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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 been 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. plants, 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.