

Proposed Regulation Update: *Ontario Heritage Act*

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By Denise Baker

On September 21, 2020, the Province published notice of a proposed regulation under the *Ontario Heritage Act* (“OHA”), to implement amendments passed as part of *Bill 108, the More Homes, More Choice Act, 2019*. The purpose of the proposed regulation is to provide improved provincial direction on how to use the Act, clearer rules and tools for decision making and support consistency in the appeals process.

The proposed regulation can be found [here](#).

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

Proposal Details:

To bring the OHA amendments into force, the following matters are proposed to be prescribed in regulation:

Principles to Guide Municipal Decision Making

The amendments to the OHA give authority to prescribe principles that a municipal council shall consider when making decisions. The proposed principles that a council of a municipality shall consider when the council exercises a decision-making authority under the specific provision of the OHA are:

1. Property that is determined to be of cultural heritage value or interest should be protected and conserved for all generations.
2. Decisions affecting the cultural heritage value or interest of a property or heritage conservation district should,
 1. minimize adverse impacts to the cultural heritage value or interest of the property or district,
 2. be based on research, appropriate studies and documentary evidence, and
- iii. demonstrate openness and transparency by considering the views of all interested persons and communities.

Conservation of properties of cultural heritage value or interest should be achieved through identification, protection and wise management, including adaptive reuse where appropriate.

The OHA defines “adaptive reuse” to mean the alteration of a property of cultural heritage value or interest to fit new uses or circumstances while retaining the heritage attributes of the property

Mandatory Content for Designation By-laws

The OHA amendments provide a regulatory authority to prescribe mandatory content for designation by-laws. The goal is to achieve greater consistency across municipalities and to provide improved clarity for property owners. The by-law:

Must identify the property by,

1. the municipal address of the property, if it exists,
 2. 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.
1. Must contain a site plan, scale drawing, aerial photograph or other image that identifies each area of the property that has cultural heritage value or interest.
 2. Must set out the statement explaining the cultural heritage value or interest of the property which 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 OHA are met and must explain how each criterion is met.
 3. Must set out the description of the heritage attributes of the property which must be brief and must explain how each heritage attribute contributes to the cultural heritage value or interest of the property.
 4. May list any physical features of the property that are not heritage attributes.

90-day Timeline to Issue a Notice of Intention to Designate

Amendments to the OHA establish a 90-day timeline for issuing a notice of intention to designate (“**NOID**”) when the property is subject to prescribed events. The ministry has proposed three triggers which would place this restriction on council’s ability to issue a NOID. 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 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 in cases of a declared emergency or where a municipal heritage committee would be unable to provide its recommendations to council, in which case 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 for 180 days.

Expiration of restriction – The 90-day restriction on council’s ability to issue a NOID would not remain on the property indefinitely and would no longer apply when the application that originally triggered the 90-day timeframe is finally disposed of under the *Planning Act*.

120-day Timeline to Pass a Designation By-law

Amendments to the OHA establish a requirement for designation by-laws to be passed within 120 days of issuing a NOID, subject to prescribed exceptions. The ministry is proposing the following categories for exceptions.

Mutual agreement – Where an extension or exemption from 120 day requirement 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 such as 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 for 180 days.

60-day Timeline to Confirm Complete Applications and Content

Amendments to the OHA establish a timeline of 60 days for the municipality to respond to a property owner about the completeness of their application for alteration, demolition or removal affecting a designated heritage property. 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;
3. A description of the property, including 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.

The above information or material must also include any additional information or material that is required by virtue of a 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.

Prescribed Steps Under s. 34.3

Amendments to the OHA provide that 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. 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.

LPAT Appeals

With the exception of decisions made under section 34.3 of the OHA, all final municipal decisions will now be appealable to the Tribunal. The Proposed Regulation identifies the materials to be provided to the LPAT by the Clerk of the municipality when an appeal is filed.

Housekeeping Amendments

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.

Transition

The proposed transition rules provide clarity on matters that are already in progress at the time the amendments come into force. In general, the proposed regulation will apply to matters or proceedings commenced as of January 1, 2021. The provisions generally provide that municipally-initiated matters, such as notices of intention to designate a property, commence as of the date of published notice, whereas as applicant initiated proceedings commence as of the date the application is received. For heritage conservation district (HCD) matters, the date of by-law passage is the commencement date.

Please contact any member of the [Municipal team at WeirFoulds](#), for more information or for assistance with your municipal/land use planning needs.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

For more information or inquiries:



Denise Baker

Toronto
416.947.5090

Email:
dbaker@weirfoulds.com

Denise Baker is the Co-Managing Partner at WeirFoulds. Her practice focuses on municipal and land use planning issues and related litigation.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035