



June 30, 2021

Lorraine Dooley
Director, Culture Policy Branch
Ministry of Tourism, Culture and Sport
401 Bay Street, Suite 1800
Toronto, ON
M7A 0A7

Re: ERO Listing 019-2770 – Updates to the Ontario Heritage Toolkit

Dear Ms. Dooley,

Thank you for the opportunity to provide comments on the draft amendments to the Ontario Heritage Toolkit to coincide with the amendments to the *Ontario Heritage Act* and Regulation 385/21.

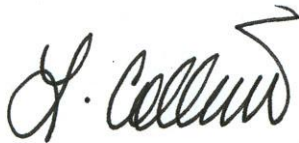
Given the very limited time frame for comments, we have not been able to provide exhaustive comments on the draft documents. Further to the letters sent earlier this month from Stephen Willis, General Manager, Planning, Infrastructure and Economic Development Department to Assistant Deputy Minister Kevin Finnerty and the letter from Mayor Jim Watson and Chair Rawlson King to Minister MacLeod, we request additional time to allow for municipalities engage in meaningful dialogue with the Ministry on these very important guidance documents.

Several of the guides have changed substantially and there are areas where additional clarity and guidance would be beneficial. The Toolkit has significant implications for the implementation of the legislative changes and appeal processes going forward. Particular areas of concern for the City of Ottawa include the interpretation of Ontario Regulation 09/06 and the lack of clarity around new requirements under Section 27 (1.2), both of these issues could result in confusion and challenges in implementing the legislative changes.

Please find comments related to the content of the Toolkit and editorial comments related to the photos and captions provided by the City of Ottawa earlier this year. I am

available at your convenience to discuss and hope that the Ministry will continue to engage the City of Ottawa in these important heritage matters. I can be reached by telephone at 613-580-2424 ext. 21586 or by email at lesley.collins@ottawa.ca

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Collins', with a stylized flourish at the end.

Lesley Collins, MCIP RPP
Program Manager, Heritage Planning Branch
Right of Way, Heritage and Urban Design Services
Planning, Infrastructure and Economic Development Department

CITY OF OTTAWA- COMMENTS ON ONTARIO HERITAGE TOOLKIT

General

- The proclamation date is incorrectly stated throughout the Toolkit and should be corrected.
- There are a number of spelling errors throughout the Toolkit that should be corrected.
- Section numbers from the *Ontario Heritage Act* should be added under headings, as shown in the previous Toolkit. Reference to section numbers is helpful for the reader to cross-reference the Act.
- Clarification on whether a newspaper having general circulation must be print or can be in digital format should be included in the Final Guides.

Designating Heritage Properties

- **Subsection 3.1, “Many of these listed properties are eventually recommended for designation”:**

This sentence implies that listing is a precondition for designation. That is not true, and not the approach of many municipalities, including in Ottawa. In addition, it would be helpful to note here that a property does not have to be listed under Section 27.1 in order to be eligible for designation under Section 29.

- **Subsection 3.2:**

The Toolkit should provide guidance on the cultural heritage value criteria for designation and how it compares to the criteria for listing. Decision makers will have difficulty distinguishing between designation and listing without clear guidance.

- **Subsection 3.3, Timeframes:**

It is suggested that the first paragraph be revised to specify that the time period is 90 days.

- **Subsection 3.3, “As part of these planning applications, a municipality or approval authority should require a heritage impact assessment (or equivalent study) to evaluate proposed development or site alteration to demonstrate that significant cultural heritage resources will be conserved”:**

This direction requires clarification to align with the changes to the definition of “significant” in the Provincial Policy Statement (2020). The definition requires that the “significance” of a property is determined through processes and criteria under the *Ontario Heritage Act*. If a property has not yet been designated, or is not the subject of a Notice of Intention to Designate, how can a municipality consider it “significant” for the purposes of the PPS?

- **Subsection 3.3, End of 90-day limitation:**

What happens in the interim? Clarification is needed on when an application is disposed of. Consider adding “application is withdrawn” to the list. What happens when an application is on hold or is “in limbo”?

- **Subsection 3.3, Multiple Applications, “Alternatively, some requests or applications are abandoned and receive no decision and later a new and different request or application is made”:**

Clarification is needed on when an application is considered abandoned. What happens in the interim? If there is no decision, does the 90-day restriction apply?

- **Subsection 3.3, “This includes any exceptions that may have been made to the original 90-day timeframe by either a mutual agreement or through others that may have applied or were invoked by the municipality”:**

If it has been agreed that the 90-day restriction would be waived, will it have to be waived again following the subsequent event?

- **Subsection 3.3, Considering objections, “If council decides to withdraw the notice of intention to designate, it must issue a notice of withdrawal”:**

If Council decides not to withdraw the Notice of Intention to Designate, what should be done? Please consider providing clarification in the document.

- **Subsection 3.3, Protecting a property of heritage value:**

Suggest moving this section before the subsection on objections.

- **Subsection 3.3, Exceptions to the 120-day timeframe for passing a designating by-law:**

Guidance is requested on what happens with this timeline when there is an

appeal under the *Planning Act*.

- **Subsection 3.6, “The appeal must set out the reason for the objection to the bylaw and all relevant facts”:**

What are acceptable reasons for objection, or are there any specific criteria? This direction should be clarified. Clarification is requested on who receives the appeal – is it the municipality? There are significant details about record of appeal requirements in the Regulation – consider expanding this section to reference those requirements.

- **Subsection 3.6, Coming into force, “If the tribunal orders the bylaw amended, or directs the municipality to amend the bylaw, the bylaw comes into force the day it is amended”:**

What about if the Tribunal repeals the by-law? The by-law may never come into force.

- **Subsection 3.7:**

The word “listed” should be replaced, as this confuses listing and designation.

- **Section 4:**

The list provided here is different from the mandatory requirements for a designation by-law and could cause confusion.

- **Subsection 5.1:**

Guidance is sought on the interpretation of Subsection 33(17) of the Act.

- **Subsection 5.1, SIDEBAR on Insurance and designated properties:**

This sidebar seems out of place in this section.

- **Subsection 5.1, Application to Council:**

With respect to electronic applications, clarification is needed on what to do about sworn affidavits. Is the original required, or is an electronic copy sufficient?

- **Subsection 5.1, Review of application:**

Clarification is sought on the 60-day period. If a notice of incomplete application

is sent, how long does the applicant have to provide the new materials? Does the 60 days start to run again when new materials are received? What cases are contemplated when a municipality would not issue a notice of incomplete or complete application?

- **Section 6.2, Heritage attributes:**

Clarification is sought with respect to the definitions of "demolish" and "remove", as these terms are undefined in the Act and would be easily confused with the term "alter". While the Ministry has provided in the information sessions that the interpretation of what constitutes alteration per Section 33 or demolition under Section 34 is left to the municipality, the examples provided in the Toolkit seem to direct municipalities to use Section 34 applications for many things that are considered alterations today, such as the replacement of the Loyalist cottage cedar roof. The examples go so far as to consider pruning of vegetation to be removal for the purposes of Section 34- this could become unreasonably burdensome for municipalities and open their decisions up to legal challenges.

- **Subsection 6.2, Prescribed steps following Council consent to demolition:**

Please provide clarification regarding when a demolition is considered complete (e.g. a building is physically demolished) and guidance regarding the timelines for Council to reconsider the designating by-law after such demolition has been completed.

- **Subsection 7.4:**

It would be helpful for the Toolkit to clarify what is under appeal – that it is the amendments to the by-law and not the designation itself.

Heritage Conservation Districts

- Please consider providing clarification regarding the status of pre-2005 HCDs without HCD Plans (under Section 41.1 of the Act) throughout this guide, as the requirements for heritage permits are not clear and has been subject to argument and decision at the Tribunal. Please see OMB Case no. PL170360 regarding this issue. Clarification from the Ministry on the status of older HCDs and the requirements for permits is requested.
- **Subsection 1.3:**

The last bullet in this subsection doesn't make sense and needs to be revised.

- **Subsection 2.3.1, “Examine character and appearance of the area including buildings, structures and other property features,”:**

Some guidance about the consideration of intangible features of a property would be helpful.

- **Subsection 2.4:**

It is confusing that Regulation 9/06 is referenced here, since it applies only to Part IV designation. Please provide clarification. Is it being suggested that a 9/06 assessment is required for every individual property in an HCD?

- **Subsection 3.1.2:**

It would be extremely helpful to provide a sample Statement of Cultural Heritage Value and Attributes for an HCD. Clarification is needed regarding the statement of heritage attributes in particular what is meant by a summary list of attributes and a detailed list of attributes “for buildings in the HCD.” Is it being suggested that every property in an HCD requires its own list of attributes?

- **Subsection 3.1.4.2: “Guidelines for conservation of heritage property and identified heritage resources should be compatible with advice and guidelines of the Ontario government (see Ministry of Heritage, Sport, Tourism and Culture Industries website at www.ontario.mhstci) and the Ontario Heritage Trust. The Standards and Guidelines for the Conservation of Historic Places in Canada, developed by Parks Canada (see www.historicplaces.ca) may be a useful reference, but where conflicts exist, the policies and advice prepared and issued by the province prevail**

Please clarify where it is noted in the legislation that the policies and advice prepared and issued by the province prevail over Council-adopted guidelines in HCDs. Many municipalities have adopted the Standards & Guidelines for the Conservation of Historic Places in Canada, and they are used in all HCDs.

- **Subsection 3.1.4.2, On vacant and other potential development sites, the preferred siting, scale, maximum allowable height, setback of new building or additions may need to be specified, as well as the preferred colour, texture and type of materials to be used”:**

The City appreciates this direction and believes that these are important elements of a HCDP but the issue of prescriptive performance standards seems

to be in direct conflict with recent LPAT decisions such as that on the St. Lawrence Market HCD Plan. See Case number MM160020.

- **Subsection 3.1.6.2:**

Additional clarity is requested on who to talk to and the jurisdictional issues that may arise with properties owned by the federal government.

- **Subsection 3.6:**

Please clarify about the process to amend an existing HCD Plan, the OHA does not provide for such a process so it would be helpful for the Ministry to provide guidance on this issue. Would an “amendment” require appeal and adoption of new by-law?

Please consider clarifying that pre-2005 HCD “plans/studies” adopted by Council have no legal standing under the Act. Despite this, it would be helpful for the Ministry to clarify that heritage permits are still required for construction, demolition, etc. in these HCDs. See OMB Case PL170360.

- **Subsection 4.1, “Property owners do not need a permit for carrying out “minor alterations” as described in the district plan or for interior alterations – except for property designated under Part IV of the act, where interior features are included in the bylaw”:**

What about HCDs without HCD Plans? Do minor alterations require a permit in these instances?

- **Subsections 4.3 and 4.4:**

These subsections may be better suited for another guide, or could be duplicated in the guide for Designating Heritage Properties. The inclusion of these subsections in only this guide suggests that they are applicable only to HCDs.

Heritage Property Evaluation

- **Subsection 1.1:**

In the interest of acknowledging that not all significant cultural heritage resources tell “celebratory” stories, and that municipalities are increasingly telling more difficult but important stories through heritage conservation, we would suggest moving away from using the word “celebration” and consider using an alternate

term such as “honour” or “acknowledge.”

- **Subsection 1.1, “Screen the surveyed properties using preliminary criteria”:**

Please provide examples or guidance regarding the preliminary criteria that municipalities should be using.

- **Subsection 2.3, “adding properties that are subject to a heritage conservation easement and/or recognized by provincial or federal jurisdictions”:**

Please clarify if it is intended or suggested that municipalities include properties that have no status under the OHA on their local Registers such as National Historic Sites or FHBRO designated properties. For the City of Ottawa this has significant implications as there are approximately 300 additional properties that are designated by the federal government that could be included on the City’s Register. Is the guidance to include these properties without actually listing under Section 27 or designating under Section 29?

Please also clarify if properties subject to an easement should be included on the Register even if they have no status under Parts IV or V of the OHA?

- **Subsection 3.3, “An approved building permit from the municipality is required prior to demolition of a building”:**

This focusses only on resources that require a building permit. Not all demolitions require a building permit (e.g. agricultural buildings, landscapes, parks, etc.). Please clarify that the 60 days notice is required even if no building permit is required.

- **Subsection 3.4, “a statement explaining why the council of the municipality believes the property to be of cultural heritage value or interest”:**

Please clarify what this statement should include – a sample statement would be helpful.

- **Subsection 3.4, “Although detailed research and evaluation of the property is not required, the municipality should consider the Criteria for Determining Cultural Heritage Value or Interest in Ontario Regulation 9/06 under the Ontario Heritage Act when deciding which properties to include in the municipal register of heritage properties”:**

Please provide clarification on this direction. Is a 9/06 evaluation required? It is unclear what the expectation is in terms of research and evaluation for a listing versus a designation.

- **Subsection 3.4, “The owner of a property who objects to a property being included in the municipal register of heritage properties under subsection (3) shall serve on the clerk of the municipality a notice of objection setting out the reasons for the objection and all relevant facts (OHA, ss. 27(7))”:**

Please provide clarity as to timing of objections and the timing of dealing with objections.

Subsection 3.7, “properties protected under federal legislation and/or recognized by federal jurisdiction, such as properties commemorated by the Historic Sites and Monuments Board of Canada, and UNESCO World Heritage Sites”:

Please see comment on Subsection 2.3 above.

- **Subsection 3.7, “Including a provincially owned heritage property (i.e. a provincial heritage property) in the municipal register of heritage properties indicates to the Province, as the property owner/manager, that the property has cultural heritage value or interest to the local community”:**

It is recommended that a matching statement be added for federally-owned properties that outlines the rationale for including them on the Register.

Section 5, “Meeting one criterion is the minimum threshold, but raising that threshold is not appropriate, e.g., by requiring that a property meet two or more criteria or by adding other “local” criteria”:

Please provide clarification on this; why is it inappropriate for municipalities to have a higher standard for designation? It is frequently the case where a property meets one of the criteria but the municipality determines that the building is not a strong candidate for designation.

- **Subsection 5.1, “Recognize a property for which levels of heritage conservation, other than section 29, are more appropriate”:**

What “other levels” does this refer to? Please clarify. What is the threshold for Section 29?

- **Subsection 5.1, “This can also help municipal council apply the principle of openness and transparency about the evaluation of potential heritage properties”:**

This principle no longer exists in the Regulation and this reference could be removed.

- **Subsection 5.5, “Council has the final decision on whether to proceed with protection under the *Ontario Heritage Act*”:**

This sentence conflicts with the previous sentence. Who is it that makes the final decision? Does the OLT not hold the final decision-making power?

- **Section 5.7 Interpretation of the Criteria in 09/06**

The addition of interpretation guidance on the Criteria on 09/06 is overdue and appreciated, however given that municipalities have been using and interpreting these criteria for over 15 years, there is a significant opportunity to work with municipalities on the interpretation guidance that has been provided. Staff and MHCs have developed expertise in applying the criteria and the City suggests that a workshop be held to discuss the application and interpretation of the criteria prior to the release of the Final Guide.

The following are some comments related to the interpretations provided but a comprehensive discussion between the Ministry and the stakeholders who apply these criteria would be helpful.

- **Subsection 5.7.1, Criterion 1.i, “a material”:**

Examples could be provided here. It is suggested that this be clarified to mean something like stone, concrete block, etc.

- **Subsection 5.7.2, Criterion 2.i, “A property may satisfy this criterion if little else survives to illustrate a particular aspect of the community’s history, e.g., the property is the last of its kind or provides rare early evidence”:**

The criterion does not require that a property be the last of its kind in order to meet this criterion. Please provide some rationale and clarity as to why this interpretation has been provided. There are many properties that have a direct association that are not the last of their kind.

- **Subsection 5.7.2, Criterion 2.i, “Incidental association does not satisfy this criterion”:**

Please clarify what is meant by “incidental association”. Does being designed by a locally significant architect mean a building meets this criterion? Or does there have to be a consideration of the body of work and where the subject building fits within it?

- **Subsection 5.7.3, Criterion 3.i, “To meet this criterion the property needs to be in an area that has a definable character and it is desirable to maintain the character”:**

It is suggested that this paragraph be reviewed with an emphasis on the definition of “character”. The use of “desirable” as it relates to character will result in significant debate and discussion around what constitutes “desirable” in the context of the *Planning Act*. Engagement with municipalities would be helpful to ensure the criteria are being interpreted correctly and consistently.

- **Subsection 5.8:**

More clarity is needed on what is required for non-designated listings. Based on this section, it sounds like research, evaluation and documentation is now on par with designation. Is that correct?

- **Subsection 6.1:**

Resources or guidance on interviews, oral history research etc. would be helpful. These are possibly excellent sources in some cases, but one has to consider logistics, ethics, and the possibility for trauma associated with sharing of oral histories. In addition, consideration needs to be given to how the LPAT will consider oral histories in dealing with appeals on designations.

Flowcharts

- The flow charts are very helpful and should definitely be included in the final Toolkit.
- **Demolition or Removal, Answer “No” to “Property owner appeal of terms and conditions within 30 days?”:**

The arrow incorrectly points to “OLT specifies terms and conditions”.

Comments on Photos and Captions

Designating Heritage Properties

- Figure 9. The Plant Bath (built 1924)

Please adjust caption to read: A noteworthy example of an early 20th century public bath. The building was repurposed and is currently used as a recreational facility.

- Figure 14. Images courtesy of the City of Ottawa

The Toolkit would benefit from stronger photos of this building. Unfortunately, the City of Ottawa does not have professional photos available. Lipsett House was featured in [Ottawa Magazine](#), you could reach out to photographer Marc Fowler for permissions: marcf@metropolisstudio.com.

Heritage Conservation Districts

- Figure 34.
Please adjust caption to read – The Central Post Office (built 1937-39) in the Sparks Street Heritage Conservation District (Image courtesy of the City of Ottawa).
- Figure 36.
Please adjust caption to read – Initially designated in 1982, a management plan for the Sweetland Avenue Heritage Conservation District was adopted in 2016 (Image courtesy of the City of Ottawa).
- Figure 39. The Simard House (1884)
Please adjust caption to read – The Simard House (built 1884) was restored using in kind materials to maintain the property's integrity as a rare example of a Second Empire style home. Five apartments were added to the structure without compromising the integrity of exterior heritage attributes (Image courtesy of the City of Ottawa).

Heritage Property Evaluation

- Figure 11.
Please adjust caption to read – The Minto Bridges (built 1900) spanning the Rideau River (Image courtesy of the City of Ottawa).
- 6. Researching a Property
PLACEHOLDER – Consider using a photo of Macdonald Gardens Park or Richelieu Park in Ottawa.

