



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	By email	By mail
	27	6	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>)

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

More Homes, More Choice Act, 2019

(<https://www.ontario.ca/laws/statute/s19009>)

Related ERO (Environmental Registry of Ontario) notices

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

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


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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.

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Original proposal

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Proposal posted	September 21, 2020
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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. (section) 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. (section) 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)

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Comment


Commenting is now closed.

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Connect with us

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