



## MEMORANDUM

**TO:** Heritage Markham Committee

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

**DATE:** August 11, 2021

**SUBJECT:** Ontario Heritage Act and Regulation 385/21  
Recent Changes to Policy and Procedures  
Ministry of Heritage, Sport, Tourism and Culture Industries

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As of July 1, 2021, the Ontario Government has introduced wide-ranging changes to the legislation used to identify and protect cultural heritage resources in our province. These are the most extensive changes to the Ontario Heritage Act since 2005 and impact a variety of municipal processes and requirements. Also now in force is Regulation 385/21 which provides further direction on how certain aspects of the legislation is to be interpreted and implemented.

To assist in the understanding of the new heritage conservation legislation, the government is updating a number of its guidance documents which unfortunately are not planned for release until sometime this fall. The legislative changes have raised many questions concerning processes and implementation, and it is hoped that these new documents will provide the necessary assistance.

Here are some of the key highlights of the legislation and the regulation:

### 1. The Register

There are new requirements for listing non-designated properties on the municipal register (section 27). Council is now required to notify a property owner within 30 days of adding such property to the register. This new notice requirement must include the following:

- a statement explaining why the property is considered to be of cultural heritage value or interest;
- a description of the property that is sufficient to readily ascertain where it is;
- a statement informing the owner of their right to object; and
- an explanation of the restriction concerning the demolition or removal of a building (60 day review period)

**The notification requirement only applies to properties that are added to the register after July 1, 2021.** If an owner objects to being listed, within 90 days of the objection, council must provide the owner with their decision as to whether or not the property should remain on the register. An owner's opportunity to object is not limited to when the property was first included on the register (after July 1<sup>st</sup>). It can occur at any time, by a current or future owner of the property.

Comment: The government has not provided any criteria to be considered when listing a property, but has suggested that municipalities be guided by Regulation 9/06 (Designation Criteria). There also does not appear to be any limitation on the number of times an objection can be submitted. In future, it will be important for municipalities to track which properties were listed pre and post July 1<sup>st</sup> as it relates to objection rights.

## **2. Designation of Property – Notice of Intention to Designate for “Prescribed Events”**

There are changes to the designation process (Section 29), including timeframes associated with certain development applications. Municipalities will now have 90 days to issue a Notice of Intention to Designate (NOID) when a property is subject to a Planning Act application for an Official Plan Amendment, Zoning By-law Amendment or a Plan of Subdivision.

This timeframe begins when the municipality declares the application ‘competent’ and the limitation to issue a NOID only applies in these prescribed circumstances. The timeline can be extended or eliminated if the municipality and the property owner are in agreement (or if the municipality declares an emergency under the Emergency Management and Civil Protection Act).

Comment: Due to this new timeframe, Markham may wish to discuss the concept of a waiver or extension of the timeframe during the pre-application stage with the applicant and consider introducing a process to secure the owner's agreement to achieve a less adversarial approach to heritage conservation. Markham may also wish to require a heritage impact assessment as a requirement for a complete application in order to receive research information on a heritage property, especially if designation is likely to be pursued and a NOID is anticipated. If the 90 days does apply, it will be very important for Markham to ensure appropriate time management as there will be many tasks to complete in a short time period such as heritage research, evaluation of the property as to its heritage value, preparation of a Statement of Significance/Heritage Attributes, and review by the municipal heritage committee prior to consideration of designation by council.

## **3. Objections to Notice of Intention to Designate (NOID)**

Once council approves a NOID, a new process will now allow for objections to be considered by council (as opposed to the former process involving the Conservation Review Board). Objections must be received by the municipality within 30 days of the date the NOID was published and council is required to consider the objections it receives when making its final decision to either withdraw the NOID or pass the by-law. This objection process applies to new designations, amendments and repeal of a designation by-law.

Comment: The reasons as to why a property should be designated are to be solely based on the designation criteria of Regulation 9/06 whereas there appears to be no such limitation on reasons for objections to the designation.

#### **4. Designation By-law Timelines**

There is also a new time limit concerning the approval of the designation by-law. Once a NOID has been published, a municipality is required to pass a designation by-law within 120 days. If this does not occur, the NOID is considered withdrawn and the municipality will have to issue a notice of withdrawal. This 120 day timeline applies to the following situations:

- all new designations
- amendments to by-laws for administrative reasons
- repealing by-laws

The 120 day timeline can be extended in three ways: if the property owner and council agree to an extension, if the municipality declares an emergency; or if council passes a resolution indicating it has received ‘new and relevant information’ pertaining to the property (which would provide 180 days from the date of the council resolution to pass the by-law).

Comment: It appears the manner in which the owner agrees to an extension is left to the discretion of the municipality. It will also be important for the municipality to ensure adherence to the timeframe as to when the by-law must be placed before council. If the 120-day timeline lapses and the NOID is withdrawn, there is no time limit on when the municipality may issue another NOID.

#### **5. Appeal of a Part IV Designation**

Any appeal of a council-approved designation by-law will now be adjudicated by the Ontario Land Tribunal (OLT) and its decision will be final. The OLT will also address appeals to amend or repeal a designation by-law, and applications to alter an individually designated property. Previously, appeals were heard by the Conservation Review Board and a report and recommendation was provided to the municipality as to the appropriateness of the proposed designation. The final decision on the designation (and amendments, alterations or repeal) remained with Council.

#### **6. Designation By-law Requirements**

There are also new requirements (as per the Regulation) for specific information to be included in a designation by-law. It must now contain:

- enhanced property identifiers
- a statement of cultural heritage value or interest which outlines which of the regulation 9/06 criteria are applicable and how the property complies with the identified criteria
- a description of heritage attributes including how each attributes contributes to the cultural heritage value or interest of the property.

The by-law may also list any physical features of the property that are not heritage attributes. These would not require council approval when an alteration is proposed.

While there is no requirement to update existing by-laws, where a municipality proposes to amend an existing by-law after July 1, the amending by-law must meet the new requirements.

## **7. Alteration and Demolition Applications**

There are changes to the legislation and new regulations regarding alteration and demolition of individually designated properties.

- Changes were made to section 34 of the Act to recognize the demolition or removal of heritage attributes that are not buildings or structures.
- Further, a municipality must now confirm that an application for alteration or demolition is deemed complete within 60 days of receipt (if the municipality fails to provide notice of a complete/in-complete application, the 90 day timeframe begins after the 60 days).
- There are also now minimum provincial submission requirements for these types of applications (section 6 of the regulation), and municipalities can also introduce additional requirements secured through a municipal by-law, council resolution or Official Plan policy. The new minimum requirements are:
  - a) The name, address, telephone number and, if applicable, the email address of the applicant.
  - b) The name of the municipality from which consent is being requested.
  - c) 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.
  - d) Photographs that depict the existing buildings, structures and heritage attributes that are affected by the application and their condition and context.
  - e) A site plan or sketch that illustrates the location of the proposed alteration, demolition or removal.
  - f) Drawings and written specifications of the proposed alteration, demolition or removal.
  - g) The reasons for the proposed alteration, demolition or removal and the potential impacts to the heritage attributes of the property.
  - h) All technical cultural heritage studies that are relevant to the proposed alteration, demolition or removal.
  - i) An affidavit or a sworn declaration by the applicant certifying that the information required under this section and provided by the applicant is accurate.

Comment: One of the provincial requirements is the submission of “all technical cultural heritage studies that are relevant to the proposed alteration, demolition or removal”. It is unclear as to who determines what type of study is considered “relevant”.

- If demolition or removal is approved, once it is complete, council is required to determine what impact the action has had on the property’s cultural heritage value or interest or

attributes. Upon reflection and review of the existing designation by-law, council may choose to do nothing, amend the by-law or repeal it.

- In cases where council determines that the by-law should be amended or repealed, the regulation provides an abbreviated process that requires fewer notifications and no opportunity for objections or appeals.
- The regulation also provides a streamlined process for designation where a building or structure is being relocated to a new property, and there would be no opportunity to appeal the new designation.

## **8. Transition**

Here are some of the key transition policies:

- Processes initiated on or after July 1, 2021 will be subject to the new legislative and regulatory regime, while those initiated prior to this would be subject to processes under the Act as it was prior to amendments and regulation being proclaimed.
- The regulation sets out the specific triggers for determining if a process has commenced.
- The regulation also requires that municipalities address all outstanding NOIDs within 365 days of proclamation. This timeframe can only be extended by mutual agreement. Where a matter was referred to the Conservation Review Board or the Ontario Land Tribunal, whichever the case may be, the municipality will have 365 days from the date of the report to pass the by-law.
- Where a building or structure has been removed or demolished following approval, but the municipality has not yet repealed the by-law as of July 1, 2021, municipalities are required to follow the steps outlined in the regulation.
- All ongoing cases that were before the Conservation Review Board will now be heard and ruled upon by the Ontario Land Tribunal.

## **Additional Sources**

The Ontario Heritage Act (with amendments taking effect on July 1, 2021) and Regulation 385/21 can be found at the following link:

<https://www.ontario.ca/laws/statute/90o18#BK49>

## **Status/ Staff Comment**

- Heritage Section Staff must ensure that the new requirements are now addressed and will be working with legal and clerks staff to modify processes and procedures.
- Staff are also looking forward to the anticipated release this fall of the educational guidance documents from the Ministry of Heritage, Sport, Tourism and Culture Industries.

## **Suggested Recommendation for Heritage Markham**

That Heritage Markham Committee receive the information on changes to the Ontario Heritage Act and the new Regulation (385/21), as information.