



**London**  
CANADA

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June 30, 2021

Samuel Wesley  
Programs and Services Branch  
Heritage, Tourism and Culture Division  
Ministry of Heritage, Sport, Tourism and Culture Industries  
401 Bay Street  
Toronto, Ontario M7A 0A7

Dear Samuel Wesley,

Re: ERO Number 019-2770

The City of London appreciates the opportunity to comment on the proposed revisions to the *Ontario Heritage Toolkit*. In addition, the City has questions on the interpretation and implementation of amendments to the *Ontario Heritage Act* and Regulation 385/21 and would appreciate the MHSTCI's clarification.

Please refer to the attached.

Sincerely,

Gregg Barrett, AICP  
Director, Planning and Development  
Planning and Economic Development

## **City of London comments on Amendments to the *Ontario Heritage Act*, *Ontario Regulation 385/21*, and draft *Ontario Heritage Toolkit***

### **General Comments**

- The 30-day review, with closure on July 2, 2021, was challenging to complete a meaningful review of the five (5) individual guides of the *Ontario Heritage Toolkit* posted to the Environmental Registry of Ontario.
  - The limited review timeframe did not allow for consultation with the London Advisory Committee on Heritage (LACH), the City of London's municipal heritage committee, in advance of the comment deadline.
  - Further engagement on the contents and guidance of the *Ontario Heritage Toolkit* is essential as there appears to be many questions and unclear direction within the guides.
- Further engagement is respectfully requested should the Province consider prescribing principles required for decision making pursuant to the *Ontario Heritage Act*, or other amendments not yet proclaimed.
- The use of language across all guides of the *Ontario Heritage Toolkit* must be consistent.
  - Inconsistent language was identified between the guides, which need to be consistent. For example, "cultural heritage value" or "heritage value," "heritage" or "cultural heritage," "heritage features" or "heritage attributes," etc.
  - Is "important" understood to mean the same as "significant"?
  - Ensure that language maintains the meaning of the *Ontario Heritage Act*; where "appeal" is required, "object" is not substituted as a synonym (page 40, *Designating Heritage Properties*).
  - Ensure that "should" and "shall" language in the *Ontario Heritage Toolkit* reflects the requirements of the legislation and its regulations.
- How will municipalities be engaged when the MHSTCI updates *Heritage Resources in the Land Use Planning Process*?

### **Amendments to *Ontario Heritage Act***

- Is there a legislated or regulatory timeframe by which council must consider an objection to the inclusion of a property on the Register per s.27(7) of the *Ontario Heritage Act*?

### **Ontario Regulation 385/21**

- Clarify if a Record of Decision under s.33, *Ontario Heritage Act* in s.12(1), O. Reg. 385/21 requires the Record of Decision under s.29, *Ontario Heritage Act* (paragraphs 4 to 8 of subsection 8(2) of O. Reg. 385/21)
- Section 29(4)(b), *Ontario Heritage Act* requires a "description of heritage attributes" to issue Notice of Intent to Designate, but O. Reg. 385/21 (s.3) requires a "description of the heritage attributes of the property must

explain how each heritage attribute contributes to the cultural heritage value or interest of the property” for a by-law – does this mean there is an opportunity or encouragement to revise or change the heritage attributes of a property between Notice of Intent to Designate and the passage of the by-law?

- Who can provide “new and relevant information” to a municipality during the 120-days following Notice of Intent to Designate?
- Is there anything that would prevent council from delegating its authority in determining “new and relevant information” per s.2(1)(3) of O. Reg. 385/21 (referring to s.29(8), *Ontario Heritage Act*) to staff?

### **Flow charts**

- Amendment of a Designating By-law: red text, only the property owner may appeal an amendment of a designating by-law (minor) per s.30.1(6), *Ontario Heritage Act*.
- Flowchart on s.33, *Ontario Heritage Act* process – Alteration of Property – the red footnote refers to “in this case, the demolition or removal can proceed” –clarify this was an error as the process for demolition or removal would be pursuant to s.34, *Ontario Heritage Act*.

### **Heritage Property Evaluation: A Guide to Identifying, Research and Evaluating Heritage Properties in Ontario Communities**

- Guidance from the MHSTCI on how to approach evaluations of properties that have sensitive or contentious histories that may be of cultural heritage value or interest would have been a useful inclusion in a revision to this guide.
- Guidance from the MHSTCI on how to recognize and understand more diverse cultural heritage values would have been a useful inclusion in a revision to this guide.
- This guide should be more clearly directed to the evaluation of individual properties by providing guidance on when an individual property designation (pursuant to s.29, *Ontario Heritage Act*) is appropriate and where designation of a Heritage Conservation District (pursuant to s.41, *Ontario Heritage Act*) should be considered.
- Section 1.1 (page 6) refers to screening properties with “preliminary criteria” (or “rationale” as subsequent referred). What are those “preliminary criteria”? Where are “preliminary criteria” are found in regulation?
- Per s.27(3), *Ontario Heritage Act* the “test” to list a property on a municipal register is the “belief” of council. Is the guidance in Section 2 (pages 8-10, red sidebar) suggesting that evaluation of the property using the criteria of O. Reg. 9/06 is required to list a property on a municipal register?
- A case study, demonstrating comparisons, would be a useful inclusion in Section 2.1 (page 10; Making Comparisons).

- Clarify what is implied in the “higher test” or “more rigorous” for designation compared to listing a property on a municipal register (Section 2.3, page 14; Section 5, page 29).
- Suggested revision in Section 2.3 (page 13), “adding a property that is not designated but ~~considered~~ believed by the municipal council to be of cultural heritage value or interest.”
- Provide guidance on what it is considers to be “rationale or selection criteria used to survey the community and compile the municipal register of heritage properties” described in the sidebar on page 18. Is the belief of a property’s potential cultural heritage value or interest, per s.27(3), *Ontario Heritage Act*, not sufficient selection criteria?
- Provide guidance on the intersection of “farm buildings” (such as barns) on properties that may be listed on a municipal register where no Building Permit (to demolish) is required by the Ontario Building Code. Clarity on this issue could fit in Section 3.3 of this guide.
- Clarify the difference between “a statement explaining why the council of the municipality believes the property to be of cultural heritage value or interest” (per Section 27(6)(1), *Ontario Heritage Act*) and “a statement explaining the cultural heritage value or interest of the property” (per Section 29(4)(b), *Ontario Heritage Act*).
- Explain what could constitute “new or relevant information.” Can the MHSTCI articulate what would not be considered “new or relevant information” (Section 3.5, page 23)?
- Clarify what is intended in refence to “recognize a property for which levels of heritage conservation, other than section 29, are more appropriate” (Section 5.1, page 30). What other levels of heritage conservation are available?
- Elaborate on what is referred with regards to “an approach or model to evaluating potential heritage properties” (Section 5.1, page 29). Is the legislated process of Part IV of the *Ontario Heritage Act*, and its regulations, not sufficiently open and transparent?
- Remove Section 5.4, Physical Condition, as condition is not a criterion for designation. Remove reference to condition from the sidebar on page 9. Section 5.3, Integrity, provides consideration for the ability of heritage attributes to represent or support the cultural heritage value of a property.
- Clarify the suggested interpretation of criterion 3.i of O. Reg. 9/06 (page 39), “desirable to maintain the character” of an area. Who determines “desirable”?
- Articulate how a researcher would consider the character of the area if a property were considerably altered or destroyed when evaluating a property (reference to the interpretation of criterion 3.i of O. Reg. 9/06 in Section 5.7.4, page 39). Questions of impact, compatibility, and fit may be better considered by a Heritage Impact Assessment rather than the evaluation of a property’s cultural heritage value or interest.

- Section 5.8.1 (page 41) provides an outline for a Cultural Heritage Evaluation Report (CHER). Will the MHSTCI provide outlines for Heritage Impact Assessments (HIA) and Conservation Plans in revisions to *Cultural Heritage Resources in the Land Use Planning Process*?
- Community engagement is identified as part of a Cultural Heritage Evaluation Report (Subsection 4 of Section 5.8.1, page 42). How, when, and by whom should community engagement be completed in evaluating the potential cultural heritage value or interest of a property?
- Section 6 (Researching a Property) should be clarified as suggestion when researching the potential cultural heritage value or interest of a property as not all resources identified exist or are accessible for every property in Ontario.

### ***Designating Heritage Properties***

- This guide should be clarified that it is for designations pursuant to s.29, *Ontario Heritage Act*, as designations pursuant to s.41, *Ontario Heritage Act* are described in *Heritage Conservation Districts* guide.
- Further information on easements pursuant to s.37, *Ontario Heritage Act*, as a tool to protect heritage properties, should be included in this guide.
- Section 3.2 (page 8) refers to the myths and misconceptions about designation. Will the MHSTCI take a leadership role in dispelling those myths and misconceptions?
- Section 3.3 (page 9) should clarify that the limiting timeframe for a council to issue Notice of Intent to Designate is only limited in those prescribed circumstances, otherwise it may issue Notice of Intent to Designate at any time and owner consent is not required for a property to be designated pursuant to s.29, *Ontario Heritage Act*.
  - A sidebar on the Tremblay v. Lakeshore (Town) Ontario Superior Court decision would be a useful inclusion.
- Is there anything that would prevent council from delegating its authority in agreeing with the owner of a property that the 90-day limitation does not apply, per s.1(2)(1) or s.1(2)(2), O. Reg. 385/21, to staff?
- How and when an application can be considered “abandoned” for the purposes of concluding a “prescribed event” which limits council’s ability to issue a Notice of Intent to Designate for a property (Section 3.3, page 11).
- With the objection process for a notice of intent to designate, what constitutes appropriate “reasons for objection and all relevant facts” in an objection (Section 3.3, page 13)? What can be considered “new or relevant information” and what would not be considered “new or relevant information”? References to “factors or criteria” (page 13) is unclear and may risk introducing non-heritage decision making.
- In Section 4.2 (page 21), the guide appears to suggest that it may be possible to limit the designation of a property pursuant to s.29, *Ontario Heritage Act* to a portion of a property by a reference plan, with the

presumed outcome of identifying areas of a property that are not of cultural heritage value. The designating by-law is registered against the real property on title. Section 34(1)(2) of the *Ontario Heritage Act* requires consent in writing to “demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property, whether or not the demolition or removal would affect the property’s heritage attributes.” Can the MHSTCI please clarify this apparent conflict?

- If there’s the ability to limit or focus the area of a property that has cultural heritage value or interest in Section 3(2) of O. Reg. 385/21 (a site plan, scale drawing, or written description) – why does Section 34(1)(2) require a full demolition process “whether or not the demolition or removal would affect the property’s heritage attributes”?
- Clarify the language of page 45, “if a building or structure falls outside the legal description of the property, it would not be subject to the demolition control provisions of the *Ontario Heritage Act*”? If a building or structure is located outside the legal description of a heritage designated property, would it not therefore be located on a different property?
- Section 5.1 (page 36) and/or Section 5.2 (page 41) should reference property standards by-laws and provide guidance on how property standards by-laws can avail of minimum maintenance standards for heritage designated properties.
  - A sidebar on the *Alma Heritage Estates Corp. v. St. Thomas (City)* would be useful.
- Section 5.1 (page 36) should reference *Eight Guiding Principles in the Conservation of Built Heritage Properties* (InfoSheet)
- Sidebar: Insurance (page 37) further support on insurance issues for heritage designated properties is needed.
  - Anecdotal evidence from heritage property owners indicates increasing instances where insurers are refusing to insure heritage designated properties. What is the MHSTCI doing to ensure that heritage property owner continue to have competitive access to insurance?
- The difference between the “alteration” of a heritage attribute and the “demolition or removal” of a heritage attribute continues to remain unclear and undefined (Section 6, page 44). Noting that an alteration likely to affect a heritage attribute of a property is required to follow the process of Section 33(1) of the *Ontario Heritage Act* and a demolition or removal of a heritage attribute is required to follow the process of Section 34(1) of the *Ontario Heritage Act*.
  - Using the example of a Loyalist cottage with a cedar roof at the end of its service life (as referenced in Section 6.2, page 46) – is the

replacement of the cedar roof an alteration or a demolition/removal?

- Explain how the example Statement of Cultural Heritage Value or Interest and description of heritage attributes in *Designating Heritage Properties* have met the requirements of s.3 in O. Reg. 385/21.
  - The example of Alton Mills is also used in *Designating Heritage Properties* (2006)

### ***Heritage Conservation Districts***

- Guidance on how to update or amend an existing Heritage Conservation District Plan should have been included this guide.
- Revisions to the text in Section 1.3 (Characteristics of Heritage Conservation Districts; pages 12-15) are unclear and need to be clarified.
- Section 2.4 (page 23) appears to suggest that the criteria of O. Reg. 9/06 should be applied for consideration of a Heritage Conservation District. Staff have serious concerns with this direction from the MHSTCI as the criteria of O. Reg. 9/06 are clearly focused for the designation of a property, rather than a group of properties together or collectively, pursuant to s.29 of the *Ontario Heritage Act*. This direction does not recognize the cumulative value of properties together as a Heritage Conservation District.
  - Notably, the following text is absent from the draft *Heritage Conservation Districts* guide (2021) which is present in the existing version (2006), "... it is important to understand the value of the district as a whole is already greater than the sum of its parts" (page 10).
- Reiterations of the criteria of O. Reg. 9/06 in Section 2.4 (page 24) are inconsistent with the interpretation included in *Heritage Property Evaluation* (draft 2021). These differences are problematic and must be corrected.
- As amendments to s.42(4.1) of the *Ontario Heritage Act* have not been proclaimed, related language should not be included in the guide (Section 4.1, page 44).
- Section 4.2 (page 45) should reference to property standards by-laws and provide guidance on how property standards by-laws can avail of minimum maintenance standards for heritage designated properties.
  - A sidebar on the *Alma Heritage Estates Corp. v. St. Thomas (City)* would be useful.
- Section 4.3 (page 46) on Easements and Covenants would make more sense in *Designating Heritage Properties* rather than *Heritage Conservation Districts*.
- Provide information and examples of when a municipality (or the Province) has expropriated a property for the purposes of heritage conservation (referenced on p.47 of *Designating Heritage Properties*).

### ***Your Community, Your Heritage, Your Committee***

- Note: the weblink to the City of London's *London Advisory Committee on Heritage* does not work.

### ***Heritage Places of Worship***

- Explain how the example designating by-law for Emmanuel Presbyterian Church has met the requirements of s.3 in O. Reg. 385/21, specifically s.3(1)(3) and s.3(1)(4).
- Section 3.7 (page 26) on Heritage Conservation Easements would also make sense in *Designating Heritage Properties* guide.