

Schedule 11 – Changes to the *Ontario Heritage Act*

The following is a summary of the proposed changes to the *Ontario Heritage Act*:

- Establishing “prescribed events and principles” that shall be considered when making decisions.
- New timeframes and notice provisions including when a property is added to the Register. Municipalities will need to provide notice within 30 days of a property being added to the Register and property owners will be able to object to their property being included in the Register.
- With respect to Heritage Conservation Districts, Bill 108 will permit demolition or removal only if it would not affect the property’s heritage attributes as listed in the Heritage Conservation District Plan. If the heritage attributes are not specifically listed, the Act does not prohibit demolition or removal.
- Bill 108 will now require that all appeals be heard by the LPAT instead of the Conservation Review Board and has expanded the powers of the LPAT from the power the Conservation Review Board previously had. The power to make a final decision on designating a property has been removed from Council and now rests with the LPAT which will be final and binding.

The following is a detailed summary of the proposed changes, implications for the City of Hamilton and staff recommendations to the Province. Staff are not supportive of the proposed changes as it will have an impact on how the City administers the Act and its current processes. The proposed changes in some case will lengthen the process, delaying projects, and will require additional staff resources with added complexity to processes. The changes proposed by Bill 108 may result in increased appeals to the LPAT as the addition of properties to the Register can now be appealed to the LPAT.

The *Ontario Heritage Act* is a tool for managing change of heritage resources that balances both public and private interests. The proposed changes to the Act tip the balance away from public interest to the interest of private owners/developers.

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Prescribed Principles	N/A	<p>Section 26.0.1</p> <p>The proposed changes would establish “prescribed principles” that shall be considered when making decisions under Part IV or V.</p>	<p>What constitutes a “prescribed principle” has not been provided. Clearer direction of “prescribed principle” is needed and in the absence of these details it is not possible to fully assess the implications of this proposed change.</p> <p>Staff advises the Province to consult with municipalities on the “prescribed principles” and that the regulation should clearly describe what constitutes a “prescribed principle”.</p>
Adding Properties to the Register	N/A	<p>Section 27(5) and (6)</p> <p>The Act now requires notice be given to a property owner within 30 days of a property being added to the Register.</p> <p>The notice is to include a statement explaining why the property is of cultural heritage value or interest, a description of the property, a statement that if the owner objects</p>	<p>Staff currently has a process for adding properties to the Register. Individual properties are not added without a detailed review of the heritage value of the property.</p> <p>In addition, Staff currently provides a notice to an owner prior to the recommendation to add the property to the Register.</p> <p>The proposed changes will require a revision to the City’s process from notifying an owner before</p>

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		<p>they may serve the Clerk with a notice of objection setting out the reasons and relevant facts, and an explanation of the restriction concerning demolition or removal.</p>	<p>to after it has been added to the Register.</p> <p>The proposed change will require municipalities to undertake a more robust assessment before adding a property to the Register. There must be a statement explaining why the property is of cultural heritage value or interest. This is currently not required by the Act.</p> <p>These proposed changes will impact the amount of time and cost it takes to add a property to the Register and will result in additional staff resources.</p> <p>This proposed change may have an impact on the heritage inventory work that the City currently undertakes as each property on the inventory will require an assessment of the properties cultural heritage value or interest given that the methodology and subsequent analysis must be robust enough to defend the decision in the event the decision is made to designate the property.</p> <p>The proposed change permits a property owner to object to the property being added to the Register. The proposed change does not identify</p>

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			<p>a timeframe for when an owner may serve a notice of objection and is open-ended.</p> <p>Staff advise the Province that a time limit for filing an objection for a property added to the Register with the Clerk be included.</p>
Notice of Objection to adding Property to the Register	N/A	<p>Section 27 (7) and (8)</p> <p>The Act now requires that if a notice of objection has been served, the municipality shall consider the notice and make a decision as to whether it should continue to be included on the Register and provide notice of the council’s decision to the owner within 90 days of the decision.</p>	<p>The proposed change would require that Council consider an owners objection and make a decision as to whether it wishes to continue to include the property on the Register.</p> <p>Notice of council’s decision must be given to the owner within 90 days of the decision.</p> <p>The proposed change will require a revision to the City’s processes and will require additional staff resources to address the additional work and report preparation required.</p>
Restriction on demolition	N/A	<p>Section 27(9), (10) and (11)</p> <p>The owner shall not demolish or remove a building or structure for a property on the Register unless the owner gives Council at least 60 days</p>	<p>This notice would only apply if the property is on the Register before a building permit application to demolish is made. If it is not on the Register, but may have cultural heritage value, notice by the owner is not required.</p>

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		<p>notice in writing of the owner's intention. This only applies if the property is on the Register before a building permit application is made.</p>	<p>The notice must also be accompanied by plans and information that Council may require.</p> <p>The Act does not include provisions by which a property owner may withdraw their notice of intent to demolish.</p> <p>This proposed change would limit the City's ability to add a property to the Register after a building permit application has been made in order to provide interim protection.</p> <p>Properties that are listed on the Inventory are afforded no protection and cannot be added to the Register to provide interim protection. Heritage resources will be lost because of this proposed change.</p> <p>Where previous research on a property has not been done, this puts the City in a difficult position which may result in proceeding directly to designating a property.</p> <p>Staff requests the Province to remove the requirement that the property be on the Register before the building permit</p>

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			application is made.
Designation Limitation	N/A	<p>Section 29(1.2)</p> <p>A new section has been added to the Act that proposes that Council will not be permitted to give notice of an intention to designate a property more than 90 days after a “prescribed event” has occurred.</p> <p>There are currently no limitations on when a Council may provide notice of an intention to designate.</p>	<p>The new section now includes a limitation as to how much time a Council has to give notice for an intention to designate a property after a “prescribed event” has occurred. Under the current Act, Council is not restricted.</p> <p>The new section does not describe what constitutes a “prescribed event” nor were regulations provided for clarification. As such, in the absence of details it is not possible to fully assess the implications of this proposed change.</p> <p>Staff advise the Province that there should be no limitations as to when Council may provide notice of an intention to designate.</p> <p>Should the Province proceed with including this requirement, the Province should consult with municipalities on the “prescribed event” and the regulation should clearly describe what constitutes a “prescribed event” prior to proceeding with these proposed changes to the Act.</p>

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<p>Objection to Designation</p>	<p>Subsections 29(6) to (17) currently outline the process for notice of objections to a designation and that objections would be referred to the Conservation Review Board (CRB). A person who objects currently has 30 days after the publication of the notice in the newspaper to serve the Clerk with a notice of objection. Previously, an appeal to the CRB was non-binding and resulted in a report to Council setting out its findings and recommendations. Council could then</p>	<p>Subsections 29(6) to (17) have been replaced with new notice requirements for objections.</p> <p>A Council will now be required to consider the objection and make a decision whether or not to withdraw the intention to designate 90 days after the end of the 30 day objection period.</p> <p>If an objection is not served, Council may pass a by-law in the following circumstances:</p> <p>By-law is passed within 120 after the publication of the notice of intention to designate;</p> <p>It must include a statement explain the heritage value or interest and the heritage attributes;</p> <p>Must provide the owner or anyone who objected with a copy of the By-</p>	<p>Additional opportunities have been included for decisions of Council on designating a property to be reconsidered (within 90 days of receiving an objection).</p> <p>Additional timeframes have been included for passing a by-law. If a by-law is not passed within 120 days, Council has the option to restart the process.</p> <p>Power to designate has been removed from Council and transferred to the LPAT. Decisions should be made by Heritage experts such as the Conservation Review Board.</p> <p>The proposed changes will lengthen the process and add to the volume of appeals before the LPAT which may result in delays in decision making.</p> <p>Proposed changes will require modifications to the City’s designation process and will require additional staff resources.</p>

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	<p>pass a by-law designating the property or withdraw the notice of intention to designate. The decision of Council would be final.</p>	<p>law;</p> <p>Notice must be published in the newspaper of the passing of the by-law; and,</p> <p>The notice must include that the by-law may be appealed within 30 days after the date of publication of the notice.</p> <p>Objections would now be appealed to the LPAT.</p> <p>For an appeal, the record of the decision must be forwarded to the LPAT within 15 days of the notice of appeal.</p>	<p>Staff requests that the Province reinstate referral of objections to the Conservation Review Board for a hearing and report and Council as the final decision making authority on objections to designations.</p>
<p>Powers of the LPAT</p>	<p>N/A</p>	<p>Section 29 (15) and (16)</p> <p>After holding a hearing the LPAT shall dismiss the appeal or allow the appeal in whole or in part.</p> <p>The LPAT may dismiss all or part of an appeal without holding a hearing if</p>	<p>The powers the Conservation Review Board currently has are proposed to be expanded for the LPAT including the ability to dismiss all or part of an appeal.</p> <p>Decisions should be made by heritage experts such as the Conservation Review Board on</p>

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		<p>the LPAT is of the opinion that there are no grounds to allow all or part of the appeal or that the appeal is not made in good faith, is frivolous or vexatious or is made only for the purpose of delay, appellant has not provided a written reason in support of the objection, has not paid the fee or has not responded to a request by the LPAT.</p> <p>Before dismissing an appeal, the LPAT shall notify the appellant and give the appellant an opportunity to make representations with respect to the dismissal.</p>	<p>heritage matters. It is also not clear on what basis the LPAT will be making decisions. For planning matters there is the “best planning” equivalency test, but a similar test does not exist for heritage matters before the LPAT.</p> <p>Using the LPAT will lengthen the process and add to the volume of appeals before the LPAT which may result in delays in decision making.</p> <p>Staff requests that the Province reinstate referral of objections to the Conservation Review Board for a hearing and report.</p>
Amending By-laws	Appeals were previously heard by the Conservation Review Board	<p>Section 30.1(7) to (16)</p> <p>The Act proposes a more robust process for objections to an appealing by-law and appeals are to be heard by the LPAT.</p>	<p>Currently the Conservation Review Board hears these matters. Decisions should be made by heritage experts such as the Conservation Review Board.</p>
Repealing By-laws by	Appeals were previously heard by	Section 31(5) to (14)	<p>Using the LPAT will lengthen the process and add to the volume of appeals before the LPAT which</p>

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Council	the Conservation Review Board	The Act proposes a more robust process for objections to an appealing by-law and appeals are to be heard by the LPAT. The powers of the LPAT have been expanded.	may result in delays in decision making. Staff requests that the Province reinstate referral of objections to the Conservation Review Board for a hearing and report.
Repeal of by-law by owner	Appeals were previously heard by the Conservation Review Board	Section 32(2) to (18) The Act proposes a more robust process for objections to an appealing by-law and appeals are to be heard by the LPAT. The powers of the LPAT have been expanded.	
Heritage Permits (Alteration of Property)	Appeals were previously heard by the Conservation Review Board	Section 33(2) to (16) The Act now outlines that for a heritage permit application, it must be accompanied with “prescribed” information and material. Appeals will now be heard by the LPAT. The powers of the LPAT have been expanded.	Currently a heritage permit application is to include information as set out by a Council. The proposed change indicates that the Province will identify what information must be included in an application through reference to “prescribed” information. As discussed previously, these matters should continue to be heard by the Conservation Review Board. Staff requests that the Province reinstate

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			referral of objections to the Conservation Review Board for a hearing and report.
Heritage Permits (Demolition of Designated Property)	<p>Previously restricted demolition or removal to a building or structure on the property</p> <p>Appeals will continue to be heard by the LPAT</p>	<p>Section 34(1) to (4.4) and 34(3) to (7)</p> <p>The Act now outlines that for a heritage permit application, it must be accompanied with “prescribed” information and material.</p> <p>The Act proposes to permit the demolition or removal whether or not the demolition or removal would affect the property’s heritage attributes set out in the designating by-law.</p> <p>The application for demolition or removal must be deemed complete and the applicant must be informed.</p> <p>The Act now includes revised notice requirements for a Heritage Permit.</p> <p>The powers of the LPAT have been expanded.</p>	<p>Currently a heritage permit application is to include information as set out by a Council. The proposed change indicates that the Province will identify what information must be included in an application through reference to “prescribed” information.</p> <p>Changes to our process will be required as this is a new requirement.</p> <p>Staff advises the Province to consult with municipalities on the “prescribed” information and that the regulation should clearly describe what constitutes “prescribed” information.</p>

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Heritage Conservation Districts		<p>Section 39.1.2</p> <p>A new section has been proposed that a Council shall consider the “prescribed principles, if any” when council exercises a decision making authority.</p>	<p>The new section does not describe what constitutes “prescribed principles” nor were regulations provided to provide clarification. Clearer direction of “prescribed principles” is needed.</p> <p>Staff advises the Province to consult with municipalities on the “prescribed principles” and that the regulation should clearly describe what constitutes a “prescribed principle”.</p>
Heritage Conservation Districts		<p>Section 42 (1)</p> <p>A new section has been proposed that requires property heritage attributes to be included in a heritage conservation district plan. These are needed with respect to demolition or removal.</p>	<p>This change is more restrictive and requires specific heritage attributes to be listed for a property in a Heritage Conservation District Plan. Demolition or removal would not be permitted if it would affect the heritage attributes included in the Heritage Conservation District Plan. If the heritage attributes are not listed, demolition or removal is permitted in a Heritage Conservation District.</p> <p>This would impact the City’s existing Heritage Conservation District Plans that do not contain specific heritage attributes for each property and</p>

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			<p>could result in the demolition or removal of properties with the Plan area.</p> <p>There is no transition for existing Plans that may not have been developed in accordance within the proposed changes.</p> <p>Future Heritage Conservation District Plans will require more time and more money to prepare as the proposed change is similar to the detail required to designate a property.</p> <p>Staff requests that the Province delete this regulation to continue to provide protection from demolition of heritage resources in a Heritage Conservation District Plan area.</p>