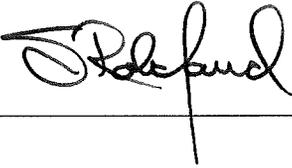




Hamilton

CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Hamilton Municipal Heritage Committee
COMMITTEE DATE:	October 30, 2020
SUBJECT/REPORT NO:	<i>Bill 108, More Homes, More Choice Act, 2019 - Ontario Regulations and Ontario Heritage Act (PED19125(b)) (City Wide)</i>
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Jennifer Roth (905) 546-2424 Ext. 2058
SUBMITTED BY:	Steve Robichaud Director of Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That Council adopt the submissions and recommendations as provided in Report PED19125b regarding the proposed Regulation under the *Ontario Heritage Act*, as amended by *Bill 108, More Homes, More Choice Act, 2019*;
- (b) That the Director of Planning and Chief Planner be authorized and directed to confirm the submissions made to the Province attached as Appendix "B" to Report PED19125(b); and,
- (c) That in advance of the Proclamation of the amendments to the *Ontario Heritage Act* and associated regulations, the Director of Planning and Chief Planner be authorized to make any changes to internal guidelines and application forms as may be required to implement the changes to the *Ontario Heritage Act*.

EXECUTIVE SUMMARY

On May 2, 2019, *Bill 108, More Homes, More Choice Act, 2019*, was introduced at the Ontario Legislature and subsequently received Royal Assent on June 6, 2019. The Bill

amended 13 different statutes, including the *Ontario Heritage Act*. On September 21, 2020 the Province released draft Regulation under the *Ontario Heritage Act* for public comment.

The draft Regulation, attached as Appendix “A” to Report PED19125(b), provides additional detail on how the changes to the *Ontario Heritage Act* resulting from Bill 108 are to be implemented. The anticipated proclamation date for the changes to the *Ontario Heritage Act* and the associated Regulation is January 1, 2021. Further information is expected to be released from the Province in the form of an updated Ontario Heritage Tool Kit to provide guidance materials on implementation of the changes to the *Ontario Heritage Act*. No firm date has been provided on the expected release of the updated Tool-Kit.

The deadline for comments on the draft Regulations is November 5, 2020. As such and given the timing, comments will be submitted to the Province in advance of Council’s consideration of this matter. The comments submitted by staff are included as Appendix “B” to Report PED19125(b). If the recommendations of this Report are approved by Council, the Director of Planning and Chief Planner will notify the Province that the submissions have been adopted by City Council and any modifications will also be noted.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The *Ontario Heritage Act* as amended by Bill 108 and the Proposed Regulations will have financial implications on the City in terms of staff resources, and possibly fees for processing matters under the *Ontario Heritage Act*. However the degree and magnitude are unknown at this time.

It should be noted that while the City does not currently charge fees for applications under the *Ontario Heritage Act*, Staff will review internal processes and the potential need to apply application fees to future heritage applications to ensure cost recovery. The result of this review will be presented to Committee and Council for consideration.

Staffing: Staffing resource implications remain unknown at this time, however it is anticipated that additional staff resources will be needed to meet the requirements of the new *Ontario Heritage Act* and the prescribed Regulations.

Legal: While it is not currently anticipated that additional legal staff will be required, additional legal resources will be required to:

- provide support interpreting and implementing these changes;

- provide support for amendments to Delegated Authority By-law No. 05-364;
- provide support in the creation of a new by-law, resolution, or Official Plan Amendments;
- assist in structuring by-laws, reports, and resolutions to comply with new requirements;
- assist with changes needed to the current process for placing properties on the heritage register; and,
- represent the City at the LPAT as staff anticipate higher number of LPAT appeals now that final decision-making power on designations rests with the LPAT.

HISTORICAL BACKGROUND

Report LS19020/PED19125 which introduced the legislative changes contained in Bill 108 and which was approved by Council on June 12, 2019, indicated that staff would report back on the details of the Bill should it be enacted. As a result of the Bill receiving Royal Assent, the anticipated Proclamation date of January 1, 2021 for the Schedule 11 changes impacting the *Ontario Heritage Act*, and the release of the proposed Regulation by the Province, this report has been prepared to provide further information on the proposed Regulation.

The following are key dates related to Bill 108, *More Homes, More Choice Act, 2019*;

May 2, 2019: Bill 108, *More Homes, More Choice Act, 2019*, was introduced at the Ontario Legislature.

June 6, 2019: Royal Assent given to Bill 108.

September 21, 2020: ERO Posting 019-1348 - Proposed Regulation under the *Ontario Heritage Act* (Bill 108) released for public comment.

November 5, 2020: Commenting deadline for the ERO posting.

Staff will be forwarding a letter to the Province, attached as Appendix "B" to Report PED19125b, outlining staff's comments on the ERO posting in advance of the commenting deadline. This staff report, including any changes or additions proposed by Council will be forwarded to the Province as additional comments on the ERO posting.

RELEVANT CONSULTATION

This report has been prepared by Planning Division staff with input from Legal staff and Tourism and Culture staff. Internal staff comments have been incorporated into the

recommendations of this report and included in the letter to be sent to the Province, attached as Appendix "B" to Report PED19125(b).

Legal

The new *Ontario Heritage Act* will require ongoing support from Legal staff respecting the interpretation and implementation of it and the associated Regulation. Legal staff anticipate an increase in requests for legal advice following the proclamation of the new *Ontario Heritage Act* and the new Regulation coming into effect.

Assistance may be required from Legal staff on new forms (such as notice of complete or incomplete application) and on structure of Council resolutions, reports, and designating by-laws in compliance with the new requirements of the *Ontario Heritage Act*.

Legal staff will provide support to Planning staff in amending the Delegated Authority By-law No. 05-364, as amended by Bylaw No. 07-322, to ensure compliance with the new *Ontario Heritage Act* as it relates what constitutes a demolition or alteration and as a result, may impact what Council can delegate to staff. Staff are currently seeking clarification from the Province regarding what constitutes an alteration. A by-law, resolution, or even Official Plan Amendments may also be needed to clarify what documents and information is required to accompany heritage applications.

The proposed Regulation provides several exceptions to timelines set out in the new *Ontario Heritage Act* that may require assistance from Legal staff. Legal staff may also provide assistance in determining whether Council's ability to provide extensions can be delegated to staff and drafting any required by-law with respect to such delegation.

When the new *Ontario Heritage Act* comes into effect on January 1, 2020, there will be a formal objection process for property owners whose property has been placed on the Heritage Register. The City will need to examine its current process for placing properties on the register and make changes to comply with the new requirements. Legal staff may be required to assist in creating and implementing this new process.

Staff anticipate that there will be an increase in appeals to the LPAT as the final decision-making authority has shifted from Council to the LPAT. Legal staff will be required to assist with these LPAT appeals which may have a significant resource impact.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

As stated in Report LS19020/PED19125, staff were not supportive of the proposed changes to the *Ontario Heritage Act* because of concerns that the regulatory changes will have on the City's ability to effectively manage heritage resources, potential impacts

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to internal resources and the ability to meet the proposed timelines. Despite these concerns being expressed to the Province, Bill 108 received Royal Assent on June 6, 2019, and the enacted regulation remained largely unchanged as it related to the *Ontario Heritage Act*. Much of the proposed Regulation implements changes that have already received royal assent and will be part of the new *Ontario Heritage Act*. In the comments provided to the Province, staff are seeking clarification on several aspects of the proposed Regulation.

The proposed Regulation released on September 21, 2020 for review has been organized by the Province into nine themes:

- 1) Principles that a municipal council shall consider when making decisions under specific parts of the OHA;
- 2) Mandatory content for designation by-laws;
- 3) Events which would trigger the new 90 day timeline for issuing a NOID and exceptions to when the timeline would apply;
- 4) Exceptions to the new 120 day timeline to pass a designation by-law after a NOID has been issued;
- 5) Minimum requirements for complete applications for alteration or demolition of heritage properties;
- 6) Steps that must be taken when council has consented to the demolition or removal of a building or structure, or a heritage attribute;
- 7) Information and material to be provided to LPAT when there is an appeal of a municipal decision to help ensure that it has all relevant information necessary to make an appropriate decision;
- 8) Housekeeping amendments related to amending a designation by-law and an owner's reapplication for the repeal of a designation by-law; and,
- 9) Transition provisions.

Staff are supportive of several of the themes in the proposed Regulation but remain concerned with the 90 day timeline to issue a NOID after a prescribed event when combined with an Official Plan Amendment, Zoning By-law Amendment or Plan of Subdivision. A detailed analysis of the proposed regulation, including implications and recommendations made to the Province, is included as Appendix "C" to Report PED19125(b). An overview of the nine themes and potential implications is provided below.

Theme 1 – Prescribed Principles

The first theme discusses the new 'prescribed principles' which staff are supportive of as the proposed principles are intended to help decision-makers. Staff note that the City's current Official Plan already requires the retention of properties with cultural heritage value or interest as well as requires extensive research and evidence to support the conservation of heritage resources. The current process which includes

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consultation with the Hamilton Municipal Heritage Committee, and decisions by Planning Committee and Council, demonstrates openness and transparency.

Staff are seeking clarification on aligning the language between the prescribed principles and the Provincial Policy Statement 2020 (PPS). Staff believe using 'shall' in the prescribed principles instead of 'should' provides appropriate strength and will be consistent with the PPS.

Theme 2 – Mandatory Contents of Designation By-laws

Staff are in support of the mandatory content for designation by-laws and note that staff's current practices generally follow the requirements. Staff will need to complete a review of internal processes to ensure all requirements are included in application forms, policies, and guidelines. A review of the Cultural Heritage Evaluation Criteria found in Policy B.3.4.2.9 of the Urban Hamilton Official Plan and Rural Hamilton Official Plan to ensure that Hamilton's requirements are aligned with the requirements of the new *Ontario Heritage Act* will be required and will be undertaken as part of the required Official Plan Review.

Theme 3 – Notice of Intention to Designate 90 Day Timeline and Exceptions

Provisions of the new *Ontario Heritage Act* will establish a new 90 day timeline for issuing a NOID when the property is subject to prescribed events.

Within the proposed Regulation prescribed events have been defined as applications submitted to and deemed complete by the municipality for an Official Plan Amendment, Zoning By-law Amendment or a Plan of Subdivision. The new 90 day timeline is intended to encourage discussions about potential designations with development proponents at an early stage to avoid designation decisions being made late in the land use planning process.

Staff's opinion is that the 90 days is not adequate to support the Ministry's 'Prescribed Principle' in 1(3)2.ii of the Regulations that requires that decisions affecting the cultural heritage value/interest be based on research, appropriate studies and documentary evidence. As well, staff review time, consultation with Policy and Design Working Group and the preparation of a staff report takes longer than 90 days.

Staff acknowledge that the Province has provided several opportunities to extend the 90 day timeframe by an additional 90 days, creating an 180 day timeframe, which include mutual agreement between applicant and the City, administrative extension in periods of declared emergency and the receipt of new and relevant information. Staff also note that there is the opportunity to have the timeframe removed through mutual agreement. Staff are supportive of the opportunities to extend the timeframe, however several items of clarification have been asked of the Province including which exceptions can be

delegated to staff to ensure timely processing and reduction of administrative burdens. The identification and review of the implications of the development proposed is dependant of the quality of the information submitted with the application.

A three week period is given to review materials as part of a *Planning Act* application, which include the review of CHIAs. If there are questions or edits to the CHIA, then additional review is necessary. Further, CHIAs are reviewed by the Policy and Design Working Group who meets monthly. Typically between one and three reviews occurs, resulting in a minimum of one to three months required for a CHIA review. Therefore, coupled that with the review of the *Planning Act* application, consultation with the community and application and the internal report writing cycle, the 90 or 180 day timeline is not sufficient for a comprehensive review to be completed.

As such, it will be necessary to review the current application submission requirements to ensure that heritage resources are identified early in the process and that the implications of the proposed on the heritage resources is fully documented.

Staff also note that designations that are not subject to a development application will continue to follow the current practice. Staff are concerned that this shortened timeframe may have impacts on the designation workplan as resources will be redirected to process designations associated with development applications.

Theme 4 – Designation By-law 120 Day Timeline and Exceptions

Provisions of the new *Ontario Heritage Act* establish a new requirement for designation by-laws to be passed within 120 days of issuing a NOID. The proposed Regulation also allows for exceptions to this timeframe including mutual agreement between applicant and the City, periods of declared emergency and receipt of new and relevant information submitted. Staff are supportive of this timeframe and the proposed exceptions as the City's current process typically has designation by-laws passed right after the 30 day appeal period for the NOID is complete. Staff have requested the Province to clarify what happens to the 120 day timeline in situations where there is an appeal to a NOID.

Theme 5 – Notice of Complete Applications for Alteration or Demolition Applications

Provisions of the new *Ontario Heritage Act* establish a new timeline of 60 days for a municipality to inform a property owner of the completeness of their application for alteration to or demolition of a designated heritage property. Minimum requirements for complete applications are established in the proposed Regulation. The purpose of these minimum standards is to ensure transparency so that property owners are aware of what information is required when making an application and provides consistency across the province. Municipalities can establish additional requirements to the ones set out in the Regulation. Where municipalities choose to add additional requirements, the

Regulation requires them to use one of the following official instruments: municipal by-law, council resolution or official plan policy.

Staff are supportive of the minimum requirements; however, it has been noted that these minimum requirements only apply to Part IV, or individually designated properties and staff have advised the Province that these requirements should also apply to Part V that are designated as part of a Heritage Conservation District to provide for the ongoing protection of those properties as well.

Internal processes and application forms will need to be updated to ensure that these new requirements are included. Specifically, staff note that coordination with the Building Division who receives these permits will be needed. Staff note that there may be a greater scope and time spent on each application which may need to be addressed through the addition of a processing fee for cost recovery, especially in those situations where it is proposed to demolish the designated building/structure.

Theme 6 - Council consent requirement for the demolition or removal of a building or structure, or a heritage attribute

Provisions of the new *Ontario Heritage Act* will require municipal council consent for the demolition or removal of any heritage attributes, in addition to the demolition or removal of a building or structure. Staff are seeking clarification from the Province on the difference between alterations that impact a heritage attribute and a demolition. For example, is the removal of a designated feature such as a window or façade, a demolition or alteration? This distinction may have an impact on what can be delegated to staff versus what will require Council approval as this may result in the need for additional staff resources.

Provisions of the proposed Regulations also provide a process for amending designation by-laws as alterations or demolitions occur. This draft Regulation establishes that any amendments to designation by-laws resulting from an alteration or demolition are not appealable, which is supported by staff.

The proposed Regulation provides that, where council has agreed to the removal of a building or structure from a designated property to be relocated to a new property, council may follow an abbreviated process for designating the receiving property. Staff are supportive of this proposed Regulation given that the subsequent designation by-law made under this proposed Regulation would not be appealable to LPAT.

Updates to internal processes and additional staff resources will need to be considered to address the Regulation.

Theme 7 - Information and material to be provided to Local Planning Appeal Tribunal

The proposed Regulation outlines which materials and information must be forwarded for every LPAT appeal process in the Act by the clerk within 15 calendar days of the date the municipality receives an appeal. Staff are generally supportive of the type of materials and the timeframe in which the material must be submitted; however, staff are seeking additional clarification from the Province on what constitutes the required 'employee statement'.

Collaboration with Legal and Clerks staff when updating internal processes will be required.

Theme 8 - Housekeeping amendments related to amending a designation by-law and an owner's reapplication for the repeal of a designation by-law

The proposed Regulation sets out a modified process for situations where a municipality wishes to make substantial amendments to an existing designation by-law. The proposed Regulation makes it clear that there is no 90 day restriction on issuing a notice of proposed amendment to a by-law and provides that council has 365 days from issuing the notice of proposed amendment to pass the final amending by-law and that this timeframe can only be extended through mutual agreement. Staff are supportive of the modified process and will need to ensure that internal processes reflect this scenario.

The proposed regulation also outlines restrictions on a property owner's ability to reapply to have a designation by-law repealed where the application was previously unsuccessful, unless council consents otherwise. The 365 day restriction on an owner's reapplication maintains what had been included in the current *Ontario Heritage Act*. Staff have advised the Province that a longer timeframe would be beneficial to avoid having to annually address an owner's application for a designation repeal.

Theme 9 - Transition provisions

The proposed transition rules provide clarity on matters that are already in progress at the time the amendments come into force. The draft Regulation states that all processes that commenced on a date prior to proclamation would follow the process and requirements set out in the Act as it read the day before proclamation, which is currently anticipated to be January 1, 2021.

Where council has outstanding notices of intention to designate but has not yet withdrawn the notice or passed the by-law at the time of proclamation, the municipality will have 365 days from proclamation to pass the by-law, otherwise the notice will be deemed withdrawn. Where a NOID has been referred to the Conservation Review

Board, the 365 days would be paused until the Board either issues its report or until the objection has been withdrawn, whichever occurs earlier.

Staff note that the City of Hamilton has four outstanding NOIDs which could be dealt with within the 365 transition period but may require additional City resources to complete. Should these four outstanding NOIDs not have a designation by-law passed with 365 days of Proclamation, a new NOID will need to be issued which will be subject to the new processes established under the new *Ontario Heritage Act*. Staff have requested a regulation from the Province in situations where the issued NOID does not follow the current OHA designation standard, but the municipality would like to pass a designation by-law that is in keeping with that standard without having to re-issue a NOID.

Staff are concerned with the short timeframe to prepare for the implementation of the changes to the *Ontario Heritage Act* and request that the changes to the *Ontario Heritage Act* not come into force until July 1, 2021 instead of the anticipated date of January 1, 2021 to give staff appropriate time to review and update internal processes.

Procedural Next Steps

The public consultation for the proposed Regulation will remain open until November 5, 2020 with an anticipated proclamation date of January 1, 2021.

A future report discussing implementation measures and staff resources, will be prepared by Planning staff for Council's consideration after the Proclamation date.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

SUBJECT: *Bill 108, More Homes, More Choice Act, 2019 - Ontario Regulations and Ontario Heritage Act (PED19125(b)) (City Wide) - Page 11 of 11*

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – Draft Regulations

Appendix "B" – Letter submitted to the Province with Comments

Appendix "C" – Impact Evaluation of Draft Regulations

Caution:

This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT

ONTARIO REGULATION

to be made under the

ONTARIO HERITAGE ACT

GENERAL

CONTENTS

[PRINCIPLES](#)

[1.](#) Principles

[RULES RE SECTION 29 OF THE ACT](#)

[2.](#) Prescribed events, s. 29 (1.2) of the Act

[3.](#) Prescribed exceptions, s. 29 (1.2) of the Act

[4.](#) Prescribed circumstances, s. 29 (8) para. 1

[5.](#) Designation by municipal by-law, requirements

[AMENDMENT OF DESIGNATING BY-LAW](#)

[6.](#) Amending by-laws, modified s. 29 of the Act

[REAPPLICATION FOR REPEAL OF BY-LAW – SUBSECTION 32 \(18\) OF THE ACT](#)

[7.](#) Prescribed circumstances and time periods

[INFORMATION AND MATERIAL – SUBSECTIONS 33 \(2\) AND 34 \(2\) OF THE ACT](#)

[8.](#) Prescribed information and material

[REQUIRED STEPS – SECTION 34.3 OF THE ACT](#)

[9.](#) Council consents to application under s. 34 of the Act

[RECORD OF DECISION](#)

[10.](#) Record of decision under s. 29 of the Act

[11.](#) Record of decision under s. 30.1 of the Act

[12.](#) Record of decision under s. 31 of the Act

[13.](#) Record of decision under s. 32 of the Act

[14.](#) Record of decision under s. 33 of the Act

[15.](#) Record of decision under s. 34.1 of the Act

[16.](#) Record of decision under s. 40.1 of the Act

[17.](#) Record of decision under s. 41 of the Act

[18.](#) Record of decision under s. 41.1 of the Act

[19.](#) Record of decision under s. 42 of the Act

[TRANSITION](#)

[20.](#) Transitional rules

[21.](#) Commencement

[SCHEDULE](#)

[SECTION 29 OF THE ACT AS MODIFIED FOR THE PURPOSES OF SUBSECTION 30.1 \(1\) OF THE ACT](#)

PRINCIPLES

Principles

1. (1) The following provisions are prescribed for the purpose of section 26.0.1 of the Act:

1. Section 29 of the Act.
2. Section 30.1 of the Act.
3. Section 31 of the Act.
4. Section 32 of the Act.
5. Section 33 of the Act.
6. Section 34 of the Act.

(2) The following provisions are prescribed for the purpose of section 39.1.2 of the Act:

1. Section 41 of the Act.
2. Section 41.1 of the Act.
3. Section 42 of the Act.

(3) For the purpose of sections 26.0.1 and 39.1.2 of the Act, the following are the principles that a council of a municipality shall consider when the council exercises a decision-making authority under a provision set out in subsection (1) or (2):

1. Property that is determined to be of cultural heritage value or interest should be protected and conserved for all generations.

2. Decisions affecting the cultural heritage value or interest of a property or heritage conservation district should,
 - i. minimize adverse impacts to the cultural heritage value or interest of the property or district,
 - ii. be based on research, appropriate studies and documentary evidence, and
 - iii. demonstrate openness and transparency by considering the views of all interested persons and communities.
3. Conservation of properties of cultural heritage value or interest should be achieved through identification, protection and wise management, including adaptive reuse where appropriate.

(4) For the purpose of this section,

“adaptive reuse” means the alteration of a property of cultural heritage value or interest to fit new uses or circumstances while retaining the heritage attributes of the property.

RULES RE SECTION 29 OF THE ACT

Prescribed events, s. 29 (1.2) of the Act

2. (1) For the purposes of subsection 29 (1.2) of the Act, the following events are prescribed in respect of a property in a municipality:

1. A council or planning board, as applicable, has completed giving notice in accordance with clause 22 (6.4) (a) of the *Planning Act* of a request for amendment referred to in that clause, if the subject land to which the amendment applies includes the property.
2. A council has completed giving notice in accordance with clause 34 (10.7) (a) of the *Planning Act* of an application for an amendment to a by-law referred to in that clause, if the subject land to which the amendment applies includes the property.
3. A council or planning board, as the approval authority, has completed giving notice in accordance with subsection 51 (19.4) of the *Planning Act* of an application referred to

in that clause, if the subject land to which the application applies includes the property.

Prescribed exceptions, s. 29 (1.2) of the Act

3. (1) The following exceptions are prescribed for the purposes of subsection 29 (1.2) of the Act:

1. If an event described in section 2 has occurred in respect of a property, the owner of the property and the council of the municipality may,
 - i. at any time after the event, agree that the period of time under subsection 29 (1.2) of the Act does not apply to the property, or
 - ii. within 90 days after the event, agree to extend the applicable period of time under subsection 29 (1.2) of the Act after which the council may not give a notice of intention to designate the property.
2. If an event described in section 2 has occurred in respect of a property and the day on which the event occurred falls within a period when an emergency has been declared to exist in the municipality in which the property is situate, or in any part thereof, under the *Emergency Management and Civil Protection Act* by the head of the council of the municipality, the 90-day period set out in subsection 29 (1.2) of the Act does not begin until the day immediately after the day on which the emergency has terminated.
3. If an event described in section 2 has occurred in respect of a property and during the 90-day period set out in subsection 29 (1.2) of the Act an emergency is declared to exist in the municipality in which the property is situate, or in any part thereof, under the *Emergency Management and Civil Protection Act* by the head of the council of the municipality, the following rules apply:
 - i. The 90-day period is terminated on the day the emergency is declared.
 - ii. A new 90-day period commences on the day immediately after the day on which the emergency is terminated.

4. If the following criteria are satisfied, the municipality may, within 15 days after the end of 90-day period set out in subsection 29 (1.2) of the Act, pass a resolution stating that the municipality has not consulted with its municipal heritage committee regarding the designation of the property and may elect, by the same resolution, that the period of time for the purposes of subsection 29 (1.2) is 180 days, and if the council passes such a resolution, the period of time for the purposes of subsection 29 (1.2) is the period set out in the resolution:
 - i. An event described in section 2 has occurred in respect of the property.
 - ii. The municipality has established a municipal heritage committee.
 - iii. The municipality has not consulted with its municipal heritage committee regarding designation of the property in accordance with subsection 29 (2) of the Act by the end of the 90-day period set out in subsection 29 (1.2) of the Act.

5. If an event described in section 2 has occurred in respect of a property and after the occurrence of the event the council of the municipality in which the property is situated passes a resolution stating that the municipality has received new and relevant information relating to the property or the event, the following rules apply:
 - i. If the resolution is passed within the 90-day period set out in subsection 29 (1.2), the council may elect, by the same resolution, that the period of time for the purposes of that subsection is 180 days after the resolution is passed and if the council so elects, the period of time for the purposes of that subsection is the period set out in the resolution.
 - ii. If the resolution is passed at any time after the 90-day period set out in subsection 29 (1.2), the council may elect, by the same resolution, that the restriction imposed by subsection 29 (1.2) of the Act does not apply for a period of 180 days commencing on the day the resolution is passed and, if the council so elects, the restriction under subsection 29 (1.2) of the Act does not apply for the period set out in the resolution.

6. If an event described in section 2 has occurred in respect of a property, subsection 29 (1.2) of the Act no longer applies to restrict the council of the municipality in which

the property is situate from giving a notice of intention to designate the property as of the day on which the event is finally disposed of under the *Planning Act*.

(2) If the council passes a resolution referred to in paragraph 4 of subsection (1), the council of the municipality shall, within 15 days after the day on which the resolution was passed, ensure that notice of the new period of time set out in the resolution is served on the owner of the property, and the notice shall include the reasons for the new period of time.

(3) If the council passes a resolution under subparagraph 5 i of subsection (1), the council shall, within 15 days after the day on which the resolution was passed, ensure that notice of the new period of time set out in the resolution is served on the owner of the property, and the notice shall include the reasons for the new period of time.

(4) If the council passes a resolution under subparagraph 5 ii of subsection (1), the council shall, within 15 days after the day on which the resolution was passed, ensure that notice is served on the owner of the property and the notice shall contain,

- (a) a statement explaining that the restriction imposed by subsection 29 (1.2) of the Act does not apply for a period of 180 days commencing on the day the resolution was passed; and
- (b) the reasons why the restriction does not apply for that period of time.

(5) For the purposes of paragraph 5 of subsection (1), “new and relevant information” means information or materials that satisfy all of the following:

1. The information or materials affect or may affect,
 - i. the determination of the cultural heritage value or interest of the property, or
 - ii. an evaluation of the potential effect of the *Planning Act* application giving rise to the event on any cultural heritage value or interest of the property.
2. The information or materials are received by council after the relevant event occurred.

3. The information or materials do not form part of the information and materials that were provided to the municipality under the *Planning Act* for the purposes of the relevant event described in section 2.

Prescribed circumstances, s. 29 (8) para. 1

4. (1) The following circumstances and corresponding periods of time are prescribed for the purpose of paragraph 1 of subsection 29 (8) of the Act:

1. If, before the end of the 120-day period referred to in paragraph 1 of subsection 29 (8) of the Act, the council and the owner of the property agree to a period of time other than the period set out in that paragraph, the period of time for the purposes of that paragraph is the period that the council and the owner have agreed upon.
2. If any part of the 120-day period referred to in paragraph 1 of subsection 29 (8) of the Act falls within a period when an emergency has been declared to exist in the municipality in which the property is situate, or in any part thereof, under the *Emergency Management and Civil Protection Act* by the head of the council of the municipality, the period of time for the purposes of paragraph 1 of subsection 29 (8) of the Act is 120 days after the day on which the emergency has terminated.
3. If, during the 120-day period referred to in paragraph 1 of subsection 29 (8) of the Act, the council passes a resolution stating that the municipality has received new and relevant information relating to the property and elects, by the same resolution, that the period of time for the purposes of that paragraph is 180 days after the resolution is passed, the period of time for the purposes of that paragraph is the period set out in the resolution.

(2) If the council has passed a resolution referred to in paragraph 3 of subsection (1), the council shall ensure that notice of the new period of time is served on the owner of the property, and the notice shall include the reasons for the new period.

(3) For purposes of paragraph 3 of subsection (1), “new and relevant information” means information or materials that satisfy the following:

1. The information or material affects or may affect any of the matters set out in paragraph 2 of subsection 29 (8) of the Act.

2. The information or materials are received by council after notice of intention to designate the property has been published under clause 29 (3) (b) of the Act.

Designation by municipal by-law, requirements

5. (1) The following requirements are prescribed for the purpose of paragraph 2 of subsection 29 (8) of the Act:

1. The by-law must identify the property by,
 - i. the municipal address of the property, if it exists,
 - ii. the legal description of the property, including the property identifier number that relates to the property, and
 - iii. a general description of where the property is located within the municipality, for example, the name of the neighbourhood in which the property is located and the nearest major intersection to the property.
2. The by-law must contain a site plan, scale drawing, aerial photograph or other image that identifies each area of the property that has cultural heritage value or interest.
3. The statement explaining the cultural heritage value or interest of the property must identify which of the criteria set out in subsection 1 (2) of Ontario Regulation 9/06 (Criteria for Determining Cultural Heritage Value or Interest) made under the Act are met and must explain how each criterion is met.
4. The description of the heritage attributes of the property must be brief and must explain how each heritage attribute contributes to the cultural heritage value or interest of the property.
5. The by-law may list any physical features of the property that are not heritage attributes.

(2) For clarity, the requirements set out in subsection (1) apply for the purposes of subsection 29 (8) of the Act, as set out in the Schedule.

AMENDMENT OF DESIGNATING BY-LAW

Amending by-laws, modified s. 29 of the Act

6. The Schedule sets out section 29 of the Act, as modified, that applies to an amending by-law for the purposes of subsection 30.1 (1) of the Act.

REAPPLICATION FOR REPEAL OF BY-LAW – SUBSECTION 32 (18) OF THE ACT

Prescribed circumstances and time periods

7. For the purposes of subsection 32 (18) of the Act, the following are the prescribed circumstances and applicable time periods in which an owner of property may not reapply to have a by-law or part thereof designating a property repealed, except with the consent of council:

1. In circumstances where a council refuses an application under paragraph 1 of subsection 32 (5) of the Act and a notice of appeal is not given within the time period specified in subsection 32 (7) of the Act, the time period is 12 months after the service of the notice of the council's decision under subparagraph 1 i of subsection 32 (5) of the Act.
2. In circumstances where an owner of the property appeals a decision of council to refuse the application under subsection 32 (7) of the Act and the Tribunal dismisses the appeal under paragraph 1 of subsection 32 (12) of the Act, the time period is 12 months after the date of the Tribunal's decision under paragraph 1 of subsection 32 (12) of the Act.
3. In circumstances where an owner of the property appeals a decision of council to refuse the application under subsection 32 (7) of the Act and the Tribunal dismisses the appeal under subsection 32 (13) of the Act, the time period is 12 months after the date of the Tribunal's decision under subsection 32 (13) of the Act.
4. In circumstances where a person appeals the council's decision to consent to an application and to pass a repealing by-law under subsection 32 (8) of the Act and the Tribunal allows the appeal in whole or in part under paragraph 2 of subsection 32 (12) of the Act, the time period is 12 months after the date of the Tribunal's decision under paragraph 2 of subsection 32 (12) of the Act.

INFORMATION AND MATERIAL – SUBSECTIONS 33 (2) AND 34 (2) OF THE ACT

Prescribed information and material

8. (1) For the purpose of subsections 33 (2) and 34 (2) of the Act, the following information and material shall accompany an application:

1. The name, address, telephone number and, if applicable, the email address of the applicant.
2. The name of the municipality from which consent is being requested.
3. A description of the property that is the subject of the application, including such information as the concession and lot numbers, reference plan and part numbers, and street names and numbers.
4. Photographs that depict the existing buildings, structures and heritage attributes that are affected by the application and their condition and context.
5. A site plan or sketch that illustrates the location of the proposed alteration, demolition or removal.
6. Drawings and written specifications of the proposed alteration, demolition or removal.
7. The reasons for the proposed alteration, demolition or removal and the potential impacts to the heritage attributes of the property.
8. All technical cultural heritage studies that are relevant to the proposed alteration, demolition or removal.
9. An affidavit or a sworn declaration by the applicant certifying that the information required under this section and provided by the applicant is accurate.

(2) The information or material referred to in subsection (1) must also include any information or material that is required to accompany an application by a municipal by-law, resolution or official plan.

(3) The owner of the property shall serve an application made under subsection 33 (1) or 34 (1) of the Act on the council of the municipality.

(4) Use of a municipality's electronic system to submit an application mentioned in subsection (3) is a method for the purpose of clause 67 (1) (d) of the Act.

(5) Service using a municipality's electronic system is effective on the day the application is submitted unless the application was submitted after 5 p.m., in which case it is effective on the following day. If the day on which service would be effective is a Saturday or a holiday, service is instead effective on the next day that is not a Saturday or a holiday.

(6) For the purpose of paragraph 2 of subsection 33 (7) of the Act and paragraph 2 of subsection 34 (4.3) of the Act, an application is considered to have commenced on the day that it is served on the council of the municipality.

REQUIRED STEPS – SECTION 34.3 OF THE ACT

Council consents to application under s. 34 of the Act

9. (1) The following steps are prescribed for the purposes of subsection 34.3 (1) of the Act:

1. After the demolition or removal of a building, structure or heritage attribute on the property is complete, the council of the municipality shall, in consultation with the municipal heritage committee established under section 28 of the Act, if one has been established, make one of the following determinations:
 - i. The property continues to have cultural heritage value or interest and, despite the demolition or removal, the statement explaining the cultural heritage value or interest of the property and the description of the heritage attributes of the property are accurate and do not need to be amended.
 - ii. The property continues to have cultural heritage value or interest but, as a result of the demolition or removal, the statement explaining the cultural heritage value or interest of the property or the description of the heritage attributes of the property is no longer accurate and needs to be amended.
 - iii. The property no longer has cultural heritage value or interest as a result of the demolition or removal.

2. If the council makes the determination described in subparagraph 1 i, the clerk of the municipality shall ensure that notice of the determination is served on the Trust.

3. If the council makes the determination described in subparagraph 1 ii,

i. the council shall,

A. pass a by-law that amends the by-law made under section 29 of the Act designating the property to update the statement of cultural heritage value or interest and the description of the property's heritage attributes to reflect the changes resulting from the demolition or removal, and

B. ensure that the amending by-law complies with the requirements set out in section 5 and includes a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property, and

ii. the clerk of the municipality shall,

A. ensure that a copy of the amending by-law is served on the owner of the property,

B. publish notice of the amending by-law in a newspaper having general circulation in the municipality, and

C. ensure that a copy of the amending by-law is registered against the property affected by the amending by-law in the appropriate land registry office and that a copy of the registered amending by-law is served on the Trust.

4. If the council makes the determination described in subparagraph 1 iii,

i. the council shall pass a by-law to repeal the by-law or the part thereof designating the property under section 29 of the Act, and

- ii. the clerk of the municipality shall,
 - A. ensure that a copy of the repealing by-law is served on the owner of the property,
 - B. publish notice of the repealing by-law in a newspaper having general circulation in the municipality,
 - C. ensure that a copy of the repealing by-law is registered against the property affected by the repealing by-law in the appropriate land registry office and that a copy of the registered repealing by-law is served on the Trust, and
 - D. ensure that any reference to the property is deleted from the register referred to in subsection 27 (1) of the Act.
5. If, as part of the removal mentioned in paragraph 1, a building or structure is moved to another property,
 - i. the council of a municipality shall, in consultation with the municipal heritage committee established under section 28 of the Act, determine if the other property meets the criteria referred to in clause 29 (1) (a) of the Act,
 - ii. if it is determined under subparagraph i that the other property meets the criteria, the council of a municipality may pass a by-law designating the other property to be of cultural heritage value or interest, and
 - iii. if a designating by-law is passed under subparagraph ii, the council of a municipality shall ensure that the by-law complies with the requirements set out in section 5 and includes a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property.
6. If a designating by-law is passed under subparagraph 5 ii, the clerk of the municipality shall,

- i. ensure that a copy of the designating by-law is served on the owner of the property affected by the designating by-law,
- ii. publish notice of the designating by-law in a newspaper having general circulation in the municipality, and
- iii. ensure that a copy of the designating by-law is registered against the property affected by the designating by-law in the appropriate land registry office and that a copy of the registered designating by-law is served on the Trust.

(2) A by-law passed under this section comes into force on the day the by-law is passed.

(3) A designating by-law passed under subparagraph 5 ii of subsection (1) is deemed to be a by-law passed under subsection 29 (1) of the Act.

(4) For greater certainty, sections 29, 30.1 and 31 of the Act do not apply in respect of passing a by-law under this section, but sections 30.1 and 31 of the Act apply in respect of an amendment or repeal of a by-law or part thereof passed under this section.

RECORD OF DECISION

Record of decision under s. 29 of the Act

10. (1) If a notice of appeal under section 29 of the Act is given within the time period specified in subsection 29 (11) of the Act, the clerk of the municipality shall ensure that the record of the decision under subsection 29 (8) of the Act to pass a by-law designating a property is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

(2) The following material and information must be included in a record of the decision referred to in subsection (1):

1. A certified copy of the notice of intention to designate the property.
2. A certified copy of the by-law.

3. A certified copy of the notice referred to in paragraph 4 of subsection 29 (8) of the Act.
4. A copy of any report considered by council.
5. A statement by an employee of the municipality as to how the decision of council considered the principles set out in subsection 1 (3) when the council exercised its decision-making authority.
6. The original or a certified copy of all written submissions and comments related to the decision and the dates they were received.
7. If a public meeting was held that related to the decision,
 - i. a copy of the minutes; and
 - ii. a list of all persons and public bodies that made oral submissions that related to the decision and, if available, the record of those submissions.
8. Any additional material or information that the council considered in making its decision.
9. An affidavit or sworn declaration by an employee of the municipality that contains a certificate that all the material and information required under this section is accurate.

(3) The following material and information must be included in a record of the decision under subsection 29 (6) of the Act to be forwarded to the Tribunal as required by subsection 29 (14) of the Act:

1. The original or a certified copy of every notice of objection served on the clerk of the municipality under subsection 29 (5) of the Act, and the date on which each notice was served.

Record of decision under s. 30.1 of the Act

11. (1) References in this section to section 29 of the Act are references to that section as it applies to an amending by-law mentioned in subsection 30.1 (1) of the Act, as modified in the Schedule.

(2) The following rule applies if the council to a municipality proposes under section 30.1 of the Act to amend a by-law designating property and the exception set out in subsection 30.1 (2) of the Act does not apply to the amending by-law:

1. If a notice of appeal under section 30.1 of the Act is given within the time period specified in subsection 29 (11) of the Act, the clerk of the municipality shall ensure that the record of the decision under subsection 29 (8) of the Act is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

(3) The following material and information must be included in a record of the decision referred to in paragraph 1 of subsection (2):

1. A certified copy of the notice of proposed amendment to the by-law designating the property.
2. A certified copy of the by-law that is the subject to the proposed amendment.
3. A certified copy of the amending by-law.
4. A certified copy of the notice referred to in paragraph 4 of subsection 29 (8) of the Act.
5. The material and information described in paragraphs 4 to 9 of subsection 10 (2).

(4) The following material and information must be included in a record of the decision under subsection 29 (6) of the Act to be forwarded to the Tribunal as required by subsection 29 (14) of the Act:

1. The original or a certified copy of every notice of objection served on the clerk of the municipality under subsection 29 (5) of the Act and the date on which it was served.

(5) The following rule applies if the council to a municipality proposes under section 30.1 of the Act to amend a by-law designating property and the exception set out in subsection 30.1 (2) applies to the amending by-law:

1. If a notice of appeal is given within the time period specified in subsection 30.1 (10) of the Act, the clerk of the municipality shall ensure that the record of the decision under subsection 30.1 (9) of the Act to pass an amending by-law is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

(6) The following material and information must be included in a record of the decision referred to in paragraph 1 of subsection (5):

1. A certified copy of the notice referred to in subparagraph 1 ii of subsection 30.1 (9) of the Act.
2. The material and information described in paragraphs 1, 3, 4 and 5 of subsection (3).

(7) The following material and information must be included in a record of the decision under subsection 30.1 (7) of the Act to be forwarded to the Tribunal as required by subsection 30.1 (14) of the Act:

1. The original or a certified copy of every notice of objection filed with the clerk of the municipality under subsection 30.1 (6) of the Act and the date on which it was filed.

Record of decision under s. 31 of the Act

12. (1) If a notice of appeal under section 31 of the Act is given within the time period specified in subsection 31 (9) of the Act, the clerk of the municipality shall ensure that the record of the decision under subsection 31 (8) of the Act to pass a repealing by-law is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

(2) The following material and information must be included in a record of the decision referred to in subsection (1):

1. A certified copy of the notice of intention to repeal the by-law or part thereof designating property.
2. A certified copy of the repealing by-law.
3. A certified copy of the by-law that is subject to the repealing by-law.
4. A certified copy of the notice referred to in paragraph 2 of subsection 31 (8) of the Act.
5. The material and information described in paragraphs 4 to 9 of subsection 10 (2).

(3) The following material and information must be included in a record of the decision under subsection 31 (6) of the Act to be forwarded to the Tribunal as required by subsection 31 (13) of the Act:

1. The original or a certified copy of every notice of objection served on the clerk of the municipality under subsection 31 (5) of the Act and the date on which it was served.

Record of decision under s. 32 of the Act

13. The following material and information must be included in a record of the decision under subsection 32 (5) of the Act to be forwarded to the Tribunal as required by subsection 32 (11) of the Act:

1. A certified copy of the application to repeal a by-law or part thereof designating the property.
2. A certified copy of the notice of application referred to in subsection 32 (3) of the Act.
3. A certified copy of the by-law designating the property.
4. The original or a certified copy of every notice of objection served on the clerk of the municipality under subsection 32 (4) of the Act and the date it was served.

5. If the appeal relates to a decision to refuse the application, a certified copy of the notice referred to in subparagraph 1 ii of subsection 32 (5) of the Act.
6. If the appeal relates to a decision to consent to the application,
 - i. a certified copy of the by-law repealing the by-law or part thereof, and
 - ii. a certified copy of the notice referred to in subparagraph 2 ii of subsection 32 (5) of the Act.
7. The material and information described in paragraphs 4 to 9 of subsection 10 (2).

Record of decision under s. 33 of the Act

14. (1) If a notice of appeal under section 33 of the Act is given within the time period specified in subsection 33 (9) of the Act, the clerk of the municipality shall ensure that the record of the decision under subsection 33 (6) of the Act is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

(2) The following material and information must be included in a record of the decision referred to in subsection (1):

1. A certified copy of the by-law designating the property.
2. The original or a certified copy of the material and information described in section 8 received by the council, and any material or information that the council required under subsection 33 (3) of the Act.
3. A certified copy of the notice informing the applicant that the application is complete that was served on the applicant under subsection 33 (4) of the Act and the date it was served.
4. A certified copy of any records relating to a notification referred to in subsection 33 (5) of the Act.

5. A certified copy of the notice of the council's decision referred to in clause 33 (6) (b) of the Act.
6. The material and information described in paragraphs 4 to 9 of subsection 10 (2).

Record of decision under s. 34.1 of the Act

15. (1) If a notice of appeal under section 34.1 of the Act is given within the time period specified in subsection 34.1 (2) of the Act, the clerk of the municipality shall ensure that the record of the decision under subsection 34 (4.2) of the Act is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

(2) The following material and information must be included in a record of the decision referred to in subsection (1):

1. A certified copy of the by-law designating the property.
2. The original or a certified copy of the material and information described in section 8 received by the council, and any material or information that the council required under subsection 34 (3) of the Act.
3. A certified copy of the notice informing the applicant that the application is complete that was served on the applicant under subsection 34 (4) of the Act and the date it was served.
4. A certified copy of any records relating to a notification referred to in subsection 34 (4.1) of the Act.
5. The original or a certified copy of the notice of the council's decision referred to in clause 34 (4.2) (b) of the Act.
6. The material and information described in paragraphs 4 to 9 of subsection 10 (2).

Record of decision under s. 40.1 of the Act

16. (1) If a notice of appeal under section 40.1 of the Act is given within the time period specified in subsection 40.1 (4) of the Act, the clerk of the municipality shall ensure that the

record of the decision under subsection 40.1 (1) of the Act is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

(2) The following material and information must be included in a record of the decision referred to in subsection (1):

1. A certified copy of the by-law made under subsection 40.1 (1) of the Act.
2. A certified copy of the notice referred to in subsection 40.1 (3) of the Act.
3. The material and information described in paragraphs 4, 6, 7, 8 and 9 of subsection 10 (2).

Record of decision under s. 41 of the Act

17. (1) If a notice of appeal under section 41 of the Act is given within the time period specified in subsection 41 (4) of the Act, the clerk of the municipality shall ensure that the record of the decision under subsection 41 (1) of the Act is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

(2) The following material and information must be included in a record of the decision referred to in subsection (1):

1. A certified copy of the by-law made under subsection 41 (1) of the Act.
2. A certified copy of the notice referred to in subsection 41 (3) of the Act.
3. A certified copy of the heritage conservation district plan adopted by a by-law under subsection 41.1 (1) of the Act.
4. A certified copy of the information referred to in clause 41.1 (6) (a) of the Act.
5. The original or a certified copy of all written submissions and comments related to the decision, including any written submissions referred to in subsection 41.1 (11) of the Act, and the dates they were received.

6. For every public meeting referred to in clause 41.1 (6) (b) of the Act that is held,
 - i. a copy of the notice of the public meeting referred to in subsection 41.1 (7) of the Act,
 - ii. a copy of the minutes, and
 - iii. a list of all persons that made oral representations referred to in subsection 41.1 (9) of the Act and, if available, the record of those representations.
7. For every public meeting that is held that related to the decision but was not a meeting referred to in clause 41.1 (6) (b) of the Act,
 - i. a copy of the minutes,
 - ii. a list of all persons and public bodies that made oral submissions that related to the decision and, if available, the record of those submissions.
8. The material and information described in paragraphs 4, 5, 8 and 9 of subsection 10 (2).

Record of decision under s. 41.1 of the Act

18. (1) If a notice of appeal under section 41.1 of the Act is given within the time period specified in subsection 41 (4) of the Act, as made applicable by subsection 41.1 (4) of the Act, the clerk of the municipality shall ensure that the record of the decision under subsection 41.1(2) of the Act is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

(2) The following material and information must be included in a record of the decision referred to in subsection (1):

1. A certified copy of the by-law under subsection 41 (1) of the Act.
2. A certified copy of the by-law under subsection 41.1 (2) of the Act.

3. A certified copy of the heritage conservation district plan adopted under subsection 41.1 (2) of the Act.
4. A certified copy of the notice referred to in subsection 41.1 (3) of the Act.
5. A certified copy of the information referred to in clause 41.1 (6) (a) of the Act.
6. The original or a certified copy of all written submissions and comments related to the decision, including the written submissions referred to in subsection 41.1 (11) of the Act, and the dates they were received.
7. For every public meeting referred to in clause 41.1 (6) (b) of the Act that is held,
 - i. a copy of the notice of the public meeting referred to in subsection 41.1 (7) of the Act,
 - ii. a copy of the minutes, and
 - iii. a list of all persons that made oral representations referred to in subsection 41.1 (9) of the Act and, if available, the record of those representations.
8. The material and information described in paragraphs 4, 5, 8 and 9 of subsection 10 (2).

Record of decision under s. 42 of the Act

19. (1) If a notice of appeal under section 42 of the Act is given within the time period specified in subsection 42 (7) of the Act, the clerk of the municipality shall ensure that the record of the decision under subsection 42 (4) of the Act is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

(2) The following material and information must be included in a record of the decision referred to in subsection (1):

1. If a heritage conservation district plan was adopted by a by-law under subsection 41.1 (1) or (2) of the Act, a certified copy of the plan.

2. The original or a certified copy of the information required under subsection 42 (2.2) of the Act.
3. A certified copy of the notice of receipt referred to in subsection 42 (3) of the Act.
4. If the council refused the application for a permit under section 42 of the Act, a copy of the notice referred to in clause 42 (4) (b) of the Act.
5. If the council approved the application for a permit under section 42 of the Act with terms or conditions attached, a copy of the permit.
6. The material and information described in paragraphs 4, 5, 6, 7, 8 and 9 of subsection 10 (2).

TRANSITION

Transitional rules

20. (1) Except as provided otherwise, references in this section to a provision of the Act are references to the provision as it read immediately before the day this section comes into force.

(2) A matter or proceeding that is mentioned in subsection (3) and commenced before the day this section comes into force shall be continued and disposed of under the Act as it read before that date.

(3) For the purposes of subsection (2), a matter or proceeding shall be deemed to have been commenced,

- (a) in the case of the designation of property by by-law under section 29 of the Act, on the date of the publication of a notice of intention to designate under clause 29 (3) (b) of the Act;
- (b) in the case of the amendment of a by-law designating property under section 30.1 of the Act,

- (i) if subsection 30.1 (2) of the Act does not apply to the notice, on the date of the publication of the notice of proposed amendment under clause 29 (3) (b) of the Act, as made applicable by subsection 30.1 (1) of the Act, or
 - (ii) if subsection 30.1 (2) of the Act applies to the notice, on the day the notice of proposed amendment is received by the owner of the property;
- (c) in the case of the repeal of a by-law or part thereof designating property under section 31 of the Act, on the date of the publication of a notice of intention to repeal a by-law or part thereof under clause 31 (3) (b) of the Act;
- (d) in the case of an application to repeal a by-law or part thereof designating a property under section 32 of the Act, on the day the application is received by the council of the municipality;
- (e) in the case of an application for consent to alter or permit the alteration under section 33 of the Act, on the day the application is received by the council of the municipality;
- (f) in the case of an application for consent to demolish or remove or permit demolition or removal under section 34 of the Act, on the day the application is received by the council of the municipality;
- (g) in the case of an application for consent to alter, demolish or remove or permit the alteration, demolition or removal under section 34.5 of the Act, on the day the application is received by the Minister;
- (h) in the case of the designation of a study area under section 40.1 of the Act, the day on which the by-law is passed under that section;
- (i) in the case of the designation of a heritage conservation district under section 41 of the Act, the day on which the by-law is passed under that section;
- (j) in the case of the adoption of a heritage conservation district plan under subsection 41.1 (2) of the Act, the day on which the by-law is passed under that section;

- (k) in the case of an application described in subsection 42 (2.1) of the Act, the day on which the application is received by the council of the municipality.

(4) Despite subsection (2), if a notice of intention to designate a property under subsection 29 (1) of the Act was published in accordance with clause 29 (3) (b) of the Act before the day this section comes into force and the council of the municipality has not passed a by-law designating the property and has not withdrawn the notice of intention to designate before that day, the notice of intention to designate the property is deemed to be withdrawn unless the council of the municipality passes a by-law designating the property within 365 days after the day this section comes in force in accordance with section 29 of the Act.

(5) For the purposes of subsection (4), if a person objects to a proposed designation under subsection 29 (5) of the Act, the 365-day period referred to in that subsection shall be counted by excluding every day that is after the day the person serves the notice of objection under subsection 29 (5) of the Act and that is before the earliest of the following:

1. The day the Review Board makes a report to council under subsection 29 (12) of the Act.
2. If the person who served the notice of objection withdraws the objection, the day on which the person serves notice of withdrawal in accordance with subsection 29 (15) of the Act.

(6) If a notice of intention to designate is deemed to be withdrawn under subsection (4), the municipality shall cause a notice of withdrawal,

- (a) to be served on the owner of the property and on the Trust; and
- (b) to be published in a newspaper having general circulation in the municipality.

(7) Despite subsection (2), the following rules apply if an application for consent to demolish or remove or permit demolition or removal under section 34 of the Act is received by the council of the municipality before the day this section comes into force and the council of a municipality has consented to the application under subclause 34 (2) (a) (i) or (i.1) of the Act or is deemed to have consented to the application under subsection 34 (4) of the Act or the Tribunal has ordered that the municipality give its consent under clause 34.1 (6) (b) of the Act:

1. If the council has not passed a repealing by-law under section 34.3 of the Act, the application shall be continued and disposed of in accordance with section 34.3 of the Act as it reads on and after the day this section comes into force.
2. If the council has passed a repealing by-law under section 34.3 of the Act, the application shall be continued and disposed of in accordance with section 34.3 of the Act as it read immediately before the day this section comes into force.

(8) Subsection 29 (1.2) of the Act, as it reads on and after the day this section comes into force, does not apply with respect to a property in a municipality if the event prescribed by section 2 of this Regulation occurred before the day this section comes into force.

Commencement

21. [Commencement]

SCHEDULE

SECTION 29 OF THE ACT AS MODIFIED FOR THE PURPOSES OF SUBSECTION 30.1 (1) OF THE ACT

Amendment of designating by-law

29. (1) The council of a municipality may, by by-law, amend a by-law designating a property within the municipality to be of cultural heritage value or interest if the amendment is made in accordance with the process set out in this section.

Notice required

(1.1) Subject to subsection (2), if the council of a municipality intends to amend a by-law designating a property within the municipality to be of cultural heritage value or interest, it shall cause a notice of proposed amendment to be given by the clerk of the municipality in accordance with subsection (3).

Consultation

(2) Where the council of a municipality has appointed a municipal heritage committee, the council shall, before giving a notice of proposed amendment, consult with its municipal heritage committee.

Notice of proposed amendment

(3) A notice of proposed amendment shall be,

- (a) served on the owner of the property and on the Trust; and

- (b) published in a newspaper having general circulation in the municipality.

Contents of notice

(4) A notice of proposed amendment that is served on the owner of property and on the Trust under clause (3) (a) shall contain,

- (a) an adequate description of the property so that it may be readily ascertained;
- (b) an explanation of the purpose and effect of the proposed amendment; and
- (c) a statement that notice of objection to the notice of proposed amendment may be served on the clerk within 30 days after the date of publication of the notice of proposed amendment in a newspaper of general circulation in the municipality under clause (3) (b).

Same

(4.1) A notice of proposed amendment that is published in a newspaper of general circulation in a municipality under clause (3) (b) shall contain,

- (a) an adequate description of the property so that it may be readily ascertained;
- (b) an explanation of the purpose and effect of the proposed amendment;
- (c) a statement that further information respecting the notice of proposed amendment is available from the municipality; and
- (d) a statement that notice of objection to the notice of proposed amendment may be served on the clerk within 30 days after the date of publication of the notice of proposed amendment in a newspaper of general circulation in the municipality under clause (3) (b).

Objection

(5) A person who objects to a proposed amendment to a designating by-law shall, within 30 days after the date of publication of the notice of proposed amendment, serve on the clerk of the municipality a notice of objection setting out the reason for the objection and all relevant facts.

Consideration of objection by council

(6) If a notice of objection has been served under subsection (5), the council of the municipality shall consider the objection and make a decision whether or not to withdraw the notice of proposed amendment within 90 days after the end of the 30-day period under subsection (5).

Notice of withdrawal

(7) If the council of the municipality decides to withdraw the notice of proposed amendment, either of its own initiative at any time or after considering an objection under subsection (6), the council shall withdraw the notice by causing a notice of withdrawal,

- (a) to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust; and
- (b) to be published in a newspaper having general circulation in the municipality.

If no notice of objection or no withdrawal

(8) If no notice of objection is served within the 30-day period under subsection (5) or a notice of objection is served within that period but the council decides not to withdraw the notice of proposed amendment, the council may pass a by-law amending the by-law designating the property, provided the following requirements are satisfied:

1. The amending by-law must be passed within 365 days after the date of publication of the notice of proposed amendment under clause (3) (b) or within such other period of time that is mutually agreed upon by the council and the owner of the property.
2. The by-law designating the property, as amended, must include a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property and must comply with such requirements in relation to the statement and the description as may be prescribed and with such other requirements as may be prescribed.

3. The council must cause the following to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust:
 - i. A copy of the amending by-law.
 - ii. A notice that any person who objects to the amending by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under paragraph 4, a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.
4. The council must publish notice of the amending by-law in a newspaper having general circulation in the municipality, which must provide that any person who objects to the by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under this paragraph, a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

Deemed withdrawal

(9) If the council of the municipality has not passed an amending by-law under subsection (8) within the time set out in paragraph 1 of that subsection, the notice of proposed amendment is deemed to be withdrawn and the municipality shall cause a notice of withdrawal,

- (a) to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust; and
- (b) to be published in a newspaper having general circulation in the municipality.

Same

(10) For clarity, the deemed withdrawal of a notice of proposed amendment under subsection (9) does not prevent the council from giving a new notice of proposed amendment in accordance with this section.

Appeal to Tribunal

(11) Any person who objects to the amending by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under

paragraph 4 of subsection (8), a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

If no notice of appeal

(12) If no notice of appeal is given within the time period specified in subsection (11),

- (a) the amending by-law comes into force on the day following the last day of the period;
and
- (b) the clerk shall ensure that a copy of the amending by-law is registered against the properties affected by the by-law in the appropriate land registry office and that a copy of the registered by-law is served on the Trust.

If notice of appeal

(13) If a notice of appeal is given within the time period specified in subsection (11), the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to such persons or bodies and in such manner as the Tribunal may determine.

Forwarding of record of decision

(14) If the council of the municipality made a decision on a notice of objection under subsection (6) and if a notice of appeal is given within the time period specified in subsection (11), the clerk of the municipality shall ensure that the record of the decision under subsection (6) is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

Powers of Tribunal

(15) After holding the hearing, the Tribunal shall,

- (a) dismiss the appeal; or
- (b) allow the appeal in whole or in part and,
 - (i) repeal the amending by-law,
 - (ii) amend the amending by-law in such manner as the Tribunal may determine,

- (iii) direct the council of the municipality to repeal the amending by-law, or
- (iv) direct the council of the municipality to amend the amending by-law in accordance with the Tribunal's order.

Dismissal without hearing of appeal

(16) Despite the *Statutory Powers Procedure Act* and subsections (13) and (15), the Tribunal may, on its own motion or on the motion of any party, dismiss all or part of the appeal without holding a hearing on the appeal if,

- (a) the Tribunal is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent ground upon which the Tribunal could allow all or part of the appeal, or
 - (ii) the appeal is not made in good faith, is frivolous or vexatious, or is made only for the purpose of delay;
- (b) the appellant has not provided written reasons in support of the objection to the amending by-law;
- (c) the appellant has not paid the fee charged under the *Local Planning Appeal Tribunal Act, 2017*; or
- (d) the appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal.

Representations

(17) Before dismissing all or part of an appeal on any of the grounds mentioned in subsection (16), the Tribunal shall,

- (a) notify the appellant of the proposed dismissal; and

- (b) give the appellant an opportunity to make representations with respect to the proposed dismissal.

Coming into force

(18) If one or more notices of appeal are given to the clerk within the time period specified in subsection (11),

- (a) the amending by-law comes into force when all of such appeals have been withdrawn or dismissed;
- (b) if the amending by-law is amended by the Tribunal under subclause (15) (b) (ii), the amending by-law, as amended by the Tribunal, comes into force on the day it is so amended; or
- (c) if the amending by-law is amended by the council pursuant to subclause (15) (b) (iv), the amending by-law, as amended by the council, comes into force on the day it is so amended.

Registration of by-law

(19) The clerk of a municipality shall ensure that a copy of an amending by-law that comes into force under subsection (18) is registered against the properties affected by the by-law in the appropriate land registry office and that a copy of the registered by-law is served on the Trust.



Mailing Address:
71 Main Street West
Hamilton, Ontario
Canada L8P 4Y5
www.hamilton.ca

Planning and Economic Development Department
Planning Division
71 Main Street West, 5th Floor, Hamilton ON L8P 4Y5
Phone: 905-546-2424, Ext. 1221 Fax: 905-540-5611

October 30, 2020

Lorraine Dooley

Ministry of Heritage, Sport, Tourism and Culture Industries - Culture Policy Unit
401 Bay Street
Suite 1800
Toronto, ON
M7A 0A7
Canada

RE: Bill 108 Draft Regulations to the *Ontario Heritage Act*

Dear Madam:

On behalf of the City of Hamilton, I am pleased to provide this letter as City of Hamilton's submission on the draft Regulations regarding Schedule 11 of Bill 108. Please find attached to this letter an outline of the key submissions the City wishes to make on the proposed changes to the *Ontario Heritage Act*. City staff will be taking a report to Planning Committee on November 3, 2020 and to Council on November 11, 2020 outlining our submission. Council's position will be forwarded to the Province once it has been ratified.

We look forward to seeing the results of the consultation on the draft Regulations. City staff would be pleased to meet with you to discuss these comments in greater detail.

Regards,

Steve Robichaud, *MCIP, RPP*
Director of Planning and Chief Planner, Planning Division
Planning and Economic Development Department
City of Hamilton

SR:jr
Attachment

cc: Anita Fabac, Manager of Development Planning, Heritage and Design

City of Hamilton Submissions on Bill 108 - Changes to the Ontario Heritage Act

Staff were not supportive of the proposed Bill 108 changes to the *Ontario Heritage Act* as they will have an impact on how the City administers the *Act* and its current processes. The Proposed Regulations, in some cases may increase the administrative burden of staff, delay heritage projects not associated with development applications, and will require additional staff resources with added complexity to processes and shortened timeframes. The changes proposed by Bill 108 and the Proposed Regulations may result in increased appeals to the LPAT as the addition of properties to the Register can now be appealed. Some of the items in the proposed Regulations do provide additional clarity that staff are satisfied with, however staff have additional questions and points of clarification.

The following are the City's comments and recommendations:

- Staff are supportive of the prescribed principle. Staff advise the Province that many of the prescribed principles use 'should' rather than 'shall' and that the use of 'should' instead of 'shall' contradicts the Provincial Policy Statement 2020, which states "Significant built heritage resources and significant cultural heritage landscapes shall be conserved". Staff advise that the language between the prescribed principles and the Provincial Policy Statement be aligned.
- Staff are seeking clarification from the Province on how to balance the minimum requirements for designation by-laws that requires that the list of heritage attributes be concise, but also requires that each attribute be adequately linked to the cultural heritage value of the cultural heritage resource.
- Staff are seeking clarification that plans, drawings, photos and other images that are required to be part of a designation by-law are to be provided by the applicant who triggered a prescribed event or if in fact they should be supplied by the municipality.
- Staff advise the Province that the 90 day timeline to issue a NOID after a prescribed event aligns with the timeframe to review Zoning By-law Amendments but does not meet the statutory timeframes for review of Official Plan Amendments and Plans of Subdivision, which is 120 days.
- Staff advise the Province that the Planning Act Regulations for Official Plan Amendments (O. Reg 543/06), Plans of Subdivision (O. Reg 544/06) and Zoning By-law Amendments (O. Reg 545/06) should be amended to have heritage resource information included on the required information and material to review.
- Staff are supportive of ensuring development applications and heritage designations are reviewed comprehensively but seek clarification from the

Province on what designation process other Planning Act applications with properties that have cultural heritage value or interest would go through.

- Staff are seeking clarity on the length of time that can be entered into through mutual agreement and if mutual agreements can be delegated to staff from Council for both the 90 day timeline to issue a NOID and the 120 day timeline to pass a designation by-law. Further clarification is requested on the formality of the agreement.
- Staff are seeking clarification on the number of times that the 90 day timeline to issue a NOID can be extended as new and relevant information is submitted.
- Further clarification from the Ministry is sought to confirm if new and relevant information can be submitted from any source. Additional clarification is requested on what is considered new and relevant information.
- Staff would like to confirm if only one extension can occur or if multiple extensions can be applied when seeking an extension to the 90 day timeline to issue a NOID.
- Clarification from the Ministry is sought to confirm if Council must pass a resolution after each time a 90 day timeframe to issue a NOID expires or if Council can pass a blanket resolution to extend all 90 day periods. Staff would like to emphasize the increased administrative burden to have resolutions by Council for extended timeframes passed.
- Clarification from the Province is sought to define further what is mean by when Planning Act applications are disposed of. Specifically, staff are seeking clarification on whether after an application has been approved or a decision from the Local Planning Appeal Tribunal has been provided and there is still cultural heritage value on the property, that staff can then proceed with designation should they not have issued a NOID within the 90 day timeframe.
- Staff are seeking clarification as to what happens in situations where there are appeals to NOIDs. Staff would like confirmation of whether the 120 day timeframe to pass a designation by-law is paused for the duration of an appeal.
- Staff note that the requirements for a complete application only apply to subsections 33 (2) and 34 (2) of the *Ontario Heritage Act*, meaning that there are no requirements for a complete application for properties designated under Part V (heritage conservation districts). Staff advise the Province that the requirements for complete application also be applied to district properties to ensure comprehensive submissions for those applications and consistent treatment of all designations.

- Staff require clarification on the ability for Council to delegate their approval authority to staff for demolition applications of designated properties as a result of the definition of demolition being the "removal of any heritage attribute".
- Staff are seeking clarification on the timeframe that amended or repealed by-laws resulting from a demolition or alteration, be processed.
- Staff advise the Province that the timeframe for an owner to reapply for repeal of a designation by-law should be longer than 12 months so that staff do not have to deal with the same issue at the LPAT every 12 months.
- Staff request from the Province additional clarity on the content and structure of the employee statement as part of a LPAT appeal submission.
- Staff are seeking clarification on whether a newspaper having general circulation must be print or can be in digital format.
- Staff are concerned with the short timeframe to prepare for the implementation of the changes to the OHA and request that proclamation be extended from January 1, 2021 to July 1, 2021 to give staff appropriate time to review internal processes.

9 Key Themes from the Regulations and Implications for Hamilton and Recommendations

#	Theme	Implications for Hamilton and Recommendations
1	<p>Principles that a municipal council shall consider when making decisions under specific parts of the OHA.</p> <p>The amendments to the <i>Ontario Heritage Act</i> give authority to prescribe principles that a municipal council shall consider when making decisions under prescribed provisions of Parts IV and V of the Act. The proposed principles relate to the purpose of the <i>Ontario Heritage Act</i> and are intended to help decision-makers better understand what to focus on when making decisions under the Act. The Regulation contains proposed principles which include:</p> <ul style="list-style-type: none"> • Property that is determined to be of cultural heritage value or interest should be protected and conserved for all generations; • Decisions affecting the cultural heritage value or interest of a property or HCD should, <ul style="list-style-type: none"> ○ minimize adverse impacts to the cultural heritage value or interest of the property or district; ○ be based on research, appropriate studies and documentary evidence; and, ○ demonstrate openness and transparency by considering the views of all interested persons and communities; and, • Conservation of properties of cultural heritage value or interest should be achieved through 	<p>Staff are supportive of the prescribed principles and note that the City's current Official Plans already contain policies that require the retention of properties with cultural heritage value or interest as well as research and evidence to support the conservation of heritage resources. The current process where decisions related to conservation of heritage resources which goes to Heritage Committee, Planning Committee and Council demonstrates openness and transparency.</p> <p>Staff advise the Province that many of the principles use 'should' rather than 'shall.' That the use of 'should' instead of 'shall' is not consistent with the Provincial Policy Statement 2020, which states "Significant built heritage resources and significant cultural heritage landscapes shall be conserved". Staff advise that the language between the prescribed principles and the Provincial Policy Statement be aligned.</p>

#	Theme	Implications for Hamilton and Recommendations
	<p>identification, protection and wise management, including adaptive reuse (proposed to be defined as the alteration of a property of cultural heritage value or interest to fit new uses or circumstances while retaining the heritage attributes of the property) where appropriate.</p>	
2	<p>Mandatory content for designation by-laws.</p> <p>The <i>Ontario Heritage Act</i> amendments provide a regulatory authority to prescribe mandatory content for designation by-laws. The goal is to achieve greater consistency across municipalities and to provide improved clarity for property owners. The Regulation contains mandatory requirements which include:</p> <ul style="list-style-type: none"> • Property identification including the municipal address of the property, legal description of the property including the property identifier number (PIN), general description of where the property is located within the municipality; • Site Plan, scale drawings, aerial photograph or other image that identifies each area of property that has cultural heritage value or interest; • Statement explaining the cultural heritage value or interest based on criteria from O. Regulation 9/06 and how each criterion is met; • The description of the heritage attributes "must be brief" and must explain how each 	<p>Staff are supportive of the mandatory content for designation by-laws as it creates consistency across the Province and provides for the defensibility of designation by-laws.</p> <p>Staff will need to update current practices to ensure all mandatory requirements are included in future designation by-laws. The designation by-law can now include elements of a property that do not contribute to the heritage value, which is a practice that has not been regularly done in the City of Hamilton.</p> <p>Staff also note that an internal review of the Cultural Heritage Impact Assessment Guidelines and the Official Plan policies will be required to ensure that policies and guidelines align with the new requirements for the content of designation by-laws.</p> <p>Staff note that the by-law requirements must indicate how Ontario Regulation 9/06 is met. There is no permission for additional criteria, which is currently in practice in the City of Hamilton. A review of the Cultural Heritage Evaluation Criteria found in Policy B.3.4.2.9 of the Urban Hamilton</p>

#	Theme	Implications for Hamilton and Recommendations
	<p>identified heritage attribute contributes to the cultural heritage value or interest of the property; and,</p> <ul style="list-style-type: none"> The by-law may list physical features of the property that are not heritage attributes. 	<p>Official Plan and Rural Hamilton Official Plan to ensure alignment with the requirements of the Regulations.</p> <p>Clarification from the Province on how to balance the requirements of the Proposed Regulation that requires that the list of heritage attributes be concise, but also requires that each attribute be adequately linked to the cultural heritage value of the cultural heritage resource has been requested.</p> <p>Clarification that plans, drawings, photos and other images that are required to be part of a designation are to be provided by the applicant who triggered a prescribed event or the municipality has been requested.</p>
3	<p>New 90 day timeline for issuing a notice of intention to designate and exceptions to when the timeline would apply.</p> <p>The proposed Regulation establishes a new 90-day timeline which applies to notice of complete applications for official plan amendments, zoning by-law amendments or plans of subdivisions during which a Notice of Intent to Designate must be issued. The new timeline is intended to encourage discussions about potential designations with development proponents at an early stage to avoid designation decisions being made late in the land use planning process.</p>	<p>The 90 day requirement to issue a Notice of Intent to Designate is not supported.</p> <p>Staff's opinion is that the 90 days, even with the extensions proposed, is not adequate to support the Ministry's 'Prescribed Principle' in 1(3)2.ii of the Regulations that requires that decisions affecting the cultural heritage value/interest be based on research, appropriate studies and documentary evidence.</p> <p>Staff's opinion is that to adequately uphold this principle, thorough research and review of Cultural Heritage Impact Assessments is necessary in addition to the preparation of a defensible designation by-law and supporting staff report, which cannot be accomplished within 90 or 180 days while</p>

#	Theme	Implications for Hamilton and Recommendations
	<p>The Proposed Regulation allows for exceptions to this new 90-day timeline and include:</p> <ul style="list-style-type: none"> • Mutual agreement of the owner and council to extend the applicable period of time or agree that a period of time does not apply; • Administrative restrictions - During a declared emergency, which provides a further full 90 days the day after the emergency is terminated; • Administrative restrictions – In situations where the heritage committee had not been consulted, council can determine up to 15 days after the end of the 90-day period that an extension is required, which provides for a further 180 days. The extension requires council resolution; and, • Where “new and relevant information” relating to the property is received; if it is received after the 90-day period, council can defer by resolution a new 90-day period for 180 days, if it is received within the 90-day period, the council can elect to take a further 180 days. <p>“New and relevant” information and materials, includes:</p> <ul style="list-style-type: none"> • Information or materials that are received after the notice of complete planning application is made and which did not form part of the planning submission; and, 	<p>at the same time reviewing, assessing and making a recommendation on the <i>Planning Act</i> application.</p> <p>These changes to align <i>Planning Act</i> timelines with designations will require significant changes to internal processes. Application forms must be updated to ensure adequate cultural heritage information is included at the time of submission. Applicants will need to ensure Cultural Heritage Assessments are submitted with <i>Planning Act</i> applications and the quantity of the CHIA is satisfactory to properly assess the proposal.</p> <p>Not all designations are subject to a development application. As a result, the designations on the workplan not subject to development applications cannot be prioritized with current staff resources.</p> <p>Currently three weeks are given to review materials as part of a <i>Planning Act</i> application. Based on an initial review, Staff may have questions or require edits to the CHIA. The volume of questions or edits will depend on the quality of the CHIA or the project in general.</p> <p>Once staff provide their comments then it is up to the applicant to address staff’s questions and comments. Subsequent reviews would also take the regular 3-week review window. Staff also take CHIAs to the Policy and Design Working Group which meets once a month. Staff’s ability to consult with the Working Group depends on when materials are received from the applicant. If the working group requires revisions to the CHIA, the applicant would need to make the revisions and return to the Working</p>

#	Theme	Implications for Hamilton and Recommendations
	<ul style="list-style-type: none"> Information and materials that may affect the determination of the cultural heritage value or interest of the property or an evaluation of the potential effect of the Planning Act application on the cultural heritage value or interest of the property. <p>Expiration of restriction – The 90 day timeline on council's ability to issue a NOID would not remain on the property indefinitely and would no longer apply when the application that originally triggered the 90 day timeframe is finally disposed of under the <i>Planning Act</i>.</p>	<p>Group. Typically, between one and three reviews are required by the Working Group, resulting in a minimum of one to three months required for this review to be completed. Coupled with the review of the <i>Planning Act</i> application, consultation with the community and the applicant followed by the internal report writing cycle, the 90 or 180 day timeline is not enough time for a thorough and comprehensive review to be undertaken.</p> <p>In addition, the 90 or 180 day timeline will not provide adequate time to review and potentially request revisions to a CHIA (provided a revised CHIA is not considered 'new and relevant information'), as well as prepare and process a designation report to HMHC, Planning Committee and Council, while concurrently reviewing a <i>Planning Act</i> application. City of Hamilton's current processing time to issue a NOID commencing with HMHC and going to Council is approximately 45 days and the report cycle combined with statutory notice requirements is approximately 63 days, for a total of 108 days.</p> <p>Additional administrative time will be required when requesting extensions to the 90-day timeline. Appropriate processes for requesting extensions will need to be developed to ensure too much time does not elapse, further shortening the review period.</p> <p>Staff advise the Province that the City of Hamilton does not support the proposed 90 and 180 day timeline. Should a timeline be necessary, the Province should provide municipalities with additional time to ensure a</p>

#	Theme
	<p>Implications for Hamilton and Recommendations thorough and comprehensive review of heritage matters in conjunction with <i>Planning Act</i> applications.</p> <p>Staff advise the Province that while this timeframe aligns with the timeframe to review Zoning By-law Amendments under the <i>Planning Act</i> it does not align with the statutory timeframes for review of Official Plan Amendments and Plans of Subdivision which are 120 days.</p> <p>Staff advise the Province that the <i>Planning Act</i> Regulations for Official Plan Amendments (543/06), Plans of Subdivision (544/06) and Zoning By-law Amendments (545/06) should be amended to have heritage resources included as prescribed information in application forms.</p> <p>While Staff are supportive of ensuring development applications and heritage designations are reviewed comprehensively the Province should clarify what designation process other <i>Planning Act</i> applications with properties that have cultural heritage value or interest would follow.</p> <p>Staff requests the Province to clarify the length of time that can be entered into through mutual agreement and that the option for Council to delegate to staff the authority to negotiate extension agreements be authorized by Regulation.</p>

#	Theme
	<p>Implications for Hamilton and Recommendations</p> <p>Staff requests the Province to clarify if new and relevant information can be submitted from any source and what is considered new and relevant information.</p> <p>Staff requests the Province to clarify the number of times that the 90 day timeline be extended as new and relevant information is submitted, or if only one extension can occur or if multiple extensions can be applied.</p> <p>Staff requests the Province to confirm if Council must pass a resolution after each time a 90 day period expires or if Council can pass a blanket resolution to extend all 90 day periods. Staff would like to emphasize the increased administrative burden to have resolutions by Council for extended timeframes passed for each <i>Planning Act</i> application</p> <p>Staff requests the Province to clarify what is meant by disposal of a <i>Planning Act</i> application. Specifically, staff are seeking clarification on whether after an application has been approved or a decision from the Local Planning Appeal Tribunal has been provided and there is still cultural heritage value on the property, that staff can then proceed with designation should a NOID not have been issued within the 90 day timeframe.</p> <p>Staff requests the Province to clarify what occurs in situations where a third party request for designation occurs during the review of a Prescribed Event or outside of the 90 day or 180 day period.</p>

#	Theme	Implications for Hamilton and Recommendations
4	<p data-bbox="254 327 404 1849">Proposed exceptions to the new 120 day timeline to pass a designation by-law after a notice of intention to designate has been issued.</p> <p data-bbox="404 327 702 1849">Amendments to the <i>Ontario Heritage Act</i> establish a new requirement for designation by-laws to be passed within 120 days of issuing a NOID. It also allows for exceptions to be prescribed. The proposed Regulation prescribes exceptions and include:</p> <ul data-bbox="702 327 1435 1849" style="list-style-type: none"> <li data-bbox="702 327 784 1849">• Mutual agreement between the owner and council within the 120 day period; <li data-bbox="784 327 966 1849">• Administrative Restrictions - Where any part of the 120 day period is during a declared emergency, which provides a full 120 days subsequent to the termination of the emergency; and, <li data-bbox="966 327 1435 1849">• Where "new and relevant information" related to the property is received prior to by-law passage, which permits council to, by resolution, extend the time period by 180 days. The proposed regulation details "new and relevant" qualifying criteria to be information or materials that is received after publication of the notice of intention to designate and that may affect the statement of cultural heritage value or interest of the property or the description of heritage attributes. 	<p data-bbox="254 1849 652 1944">Staff reiterate that a longer time frame is needed for the initial research and preparation of the NOID, however are generally satisfied that 120 days to accommodate the 30-day appeal period from the issuance of a NOID and to pass the designation by-laws is sufficient. Staff are also supportive of extensions to the 120 day timeframe. Staff note that the administrative burden of requesting exceptions through formal agreements or Council resolutions will impact existing staff resources.</p> <p data-bbox="652 1849 834 1944">Staff requests the Province to clarify what happens in situations where there are appeals to a NOID. Staff would like confirmation that the 120 day timeframe is paused for the duration of an appeal.</p> <p data-bbox="834 1849 982 1944">Staff requests the Province to clarify whether Council can delegate extensions to the 120 day timeframe by mutual agreement to staff.</p> <p data-bbox="982 1849 1435 1944">Staff requests the Province to provide clarification on the formality of the mutual agreements.</p>

#	Theme	Implications for Hamilton and Recommendations
	<p>Exceptions allowing for the extension of the 120 day timeframe for passing a by-law must occur prior to the expiry of the initial 120 days. The proposed regulation includes notification requirements related to the exceptions to the 120-day timeframe (notice of the extension).</p>	
5	<p>Minimum requirements for complete applications for alteration or demolition of heritage properties.</p> <p>The Proposed Regulations establish minimum requirements for complete applications for a Heritage Permit for a designated property.</p> <p>The requirements for complete application include:</p> <ul style="list-style-type: none"> • Name, address, telephone number and email address, if applicable; • Name of the municipality from which consent is being requested; • Description of the property including information such as concession and lot numbers, reference plan, part numbers and street names and numbers; • Photographs that depict the existing buildings, structures and heritage attributes that are affected by the application and their condition and context; 	<p>Staff are supportive of the minimum requirements for complete applications for alteration or demolition of heritage properties and generally follow these regulations already.</p> <p>Detailed review of the City's current submission requirements should be completed by staff to ensure forms include the regulated minimum requirements.</p> <p>Staff support the inclusion of electronic submissions within the regulations and anticipate the continued use of electronic submissions for the duration of the Emergency Order related to Covid-19, but also anticipate the future use of electronic submissions. Staff are supportive of the effective date of submission being during work hours and excludes weekends and holidays.</p> <p>Staff note that there may be a greater scope and time spent on each application which may need to be addressed through the addition of a processing fee. While currently the City does not charge a fee for a heritage permit, the need for a fee will be further reviewed by staff.</p> <p>Staff note that coordination with the Building Division who receives these permits will be needed. An efficient system whereby Building staff inform or require sign off from</p>

#	Theme	Implications for Hamilton and Recommendations
	<ul style="list-style-type: none"> • Site plan or sketch that illustrated the location of the proposed alteration, demolition or removal; • Drawings and written specifications of the proposed alteration, demolition or removal; • The reasons for the proposed alteration, demolition or removal and the potential impacts to heritage attributes; • Technical cultural heritage studies that are relevant to the proposed alteration, demolition or removal; and, • Affidavit or a sworn declaration by the applicant certifying that the information required under this section and provided by the applicant is accurate. <p>The Regulation also permits electronic submissions to be accepted. Electronic submissions submitted after 5pm is considered to be effective on the following day. If the effective day is a Saturday or a holiday, the next day that isn't a Saturday or holiday is the effective day.</p>	<p>Cultural Heritage staff will need to be confirmed in AMANDA.</p> <p>Staff note that the requirements for a complete application only apply to subsections 33 (2) and 34 (2) of the <i>Ontario Heritage Act</i>, meaning that there are no requirements for a complete application for properties designated under Part V (heritage conservation districts). Staff requests the Province to apply the requirements for complete application to properties within a Heritage Conservation District to ensure comprehensive submissions for those applications and consistency for designations.</p>
6	<p>Steps that must be taken when council has consented to the demolition or removal of a building or structure, or a heritage attribute.</p> <p>Amendments to the <i>Ontario Heritage Act</i> provide that municipal council consent is required for the demolition or removal of any heritage attributes,</p>	<p>The demolition or removal of any heritage attribute is considered a demolition. Staff are seeking clarification that this change will not impact internal processes considering that the definition of Alteration has largely remained unchanged. If the change does impact internal processes in the form of fewer heritage permits being delegated to staff, this will create more reports going to HMHC, PC and Council. Staff are concerned that if the new definition of demolition does impact the ability to delegate heritage</p>

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	<p>in addition to the demolition or removal of a building or structure.</p> <p>Prior to the amendments, where council approved a demolition or removal under s. 34, the Act required council to repeal the designation by-law. The proposed regulation provides municipalities with improved flexibility by requiring council to first determine the impact, if any, of the demolition or removal on the cultural heritage value or interest of the property.</p> <p>Based on the determination council makes the Regulation outlines the appropriate administrative action:</p> <ul style="list-style-type: none"> • issuing a notice that no changes to the by-law are required; • amending the by-law to reflect the continued cultural heritage value or interest; or, • repealing the by-law because there is no longer cultural heritage value or interest. <p>Council's determination and the required administrative actions that follow are not appealable to LPAT.</p> <p>Where council has agreed to the removal of a building or structure from a designated property to be relocated to a new property, council may follow an abbreviated process for designating the</p>	<p>permits to staff, a significant resource issue will unfold. This is an issue related to the Act, not just regulation and would require an amendment to the <i>Ontario Heritage Act</i>.</p> <p>Staff time being redirected to process and prepare staff reports related to demolition applications will impact staff's ability move forward with their regular workload including new demolitions. Staff note that there will be additional costs incurred as by-laws are amended and notice must be issued to the community.</p> <p>Staff note that some of the older designation by-laws are not detailed in terms of the heritage attributes and would not meet the requirements of the regulation. Staff will need to review the existing by-laws to confirm which by-laws may require updating. Additional staff resources would be required to update by-laws that fall into this category.</p> <p>In situations where an alteration occurs and a by-law needs to be amended to reflect the continued cultural heritage value or interest, the by-laws will need to be updated to the new designation standard which likely will require additional research and evidence as well as additional staff resources. It is expected that there will be a substantial increase in the time, staff resources and cost associated with hiring consultants to assist in the necessary research to amend designation by-laws resulting from alterations.</p> <p>A new process will need to be developed for situations where Council agrees to the relocation of a building or structure from a designated property to a new property that will become designated.</p>

#	Theme	Implications for Hamilton and Recommendations
	<p>receiving property. Council's determination that the new property has cultural heritage value or interest and the subsequent designation by-law made under this proposed regulation would not be appealable to LPAT.</p>	<p>Staff requests the Province to clarify on Council's ability to delegate their approval authority to staff for demolition and alteration applications of designated properties as a result of the definition of demolition being the "removal of any heritage attribute".</p>
7	<p>Information and material to be provided to Local Planning Appeal Tribunal (LPAT) when there is an appeal of a municipal decision to help ensure that it has all relevant information necessary to make an appropriate decision.</p> <p>The proposed Regulation requires the following items to be provided to the LPAT within 15 days of an appeal being received:</p> <ul style="list-style-type: none"> • a certified copy of the by-law designating the property; • any materials and information council considered in making its decision; • a copy of the NOID or any notice given; • staff reports considered by council; • public meeting minutes; • notice of council decision; • an employee statement describing how council's decision considered the prescribed principles; • copies of written comments; • list of persons who made submissions and their submission, if available; and, 	<p>Staff are generally supportive of the process, timeframe and relevant information that must be submitted to the LPAT. Further discussion with Legal and Clerks staff must occur to ensure staff prepare appropriate employee statements.</p> <p>The regulation outlines a process where "preliminary objections" to any designation associated with a prescribed event can be made to the City. Staff will have to create an internal process for tracking "preliminary objections." Additional Legal staff time will also be required to address preliminary objections.</p> <p>Staff advises the Province that they are supportive of the Regulation relating to the required information and material that needs to be provided to the LPAT, however clarification is needed on what constitutes the employee's statement describing how council's decision considered the principles set out in subsection 1(3) when it exercised its decision making authority.</p>

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	<p>• an affidavit or sworn declaration from an employee of the municipality.</p> <p>The decisions of LPAT are binding. Preliminary objections to designation matters will now be made to the municipality, before the final decision is made.</p>	
8	<p>Housekeeping amendments related to amending a designation by-law and an owner's reapplication for the repeal of a designation by-law.</p> <p>Amendments to the Act included regulatory authority to address a few housekeeping matters through regulation. Previously, where a municipality proposed to make substantial amendments to an existing designation by-law it stated that the designation process in section 29 applied with necessary modifications. The proposed regulation clearly sets out the modified process, including revised language that is more appropriate for an amending by-law.</p> <p>The proposed regulation also makes it clear that there is no 90-day restriction on issuing a notice of proposed amendment to a by-law and provides that council has 365 days from issuing the notice of proposed amendment to pass the final amending by-law and that this timeframe can only be extended through mutual agreement.</p>	<p>Staff are supportive of the modified process to amend designation by-laws where Council has agreed to an alteration or demolition and as a result staff should review internal processes to ensure an efficient process is in place that meets the proposed Regulations. This will require a change to existing processes that previously treated amendments to designation by-laws in a similar manner to a new designation.</p> <p>While it is not a common practice for staff to have owner's request the repeal of designation by-laws, Staff will need to implement a process to track these requests.</p> <p>Staff advises the Province that this timeframe should be longer than 365 days to avoid having to deal with the same property repeatedly at the LPAT.</p>

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	<p>The proposed regulation also outlines restrictions on a property owner's ability to reapply for repeal of a designation by-law where the application was unsuccessful, unless council consents otherwise. The one-year restriction on an owner's reapplication maintains what had been included in the Act prior to the amendments.</p>	
9	<p>Transition provisions.</p> <p>The proposed transition rules within the Regulation provide clarity on matters that are already in progress at the time the Regulation comes into force. In general, the proposed Regulation will apply to matters commenced as of January 1, 2021.</p> <p>General Transition Rule:</p> <p>The Regulation will require that all processes that commenced on a date prior to proclamation (January 1, 2021) would follow the process and requirements set out in the Act as it read the day before proclamation. The proposed regulation sets out the specific triggers for determining if a process had commenced.</p> <p>Exceptions:</p> <p>Outstanding Notices of Intention to Designate:</p>	<p>Staff are generally satisfied with the proposed transition provisions.</p> <p>Staff are supportive of the transition regulation regarding heritage permits that result in an amendment to a designation by-law.</p> <p>Staff note that all outstanding NOIDs should be processed within the transition provisions. The City of Hamilton has four outstanding NOIDs which can be dealt with within the 365 day transition period and may require additional City resources to complete.</p> <p>The outstanding NOIDs include:</p> <ul style="list-style-type: none"> • King George School (77 Gage Avenue North); • Lampman Stone House (1021 Garner Road East, Ancaster); • Evergreen Farm (1389 Progreston Road, Flamborough) (under appeal); and, • Coppoley Building (56 York Boulevard) - Historic 1979 NOID.

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	<p>Where council has published a notice of intention to designate but has not yet withdrawn the notice or passed the by-law at the time of proclamation, the municipality will have 365 days from proclamation to pass the by-law, otherwise the notice will be deemed withdrawn. Where a notice of intention to designate has been referred to the Conservation Review Board, the 365 days would be paused until the Board either issues its report or until the objection has been withdrawn, whichever occurs earlier.</p> <p>90-Day Restriction on Issuing a NOID:</p> <p>The 90-day restriction on council's ability to issue a NOID would only apply where all notices of complete application have been issued by the municipality in relation to a prescribed Planning Act application, on or after proclamation.</p> <p>Prescribed steps following council's consent to demolition or removal (s. 34.3):</p> <p>The ministry is proposing that the prescribed steps as it relates to council's consent to a demolition or removal would apply following consent to an application by the municipality or by order of the Tribunal, where at the time of proclamation council had not already repealed the by-law under s. 34.3.</p>	<p>Staff are concerned with the short timeframe to prepare for the implementation of the changes to the <i>Ontario Heritage Act</i> and requests the Province to extend proclamation from January 1, 2021 to July 1, 2021 to give staff appropriate time to review internal processes.</p> <p>Staff request clarification from the Province on situations where there are outstanding NOIDs that do not follow current standards and whether new NOIDs need to be re-issued to bring these up to new OHA standards or if a transition regulation can be added to ensure that a new NOID does not need to be re-issued but the new OHA standard can be met.</p>