Report to Planning and Environment Committee

To: **Chair and Members**
Planning and Environment Committee
From: **Gregg Barrett, Director, Planning and Development**
Subject: **Proclamation of Amendments to the *Ontario Heritage Act*, *Ontario Regulation 385/21*, and draft *Ontario Heritage Toolkit***
Date: **Monday July 26, 2021**

Recommendation

That, on the recommendation of the Director, Planning and Development, with the advice of the Heritage Planner, the report dated July 26, 2021 entitled "Proclamation of Amendments to the *Ontario Heritage Act*, *Ontario Regulation 385/21*, and draft *Ontario Heritage Toolkit*" **BE RECEIVED** for information.

Executive Summary

Amendments to the *Ontario Heritage Act* and *Ontario Regulation 385/21* were proclaimed on July 1, 2021. This staff report provides an update on those amendments and the new regulation. As previously reported, staff anticipate procedural changes will be required to implement the new legislative and regulatory framework including terms of reference, application forms, notices, and Council Policy.

Draft revisions to the *Ontario Heritage Toolkit* were posted to the Environmental Registry of Ontario with a commenting deadline of July 2, 2021. Staff comments are appended as Appendix A.

Linkage to the Corporate Strategic Plan

This recommendation supports the following 2019-2023 Strategic Plan area of focus:

- Strengthening Our Community:
    - Continuing to conserve London's heritage properties and archaeological resources.

Analysis

1.0 Background Information

Bill 108 – *More Homes, More Choices Act* – was released on May 2, 2019. It proposed amendments to thirteen provincial statutes, including the *Ontario Heritage Act*. Comments on Bill 108, including the proposed amendments to the *Ontario Heritage Act* were included in a report to the Planning and Environment Committee on May 27, 2019. Those comments were forwarded to the Ministry of Municipal Affairs and Housing for consideration in response to the Environmental Registry of Ontario. Most of the amendments to the *Ontario Heritage Act* in Bill 108 were proclaimed on July 1, 2021.

A new draft regulation for the *Ontario Heritage Act* was released on September 21, 2020 on the Environmental Registry of Ontario. Staff commented on the draft regulations, which were submitted. *Ontario Regulation 385/21* was proclaimed on July 1, 2021.

The Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) has released draft revised guidance in the *Ontario Heritage Toolkit* for review on June 1, 2021. The deadline for comments was July 2, 2021. Staff submitted comments on the guidance in the draft *Ontario Heritage Toolkit*, as well as questions on interpretation and implementation of the amended *Ontario Heritage Act* and its regulations (Appendix A).

1.1 Previous Reports Related to this Matter

Report to Planning and Environment Committee at its meeting on May 27, 2019, “Bill 108 – More Homes, More Choices Act, 2019.”

Report to Planning and Environment Committee at its meeting on November 30, 2020, “Bill 108 and Regulations, Amendments to the *Ontario Heritage Act* – Process Implications.”

2.0 Discussion and Considerations

2.1 What was not Proclaimed in Amendments to the *Ontario Heritage Act*?

The following sections of the *Ontario Heritage Act* were not proclaimed on July 1, 2021:

- Section 1(2), *Ontario Heritage Act* – definition of “alter” (“does not include to demolish or to remove and “alteration” does not include demolition or removal”) as it relates to Section 33, Section 34.5, and Section 69, *Ontario Heritage Act*.
- Section 41(2.3), *Ontario Heritage Act* – as it relates to the demolition or removal of buildings, structures, or heritage attributes on a property designated pursuant to Parts IV and V of the *Ontario Heritage Act.*
- Section 42(1)(2)-(4), Section 42(2.1), and Section 42(4.1), *Ontario Heritage Act* – as it relates to demolition and removal of heritage attributes for properties located within a Heritage Conservation District which would require all heritage attributes for all properties to be described in a Heritage Conservation District Plan, including consultation requirements.
- Section 69(3), *Ontario Heritage Act* – as it relates to offences and restoration costs for Part V properties (related to amendments to Section 42 not being proclaimed).

The MHSTCI has not provided any indication of when these amendments may be proclaimed. Staff have requested further clarification from the MHSTCI on the definitions of “alter” and “demolish or remove.”

2.2 What revisions to the *Ontario Regulation 385/21* were made?

A draft of the regulation implementing amendments to the *Ontario Heritage Act* was posted by the MHSTCI on the Environmental Registry of Ontario on September 1, 2020. Staff commented on the draft regulation, with comments appended to the staff report dated November 30, 2020 (see link at the end of this staff report).

Several key changes were made to the final *Ontario Regulation 385/21*:

- “Prescribed Principles” are not included in the regulation.
- Removal of requirement for a municipal employee to describe how Municipal Council considered the “Prescribed Principles” in decision making.
- Designating by-laws must include a written description, a scale drawing, or a site plan (rather than all three).
- Changes to exceptions to the 90-day timeline per Section 29(1.2), *Ontario Heritage Act*:
    - Removal of “new and relevant information” as applicable to re-starting the 90-day timeline.
    - Clarification in the event of multiple “prescribed events.”
    - Clarification that when the “prescribed event” is disposed, the 90-day timeline limitation no longer applies, and Municipal Council may issue its Notice of Intent to Designate.

Provisions within the amendments to the *Ontario Heritage Act* which introduce “Prescribed Principles” will be proclaimed on July 1, 2021, however the “Prescribed Principles” themselves are not included in *Ontario Regulation 385/21*. In their reply to comments provided on ERO #019-1348, the MHSTCI stated they “will be monitoring the implementation of the amendments and the regulations to determine if principles should be prescribed at a later time.”

2.3 Comments on Draft *Ontario Heritage Toolkit*

The *Ontario Heritage Toolkit* is a collection of resource guidance material issued by the MHSTCI, and its predecessors, on cultural heritage matters. The guidance of the *Ontario Heritage Toolkit* is of importance in the implementation and administration of the *Ontario Heritage Act* and has been the topic of evidence and examination in previous Ontario Municipal Board/Local Planning Appeal Tribunal hearings.

Five of the guides in the *Ontario Heritage Toolkit* have been revised in draft to provide guidance on recent changes to the *Ontario Heritage Act* and Ontario Regulation 385/21. The five guides are:

- *Heritage Property Evaluation* – a guide to listing, researching, and evaluating cultural heritage properties in Ontario communities.
- *Designating Heritage Properties* – a guide to municipal designation of individual properties under the *Ontario Heritage Act.*
- *Heritage Conservation Districts* – a guide to district designation under the *Ontario Heritage Act*.
- *Your Community, Your Heritage, Your Committee* – a guide to establishing and sustaining an effective municipal heritage committee.
- *Heritage Places of Worship* – a guide to assist in the conservation and protection of all heritage places of worship in Ontario.

Heritage Resources in the Land Use Planning Process, which explains cultural heritage and archaeology policies of the Ontario *Provincial Policy Statement* (2005), was not included in the draft *Ontario Heritage Toolkit* posted to the Environmental Registry of Ontario. *Heritage Resources in the Land Use Planning Process* was not updated following the proclamation of the *Provincial Policy Statement* (2014) or *Provincial Policy Statement* (2020). The MHSTCI has not indicated when *Heritage Resources in the Land Use Planning Process* will be updated.

The five guides of the *Ontario Heritage Toolkit* were posted by the MHSTCI on the Environmental Registry of Ontario on June 1, 2021 (ERO #019-2770). Comments were due on July 2, 2021. This short timeframe for review and commenting did not facilitate the ability to consult with the LACH in advance of the commenting deadline. Staff have prepared and submitted comments, which are attached as Appendix A.

2.4 Transition

Transition rules state that existing application will continue under the old *Ontario Heritage Act*. The new rules will apply for applications received after July 1, 2021. The new rules are particularly applicable for Notices of Complete Application for Official Plan Amendments, Zoning By-law Amendments, and Plans of Subdivision issued after July 1, 2021 where a potential cultural heritage resource may be affected. These notices start the 90-day limitation on Municipal Council's ability to issue a Notice of Intent to Designate, per Section 1(1), *Ontario Regulation 385/21*.

There is one outstanding Notice of Intent to Designate that has been appealed to the Conservation Review Board (CRB). It is staff's current understanding that the matter will continue under the jurisdiction of the CRB, now operating under the auspices of the Ontario Land Tribunal (OLT) as the CRB ceased to exist as of June 1, 2021, so a recommendation to Municipal Council will be provided by the OLT regarding the property's heritage designation; Municipal Council will retain its final decision-making ability for this Notice of Intent to Designate. For future appeals regarding the passage of a heritage designating by-law, the OLT will make binding decisions regarding a property's cultural heritage status.

3.0 Next Steps

3.1 Council Policy Manual

The Council Policy Manual includes the process for consideration of a demolition request for a building or structure on a heritage listed or designated property which includes public notification and a public participation meeting where the demolition

request is considered. This process is found under the Demolition Control policy in the Council Policy Manual.

Consideration should be given to updating the Demolition Control policy in the Council Policy Manual to reflect the new legislative and regulatory framework. Alternatively, a new “heritage processes” policy could be adopted, which could include processes such as:

- Process for consideration of an objection to the inclusion of a property on the Register of Cultural Heritage Resources per Section 27(7), *Ontario Heritage Act*.
- Process for a demolition request of a building or structure on a heritage listed property per Section 27(9), *Ontario Heritage Act*.
- Process for considering an objection to a Notice of Intent to Designate per Section 29(5), *Ontario Heritage Act.*
- Process for a demolition request of a building or structure on a heritage designated property per Section 34(1), *Ontario Heritage Act* and Section 42(1), *Ontario Heritage Act*.
- Process for considering an objection to an amendment of a heritage designating by-law per Section 30.1(7), *Ontario Heritage Act.*
- Defining complete Heritage Alteration Permit application for Part V heritage designated properties per Section 42(1), *Ontario Heritage Act*.
- Defining “reasons for objection and all relevant facts” pursuant to Section 27(7), 29(5), 30.1(6), 31(5), 32(4), 34.1(3) *Ontario Heritage Act*.
- Consideration of following the process of Section 32, *Ontario Heritage Act* for the repeal of heritage designating by-laws of municipally owned properties.
- Process to agree to remove or extend the 90-day limitation imposed by Section 29(1.2), *Ontario Heritage Act* per Section 1(2)(1) or Section 1(2)(2), *Ontario Regulation 385/21*.

3.2 Terms of Reference

The City of London currently relies on the guidance of the MHSTCI for terms of reference for Heritage Impact Assessments (HIAs) that are required as part of complete applications for planning and development applications. Direction has been previously provided directing staff to prepare terms of reference for HIAs and Cultural Heritage Evaluation Reports (CHERs).

The MHSTCI has suggested that terms of reference for HIAs may be within an updated *Heritage Resources in the Land Use Planning Process*, however no clear details or timeline have been specified.

Staff will continue to examine best practice in Ontario to prepare Terms of Reference for HIAs and CHERs.

3.3 Heritage Alteration Permit Application

Ontario Regulation 385/21 prescribes minimum application requirements for alterations to individually designated heritage properties pursuant to Section 33(1), *Ontario Heritage Act*. *Ontario Regulation 385/21* also prescribes the same minimum application requirements for a demolition or removal of a building, structure, or heritage attribute on an individually designated heritage property pursuant to Section 34(1), *Ontario Heritage Act*.

The minimum application requirements (“prescribed information and material”) pursuant to Section 33(1) and Section 34(1), *Ontario Heritage Act*, per *Ontario Regulation 385/21*, are:

- The name, address, telephone number, and, if applicable, the email address of the applicant.
- The name of the municipality from which the consent is being requested.
- 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, street names and numbers.

- Photographs that depict the existing buildings, structures and heritage attributes that are affected by the application and their condition and context.
- A site plan or sketch that illustrates the location of the proposed alteration, demolition, or removal.
- The reasons for the proposed alteration, demolition, or removal and the potential impacts to the heritage attributes of the property.
- All technical cultural heritage studies that are relevant to the proposed alteration, demolition, or removal.
- An affidavit or a sworn declaration by the applicant certifying that the information required under this section and provided by the applicant is accurate.

While many of the minimum application requirements are required in the Heritage Alteration Permit application form, not all requirements are clearly reflected as required contents. Staff will be unable to receive Heritage Alteration Permit applications, for applications pursuant to Section 33(1) and 34(1), *Ontario Heritage Act*, that do not comply with the minimum requirements defined in *Ontario Regulation 385/21* after July 1, 2021. Staff will be updating the Heritage Alteration Permit application form to clearly reflect the requirements of Section 6(1), *Ontario Regulation 385/21*.

As a point of reference, there are 330 properties designated pursuant to Part IV in London, including 99 properties that are “double designated” pursuant to both Parts IV and V. In 2020, there were six Heritage Alteration Permit applications for Part IV heritage designated properties (out of a total of 80 Heritage Alteration Permit applications). There were eight Heritage Alteration Permit application for Part IV heritage designated properties (out of a total of 127 Heritage Alteration Permit applications) in 2019.

Consideration should be given to adopting the minimum application requirements for Heritage Alteration Permit applications for properties within a Heritage Conservation District (applications pursuant to Section 42(1), *Ontario Heritage Act*).

3.4 Notices

Amendments to the *Ontario Heritage Act* and the new regulation introduce new and revised notice requirements for certain actions pursuant to the *Ontario Heritage Act*. For example, notice to the property owner is now required following the decision of Municipal Council to include a property on the Register of Cultural Heritage Resources per Section 27(5), *Ontario Heritage Act*. The Heritage Planners will continue to work with staff in the City Clerk’s office to ensure that appropriate notices are provided where required.

3.5 Updating Heritage Designating By-laws

Like the amendments to the *Ontario Heritage Act* in 2005, these amendments to the *Ontario Heritage Act* and its regulations require that heritage designating by-laws be brought up to the current standards when affected by certain decisions. Particularly, the new process required for the demolition or removal of a heritage attribute of a property requires prescribed steps per Section 34.3(1), *Ontario Heritage Act* and Section 7(1), *Ontario Regulation 385/21*, which could require the passage of an amendment or repealing by-law.

Staff have completed amendments to bring heritage designating by-laws into compliance with current standards as the need has presented itself.

There are 261 individually designated heritage properties in London protected by pre-2005 heritage designating by-laws, where updating the by-law may become necessary.

Conclusion

Staff continue to have concerns regarding the implementation of the amendments and the transition to the new legislative and regulatory processes. Revisions and changes to process may need to develop over time as applications are submitted.

Prepared by:	**Kyle Gonyou, CAHP** **Heritage Planner**
Reviewed by:	**Britt O'Hagan, MCIP RPP** **Manager, Community Planning, Urban Design and Heritage**
Recommended by:	**Gregg Barrett, AICP** **Director, Planning and Development**

Appendices

Appendix A Staff Comments on Environmental Registry of Ontario (ERO #019-2770)

Links

Ontario Heritage Act, R.S.O., 1990, c. O. 18 https://www.ontario.ca/laws/statute/90o18

Ontario Regulation 385/21 https://www.ontario.ca/laws/regulation/210385

Decision Summary, Ministry of Heritage, Sport, Tourism and Culture Industries on Proposed Regulation under the *Ontario Heritage Act* (Bill 108) (ERO #019-1348) https://ero.ontario.ca/notice/019-1348

Updates to the Ontario Heritage Toolkit (ERO #019-2770) https://ero.ontario.ca/notice/019-2770

- Heritage Property Evaluation (Draft) https://prod-environmental-registry.s3.amazonaws.com/2021-05/HPE_FINAL%20DRAFT-compressed.pdf
- Designating Heritage Properties (Draft) https://prod-environmental-registry.s3.amazonaws.com/2021-05/DHP_FINAL%20DRAFT-compressed.pdf
- Heritage Conservation Districts (Draft) https://prod-environmental-registry.s3.amazonaws.com/2021-05/HCD-Guide-FINAL%20DRAFT-compressed.pdf
- Your Community, Your Heritage, Your Committee (Draft) https://prod-environmental-registry.s3.amazonaws.com/2021-05/MHC_FINAL%20DRAFT-compressed.pdf
- Places of Worship (Draft) https://prod-environmental-registry.s3.amazonaws.com/2021-05/POW-FINAL%20DRAFT-compressed.pdf
- Flowcharts (Draft) https://prod-environmental-registry.s3.amazonaws.com/2021-05/Flow%20charts_FINAL%20DRAFT.pdf

Links to Previous Reports

Report to Planning and Environment Committee at its meeting on May 27, 2019, "Bill 108 – More Homes, More Choices Act, 2019," https://pub-london.escribemeetings.com/Meeting.aspx?Id=09f9f1eb-890f-43d1-9aa8-274eb2a22fef&Agenda=Merged&lang=English (Item 2.3).

Report to Planning and Environment Committee at its meeting on November 30, 2020, "Bill 108 and Regulations, Amendments to the *Ontario Heritage Act* – Process Implications," https://pub-london.escribemeetings.com/Meeting.aspx?Id=9ce4ebc6-6068-441d-897d-d197390f3610&Agenda=Merged&lang=English (Item 2.3).

Appendix A – Staff Comments on ERO #019-2770

The below comments were submitted to the Environmental Registry of Ontario in response to the proposed revisions to selected titles of the *Ontario Heritage Toolkit* by the July 2, 2021 deadline.

300 Dufferin Avenue
P.O. Box 5035
London, ON
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London
CANADA

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 for 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.