MEMORANDUM

TO: **Heritage Markham Committee**

FROM: **Regan Hutcheson, Manager-Heritage Planning**

DATE: **October 14, 2020**

SUBJECT: **Ontario Heritage Act**
Request for Comment on Proposed Regulation

Project: Request for comment on proposed regulation to the Ontario Heritage Act.

Background:

- 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). According to the Ministry of Heritage, Sport Tourism and Culture Industries, the OHA 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 provincial government expects the OHA 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 amendments into force, the following matters are proposed to be prescribed in regulation:
    - Principles that a municipal council shall consider when making decisions under specific parts of the OHA.
    - Mandatory content for designation by-laws.
    - 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.
    - Exceptions to the new 120-day timeline to pass a designation by-law after a notice of intention to designate has been issued.
    - Minimum requirements for complete applications for alteration or demolition of heritage properties.

    - Steps that must be taken when council has consented to the demolition or removal of a building or structure, or a heritage attribute.
    - 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.
    - Housekeeping amendments related to amending a designation by-law and an owner's reapplication for the repeal of a designation by-law.
    - Transition provisions.
- The proposed date for all amendments to the *Ontario Heritage Act* and the proposed regulation 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. The Ministry will post drafts of the updated guidance documents for public review and comment later in 2020.
- We are currently in the 45 day review period which ends on November 5th.

Status/ Staff Comment

- Many of the regulations will have an impact on how we process applications involving a cultural heritage resource (ie. the principles that have to be considered, what has to be in a designation by-law, notice of intention to designate a property that is tied to a prescribed event (OPA, ZBA, Plan of subdivision) has to be addressed within specific timelines, passing of a designation by-law within a set timeline, complete application requirements for certain heritage applications, etc);
- These changes will require increased staff time and resources.
- See attached chart which provides an overview of the proposed Regulation as well as staff comments and feedback. The actual Regulation can also be viewed on the Environmental Registry of Ontario, but is quite complex and challenging to follow.
- Staff is preparing a report for Markham Council that addresses the City's feedback and any concerns. It is suggested that Heritage Markham Committee support the feedback provided in the chart
- It is also recommended that Heritage Markham advise Council that to proceed with implementation of these changes (proclamation of new legislation and the regulations) on January 1, 2021 which will require changes to municipal protocols and procedures during a pandemic imposes an unfair burden on stakeholders whose focus should be on responding to this unprecedented health challenge. Also, the Ministry of Heritage has yet to release the draft for a new/revised **Ontario Heritage Tool Kit** which is to provide guidance on how to interpret and implement these new changes.

Suggested Recommendation for Heritage Markham

That Heritage Markham Committee advises Markham Council that it recommends that the matters identified by staff in the review of the proposed Regulation to the Ontario Heritage Act be forwarded to the Ministry of Heritage, Sport, Tourism and Culture Industries as feedback.

And That the Ministry be advised that to proceed with implementation of these changes (proclamation of new legislation and the regulation) on January 1, 2021 which will require

changes to municipal protocols and procedures during a pandemic, imposes an unfair burden on municipal stakeholders whose focus should be on responding to this unprecedented health challenge.

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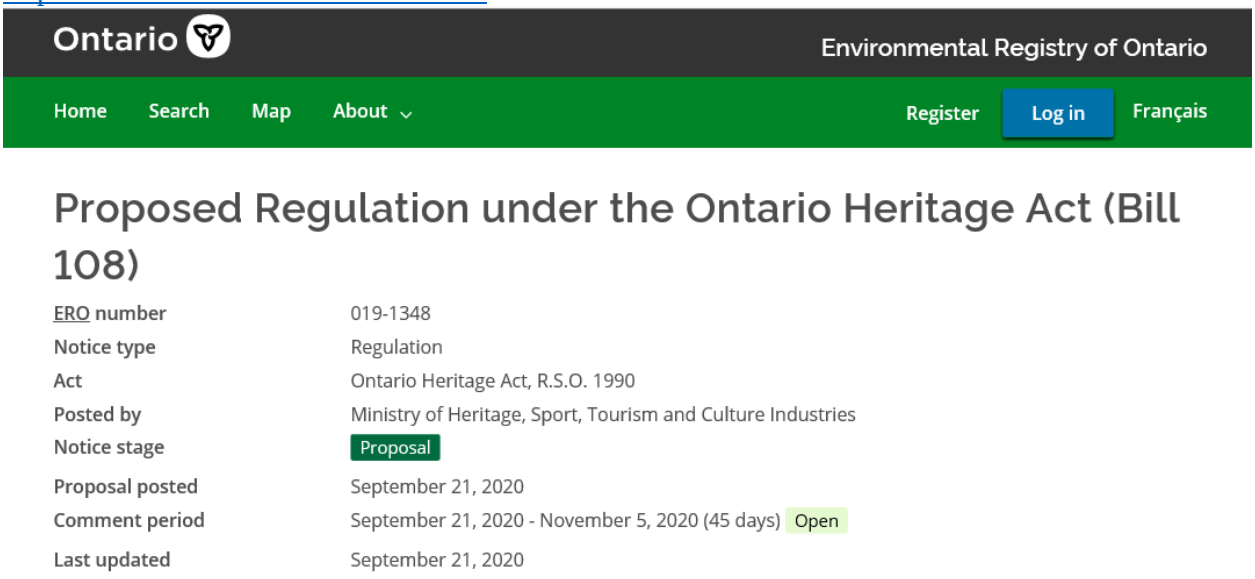
To fulfill the intent of the Housing Supply Action Plan and bring the OHA amendments into force, the following matters are proposed to be prescribed in regulation.

The Regulation can be found at:
https://ero.ontario.ca/notice/019-1348



See attached summary chart prepared by staff

Regulatory Proposals	Staff Comment	Feedback
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. <u>Principles</u> The following are the principles that a council of a municipality shall consider when the council exercises a decision-making authority under a provision set out in subsection (1) or (2): 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, i. minimize adverse impacts to the cultural heritage value	• It is clear that the municipality must consider the principles ("shall"); • Unclear as to how adherence to the Principles is to be reflected in the decision-making • Does #2iii require consideration of those who have expressed a view or does this require the municipality to solicit these views in some manner	Provide clarity as to how adherence to the Principles is to be reflected in the decision-making Provide clarity on 2iii as to whether this only refers to those person or communities who have expressed an interest.

Regulatory Proposals	Staff Comment	Feedback
or interest of the property or district, ii. 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. 3. Conservation of properties of cultural heritage value or interest should be achieved through identification, protection and wise management, including adaptive reuse where appropriate. (4) For the purpose of this section, "adaptive reuse" means 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.		
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	• This is a worthy objective • One of the requirement is that the by-law 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."- in the past, the Registry office had problems with by-laws that included images. • The fourth requirement notes that the	Confirm that the Registry Office will permit the required images in by-laws. Provide greater clarity on how to address requirement #4 while still being brief.

Regulatory Proposals	Staff Comment	Feedback
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. "4. The description of the heritage attributes of the property must be brief and must explain how each heritage attribute contributes to the cultural heritage value or interest of the property. 5. The by-law may list any physical features of the property that are not heritage attributes."	description of the attribute must be brief but then required an explanation as to how this attributes supports the cultural heritage value of the property- seems excessive • It is positive that the by-law can now include features that are not heritage attributes to provide clarity (say a newer garage on the property)	
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	• Markham has always informed applicants of our desire to preserve and protect specific cultural heritage resources at the beginning of the review process and we achieve it as a condition of development approval/agreement condition at the end of process. • Now we would have to issue a NOID within 90 days of application submission. If we don't achieve a	A 90 day timeframe does not appear to be sufficient or appropriate given the need to research and evaluate a property, seek input from the MHC on designation, prepare staff reports and secure Council approval for issuance of a NOID. Early NOID and passing of the by-law will result in registering the by-law on the entire development parcel rather than the final lot or block

Regulatory Proposals	Staff Comment	Feedback
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. 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. <u>Mutual agreement</u> – 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*. <u>Administrative restrictions</u> – Where municipal council or heritage committee are limited in their ability to reasonably fulfill the statutory requirements for issuing a NOID 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. <u>New and relevant information</u> – Where new and relevant information could have an impact on the potential cultural heritage value or interest of the property is revealed and	negotiated exception with the applicant: ○ We would have to have all research undertaken and reviewed by Heritage Markham and approved Council within 90 days; ○ Potentially have to apply the designation by-law to a larger land parcel if the land has not been subdivided into lots or blocks. • Under the <u>Administrative restrictions</u> section to allow extra days, it is unclear as to what constitutes "where a MHC would be unable to provide its recommendation to council". • Under the <u>New and relevant information</u> section, it is unclear as to what constitutes 'new and relevant'. • This early requirement for designation may impact the planning review process- may be designating a property without knowing how the resource will ultimately fit into the development.	which is problematic from a land registration and administrative perspective. Provide more clarity as to what constitutes "where a MHC would be unable to provide its recommendation to council". Provide more clarity as to what constitutes "new and relevant" information which would support a further extension of the timeline.

Regulatory Proposals	Staff Comment	Feedback
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 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 is mutually agreed to by the municipality	• At present in Markham, we pass the designation by-law once we had a clear understanding of the actual lot it would be on. This new process could result in registration on a large parcel of development land (unless an exemption or extension is granted) • Under the New and relevant information section, it is unclear as to what constitutes 'new and relevant'.	Provide more clarity as to what constitutes "new and relevant" information which would support a further extension of the timeline.

Regulatory Proposals	Staff Comment	Feedback
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**	• This only applies to individual designations (Part IV); not district properties. • It should result in more useful information being provided by the	No Comment

Regulatory Proposals	Staff Comment	Feedback
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. 1. The name, address, telephone number and, if applicable, the email address of the applicant. 2. The name of the municipality from which consent is being requested. 3. A description of the property that is the subject of the application, including such information as 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	applicant (since the application will not be considered complete until all the info is submitted) • The province is proposing certain requirements for a complete application which can be supplemented by additional municipal requirements (as long as they are officially approved)	

Regulatory Proposals	Staff Comment	Feedback
accurate. 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. 34.3** Amendments to the *Ontario Heritage Act* provide that	• This is only applicable to individually designated properties (Part IV) • Provides direction on what administrative action Council is to take based on the scope and significance of the demolition or removal. Council has to consult with its MHC.	No Comment

Regulatory Proposals	Staff Comment	Feedback
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. 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	• Relocation of a designated heritage resource from a property to a new property can use a shorter process and is not appealable. • Will require a second report to Council unless these requirements can be built into the initial report on the demolition or removal	

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appealable to LPAT. 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.		
7. **Information to be provided to LPAT 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, in addition to decisions related to demolition and Heritage Conservation Districts, which were already appealable to LPAT. The decisions of LPAT 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,	• This provides a list of required information the City has to forward to LPAT in cases of appeal • 15 calendar days is tight	Consider making the timeframe for submission of materials the same as under the Planning Act (20 days)

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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 to inform appeals. The proposed regulation outlines which materials and information must be forwarded for every LPAT appeal process in the Act by the clerk within 15 calendar days of the municipality's		
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	• None	No Comment

Regulatory Proposals	Staff Comment	Feedback
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.	• A NOID passed before proclamation of these changes would have 365 days to pass the by-law • Appropriate that the 90 day restriction on issuing a NOID does not apply until the identified planning application is declared 'complete'.	No comment

Regulatory Proposals	Staff Comment	Feedback
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 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.		