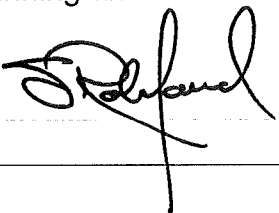




**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b>	Chair and Members Hamilton Municipal Heritage Committee
<b>COMMITTEE DATE:</b>	June 25, 2021
<b>SUBJECT/REPORT NO:</b>	<i>Bill 108, More Homes, More Choice Act, 2019, Ontario Regulation 385/21 made under the Ontario Heritage Act and the Draft Ontario Heritage Tool Kit (PED19125(c)) (City Wide)</i>
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Jennifer Roth (905) 546-2424 Ext. 2058
<b>SUBMITTED BY:</b>	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That Council adopt the submissions and recommendations as provided in Report PED19125(c) regarding the Regulation under the *Ontario Heritage Act*, as amended by *Bill 108, More Homes, More Choice Act, 2019* that is scheduled to be Proclaimed July 1, 2021 and the associated Draft Ontario Heritage Tool Kit;
- (b) That the Director of Planning and Chief Planner be authorized and directed to confirm the submissions made to the Province attached as Appendix "D" to Report PED19125(c); and,
- (c) That the Director of Planning and Chief Planner, be authorized and directed to negotiate and consent to agreements to extend or eliminate the 90-day timeline to issue a notice of intention to designate when a Prescribed Event occurs, to ensure the comprehensive review of *Planning Act* applications as well as cultural heritage resources.

**EXECUTIVE SUMMARY**

Report PED19125(b) went to Hamilton Municipal Heritage Committee on October 30, 2020 and to Planning Committee on November 3, 2021 which provided an overview of

the proposed Regulation to implement changes to the *Ontario Heritage Act* resulting from *Bill 108, More Homes, More Choice Act, 2019*. As part of Report PED19125(b), a letter submission was prepared and submitted to the Ministry with questions of clarification, supportive comments and concerns. Direct responses to each municipality from the Ministry have not been provided to this letter but the ERO Posting Decision was posted on July 9, 2021 and is included as Appendix "E" to this Report.

The Ministry of Heritage, Sport, Tourism and Culture Industries issued *Ontario Regulation 385/21*, attached as Appendix "A" to Report PED19125(c), and released ERO Posting 019-2770 – Updates to the Ontario Heritage Tool Kit for public comment on June 1, 2021. This Report identifies some of the key changes to the Regulation from the previously reviewed draft Regulation outlined in Report PED19125(b).

Staff will be forwarding a letter to the Province, attached as Appendix "B" to Report PED19125(c), outlining staff's comments on the ERO posting in advance of the commenting deadline, being June 30, 2021. This Report, including any changes or additions proposed by Council will be forwarded to the Province as additional comments on the ERO posting after it has closed.

#### **Alternatives for Consideration – See Page 11**

#### **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: The *Ontario Heritage Act*, as amended by Bill 108, and *Ontario Regulation 385/21* 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.

Staff note that there are currently 238 properties with Part IV designation by-laws that pre-date 2005 and the implementation of *Ontario Regulation 9/06 - Ontario Criteria for Determining Cultural Heritage Value or Interest*. Properties that are subject to a heritage permit that have a pre-2005 designation by-law will need to be amended to meet the heritage evaluation criteria of *Ontario Regulation 9/06* as a result of *Ontario Heritage Act*, as amended by Bill 108, and *Ontario Regulation 385/21*. The associated costs for updating these by-laws has not been considered in the capital budget.

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**Staffing:** Staff resource implications remain unknown at this time, and ongoing monitoring will continue to ensure that the new *Ontario Heritage Act* timelines are met, and heritage resources are protected and conserved.

**Legal:** Additional Legal resources will be required to:

- provide support interpreting and implementing changes;
- provide support for amendments to Delegated Authority By-law No. 05-364;
- assist with preparation of reports, by-laws, resolutions and agreements to comply with new requirements;
- assist with changes to the process of placing properties on the heritage register; and,
- represent the City at the Ontario Land Tribunal (OLT) as staff anticipate higher number of OLT appeals now that final decision-making power on designations rests with OLT.

## **HISTORICAL BACKGROUND**

Report PED19125(b) went to Hamilton Municipal Heritage Committee on October 30, 2020 and to Planning Committee on November 3, 2021 which provided an overview of the proposed Regulation to implement changes to the *Ontario Heritage Act* resulting from *Bill 108, More Homes, More Choice Act, 2019*. As part of Report PED19125(b), a letter submission was prepared and submitted to the Ministry with questions of clarification, supportive comments and concerns. Responses from the Ministry have not been provided to this letter.

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 019-1348.

June 1, 2021: Ministry of Heritage, Sport, Tourism and Culture Industries issued *Ontario Regulation 385/21* and released ERO Posting 019-2770 – Updates to the Ontario Heritage Tool Kit for public comment.

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- June 9, 2021: ERO Posting 019-1348 Decision posted explaining the changes between the Draft Regulation and *Ontario Regulation 385/21* and how the comments submitted impacted the changes. The decision is attached as Appendix "E" to Report PED19125(c).
- June 30, 2021: Commenting deadline for ERO Posting 019-2770 – Updates to the Ontario Heritage Tool Kit.
- July 1, 2021: *Ontario Heritage Act* and *Ontario Regulation 385/21* will be Proclaimed.

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**RELEVANT CONSULTATION**

This Report has been prepared by Planning Division staff with input from Legal staff and Tourism and Culture staff.

**Legal**

Legal staff reiterate the comments provided in PED19125(b). Legal staff also identified the Sections in the *Ontario Heritage Act* that are not being Proclaimed on July 1, 2021, including:

- Section 1(2) - definition of 'alter' as it relates to Sections 33, 34.5 and 69;
- Subsection 41(2.3) – Change to language related to demolition and removal as it relates to properties that are designated under both Section 29 (Individual designation) and Section 41 (Heritage Conservation District);
- Section 42(1) 2. – 4., Section 42(2.1) and Section 42(4.1) – Change to language related to demolition and removal of heritage attributes for properties located within a Heritage Conservation District (HCD) which would require all attributes to be described in the HCD Plan and associated impacts on heritage permits; and,
- Section 69(3) – Change to the offences and restoration costs as it relates to demolition within an HCD (not Proclaimed because changes to Section 42 are not being proclaimed).

The Sections that are not being proclaimed and their associated impacts are discussed in more detail in the Analysis and Rationale for Recommendation section below.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

### ***Ontario Heritage Act and the New Regulation***

On June 1, 2021 the Ministry of Heritage, Sport, Tourism and Culture Industries provided an email communication notifying municipalities that changes to the *Ontario Heritage Act* and associated implementation regulation being, *Ontario Regulation 385/21*, resulting from *Bill 108, More Homes, More Choice Act, 2019* were coming into effect on July 1, 2021. ERO Posting 019-1348 Decision posted on June 9, 2021 explains the changes between the Draft Regulation and *Ontario Regulation 385/21* and how the comments submitted through the previous ERO Posting in 2020 impacted the changes. The Decision is attached as Appendix "E" to Report PED19125(c).

#### **Changes to the *Ontario Heritage Act* that are not Proclaimed**

There are a number of changes to the *Ontario Heritage Act* that are not being proclaimed into effect on July 1, 2021 but remain in the *Ontario Heritage Act*. Staff will be seeking clarification from the Province on the plan regarding these items and if there will be future proclamation dates. The changes that are not being proclaimed include:

- Section 1(2) - definition of 'alter' as it relates to Sections 33, 34.5 and 69;
- Subsection 41(2.3) – Change to language related to demolition and removal as it relates to properties that are designated under both Section 29 (Individual designation) and Section 41 (Heritage Conservation District);
- Section 42(1) 2. – 4., Section 42(2.1) and Section 42(4.1) – Change to language related to demolition and removal of heritage attributes for properties located within a Heritage Conservation District (HCD) which would require all attributes to be described in the HCD Plan and associated impacts on heritage permits; and,
- Section 69(3) – Change to the offences and restoration costs as it relates to demolition within an HCD (not Proclaimed because changes to Section 42 are not being proclaimed).

Staff previously noted in Report PED19125(b) that the proposed definition of "alter", as it relates to certain provisions, would have impacts on workflows because it specifically does not include "to demolish" or "to remove" any heritage attribute. The new definition of "alter" reduces the number of heritage permits that can be delegated to staff if it is proclaimed, because more alterations will be considered a demolition which requires Council approval. Staff previously requested clarification from the Province regarding this matter. If the definition of "alter" is proclaimed the number of non-delegated reports

going to Council will increase. ERO Posting 019-1348 Decision stated that the Ministry would not be proclaiming the change at this time but did not provide any specific details regarding when it may be proclaimed. Staff will be seeking further clarification from the Province regarding when this will be proclaimed.

Staff note that the proposed changes to Section 42 would have impacts on staff's ability to process heritage permits within existing HCDs in the City of Hamilton. Given the requirement to have attributes identified specifically within the HCD Plans to ensure that heritage attributes are protected from demolition or removal would require all the HCD Plans that exist within the City to be updated. Staff will be seeking clarification from the Province regarding when this will be proclaimed.

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### *Ontario Regulation 385/21*

Some provisions of *Ontario Regulation 385/21* have been revised from the draft Regulation provided by the Ministry in September 2020. Changes from the previously circulated draft Regulation include:

- Removal of the Prescribed Principles;
- Removal of the requirement for an employee to describe how Council considered the Prescribed Principles in making its decision to designate;
- Designation By-laws will now only require the inclusion of one of the following: written description, scale drawing or site plan, instead of all three; and,
- Changes in the prescribed exceptions to the 90 day timeline established in Section 29 (1.2) of the *Ontario Heritage Act*, being:
  - the removal of the exception for new and relevant information restarting the 90 day timeline;
  - the addition of a provision that states when two or more prescribed events occur, only one 90 day timeline applies; and,
  - the addition of a provision that states that once the prescribed event is disposed of (i.e. Council provides a decision on an Official Plan Amendment and the appeal period is over), then the 90 day timeline does not apply, and designation could proceed if there is a building, structure or attributes that remain and meet the designation requirements.

The changes to the provisions noted above address several concerns identified by staff in Report PED19125(b) as it relates to:

- Council's decision-making power with regards to the Prescribed Principles;
- Lack of clarity on what constituted an Employee Statement; and,

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- Concerns with the Land Registry's Office ability to register a by-law with a site plan (digital file size).

Other modifications to the Regulation also include subsection reference updates, grammatical changes, and revising the title of the Local Planning Appeal Tribunal (LPAT), now the Ontario Land Tribunal (OLT). The above noted modifications have not fully addressed staff's concern or comments outlined in Report PED19125(b) and provided to the Ministry as it relates to the ability to provide a comprehensive review of heritage matters in conjunction with *Planning Act* applications.

Sections 26.0.1 and 39.1.2 of the *Ontario Heritage Act* are being proclaimed on July 1, 2021, and they contain reference to 'Prescribed Principles' which are not in *Ontario Regulation 385/21*. Staff will be seeking clarification from the Province regarding the status of the Prescribed Principles and if there will be future consultation on new Principles should a future proclamation date be established.

ERO Posting 019-1348 Decision provided clarity as it relates to properties that have been subject to a prescribed event which would trigger the 90 day timeline to issue a NOID, that are subject to a subsequent application. The new application would trigger a new 90 day timeline for issuing a NOID, and the restriction would end once the subsequent application has been disposed of under the *Planning Act*.

Staff note that one of the exceptions to extend the 90 day timeline was removed, being the submission of new and relevant information, which would restart the 90 day timeline. ERO Posting 019-1348 Decision stated that some of the submissions were concerned that the exceptions were too flexible and allow municipalities too much latitude.

Staff remain concerned that the 90 day timeline to issue a notice of intention to designate is not sufficient. Staff recommend that Council seek opportunities to utilize the prescribed exceptions, specifically the exception to enter into an agreement with the applicant triggering a prescribed event. The Recommendations of this Report include Council authorization and direct the Director of Planning and Chief Planner to enter into agreements to extend or eliminate the 90 day timeline to ensure a comprehensive review of cultural heritage resources and *Planning Act* applications occurs.

#### Amending Designation By-laws

Staff note that there are 238 properties with Part IV designation by-laws in the City of Hamilton that came into effect prior to when *Ontario Regulation 9/06 06 – Criteria for Determining Cultural Heritage Value* came into effect in 2006. There is concern that one or more of the pre-2006 designation By-laws may lack the detail established in *Ontario*

*Regulation 9/06* which may impact approvals of heritage permits which may not maintain the intended conservation goals of designation.

Further the Regulation establishes a requirement that in situations where Council agrees or is deemed to have agreed to a heritage permit for a demolition or removal of a heritage attribute, the associated designation By-law needs to be amended. When By-laws need to be amended after a heritage permit has been processed, it should be amended to meet the current standards established in *Ontario Regulation 9/06 – Criteria for Determining Cultural Heritage Value*, which will require additional staff resources and budget.

Consideration should be given to commencing work on prioritizing and updating the 238 Part IV designation by-laws to ensure proactive conservation work can continue based on staff resources and budget.

#### Transitional Provisions

The Transitional Provisions have been revised as it relates to notices of intention to designate for those properties that have not had designating By-laws passed and any applications to demolish or alter that were made before July 1, 2021. The Transitional Provision states that the notices and applications will continue under the old *Act*. Further, designating By-laws that are outstanding on July 1, 2021 must be passed before July 1, 2022 or the notice will be deemed to be withdrawn unless an extension is agreed to with the property owner. Generally, staff are satisfied with the changes that have been made to the Transitional Provisions.

#### Ontario Heritage Tool Kit and Supportive Materials

Guidance material to assist with the transition to the new legislative and regulatory processes were provided in an updated draft version of the Ontario Heritage Tool Kit (the Tool Kit), attached as Appendix "B" to Report PED19125(c). The updates to the Tool Kit are intended to assist users in understanding the recent changes to the *Ontario Heritage Act* and associated *Ontario Regulation 385/21*. The draft Tool Kit consists of five guides which are available for comment until June 30, 2021.

A brief summary of the five guides are outlined below:

1. Designating Heritage Properties: a guide for municipal designation of individual properties under the *Ontario Heritage Act*. The Guide includes flow charts that outline processes step-by-step.
2. Heritage Property Evaluation: a guide for listing, researching and evaluating cultural heritage property in Ontario communities.



3. Heritage Conservation Districts: a guide for designating districts, containing multiple properties, under the *Ontario Heritage Act* to conserve local character and heritage interest.
4. Your Community, Your Heritage, Your Committee: a guide for establishing and sustaining an effective Municipal Heritage Committee that provides advice to Council.
5. Heritage Places of Worship: a guide for keeping heritage places of worship viable in the community while conserving their cultural heritage value or interest.

Staff have prepared comments on the draft Guides that will be submitted to the ERO Posting ahead of the June 30, 2021 deadline which are included in Appendix "D" to Report PED19125(c). Final versions of the Tool Kit will be published on the Ministry's webpage in the fall of 2021.

The Ministry prepared flowcharts, attached as Appendix "C" to Report PED19125(c) to supplement the changes to the *Ontario Heritage Act*, *Ontario Regulation 385/21* and the Tool Kit. The flowcharts provide guidance on the following work flows:

1. Adding a non-designated property to the Municipal Register of Heritage Properties (*Ontario Heritage Act* Section 27(3)(6));
2. Considering an objection to the inclusion on the Municipal Register (*Ontario Heritage Act* Section 27(7)(8));
3. Designation by Municipal By-law (*Ontario Heritage Act* Section 29);
4. Amendment of Designating By-law (*Ontario Heritage Act* Section 30.1(1));
5. Amendment of Designating By-law with applicable Exception (*Ontario Heritage Act* Section 30.1(2)(16));
6. Council Initiated Repeal of Designating By-law (*Ontario Heritage Act* Section 31);
7. Owner Initiated Repeal of Designating By-law (*Ontario Heritage Act* Section 32);
8. Alteration of a Property (*Ontario Heritage Act* Section 33);
9. Demolition or Removal of a Heritage Building, Structure or Attribute (*Ontario Heritage Act* Section 34, 34.1 and 34.3); and,
10. Designation Process for a Heritage Conservation District Designation (*Ontario Heritage Act* Section 40, 40.1, 41 and 41.1).

While these flowcharts are helpful for understanding the workflows that staff will have to implement internally, it also demonstrates an impact on Council's decision to protect a property using the *Ontario Heritage Act*, specifically as it relates to appeals to the OLT. Previously, Council retained final decision-making authority when there were appeals related to designations to the Conservation Review Board, which no longer exists. As a result of this change, Council must ensure that all notices of intent to designate include defensible evidence including all the new requirements that must be included in a designation By-law as required by *Ontario Regulation 385/21*. The ability of staff to

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ensure that a comprehensive analysis of heritage resources occur if they are associated with a "Prescribed Event" is constrained by the new 90-day timeframe to issue a notice of intention to designate. This challenge was initially described in Report PED19125(b) and remains. Staff recommend utilizing the exceptions to eliminate or extend the 90-day timeframe. The Recommendations of this Report recommended that Council authorize and direct the Director of Planning and Chief Planner to enter into agreements to extend or eliminate the 90 day timeline to ensure a comprehensive review of cultural heritage resources and *Planning Act* applications occurs.

The flowcharts illustrating the process for alterations to a property or demolition or removal of a heritage building, structure or attribute identifies the new requirement to issue a notice of complete or incomplete application within 60 days of receipt. If a notice of complete or incomplete application is not issued, then consent will be deemed to have been given 90 days after the end of the 60-day period. Council will then have to follow the prescribed steps in Section 7 of *Ontario Regulation 385/21* and determine if there is heritage value that remains and if the associated designating By-law needs to be amended. As stated above, amended designation by-laws should be amended to the current standard established by *Ontario Regulation 9/06 – Criteria for Determining Cultural Heritage Value*, which will require additional staff resources and budget.

Staff have prepared additional comments on the flowcharts that are included in Appendix "D" to Report PED19125(c).

### **Next Steps**

Staff have prepared comments to be submitted to the Ministry regarding the Tool Kit and the Regulation. The comments are attached as Appendix "D" for endorsement by Council after they have been submitted due to the ERO Posting closing on June 30, 2021.

Staff are preparing items to assist with the implementation of the amended *Ontario Heritage Act* and the new Regulation to ensure that the City will be able to address all the requirements starting July 1, 2021. These items included revisions to application forms, a new heritage permit application, notice of (in)complete templates and a mutual agreement template.

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

## **ALTERNATIVES FOR CONSIDERATION**

- (a) Council can choose to not endorse the comments and instead provide alternative comments; or,
- (b) Council can choose to not endorse the staff comments and provide no comments.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Community Engagement and Participation**

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

### **Economic Prosperity and Growth**

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

### **Healthy and Safe Communities**

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

### **Clean and Green**

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

### **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.

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" – *Ontario Regulation 385/21*

Appendix "B" – *Draft Ontario Heritage Tool Kit*

Appendix "C" – *Ministry Flow Charts*

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Appendix "D" – Letter to the Province on the Regulations and the draft Ontario Heritage Act Tool Kit

Appendix "E" – ERO-019-1348 Decision

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Engaged Empowered Employees.

Français

**ONTARIO REGULATION 385/21**

made under the

**ONTARIO HERITAGE ACT**

Made: May 20, 2021

Filed: May 31, 2021

Published on e-Laws: June 1, 2021

Printed in *The Ontario Gazette*: June 19, 2021**GENERAL****CONTENTS**RULES RE SECTION 29 OF THE ACT

- |                 |  |
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| 2.              | Prescribed circumstances, par. 1 of s. 29 (8) of the Act   |
| 3.              | Designation by municipal by-law, requirements<br><u>AMENDMENT OF DESIGNATING BY-LAW — SUBSECTION 30.1 (1) OF THE ACT</u> |
| 4.              | Amending by-laws, modified s. 29 of the Act<br><u>REAPPLICATION FOR REPEAL OF BY-LAW — SUBSECTION 32 (18) OF THE ACT</u> |
| 5.              | Prescribed circumstances and time periods<br><u>INFORMATION AND MATERIAL — SUBSECTIONS 33 (2) AND 34 (2) OF THE ACT</u>  |
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| 7.              | Council consents to application under s. 34 of the Act<br><u>RECORD OF DECISION</u>                                      |
| 8.              | Record of decision under s. 29 of the Act  |
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| 10.             | Record of decision under s. 31 of the Act  |
| 11.             | Record of decision under s. 32 of the Act  |
| 12.             | Record of decision under s. 33 of the Act  |
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| 19.             | Commencement   |
| <u>Schedule</u> | Section 29 of the Act as modified for the purposes of subsection 30.1 (1) of the Act                                     |

RULES RE SECTION 29 OF THE ACTLimitation, s. 29 (1.2) of the Act

1. (1) For the purposes of subsection 29 (1.2) of the Act, the following events that occur on or after July 1, 2021 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 proposed 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 proposed amendment applies includes the property.

3. A council or planning board, as the approval authority, has completed giving notice in accordance with clause 51 (19.4) (a) of the *Planning Act* of an application referred to in that clause, if the subject land to which the application applies includes the property.

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

1. The restriction set out in subsection 29 (1.2) of the Act does not apply if an event described in subsection (1) occurs in respect of a property and, at any time after the event occurs, the owner of the property and the council of the municipality agree that the restriction does not apply.
2. If an event described in subsection (1) occurs in respect of a property and the owner of the property and the council of the municipality, within 90 days after the day on which the event occurs, agree to extend the period of time set out in subsection 29 (1.2) of the Act, the period of time for the purposes of that subsection is the period that the council and the owner have agreed upon.
3. If an event described in subsection (1) occurs in respect of a property and the day on which the event occurs 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 is terminated.
4. If an event described in subsection (1) occurs 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.
5. Subject to subsection (4), if an event described in subsection (1) occurs 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 date of final disposition of the request or application giving rise to the event, whether by operation of the *Planning Act* or order of the Tribunal.

(3) If an event described in subsection (1) in respect of a property occurs and a subsequent event occurs in respect of the property, the earlier event is deemed not to have occurred in respect of the same property for the purposes of subsection 29 (1.2) of the Act.

(4) If two or more events described in subsection (1) in respect of a property occur on the same day, 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 latest of the dates on which the requests or applications giving rise to the events are finally disposed of, whether by operation of the *Planning Act* or order of the Tribunal.

**Prescribed circumstances, par. 1 of s. 29 (8) of the Act**

2. (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 extend the period of time 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, that is the period of time for the purposes of that paragraph.

(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**

3. (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 one or more of the following that identifies each area of the property that has cultural heritage value or interest:
  - i. A site plan.
  - ii. A scale drawing.
  - iii. A description in writing.
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 explain how each heritage attribute contributes to the cultural heritage value or interest of the property.

(2) Nothing in subsection (1) prevents a by-law from identifying any physical features of a property that are not heritage attributes.

(3) For clarity, the requirements set out in subsection (1) also apply for the purposes of subsection 29 (8) of the Act, as it appears in the Schedule for the purposes of an amending by-law mentioned in subsection 30.1 (1) of the Act.

**AMENDMENT OF DESIGNATING BY-LAW — SUBSECTION 30.1 (1) OF THE ACT**

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

4. 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**

5. For the purposes of subsection 32 (18) of the Act, the following are the prescribed circumstances and corresponding 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. If 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. If 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. If 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. If a person appeals the decision of council 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**

6. (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

7. (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 owner of the property and 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 3 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 3 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

8. (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. The original or a certified copy of all written submissions and comments related to the decision and the dates they were received.

6. 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 representations that related to the decision and, if available, the record of those representations.
7. Any additional material or information that the council considered in making its decision.
8. 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**

9. (1) References in this section to section 29 of the Act are references to that section as it appears in the Schedule for the purposes of an amending by-law mentioned in subsection 30.1 (1) of the Act.
- (2) The following rule applies if the council of 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 8 of subsection 8 (2) of this Regulation.
- (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 of 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 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, 2, 3 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**

10. (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 8 of subsection 8 (2) of this Regulation.

(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**

11. 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 8 of subsection 8 (2) of this Regulation.

**Record of decision under s. 33 of the Act**

12. (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 6 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 8 of subsection 8 (2) of this Regulation.

**Record of decision under s. 34.1 of the Act**

13. (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 6 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 8 of subsection 8(2) of this Regulation.

**Record of decision under s. 40.1 of the Act**

**14.** (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 to 8 of subsection 8(2) of this Regulation.

**Record of decision under s. 41 of the Act**

**15.** (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 who 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, and
    - ii. a list of all persons and public bodies that made oral representations that related to the decision and, if available, the record of those representations.
  8. The material and information described in paragraphs 4, 7 and 8 of subsection 8(2) of this Regulation.

**Record of decision under s. 41.1 of the Act**

**16.** (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 by a by-law 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 who 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, 7 and 8 of subsection 8 (2) of this Regulation.

**Record of decision under s. 42 of the Act**

17. (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 to 8 of subsection 8 (2) of this Regulation.

**TRANSITION**

**Transitional rules**

18. (1) Except as provided otherwise, references in this section to a provision of the Act are references to the provision as it read on June 30, 2021.

(2) A matter or proceeding that is mentioned in subsection (3) and commenced before July 1, 2021 shall be continued and disposed of under the Act as it read on June 30, 2021.

(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, on the day 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, on the day 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, on the day the by-law is passed under that subsection; and
  - (k) in the case of an application described in subsection 42 (2.1) of the Act, on the day the application is received by the council of the municipality.
- (4) The following rules apply 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 July 1, 2021 and the council of the municipality has not, before that day, passed a by-law designating the property or withdrawn the notice of intention to designate before that day:
- 1. The notice of intention to designate the property is deemed to be withdrawn on the later of the following dates, unless the council of a municipality has passed a by-law in accordance with section 29 of the Act designating the property before that date:
    - i. July 1, 2022.
    - ii. If, before July 1, 2022, the council of the municipality and the owner of the property mutually agree to a period that ends after July 1, 2022, the last day of the agreed upon period.
  - 2. During the period before the notice of intention to designate is deemed to be withdrawn under paragraph 1, the notice of intention shall be continued and disposed of under the Act as it read on June 30, 2021.
- (5) For the purposes of paragraph 1 of subsection (4), if a person objects to a proposed designation under subsection 29 (5) of the Act, either before, on or after July 1, 2021, the date that applies for the purpose of that paragraph is extended by the total number of days that are after June 30, 2021 and 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 paragraph 1 of 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 July 1, 2021 and the council 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 before July 1, 2021, the application shall be continued and disposed of in accordance with section 34.3 of the Act as it reads on and after July 1, 2021.
  - 2. If the council has passed a repealing by-law under section 34.3 of the Act before July 1, 2021, the application shall be continued and disposed of in accordance with section 34.3 of the Act as it read on June 30, 2021.
- (8) For the purposes of paragraph 1 of subsection (5), on and after the day section 2 of Schedule 6 to the *Accelerating Access to Justice Act, 2021* comes into force, the reference to "Review Board" in subsection 29 (12) of the Act, as it read on June 30, 2021, shall be read as a reference to "Tribunal".

#### COMMENCEMENT

##### Commencement

**19. This Regulation comes into force on the later of July 1, 2021 and the day it is filed.**

#### 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 by the Tribunal.
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 by the Tribunal.

**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 by the Tribunal.

**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 by the Tribunal; 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.

Français

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Draft of May 28, 2021

## Your Community, Your Heritage, Your Committee

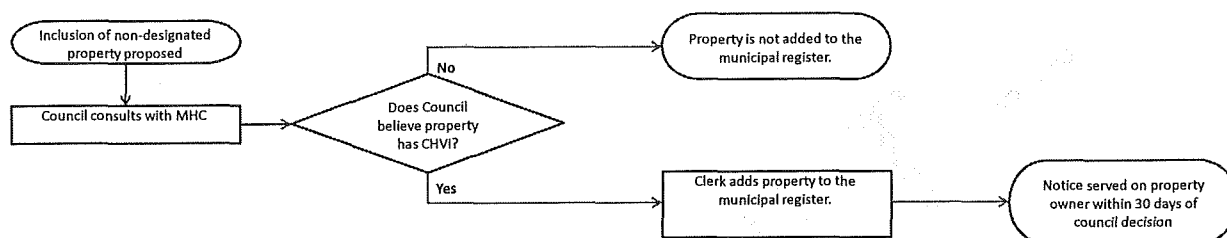


Figure 1. A heritage streetscape in the Downtown Port Perry Heritage Conservation District contributes to a vibrant downtown (Image courtesy of the Ontario Business Improvement Association).

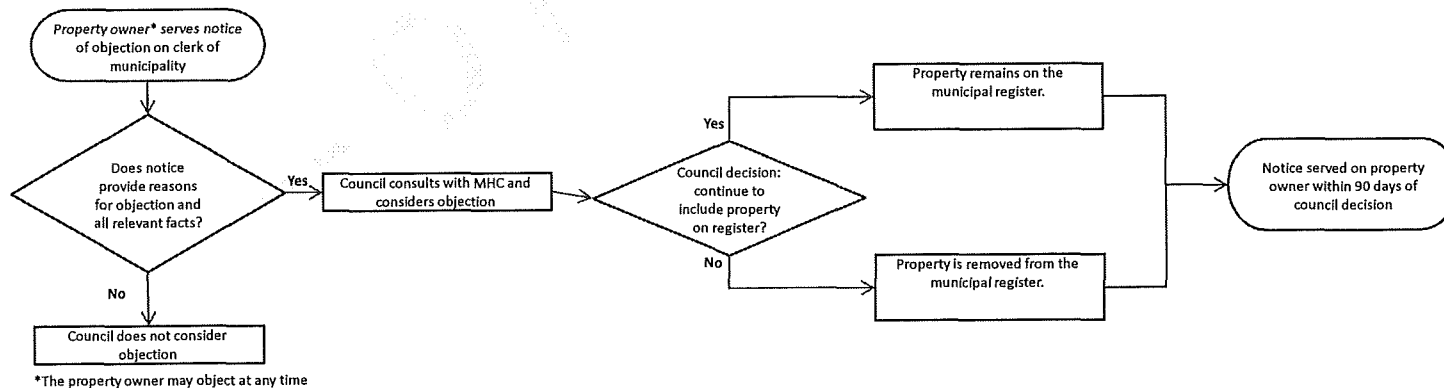
Every day across Ontario, thousands of volunteers work to conserve and celebrate the stories, places and events of the people that shaped our communities. Many of these volunteers are active at the municipal level as members of municipal heritage committees.

Under the *Ontario Heritage Act*, municipalities can establish municipal heritage committees to advise council on identifying, protecting and promoting cultural heritage resources that make our communities unique and sustainable places to live. The fact that so much of Ontario's rich heritage has been conserved is a testament to the good advice and hard work of municipal heritage committees.

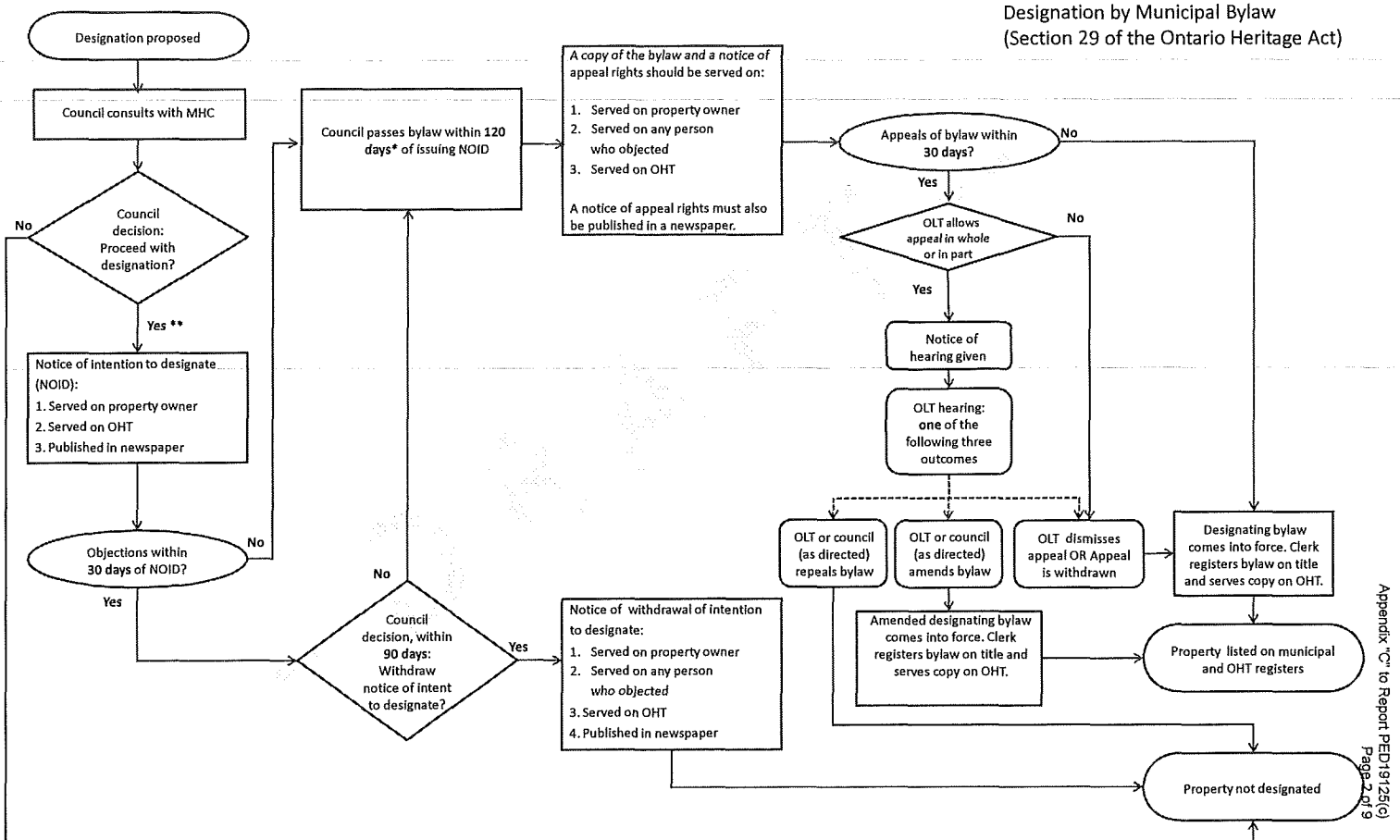
# Adding a non-designated property to the Municipal Register of Heritage Properties (Section 27 (3)-(6) of the Ontario Heritage Act)



## Considering an objection to a property being included on the Municipal Register under Subsection 27 (3) (Section 27 (7)-(8) of the Ontario Heritage Act)



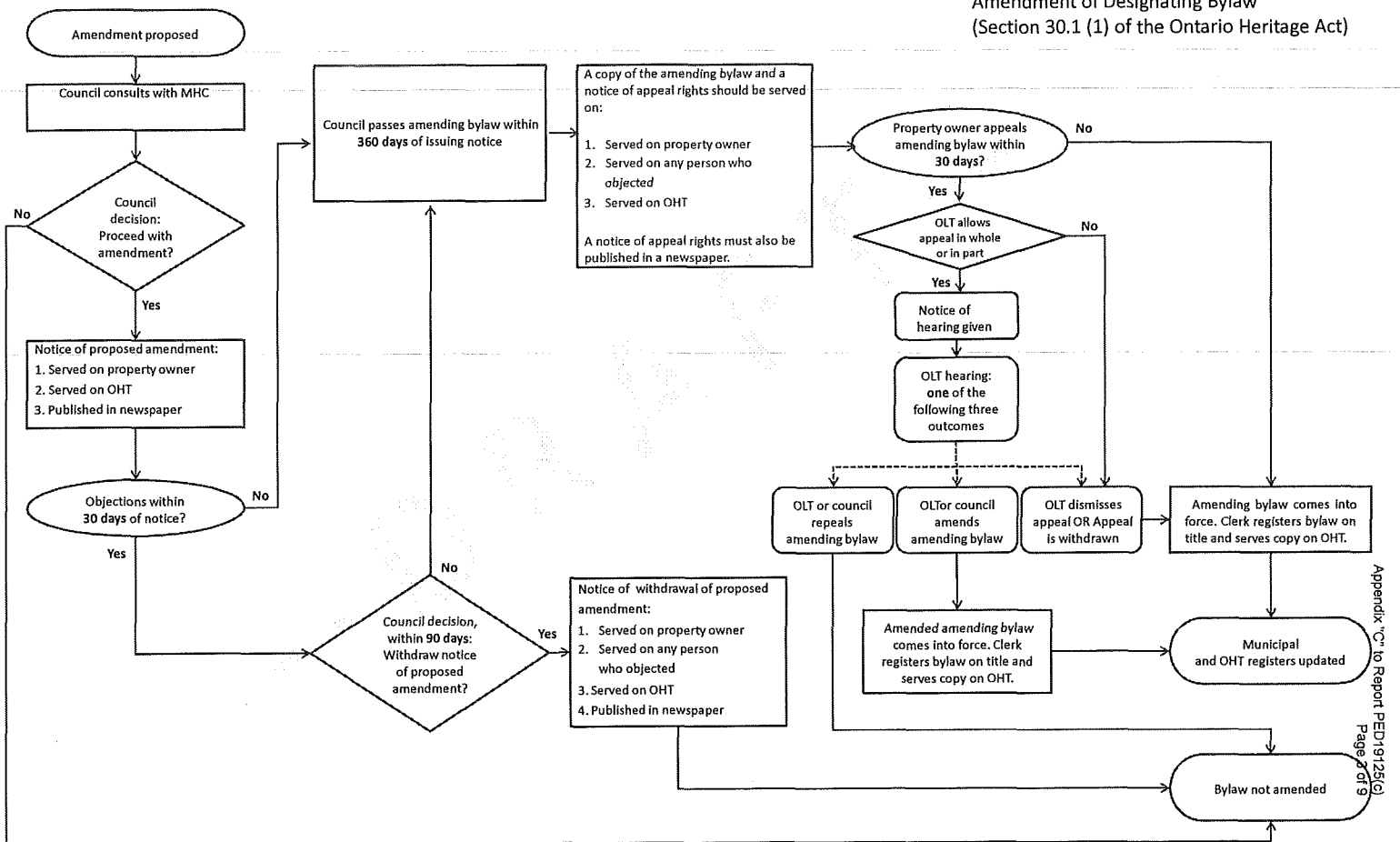
# Designation by Municipal Bylaw (Section 29 of the Ontario Heritage Act)



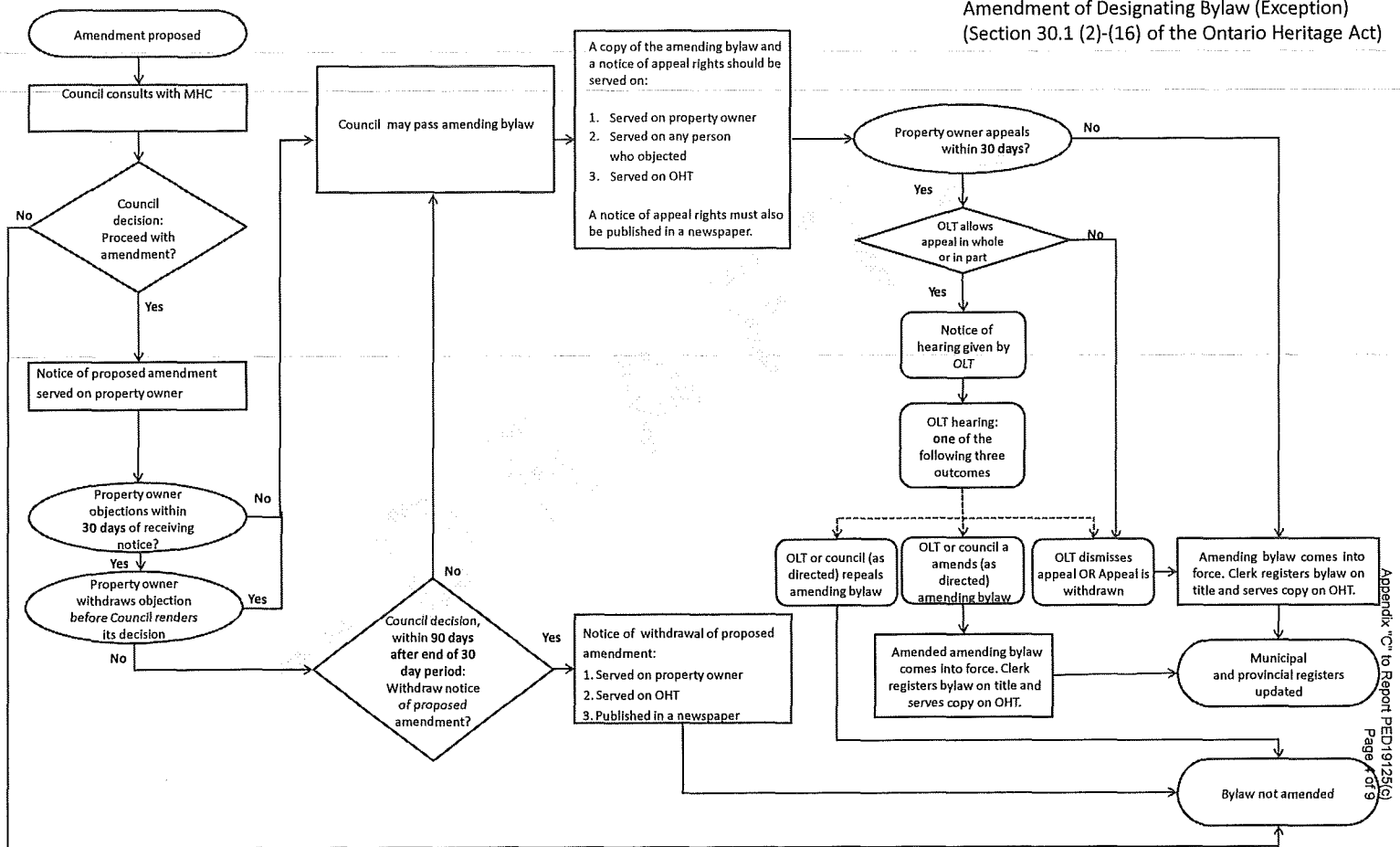
\*If council fails to meet these timelines, the NOID will be deemed withdrawn, and council must issue a notice of withdrawal. For exceptions to the 120-day timelines, please consult the guidance text.

\*\* Council has a limited 90 day period to give its notice of intention to designate a property when the property is subject to an official plan amendment, a zoning bylaw amendment, or plan of subdivision.

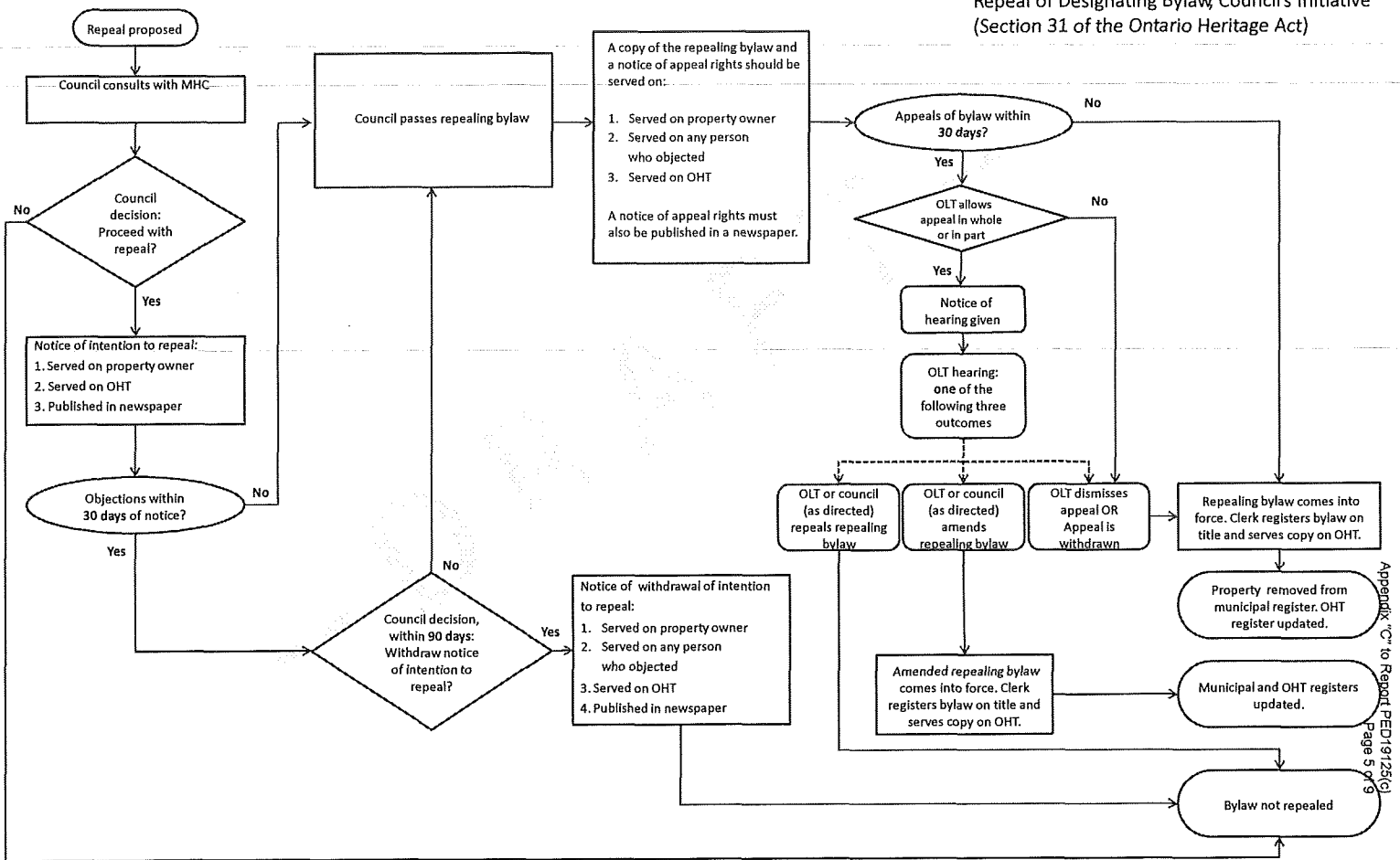
# Amendment of Designating Bylaw (Section 30.1 (1) of the Ontario Heritage Act)



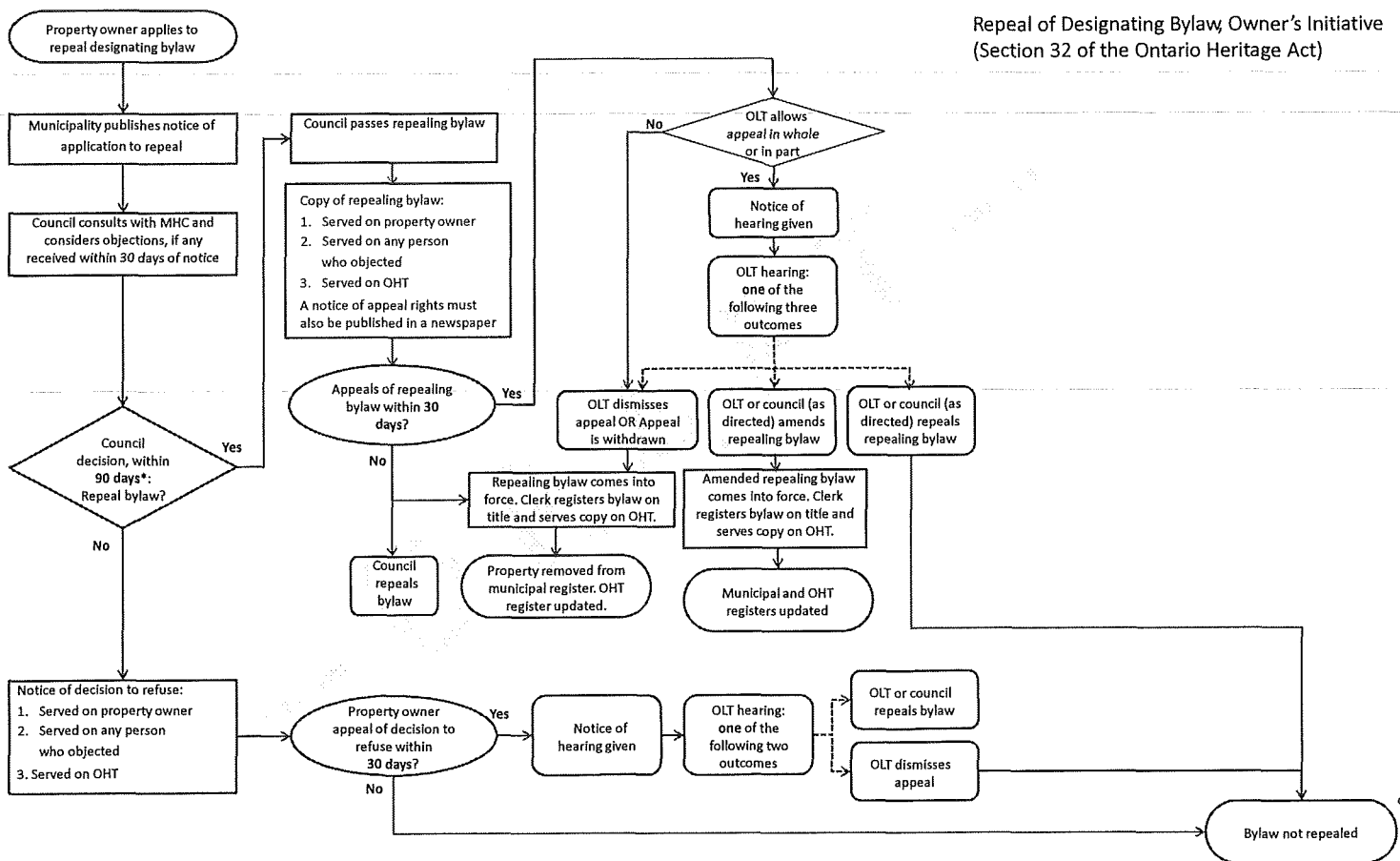
# Amendment of Designating Bylaw (Exception) (Section 30.1 (2)-(16) of the Ontario Heritage Act)



# Repeal of Designating Bylaw Council's Initiative (Section 31 of the Ontario Heritage Act)

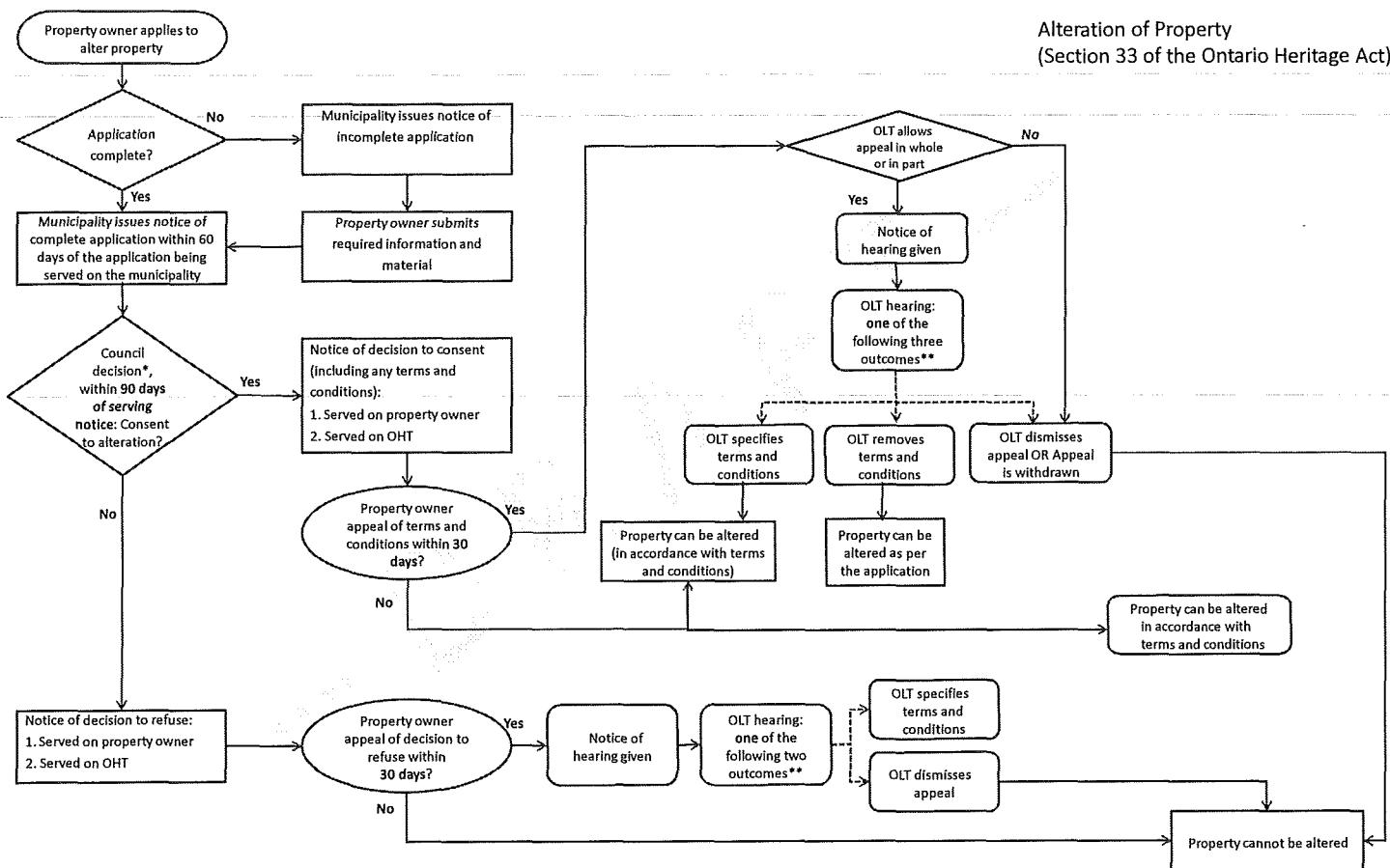


# Repeal of Designating Bylaw, Owner's Initiative (Section 32 of the Ontario Heritage Act)





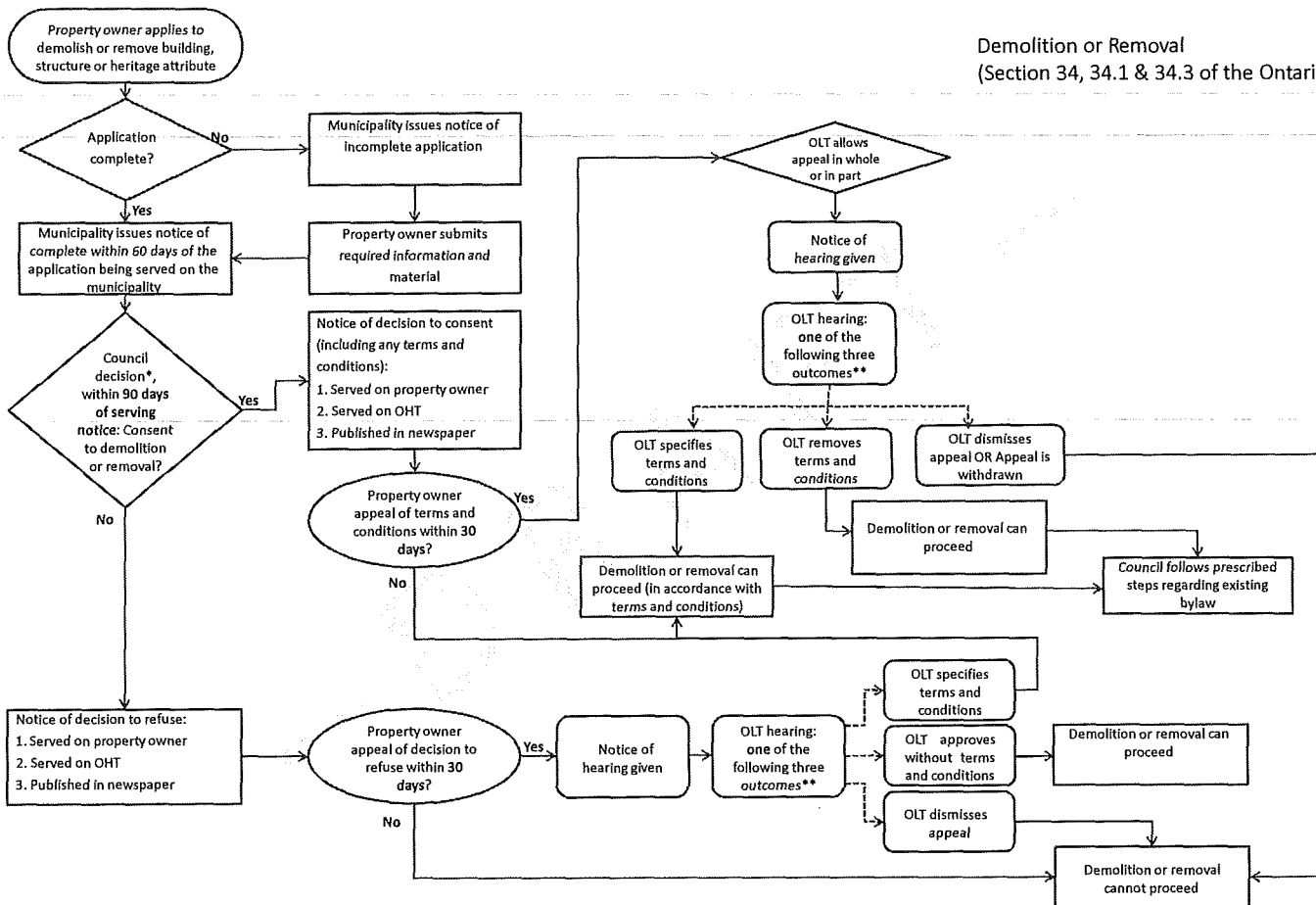
# Alteration of Property (Section 33 of the Ontario Heritage Act)



\*If council failed to issue either a notice of complete application or a notice of incomplete application within 60 days after the day the application was served on the municipality, consent will be deemed to have been given 90 days after the end of the 60-day period. In this case, the demolition or removal can proceed, and council must follow the prescribed steps.

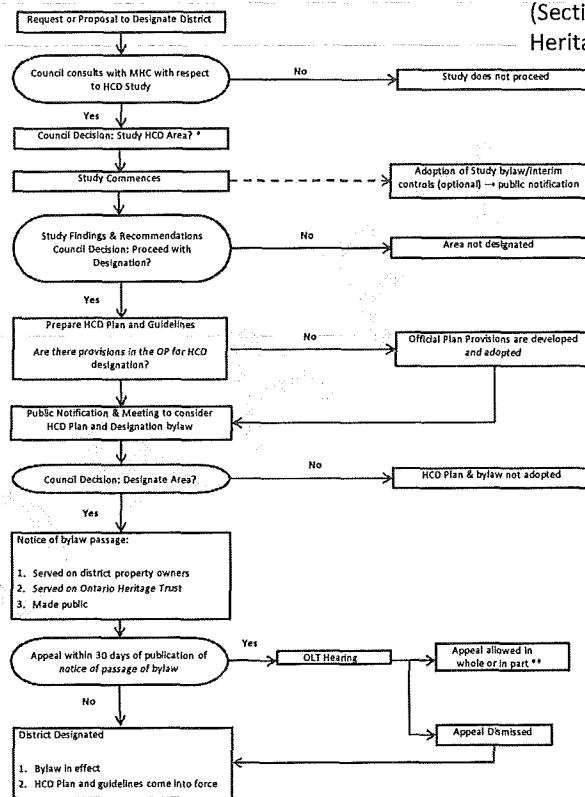
\*\*The municipality must notify the OHT of the OLT decision.

Demolition or Removal  
(Section 34, 34.1 & 34.3 of the Ontario Heritage Act)



\*If council failed to issue either a notice of complete application or a notice of incomplete application within 60 days after the day the application was served on the municipality, consent will be deemed to have been given 90 days after the end of the 60-day period. In this case, the demolition or removal can proceed, and council must follow the prescribed steps.  
\*\*The municipality must notify the OHT of the OLT decision.

# Heritage Conservation District Designation Process (Sections 40, 40.1, 41, 41.1 of the Ontario Heritage Act)



\* The Ontario Heritage Act does not require a study in order to designate a heritage conservation district

\*\* The HCD bylaw may need to be amended for an appeal allowed "in part"



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

June 25, 2021

**Lorraine Dooley**

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

**RE: *Ontario Regulation 385/21 to the Ontario Heritage Act* and Draft Ontario Heritage Tool Kit**

Dear Madam:

On behalf of the City of Hamilton, I am pleased to provide this letter as City of Hamilton's submission on the *Ontario Regulation 385/21 to the Ontario Heritage Act* and the Draft Ontario Heritage Tool Kit. Please find attached to this letter an outline of the key submissions the City wishes to make on the Regulation and the Draft Ontario Heritage Tool Kit. City staff will be taking a report to Planning Committee on July 6, 2021 and to Council on July 9, 2021 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 Ontario Heritage Tool Kit. City of Hamilton 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 *Ontario Regulation 385/21* to the *Ontario Heritage Act* and Draft Ontario Heritage Tool Kit**

Staff remain challenged by the administrative burden that the changes to the *Ontario Heritage Act* and implementing Regulation have placed on municipalities. The additional complexity to processes and shortened timeframes remain a concern and have not been addressed through *Ontario Regulation 385/21*.

The following are the City's comments on *Ontario Regulation 385/21* to the *Ontario Heritage Act*:

- Staff would like further clarification on the changes to the *Ontario Heritage Act* that are not being Proclaimed on July 1, 2021. Is there a future Proclamation date that will be scheduled? These Sections in the *Ontario Heritage Act* will have an impact on staff's ability to process heritage permits through delegated authority and may require updates to all the heritage conservation district plans. Staff request that further communication from the Ministry be provided well in advance of those sections being Proclaimed.
- Staff would like confirmation that any future drafts of "Prescribed Principles" be posted on the Environmental Registry of Ontario for comment prior to being proclaimed.
- Staff would like clarification as to why the Exception of the submission of 'new and relevant information' to the 90 Days to issue a notice of intention to designate was removed from the Regulation.
- Staff continue to 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 continue to 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 continue to 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 should also apply to district properties to ensure comprehensive submissions for those applications and consistent treatment of all designations.

The following are the City's comments on the Draft Ontario Heritage Tool Kit:

- Staff note that a 30 day period to provide a fulsome review is not sufficient. Staff request an extension to the ERO Posting closure of June 30, 2021 to ensure more fulsome consultation with municipalities occurs.
- Staff note it may be helpful to distinguish between new legislated requirements so that the changes to municipal processes can be easily identified and implemented by staff. The inclusion of the legislated references to the *Ontario Heritage Act* and the Regulation in the Final Guides would be beneficial.
- Clarification on whether a newspaper having general circulation must be print or can be in digital format should be included in the Final Guides.
- Inclusion of examples and case studies throughout all the Guides are useful to municipal staff as well as the public's understanding of requirements and practices. Staff recommend additional examples and case studies be included in all the Guides.

The following are the City's comments on *Ontario Regulation 385/21* to the Your Community, Your Heritage, Your Committee Guide

- Staff note that there have not be legislative changes to the structure and procedures of a Municipal Heritage Committee. Staff would appreciate further understanding of the changes that have been proposed between the current guide and draft guide.
- The draft Guide states that Municipal Heritage Committee member terms typically are for a 3 year period on page 12. Consideration should be given to updating this reference to 4 year terms to generally align with Council terms.
- The Final Guide should continue to include the preferred reporting structure in Section 3.2 on page 18 which states that Municipal Heritage Committees are more effective when they report directly to Council instead of through standing committees. The reporting structure may help ease the length of time it takes to issue a notice of intention to designate associated with a prescribed event or process a complex heritage permit.
- The Final Guide should continue to include the functional relationship of advisory committees to Municipal Heritage Committees in Section 3.2.1 on page 18. The Final Guide would benefit from additional information on the preferred reporting structure of advisory committees.
- Section 4.2.1 – Checklist for Evaluating your Committee's Mission and Vision could be enhanced with a proposed frequency for self-evaluation by Municipal Heritage Committees. A report could be associated with the checklist to

demonstrate examples of how the Municipal Heritage Committee was achieving each criteria.

The following are the City's comments the Heritage Property Evaluation: A Guide to Identifying, Research and Evaluating Heritage Properties in Ontario Communities

- Staff note that on the bottom of page 6 there is reference to screening properties with "preliminary criteria." Staff would appreciate further explanation of where this "preliminary criteria" is established in the legislation or if this is a reference to a streamlined version of the *Ontario Regulation 9/06 - Ontario Criteria for Determining Cultural Heritage Value or Interest*. The Final Guide could benefit in explaining with examples what a preliminary criteria would be.
- At the bottom of the red text box on page 10, the draft Guide states that an initial recommendation for listing a property should make specific reference to the criteria in *Ontario Regulation 9/06*. The guide could benefit from a clear distinction between the level of detail required for a register listing for a property that is not designated and a register listing for a designated property.
- Staff recommend the inclusion of the merits of completing heritage survey work at the same time as Secondary Plan work in Section 2.1 - Making a Comparison.
- Staff note that on page 18 where it discusses the Basics of a Municipal Register of Heritage Properties that there is a difference between what is recommended to be included on register for non-designated properties being placed on the register and what is required by legislation. Clarification in the guide on the distinction between legislated requirements and best practice should be provided. Specifically, the level of detail between the listing of a non-designated and a designated property is not clear. The draft Guide currently states that listings must include a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property, which is the same requirement for a designation.
- Page 18 identifies that some recent structures hold cultural heritage value or interest. The draft Guide could benefit from an example of a recent structure that has been listed on a heritage register.
- Page 21 identifies the *Ontario Building Code Act* timeframes for the review of building permits and staff recommend that this reference be updated to clearly distinguish between types of uses, ie. residential, commercial, industrial and institutional.
- Page 23 refers to 'new and relevant' information being received by Council when a notice of objection is served regarding the addition of a property to the register. A definition of what constitutes 'new and relevant' would be beneficial in the Final Guide. Further, the Final Guide could benefit from an explanation that there

should be no impact on insurance rates and home value should a register listing occur, or a reference to this type of resource.

- Page 28 recognizes the importance of oral evidence in support of register listings for both designated and non-designated properties. The Final Guide could benefit from appropriate methods for documenting these oral histories as evidence so that designations that are appealed to the Ontario Land Tribunal (OLT) will remain defensible. While Section 6.1 – Oral Evidence provides the merits of oral histories, it does not provide the detail needed to ensure these histories can be used as evidence at OLT and be considered defensible evidence.
- Section 5.1 – Conducting the Evaluation and Determination of Cultural Heritage Value or Interest on pages 29 and 30 of the draft Guide would benefit from a clear threshold between the amount of detail needed for a register listing for a non-designated property and when a property meets the threshold for designation.
- Section 5.3 – Assessing Integrity, on pages 30 and 31 is a useful section. In particular, the examples within this section contribute to municipal staff and the public's understanding of the integrity of cultural heritage resources.
- Section 5.5 – Who does the Evaluation, on pages 34 and 35 could benefit from a statement that municipal heritage committees and heritage staff can both complete evaluations, and that it does not have to be one or the other. A number of municipalities have nomination forms where general members of the public nominate properties for consideration on the register. This section of the draft Guide could benefit from further clarification on the role of nomination forms and evaluation of heritage properties.
- Staff have identified a process error on page 35, the last sentence of section 5.5, the Guide states that Council has retained final decision-making authority on whether to proceed with protection. The legislation has been changed to give the Ontario Land Tribunal the final decision-making authority and as a result, this statement of Council still retaining final decision-making authority should be removed.
- Page 38 states that Criterion 2.i of O. Reg 9/06 may not be met if the criterion cannot be substantiated. As previously stated in these comments, further explanation of how oral histories can be considered substantive evidence would be valuable to municipalities in completing assessments. While Section 6.1 – Oral Evidence provides the merits of oral histories, it does not provide the detail needed to ensure these histories can be used as evidence at OLT and be considered defensible evidence.



- Section 5.8 – Written Account of the Research Evaluation on pages 40 and 41 would benefit from distinguishing between the level of detail needed to add a non-designated property to the register compared to a designated property. While staff have made this comment above, it is noted that the draft Guide states that a non-designated register listing needs to provide a statement of cultural heritage value and significance and a list of heritage attributes which generally appears to be the same as a designation. Staff would appreciate further clarification in the Final Guide.
- Page 47 has a reference to an extract the Ontario Archives Land Record index that has not be included. Staff would request the Final Guide include the referenced extract.
- Staff note that Section 6.3.1 – Site Visit on pages 52 and 53 outlines the benefits of site visits. Staff note that consent from a property owner is required for site visits and should be clearly outlined in the Final Guide.
- Page 57 appears to be the start of an example or case study. An introduction in this section would be beneficial to understand how to best apply the information presented in this section.

The following are the City's comments the Designating Heritage Properties Guide:

- Staff note that page 5 lists seven key steps of a designation process. Staff note that it may be helpful to include a step outlining the requirement to register the by-law on title.
- Staff note that there is some duplication between the Guides as it relates to the identification of properties with cultural heritage value or interest. Consideration can be given to reducing the duplication between the Guides. For example, sections 3.1 and 3.2 repeat the information found in the Heritage Property Evaluation Guide.
- Page 8 identifies that there are "many myths and misconceptions about designation that may need to be clarified." Guidance material that is from the Ministry on how to clarify and educate property owners would be of great assistance.
- Page 9 references a "newspaper having general circulation in the municipality." Staff would appreciate clarification if this can be a digital format or if the intent is a print newspaper.
- Staff note that on page 10 the Ministry encourages that a heritage impact assessment or equivalent study be required to evaluate the proposed development and that will demonstrate that significant cultural heritage resources will be conserved. Staff note that to secure any studies as part of a complete

application for an official plan amendment application, zoning by-law amendment application or plan of subdivision application, a formal consultation or pre-consultation should occur which identifies all required studies for an application to be deemed complete. Staff believe the Ministry should identify this step to assist municipalities in ensuring they have all the required materials to assist in the review of cultural heritage resources that are subject to a 'prescribed event.'

- Page 11 explains in detail the impacts of multiple applications on the 90-day timeframe. Specifically, reference to abandoned applications is provided. Clarification from the Ministry should be provided on what constitutes an abandoned application and provide guidance on when a municipality can move to issue a NOID should an application be abandoned. Does an abandoned application constitute as being 'disposed of' under the *Planning Act*?
- Staff recommend additional clarification be given that there is no timeframe associated with other *Planning Act* applications and designations not associated with *Planning Act* applications and the issuance of a NOID within Section 3.3.
- Section 3.3 could benefit from additional numbering to ease navigation of the Final Guide for readers.
- Further clarification should be provided on page 12 where the contents of NOIDs is provided on whether additional detail can be provided in the designation by-law or if the NOID's statement of cultural heritage value or interest and description of heritage attributes must be the exact statement and list in the designation by-law.
- Staff note that the bottom of page 12 provides an overview for municipalities considering objections. Staff note that a Council must consider an objection within 90 days of the end of the 30 day appeal notice period, being the 120 day period to pass a designating by-law. Clarification of this timeline and its legislated basis should be provided in the Final Guide in this section.
- Staff note that the top of page 13 outlines how municipalities can consider objections. The draft Guide states municipalities should establish a public facing procedure for how Councils will consider objections, how to provide suitable notice of objections, and factors Council takes into account when deciding whether to withdraw a notice of intention to designate. Staff note that this requirement does not appear to be based in the legislation and would like clarification as to its basis and if it is a legislated requirement.
- Staff note that clarification or examples of how the Ministry expects municipal Council's to consider objections should be provided (ie. Resolution, full staff report with recommendations, etc.).
- Page 13 provides questions for how a Council should decide whether to withdraw a NOID, including the submission of new and relevant information. The Guide

should identify the legislated exception within this text to extend the 120 day timeline and provide an example for how the Ministry expects Council to extend the 120 day timeline (ie. Resolution).

- Page 13 identifies that issuing a NOID protects a property from demolition or alteration. Since a timeline is not provided in the legislation for the processing of NOIDs that are not associated with *Planning Act* applications and the Guide could benefit from clear communication of this distinction.
- Staff note that the top of page 15 explains situations where new and relevant information can impact the 120 day timeline to pass a designating by-law. Staff would like the Final Guide to include clarification on who can provide new and relevant information.
- Staff suggest that the Final Guide could benefit from additional examples of what constitutes new and relevant information which is found on page 15 of the draft Guide.
- Section 3.6 – Appeals and Coming into Force on page 16 states that the Tribunal can direct a municipality to amend a designation by-law. Clarification should be provided to confirm if the amended by-law can be appealed.
- Staff would like clarification in Section 4 – Preparing the Designation By-law and Related Material on how much additional research and detail can be added to a designation by-law between the issuance of a NOID and the passing of a by-law. Does the NOID's statement of cultural heritage value or interest and description of heritage attributes have to be the exact same statement and list as in the designation by-law?
- Section 4 – Preparing the Designation By-law and Related Material could benefit from a case study or example of excellent and defensible designation by-laws.
- On page 21 where the explanation of how to use a reference to illustrate the land excluded from the designation is provided, the Final Guide could benefit from additional information on how to list specific elements of a property that are not considered heritage attributes. For example, a modern addition to a building with cultural heritage interest could be identified in a list of exclusions that do not constitute part of the designation by-law.
- Staff reiterate the duplication between the Designation Guide and the Heritage Property Evaluation Guide as it relates to the explanation of *Ontario Regulation 9/06*. Consideration can be given to streamlining the Designation Guide, and providing a reference to the Heritage Property Evaluation Guide which provides additional information and is useful to individuals preparing designation by-laws, instead of providing a shorter summary in the Designation Guide.

- Staff note that the examples of designation by-laws provided do not have brief 2 - 3 sentence statements of cultural heritage value or interest as recommended by the draft Guide. Staff suggest different examples be provided or consideration be given to increasing the recommended length of the statements of cultural heritage value or interest.
- Staff note that the Alton Mills example on page 34 outlines key attributes that represent the value of the mill complex as it has evolved and as a landmark. Staff would appreciate understanding the value of distinguishing key attributes this way.
- Staff would appreciate clarification that a new Guide would be developed should the definition of 'alter' be scheduled to be proclaimed in the future, due to the impact this change will have on municipalities (ie. What can be delegated to staff and what requires Council approval). Staff note that the proclamation of the definition of 'alter' would significantly change Section 5.1 of this Guide.
- The sidebar text in the red text box should include a link to the location of the Ministry's advice on Insurance and Heritage Properties on page 37.
- Staff recommend the Ministry provide a separate bullet between 1. Application to Council and 2. Review of Application, on page 39, to emphasize the importance of deeming an application complete or incomplete and the associated timelines as established in *Ontario Regulation 345/21*.
- Staff recommend that on page 40, the information that is required to be forward to the Tribunal be listed out for convenience to the reader.
- Staff have identified that the second paragraph in section 5.2 - Maintenance on page 41 discusses notices of complete application which appears to be located in the incorrect location in the draft Guide.
- The Final Guide could benefit from examples or case studies where a heritage permit is not required and a waiver can be issued instead.
- Throughout Section 6 – Demolition Control, starting on page 44, the Final Guide could benefit from referencing the *Ontario Heritage Act* legislated requirements and implementing regulations in *Ontario Regulation 345/21*.
- On page 46 where the process for demolition or removal of a building, structure or heritage attribute is explained, consideration should be given to adding a step to emphasize the importance of deeming an application complete or incomplete and the associated timelines.
- On page 47, there is reference to the 'aid of concerned citizens' and how they can assist a property owner towards a means to conserving a threatened

property. Staff would appreciate understanding the Ministry's vision for how citizens can participate in the process.

- Staff appreciate the inclusion of the 'Alterations to Cemeteries' information on pages 42 and 43. Staff would also appreciate additional information on Indigenous burial grounds.
- On page 49, an example where the consent to demolition would not impact the property's cultural heritage value or interest or heritage attributes would be useful to include.
- Staff request additional clarification on which regulation is referenced in situations where a demolition leads to an amending by-law. The third sentence in the fourth paragraph simply refers to the 'requirements set out in the regulation'. Does this mean *Ontario Regulation 9/06*? Staff note that this may not be administrative in nature given the age and lack of detail of some designation by-laws that pre-date 2005.
- Staff seek clarification on the process to move a building or structure to a new property. If the structure was designated on its original property and is moved to a new property, how does the land registry office know that there is no longer anything to be registered on title against the original property when the by-law goes through the abbreviated process explained on pages 50 and 51? Does the designation by-law being registered automatically repeal any registration on the original property?
- Clarification should be provided in Section 7.2 – Substantial Amendments to confirm that any by-laws that pre-date *Ontario Regulation 9/06* that are being amended to meet that standard that have not been subject to a heritage permit, would follow the process outlined in this section.
- Staff suggest greater emphasis be placed on the fact that if an amending by-law is appealed to OLT and the Tribunal allows the appeal in full, the amending by-law is repealed and does not come into force, but the original designation by-laws stays as it was before the amendment process. This information is valuable to municipalities which may seek to update designation by-laws that pre-date *Ontario Regulation 9/06* but are concerned that protection of a cultural heritage resource would be lost.
- Staff request that an example with a condominium be included in the Guide that would provide information about notice of intention to designate and by-law registration in the case of large multi-unit condominiums.
- Staff would like detail in the Final Guide explaining whose responsibility it is to provide the requirements for a designation by-law (ie. plans, drawings, photos,

etc.) in situations where a 'Prescribed Event' occurs and a municipality would like to issue a notice of intention to designate.

The following are the City's comments the Heritage Conservation Districts Guide:

- Staff would appreciate understanding how this Guide may change should Sections 41(2.3) and 42(1) of the *Ontario Heritage Act* be proclaimed in the future. Alternatively, staff request that the Ministry provide a revised Guide for comment should Sections 41(2.3) and 42(1) of the *Ontario Heritage Act* be proclaimed in the future.
- Staff recommend that a new section be added discussing the method to amend Heritage Conservation District Plans. Pertinent information should be included such as: does the original by-law become appealable if a new study by-law is passed? How to update old plans?

The following are the City's comments the Places of Worship Guide:

- There are several references to the removal of a heritage attributes being considered a demolition and needing Council approval on pages 34 and 35, which may no longer apply given that the definition of 'alter' is not being proclaimed.
- There is a statement in Section 2.3 that states that Places of Worship will undergo a more rigorous evaluation against the criteria set out in *Ontario Regulation 9/06*. Staff would like to understand if this more rigorous evaluation is established in the legislation or other regulation?
- Section 5 – Managing Disposal of heritage places of worship starting on page 41 could benefit from examples from locations outside of Ontario where feasible financial models have been used.
- Section 5.1 – Deconsecration and Removal of Liturgical Items should note that there may be conflicts with designation by-laws if there are interior attributes that may be removed during this stage.
- Section 5.2 – Sale for Adaptive Reuse should recognize that there are a growing number of churches within urban centres that are being sold as development sites for residential intensification. The Final Guide could benefit from examples where residential intensification and conservation have occurred simultaneously and reference to financial models that support adaptive re-use.
- Staff recommend an additional subsection within Section 5 that outlines good examples of partial retention of places of worship.

- Staff recommend that information regarding salvage efforts of heritage attributes prior to demolition occurring be included in Section 5.5 – Demolition of Heritage Place of Worship.

The following are the City's comments the draft Flow Charts:

- Staff note that the flow charts do not acknowledge the right of a person, other than the property owner to object to notices associated with register listings and notices of intention to designate.
- Amendment of Designating By-law, Exception Flow Chart
  - Staff note the flow chart should be updated to state that amended by-laws should meet current standards established by *Ontario Regulation 9/06 – Criteria for Determining Cultural Heritage Value*.
- Repeal of Designating By-law Flow Chart
  - Staff note that there can be a partial repeal but this is not identified in the flow chart.
- Repeal of Designating By-law, Owner's Initiative Flow Chart
  - First box that states that the property owner applies to repeal a designating by-law. The chart should also indicate how the workflow will change if they appeal for a partial repeal. For example, the flowchart would be changed if it is a partial repeal, because the by-law would not be removed from the register.
- Demolition or Removal Flow Chart
  - Bubble that states "municipality issues notice of complete" should state "municipality issues notice of complete application."
  - Bubble that states that "OLT specifies terms and conditions" should be connected to the bubble that states that "demolition or removal can proceed."
  - Bubble that states "property owner appeal of terms and conditions within 30 days" does not have a leader/workflow path. It should be connected to the bubble that states "demolition or removal can proceed."
  - Staff note that the bubble that states "demolition or removal can proceed" should also include reference to the associated terms and conditions for those permits that do not go on to the OLT.
  - Staff note that appeals are not limited to just the property owner which is not identified in the flowchart.



Environmental Registry of Ontario

## Proposed Regulation under the Ontario Heritage Act (Bill 108)

ERO (Environmental Registry of Ontario) number	019-1348
Notice type	Regulation
Act	Ontario Heritage Act, R.S.O. 1990
Posted by	Ministry of Heritage, Sport, Tourism and Culture Industries
Notice stage	Decision
Decision posted	June 9, 2021
Comment period	September 21, 2020 - November 5, 2020 (45 days) Closed
Last updated	June 9, 2021

This consultation was open from:

**September 21, 2020  
to November 5, 2020**

### Decision summary

Ontario Regulation 385/21 (General) implements amendments that were made to the Ontario Heritage Act through the More Homes, More Choice Act, 2019. The amendments and regulation come into force on July 1, 2021.

### Decision details

In June 2019, the More Homes, More Choice Act, 2019 (Bill 108) received Royal Assent. Schedule 11 of this Act included amendments to the Ontario Heritage Act (OHA) that were intended to support the Housing Supply Action Plan. The Bill 108 Amendments to the OHA, which come into force on July 1, 2021, provides improved provincial direction on how to use the Act, clearer rules for decision making, and supports consistency in appeals processes.

O. Reg. 385/21 was filed on May 31, 2021, and comes into force on July 1, 2021. The regulation sets out new rules to implement the changes made to the OHA through Bill 108, including:



- Mandatory standards for designation by-laws;
- Events that trigger the new 90-day timeline for issuing a notice of intention to designate, with limited exceptions;
- Exceptions to the new 120-day timeline for passing a designation bylaw;
- Minimum requirements for complete applications for demolition or alteration of a protected property;
- Steps for amending or repealing a designation bylaw following consent for demolition or removal;
- Information and materials to be provided to the Tribunal;
- A modified process for amending bylaws, and restrictions for repeal requests;
- Transition rules to provide clarity on matters that are in progress at the time the amendments come into force;

The government recognizes that every municipality is unique in terms of its capacity and approach to heritage conservation. For that reason, the OHA continues to enable communities to apply a range of tools to conserve heritage properties, while allowing for compatible development.

**Comments  
received**

**Through the  
registry  
27**

**By email  
6**

**By mail  
1**

[View comments submitted through the registry \(/notice/019-1348/comments\)](/notice/019-1348/comments)

**Effects of  
consultation**

Comments received through the Environmental Registry, by email, and in person during the comment period were considered by the government in making the decision to approve the regulation and proclaim the OHA amendments. Several of the comments resulted in changes to the regulation as outlined below.

Commonly expressed themes and the Ministry's responses are as follows:

**Mandatory standards for designation bylaws:**

- There was general support for the mandatory standards for designation bylaws. Submissions provided specific suggestions to improve clarity and ensure bylaws are compatible with the land registry office system.
- **Ministry response:** Changes have been made to the final regulation to remove the requirement to provide aerial photographs or other images, as the land registry office system does not support images.

Municipalities have instead been given the option to provide either a scale drawing or written description of the property's layout.

Additionally, the requirement to make descriptions of heritage attributes brief was removed, and instead further guidance will be provided in the Ontario Heritage Tool Kit.

### 90-day timeline:

- Some submissions commented that the 90-day timeline is too short and noted that there may be resourcing and staffing changes required to respond to designation requests within the new timeline. There were also requests for the ministry to clarify when the restriction on designation would end, and how the restriction works when there are multiple applications submitted for a property.
- **Ministry response:** The timeline itself cannot change because it is established in the legislation. The regulation was amended to clarify that the restriction is limited to the duration of the application and is lifted once the application is disposed of under the Planning Act. The regulation also provides clarity on what happens when there are multiple applications or when a subsequent application triggers the 90-day restriction on designation. In the case of multiple applications that trigger the event at the same time, the restriction ends once all applications are disposed of under the Planning Act. When a subsequent application is received, the new application would trigger a new 90-day timeline for issuing a notice of intention to designate, and the restriction would end once the subsequent application was disposed of under the Planning Act.
- Submissions requested additional triggers be added in addition to Official Plan Amendment, Zoning Bylaw Amendment and Plan of Subdivision applications. Some submissions expressed concerns that exceptions were too flexible and allow municipalities too much latitude.
- **Ministry response:** The ministry explored the option of adding additional triggers for the 90-day timeline, however, the original three

triggers were maintained because they come early in the planning process and have clearly set out timelines within the Planning Act. The regulation was amended to limit exceptions to the 90-day timeline to cases of a declared emergency or when there is mutual agreement between the property owner and the municipality.

### **120-day timeframe:**

- Submissions were generally supportive of the 120-timeline and limited exceptions that have been prescribed. Some submissions expressed concerns that exceptions were too flexible and also requested that municipalities should not be able to issue another notice of intention to designate if the 120 days lapses.
- **Ministry response:** The ministry has not suggested changes to the 120-day timeline exceptions, as the goal of the exceptions was to provide municipalities with flexibility and not to restrict them from moving forward with designation. The regulation making authority could not be used to restrict municipalities from issuing another notice of intention to designate if the 120 days lapses, as this the ability to immediately issue a new notice is set out in the legislation.

### **Complete applications:**

- The complete applications requirements were positively received. Some concerns were raised that additional complete application requirements should only be outlined through official plans and that municipalities should not have the ability to request additional information and materials beyond this.
- **Ministry response:** The ministry has not recommended changes to the regulation. The regulatory authority enabling municipalities to set out complete application requirements states that these requirements can be established through municipal bylaw or another prescribed instrument. Furthermore, the legislation also provides that municipalities can require an applicant to provide any other information that council considers it may need in order to make a decision on an alteration or demolition application.

### **Information and Materials to be forwarded to the Tribunal:**

- Submissions raised concerns about the shifting of designation and alteration appeals to a binding tribunal and called for the Conservation

Review Board to continue to hear matters related to designation and alteration because of their heritage expertise.

- **Ministry response:** The shift in designation and alteration appeals to a binding tribunal was a legislative amendment made through Bill 108. Under the Accelerating Access to Justice Act, 2021 (Bill 245) the Conservation Review Board was consolidated with the Local Planning Appeal Tribunal and other land tribunals into a new tribunal, the Ontario Land Tribunal. To ensure that the expertise of the Conservation Review Board was maintained, its members were continued as members of the Ontario Land Tribunal. Also, the Ontario Land Tribunal is subject to the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009, including the provisions regarding the appointment of members based on minimum selection criteria, including experience, knowledge or training in the subject matter and legal issues dealt with by the tribunal.

#### **Consent for demolition:**

- There was general support for streamlining the process of amending or repealing the designation bylaw following a consent for demolition. Submissions requested that certain decisions be delegated to staff, and that property owners be notified when no changes are made to the designation bylaw.
- Ministry response: While the ministry was able to include the request related to notification of property owners, providing for delegation to staff about decisions related to amending or repealing the bylaw was beyond the scope of the regulation.

#### **Transition:**

- Many submissions requested that proclamation of the amendments and regulations be delayed to July 2021 in order to allow municipalities to prepare for implementation of the new requirements.
- **Ministry response:** The ministry delayed proclamation of the amendments for six months, to allow municipalities and heritage stakeholders time to prepare for the new requirements.
- Submissions made suggestions on what processes should proceed under the old regime versus moving into the new regime. For example, having the 90-day restriction on designation only apply to applications received by a municipality on or after proclamation of the amendments

and allowing for an extension of the 365 days to address any outstanding notices of intention to designate through mutual agreement.

- **Ministry response:** The ministry did not make changes to the transition rules for the 90-day timeline. For the purposes of consistency and accuracy, the rule was drafted to align with the event that triggers the start of the 90-day timeline, which is not the submission of the application itself, but the date the notices of complete application have all been given. The ministry has included the allowance for an extension of the 365 days through mutual agreement in the regulation.

### Principles:

- Many submissions suggested changes to the principles, including changes to the definition of adaptive reuse. Some submissions raised concerns that the principles do not go far enough to align with the Housing Supply Action Plan and the broader planning priorities of the Provincial Policy Statement.
- **Ministry response:** Principles have not been prescribed in the final regulation. The ministry will be monitoring implementation of the amendments and the regulation to determine if principles should be prescribed at a later time.

### Alteration and Demolition:

- Submissions raised concerns about the new definition of "alter" which would result in the loss of flexibility in decision-making and increased burdens, as consent to demolition and removal requests cannot be delegated to municipal staff. Additionally, concerns were raised about amendments made to subsection 42(1) to refer to demolition of a heritage attribute identified in a heritage conservation district plan.
- **Ministry response:** The modified definition of "alter" in the new subsection 1(2) and the changes to subsection 42(1) will not be proclaimed at this time.

### Application of the OHA:

- Submissions requested that certain types of properties be excluded from the OHA.
- **Ministry response:** These types of exclusions would be beyond the scope of the regulatory authority and would require a new legislative amendment.

**Ontario Heritage Tool Kit:**

- Many submissions requested that the Ontario Heritage Tool Kit be updated to facilitate implementation of the regulation and amendments.
- **Ministry response:** The updated draft Tool Kit was posted to the Environmental Registry for a 30 day consultation before the on June 1, 2021.

## Supporting materials

### Related links

[Ontario Heritage Act Regulation 385/21](https://www.ontario.ca/laws/regulation/r21385)  
(<https://www.ontario.ca/laws/regulation/r21385>)

[Ontario Heritage Act](https://www.ontario.ca/laws/statute/90o18) (<https://www.ontario.ca/laws/statute/90o18>)

[More Homes, More Choice Act, 2019](https://www.ontario.ca/laws/statute/s19009)  
(<https://www.ontario.ca/laws/statute/s19009>)

### Related ERO (Environmental Registry of Ontario) notices

[Updates to the Ontario Heritage Toolkit \(/notice/019-2770\)](/notice/019-2770)

[Bill 108 - \(Schedule 11\) – the proposed More Homes, More Choice Act: Amendments to the Ontario Heritage Act \(/notice/019-0021\)](/notice/019-0021)

## View materials in person


Important notice: Due to the ongoing COVID-19 pandemic, viewing supporting materials in person is not available at this time.

Please reach out to the Contact listed in this notice to see if alternate arrangements can be made.

Ministry of Tourism, Culture and Sport  
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## Original proposal

ERO (Environmental  
Registry of Ontario)  
number

019-1348

Notice type

Regulation

Act

Ontario Heritage Act, R.S.O. 1990

Posted by

Ministry of Heritage, Sport, Tourism and Culture Industries

Proposal posted

September 21, 2020

Comment period

September 21, 2020 - November 5, 2020 (45 days)

## Proposal details

As part of Ontario's Housing Supply Action Plan, the *More Homes, More Choice Act, 2019* made amendments to several pieces of legislation, including the *Ontario Heritage Act* (OHA). The *OHA (Ontario Heritage Act)* amendments provide clearer direction and timelines for local decision-makers, heritage professionals and development proponents about protecting heritage properties, and create a consistent appeals process, while maintaining local

control over heritage decisions. Some of the amendments require additional details to be prescribed by the Lieutenant Governor in Council through regulation.

The OHA (Ontario Heritage Act) amendments and the associated regulation will help to align municipal decisions in the heritage conservation process with Planning Act processes, improve municipal processes for identifying, designating and managing proposed changes to heritage properties, and improve clarity for property owners and development proponents.

To fulfill the intent of the Housing Supply Action Plan and bring the OHA (Ontario Heritage Act) amendments into force, the following matters are proposed to be prescribed in regulation:

1. Principles that a municipal council shall consider when making decisions under specific parts of the OHA (Ontario Heritage Act).
2. Mandatory content for designation by-laws.
3. Events which would trigger the new 90-day timeline for issuing a notice of intention to designate and exceptions to when the timeline would apply.
4. Exceptions to the new 120-day timeline to pass a designation by-law after a notice of intention to designate 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 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.
8. Housekeeping amendments related to amending a designation by-law and an owner's reapplication for the repeal of a designation by-law.
9. Transition provisions.

The proposed date for all amendments to the *Ontario Heritage Act* and the proposed regulations to come into force is January 1, 2021.

The ministry will also be updating the Ontario Heritage Tool Kit to reflect the changes to the OHA (Ontario Heritage Act). The Ministry will post drafts of the updated guidance documents for public review and comment later in 2020.



A link to the draft of the proposed regulation prepared for consultation purposes is included in this posting. A summary of the regulatory proposal is set out below.

## Regulatory Proposals

### 1. Principles to guide municipal decision making

The amendments to the *Ontario Heritage Act* 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 *Ontario Heritage Act* and are intended to help decision-makers better understand what to focus on when making decisions under the Act. The proposed principles are consistent with Ontario's policy framework for cultural heritage conservation.

### 2. Mandatory content for designation by-laws

The *Ontario Heritage Act* 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 through designation by-laws including:

- Identifying the property for the purposes of locating it and providing an understanding of its layout and components;
- Establishing minimum requirements for the statement of cultural heritage value or interest; and
- Setting standards for describing heritage attributes.

### 3. 90-day timeline to issue a Notice of Intention to Designate

Amendments to the *Ontario Heritage Act* establish a new 90-day timeline for issuing a notice of intention to designate (NOID) when the property is subject to prescribed events. It also allows for exceptions to this restriction to be prescribed.

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. The ministry has proposed three triggers which would place this restriction on council's ability to issue a NOID (notice of intention to designate). These are applications submitted to the municipality for either an official plan amendment, a zoning by-law amendment or a plan of subdivision.

The proposed regulation also provides exceptions to when the 90-day timeline applies. The ministry is proposing the following categories of exceptions.

**Mutual agreement** – Where an extension of, or exemption from, the 90-day restriction on issuing a ~~NOID (notice of intention to designate)~~ is mutually agreed to by the municipality and the property owner who made the application under the *Planning Act*.

**Administrative restrictions** – Where municipal council or heritage committee are limited in their ability to reasonably fulfill the statutory requirements for issuing a ~~NOID (notice of intention to designate)~~ within the original 90-day timeframe. This would apply in cases of a declared emergency or where a municipal heritage committee would be unable to provide its recommendations to council. The timeframe would be extended by 90 days.

**New and relevant information** – Where new and relevant information could have an impact on the potential cultural heritage value or interest of the property is revealed and needs further investigation. Council would be able to extend the timeframe through a council resolution. In the case of new and relevant information council would have 180 days from the date of the council resolution to ensure there is sufficient time for further information gathering and analysis to inform council's decision.

**Expiration of restriction** – The 90-day restriction on council's ability to issue a ~~NOID (notice of intention to designate)~~ 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 *Planning Act*.

The proposed regulation also provides notification requirements related to the exceptions to the 90-day timeframe restriction.

#### 4. 120-day timeline to pass a designation by-law

Amendments to the *Ontario Heritage Act* establish a new requirement for designation by-laws to be passed within 120 days of issuing a Notice of Intention to Designate (NOID). It also allows for exceptions to be prescribed. The ministry is proposing the following categories for exceptions.

**Mutual agreement** - Where an extension of, or exemption from, the requirement to pass a by-law within 120 days of issuing a ~~NOID (notice of intention to designate)~~ is mutually agreed to by the municipality and the property owner.

Administrative restrictions – Where municipal council is limited in its ability to reasonably fulfill the statutory requirements for passing a designation bylaw within the original 120-day timeframe. This would apply in cases of a declared emergency.

New and relevant information – Where new and relevant information that could have an impact on the potential cultural heritage value or interest of the property is revealed and needs further investigation. Council would be able to extend the timeframe through a council resolution to ensure there is enough time for further information gathering and analysis to inform its decision.

Council would have an additional 180 days from the date of the council resolution to pass the bylaw.

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.

5. 60-day timeline to confirm complete applications, alteration or demolition and contents of complete applications

Amendments to the *Ontario Heritage Act* establish a new timeline of 60 days for the municipality to respond to a property owner about the completeness of their application for alteration of, or demolition or removal affecting, a designated heritage property. It also provides a regulatory authority for the Province to set out minimum requirements for complete applications.

The purpose of these provincial minimum standards is to ensure transparency so that property owners are aware of what information is required when making an application. The details of what is proposed in regulation reflect current municipal best practices. The proposed regulation also enables municipalities to build on the provincial minimum requirements for complete applications as a way of providing additional flexibility to address specific municipal contexts and practices. Where municipalities choose to add additional requirements, the proposed regulation requires them to use one of the following official instruments: municipal by-law, council resolution or official plan policy.

The proposed regulation establishes that the 60-day timeline for determining if the application is complete and has commenced starts when an application is served on the municipality. It further proposes that applications may now be

served through a municipality's electronic system, in addition to email, mail or in person.

#### 6. Prescribed steps following council's consent to a demolition or removal under s. 34.3

Amendments to the *Ontario Heritage Act* provide that municipal council consent is required for the demolition or removal of any heritage attributes, in addition to the demolition or removal of a building or structure. This is because removal or demolition of a heritage attribute that is not a building or structure, such as a landscape element that has cultural heritage value, could also impact the cultural heritage value or interest of a property.

Prior to the amendments, where council approved a demolition or removal under s. 34, the Act required council to repeal the designation by-law. However, in cases where only certain heritage attributes have been removed or demolished, or where the demolition or removal was of a structure or building that did not have cultural heritage value or interest, the property might still retain cultural heritage value or interest. In these cases, repeal of the by-law would not be appropriate.

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 and the corresponding description of heritage attributes. Based on the determination council makes, it is required to take the appropriate administrative action, which ranges from issuing a notice that no changes to the by-law are required, to amending the by-law as appropriate, to repealing the by-law. Council's determination and the required administrative actions that follow are not appealable to LPAT (Local Planning Appeal Tribunal).

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. The proposed regulation provides a series of administrative steps to support the designation by-law. 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 (Local Planning Appeal Tribunal).

#### 7. Information to be provided to LPAT (Local Planning Appeal Tribunal) upon an appeal

With the exception of decisions made under section 34.3 as described above, all final municipal decisions related to designation, amendment and repeal, as well as alteration of a heritage property under the Act will now be appealable to LPAT (Local Planning Appeal Tribunal), in addition to decisions related to demolition and Heritage Conservation Districts, which were already appealable to LPAT (Local Planning Appeal Tribunal). The decisions of LPAT (Local Planning Appeal Tribunal) are binding. Preliminary objections to designation matters will now be made to the municipality, before the final decision is made. Prior to the amendments, appeals of designation-related notices or appeals of alteration decisions were made to the Conservation Review Board, whose decisions were not binding.

A regulatory authority was added to ensure that appropriate information and materials related to designations, alteration and demolition decisions are forwarded to the LPAT (Local Planning Appeal Tribunal) to inform appeals. The proposed regulation outlines which materials and information must be forwarded for every LPAT (Local Planning Appeal Tribunal) appeal process in the Act by the clerk within 15 calendar days of the municipality's decision.

## 8. Housekeeping amendments

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.

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.

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.

## 9. Transition

Section 71 of the *Ontario Heritage Act* establishes a regulation-making authority for transitional matters to facilitate the implementation of the amendments, including to deal with any problems or issues arising as a result of amendments. The proposed transition rules provide clarity on matters that are already in progress at the time the amendments come into force.

### General Transition Rule

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. The proposed regulation sets out the specific triggers for determining if a process had commenced.

### Exceptions

#### Outstanding notices of intention to designate

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.

#### 90-Day restriction on issuing a ~~NOID (notice of intention to designate)~~

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.

#### Prescribed steps following council's consent to demolition or removal (~~s.~~ (section) 34.3)

The ministry is proposing that the prescribed steps 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.~~ (section) 34.3.

### Regulatory Impact Assessment

The objective of the proposed regulation is to improve provincial direction on how to use the Ontario Heritage Act, provide clearer rules and tools for decision making, and support consistency in the appeals process. Direct compliance costs and administrative burdens associated with the proposed regulations are unknown at this time. New rules and tools set out in the proposed regulations are expected to result in faster development approvals.

There are anticipated social and environmental benefits as the proposed regulation seeks to achieve greater consistency to protecting and managing heritage property across the province.

## Supporting materials

### Related files

[General Regulation under the Ontario Heritage Act \(English only draft for consultation\) \(https://prod-environmental-registry.s3.amazonaws.com/2020-09/General%20Regulation%20under%20the%20OntarioHeritage%20Act\\_Consultation.pdf\)](https://prod-environmental-registry.s3.amazonaws.com/2020-09/General%20Regulation%20under%20the%20OntarioHeritage%20Act_Consultation.pdf)  
pdf.(Portable.Document.Format.file) 297.34 KB

### Related links

[Ontario Heritage Act \(https://www.ontario.ca/laws/statute/90o18#BK82\)](https://www.ontario.ca/laws/statute/90o18#BK82)

[Bill 108, More Homes, More Choice Act, 2019 \(https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-108\)](https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-108)

## View materials in person

Important notice: Due to the ongoing COVID-19 pandemic, viewing supporting materials in person is not available at this time.

Please reach out to the Contact listed in this notice to see if alternate arrangements can be made.

Ministry of Heritage, Sport, Tourism and Culture Industries - Culture Policy Unit

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## Comment

Commenting is now closed.

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This consultation was open from September 21, 2020  
to November 5, 2020

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## Connect with us

### Contact

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