – Property Must be Listed Prior to a Prescribed Event</p> <p>Currently, subsection 29 (1.2) of the Act provides that, if a prescribed event occurs (OPA, ZBA, Subdivision application), a notice of intention to designate a property under that section may not be given after 90 days have elapsed from the prescribed event, subject to such exceptions as may be prescribed.</p> <p>The subsection is re-enacted to also provide that the municipality may give a notice of intention to designate the property only if</p>	<ul style="list-style-type: none"> • The amendment will preclude stating an intention to designate <i>unless</i> the property is already listed on the heritage register. • The Act never required listing a property on the Register to qualify a property for designation. It had to meet the criteria Reg. 9/06 • Not all properties are inventoried and included on Registers in Ontario – this amendment would require a municipality to undertake a complete inventory and place all properties on the Register only to see them fall off 	<p>The requirement that a property must be listed on the Register prior to a prescribed event (OPA, ZBA, Subdivision application) is not supported given that not all cultural heritage resources are included on municipal Registers and in some cases are only identified when a development application is submitted.</p> <p>If the change is approved as proposed, the legislation should maintain exceptions such as still allowing for designation through mutual agreement.</p>

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<p>the property was included in the register under subsection 27 (3) as of the date of the prescribed event</p>	<p>the Register in two years if not designated.</p> <ul style="list-style-type: none"> Requiring listing prior to the prescribed event also eliminates the possibility of preventing the demolition of cultural heritage resources on the subject properties using Part IV designation unless the property is listed. This was the policy direction for a Notice of Intention to Designate. 	
<p>Section 41 – Heritage Districts Subsection 41 (1) of the Act currently permits a council of a municipality to designate, by by-law, the municipality or any defined area of it as a heritage conservation district, if there is in effect in the municipality an official plan that contains provisions relating to the establishment of a heritage conservation district. The subsection is re-enacted to also require the municipality or defined area or areas to meet criteria for determining whether they are of cultural heritage value or interest, if such criteria are prescribed.</p>	<ul style="list-style-type: none"> Seem overly prescriptive given that the Act already requires that the heritage conservation district plan must provide a statement explaining the cultural heritage value or interest of the district The criteria (specific to district designation) have not been developed or shared so it is difficult to provide any comment 	<p>No comment at this time other than this does not seem necessary Would like to review any proposed criteria. It is understood that when/if criteria have been prescribed, the statement explaining the cultural heritage value or interest of the district must explain how the district meets the prescribed criteria.</p>
<p>Section 41 – Amending a Heritage District Plan New subsections 41 (10.2) and (10.3) require a council of a municipality wishing to amend or repeal a by-law made under the section to do so in accordance with such process as may be prescribed; similar rules are added</p>	<ul style="list-style-type: none"> The change is welcomed as the Act was silent on how a heritage conservation district was to be amended or repealed. This would include any boundary changes or changes to the heritage conservation district plan (including 	<p>Support the changes outlining that a heritage conservation district by-law can be amended or repealed but would like to see the prescribed process.</p>

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to section 41.1. (which deals specifically with the heritage conservation district plan)	the repeal of an existing plan and introduction of a new plan).	
<p>Provincially Owned Heritage Properties Section 25.2 of the Act currently permits the Minister to prepare heritage standards and guidelines for the identification, protection, maintenance, use and disposal of property that is owned by the Crown or occupied by a ministry or prescribed public body and that has cultural heritage value or interest.</p> <p>New subsection 25.2 (3.1) provides that the process for identifying such properties, as set out in the heritage standards and guidelines, may permit the Minister to review determinations made by a ministry or prescribed public body.</p> <p>New subsection 25.2 (7) authorizes the Lieutenant Governor in Council to, by order, exempt the Crown, a ministry or a prescribed public body from having to comply with the heritage standards and guidelines 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 provincial priorities, as specified.</p>	<ul style="list-style-type: none"> • This change could impact the protection and conservation of provincially owned cultural heritage resources in local communities if the Minister believes the heritage resource is affecting other provincial priorities which are identified as <ul style="list-style-type: none"> ○ 1. Transit. ○ 2. Housing. ○ 3. Health and Long-Term Care. ○ 4. Other infrastructure. ○ 5. Such other priorities as may be prescribed. 	<p>The Province of Ontario has a responsibility to protect, conserve and maintain cultural heritage resources in its ownership (which are often also of heritage value to a local community) and should abide by the Standards and Guidelines and consider the conservation of heritage resources as a provincial priority. At minimum, if the government proposes to not comply with the heritage standards and guidelines, it should commit to consultation with the local municipality in which the resource resides to further assess the value/significance and possible options for conservation.</p>

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