



Ontario Bar Association's Institute

Adapting to the New Era of Municipal and Planning Law: The Only Constant is Change

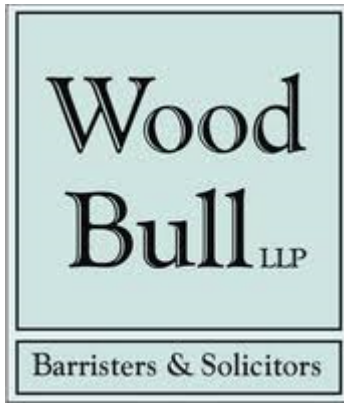
“Ontario Heritage Act Update” Source Materials

February 7, 2020

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Tab 1 - Provincial Policy Statement, 2014

1.7 Long-Term Economic Prosperity

2.0 Wise Use and Management of Resources

2.6 Cultural Heritage and Archaeology

6.0 Definitions

2014 Provincial Policy Statement

Under the *Planning Act*

1.7 Long-Term Economic Prosperity

1.7.1 Long-term economic prosperity should be supported by:

...

- d) encouraging a sense of place, by promoting well-designed built form and cultural planning, and by conserving features that help define character, including *built heritage resources* and *cultural heritage landscapes*;

2.0 Wise Use and Management of Resources

Ontario's long-term prosperity, environmental health, and social well-being depend on conserving biodiversity, protecting the health of the Great Lakes, and protecting natural heritage, water, agricultural, mineral and cultural heritage and archaeological resources for their economic, environmental and social benefits.

Accordingly:

...

2.6 Cultural Heritage and Archaeology

2.6.1 *Significant built heritage resources and significant cultural heritage landscapes shall be conserved.*

2.6.2 *Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved.*

2.6.3 Planning authorities shall not permit *development and site alteration on adjacent lands to protected heritage property* except where the proposed *development and site alteration* has been evaluated and it has been demonstrated that the *heritage attributes* of the *protected heritage property* will be *conserved*.

2.6.4 Planning authorities should consider and promote archaeological management plans and cultural plans in conserving cultural heritage and archaeological resources.

2.6.5 Planning authorities shall consider the interests of Aboriginal communities in conserving cultural heritage and archaeological resources.

6.0 Definitions

Archaeological resources: includes artifacts, archaeological sites, marine archaeological sites, as defined under the *Ontario Heritage Act*. The identification and evaluation of such resources are based upon archaeological fieldwork undertaken in accordance with the *Ontario Heritage Act*.

Areas of archaeological potential: means areas with the likelihood to contain *archaeological resources*. Methods to identify archaeological potential are established by the Province, but municipal approaches which achieve the same objectives may also be used. The *Ontario Heritage Act* requires archaeological potential to be confirmed through archaeological fieldwork.

Built heritage resource: means a building, structure, monument, installation or any manufactured remnant that contributes to a property's cultural heritage value or interest as identified by a community, including an Aboriginal community. Built heritage resources are generally located on property that has been designated under Parts IV or V of the *Ontario Heritage Act*, or included on local, provincial and/or federal registers.

Conserved: means the identification, protection, management and use of *built heritage resources*, *cultural heritage landscapes* and *archaeological resources* in a manner that ensures their cultural heritage value or interest is retained under the *Ontario Heritage Act*. This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment. Mitigative measures and/or alternative development approaches can be included in these plans and assessments.

Cultural heritage landscape: means a defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Aboriginal community. The area may involve features such as structures, spaces, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. Examples may include, but are not limited to, heritage conservation districts designated under the *Ontario Heritage Act*; villages, parks,

gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways, viewsheds, natural areas and industrial complexes of heritage significance; and areas recognized by federal or international designation authorities (e.g. a National Historic Site or District designation, or a UNESCO World Heritage Site).

Development: means the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the *Planning Act*, but does not include:

- a) activities that create or maintain *infrastructure* authorized under an environmental assessment process;
- b) works subject to the *Drainage Act*; or
- c) for the purposes of policy 2.1.4(a), underground or surface mining of *minerals* or advanced exploration on mining lands in *significant areas of mineral potential* in Ecoregion 5E, where advanced exploration has the same meaning as under the *Mining Act*. Instead, those matters shall be subject to policy 2.1.5(a).

Significant: means ...

- e) in regard to cultural heritage and archaeology, resources that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event, or a people.



Tab 2 - A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019

4.2.7 Cultural Heritage Resources

7 Definitions

A Place to Grow

Growth Plan for the Greater Golden Horseshoe



4.2 Policies for Protecting What is Valuable

4.2.7 Cultural Heritage Resources

1. *Cultural heritage resources* will be *conserved* in order to foster a sense of place and benefit communities, particularly in *strategic growth areas*.
2. Municipalities will work with stakeholders, as well as First Nations and Métis communities, in developing and implementing official plan policies and strategies for the identification, wise use and management of *cultural heritage resources*.
3. Municipalities are encouraged to prepare archaeological management plans and municipal cultural plans and consider them in their decision-making.

7 Definitions

As defined in this glossary, many of the defined terms in this Plan have the same meaning or are based on the meaning of another provincial document, particularly the PPS, 2014. For convenience, a parenthetical note following definitions indicates where this is the case.

Conserved

The identification, protection, management and use of built heritage resources, cultural heritage landscapes and archaeological resources in a manner that ensures their cultural heritage value or interest is retained under the Ontario Heritage Act. This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment. Mitigative measures and/or alternative development approaches can be included in these plans and assessments. (PPS, 2014)

Cultural Heritage Landscape

A defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Aboriginal community. The area may involve features such as structures, spaces, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. Examples may include, but are not limited to, heritage conservation districts designated under the Ontario Heritage Act; villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways, viewsheds, natural areas and industrial complexes of heritage significance; and areas recognized by federal or international designation authorities (e.g., a National Historic Site or District designation, or a UNESCO World Heritage Site). (PPS, 2014)

Cultural Heritage Resources

Built heritage resources, cultural heritage landscapes and archaeological resources that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event, or a people. While some cultural heritage resources may already be identified and inventoried by official sources, the significance of others can only be determined after evaluation. (Greenbelt Plan)

Strategic Growth Areas

Within settlement areas, nodes, corridors, and other areas that have been identified by municipalities or the Province to be the focus for accommodating intensification and higher-density mixed uses in a more compact built form.

Strategic growth areas include urban growth centres, major transit station areas, and other major opportunities that may include infill, redevelopment, brownfield sites, the expansion or conversion of existing buildings, or greyfields. Lands along major roads, arterials, or other areas with existing or planned frequent transit service or higher order transit corridors may also be identified as strategic growth areas.



Tab 3 - Planning Act, R.S.O. 1990, c. P.13

2 Provincial Interest

3(1) Policy Statements

34(1) Zoning by-laws - archaeological matters

Français

Planning Act**R.S.O. 1990, CHAPTER P.13****Consolidation Period:** From December 10, 2019 to the [e-Laws currency date](#).

Last amendment: 2019, c. 15, Sched. 31.

Legislative History: 1991, c. 9, s. 1; 1991, c. 15, s. 41, 42; 1993, c. 26, s. 49-66; 1993, c. 27, Sched.; 1994, c. 2, s. 40-49; 1994, c. 4, s. 14, 15; 1994, c. 23, s. 3-50; 1996, c. 4, s. 1-42; 1996, c. 32, s. 82; 1997, c. 24, s. 226; 1997, c. 26, Sched.; 1997, c. 29, s. 65; 1997, c. 31, s. 164 (But see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - December 31, 2011); 1998, c. 15, Sched. E, s. 27; 1999, c. 12, Sched. M, s. 21-30; 2000, c. 5, s. 20; 2000, c. 26, Sched. K, s. 5; 2001, c. 9, Sched. J, s. 2; 2001, c. 17, s. 7; 2001, c. 32, s. 31; 2002, c. 1, Sched. C, s. 4; 2002, c. 9, s. 56; 2002, c. 17, Sched. B; 2004, c. 18; 2005, c. 26, Sched. B, s. 1; 2006, c. 22, s. 115; 2006, c. 23, s. 1-29; 2006, c. 32, Sched. C, s. 47, 48; 2009, c. 12, Sched. K; 2009, c. 12, Sched. L, s. 19; 2009, c. 33, Sched. 2, s. 59; 2009, c. 33, Sched. 21, s. 10; 2011, c. 6, Sched. 2; 2015, c. 26, s. 11-38 (see 2016, c. 25, Sched. 6); 2015, c. 28, Sched. 1, s. 155; 2016, c. 25, Sched. 4; 2017, c. 10, Sched. 4, s. 11; 2017, c. 20, Sched. 8, s. 119; 2017, c. 23, Sched. 3, ss. 1-17; 2017, c. 23, Sched. 5, ss. 79-103; 2018, c. 3, Sched. 5, s. 47 (see: 2019, c. 1, Sched. 3, s. 5); 2018, c. 16, s. 8; 2019, c. 1, Sched. 4, s. 45; 2019, c. 9, Sched. 12; 2019, c. 15, Sched. 31.

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**PART I
PROVINCIAL ADMINISTRATION**

Provincial interest

2 The Minister, the council of a municipality, a local board, a planning board and the Tribunal, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,

...

(d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;

Policy statements

3 (1) The Minister, or the Minister together with any other minister of the Crown, may from time to time issue policy statements that have been approved by the Lieutenant Governor in Council on matters relating to municipal planning that in the opinion of the Minister are of provincial interest. R.S.O. 1990, c. P.13, s. 3 (1).

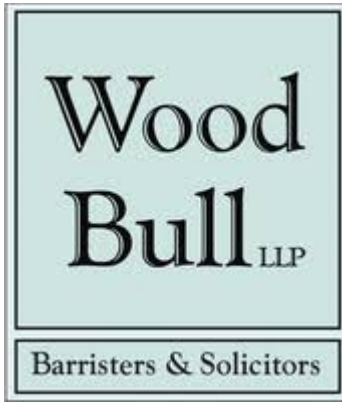
**PART V
LAND USE CONTROLS AND RELATED ADMINISTRATION**

Zoning by-laws

34 (1) Zoning by-laws may be passed by the councils of local municipalities: ...

Significant archaeological resources

3.3 For prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures on land that is the site of a significant archaeological resource.



Tab 4 - Municipal Act, 2001, S.O. 2001, c.25

11(3) By-laws re: matters within spheres of jurisdiction

11(8) Services or things provided by others

Municipal Act, 2001 (as amended)

By-laws re: matters within spheres of jurisdiction

11 (3) A lower-tier municipality and an upper-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting matters within the following spheres of jurisdiction:...

5. Culture, parks, recreation and heritage...

Services or things provided by others

11 (8) The power of a municipality to pass a by-law under subsection (3) under the following spheres of jurisdiction does not, except as otherwise provided, include the power to pass a by-law respecting services or things provided by any person, other than the municipality or a municipal service board of the municipality, of the type authorized by that sphere:...

5. Culture, parks, recreation and heritage.

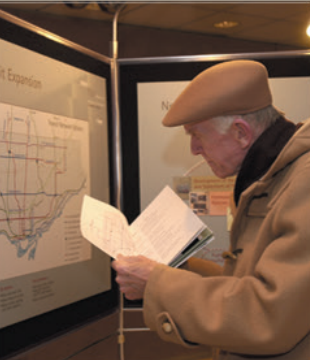
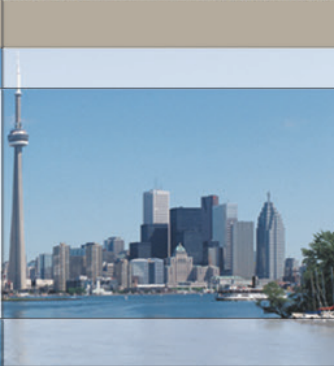


Tab 5 - City of Toronto Official Plan, February 2019

3.1.5 Heritage Conservation

TORONTO

OFFICIAL PLAN



- e) providing high quality, comfortable and usable publicly accessible open space areas; and
- f) meeting the other goals and objectives of this Plan.

3.1.4 PUBLIC ART

Public art installations, both publicly and privately owned, make walking through the City’s streets, open spaces and parks a delight for residents, workers and visitors alike. Public art has broad appeal and can contribute to the identity and character of a place by telling a story about the site’s history. It creates a landmark and celebrates the cultural diversity and creativity of our communities. A partnership between the public and private sectors is to be nurtured to transform Toronto into a large public art gallery with installations throughout the City.

Policies

1. The creation of public art that reflects our cultural diversity and history will be promoted by:
 - a) adopting a Public Art Master Plan;
 - b) promoting the Toronto Public Art Reserve Fund and actively soliciting gifts of cash, and gifts in-kind to the City to implement the Public Art Master Plan;
 - c) encouraging public art initiatives on properties under the jurisdiction of the City, its agencies, boards and commissions;
 - d) dedicating one per cent of the capital budget of all major municipal buildings and structures to public art; and
 - e) encouraging the inclusion of public art in all significant private sector developments across the City.

As part of the new *Culture Plan*, the City will be adopting a *Public Art Master Plan* that will identify important sites and opportunities for public art installations. To make this dream a reality, the City needs assistance. Toronto needs to promote its Public Art Reserve Fund, contributions to which can be eligible for tax deductions as a gift to a municipality. Public art installations are also community benefits to be considered as part of the Section 37 incentives policies in Chapter Five of this Plan.



Public art is a work of art created to beautify a specific space to which the public has access. The public art installation may range from a stand-alone installation to an integrated architectural treatment or landscape design.

3.1.5 HERITAGE CONSERVATION

Toronto’s cultural heritage can be seen in the significant buildings, properties, districts, landscapes and archaeological sites found throughout the city. Their protection, wise use and management demonstrate the City’s goal to integrate the significant achievements of our people, their history, our landmarks, and our neighbourhoods into a shared sense of place and belonging for its inhabitants.

The City’s significant heritage properties tell stories about the forces and events that have shaped Toronto. They reveal the City’s historical geography; a lakefront terrain carved by rivers and valleys that 11,000 years ago first allowed our First Nations to hunt and fish, and later farm. The Plan policies call for an engagement protocol with First Nations and the Métis for heritage properties and archaeological sites that may be of interest to them, as well as ensuring that information is provided to First Nations and Métis where archaeological resources are found to be First Nations or Métis in origin.

CHAPTER THREE

Our cultural heritage includes both the tangible and intangible values and attributes of the distinct towns, villages and cities that have come together to create the Toronto we know today. They enable us to reflect upon the diversity of our communities and neighbourhoods, and our distinct role as a provincial capital. The scale, number and significance of our cultural heritage resources is described in an on-going process of identification, evaluation and preservation that includes a Heritage Register and a comprehensive mapping of the City's archaeologically sensitive areas and sites. The identification of heritage properties that tell our City's stories is an on-going process.

Our heritage properties represent a collective past and their protection, use and adaptive reuse also enrich our daily experience of the City; from commuting through Union Station and dining at the Distillery District, to hiking the Humber River and Rouge Valleys, which were important trade routes and the sites of large and vibrant First Nations settlements. We celebrate communally in squares in front of the Scarborough and North York Civic Centres and City Hall. Consciously or unconsciously, our heritage resources are part of our daily experience of our City.

Cultural Heritage is an important component of sustainable development and place making. The preservation of our cultural heritage is essential to the character of this urban and liveable city that can contribute to other social cultural, economic and environmental goals of the City. As a result, heritage conservation is integrated within the policies in many other sections of this Official Plan. The heritage policies of this Plan not only promote the preservation of important heritage buildings and structures but also the public views of them for the enjoyment of Torontonians. Schedule 4 describes the significance of each of the views of important heritage properties shown on Maps 7A and 7B.

The conservation of natural heritage is also an important element of heritage conservation in Toronto. The Official Plan provides for the conservation of Toronto's urban forest, ravines and river valleys in policies protecting the Natural Heritage System contained in Section 3.4 and Map 9 of the Plan. The conservation of important heritage resources includes those policies protecting Toronto's Natural Heritage Areas.

As Toronto continues to grow and intensify this growth must recognize and be balanced with the ongoing conservation of our significant heritage properties, views, natural heritage system, and landscapes. In this context, the regulatory tools available to the City will be used to conserve the significant cultural heritage values and attributes of our heritage properties. Conservation of cultural heritage resources not only enriches our lives, it is an important shared responsibility and a prominent civic legacy that we must leave for future generations.

Criteria for evaluating the potential Cultural Heritage Value of proposed Heritage Conservation Districts are included in Heritage Conservation Districts in Toronto: Procedures, Policies and Terms of Reference.

The Ontario Heritage Toolkit: Heritage Places of Worship is a useful reference document for making decisions about how to approach the protection and alteration of places of worship included on the Heritage Register. The City, in consultation with faith groups, will establish a protocol for the protection of places of worship with cultural heritage value.

CHAPTER THREE

Policies

1. The Heritage Register will be maintained by the City Clerk, or his or her designate and will include all properties and Heritage Conservation Districts of cultural heritage value or interest that are designated under Parts IV and V of the *Ontario Heritage Act*, and will include all non-designated properties that have been identified through consultation with the City's heritage committee and approved by Council for their inclusion. The Heritage Register will be publicly accessible.
2. Properties and Heritage Conservation Districts of potential cultural heritage value or interest will be identified and evaluated to determine their cultural heritage value or interest consistent with provincial regulations, where applicable, and will include the consideration of cultural heritage values including design or physical value, historical or associative value and contextual value. The evaluation of cultural heritage value of a Heritage Conservation District may also consider social or community value and natural or scientific value. The contributions of Toronto's diverse cultures will be considered in determining the cultural heritage value of properties on the Heritage Register.
3. Heritage properties of cultural heritage value or interest properties, including Heritage Conservation Districts and archaeological sites that are publicly known will be protected by being designated under the *Ontario Heritage Act* and/or included on the Heritage Register.
4. Properties on the Heritage Register will be conserved and maintained consistent with the *Standards and Guidelines for the Conservation of Historic Places in Canada*, as revised from time to time and as adopted by Council.
5. Proposed *alterations*, development, and/or public works on or adjacent to, a property on the Heritage Register will ensure that the *integrity* of the heritage property's cultural heritage value and attributes will be retained, prior to work commencing on the property and to the satisfaction of the City. Where a Heritage Impact Assessment is required in Schedule 3 of the Official Plan, it will describe and assess the potential impacts and mitigation strategies for the proposed alteration, development or public work.
6. The adaptive re-use of properties on the Heritage Register is encouraged for new uses permitted in the applicable Official Plan land use designation, consistent with the *Standards and Guidelines for the Conservation of Historic Places in Canada*.
7. Prior to undertaking an approved *alteration* to a property on the Heritage Register, the property will be recorded and documented by the owner, to the satisfaction of the City.
8. When a City-owned property on the Heritage Register is no longer required for its current use, the City will demonstrate excellence in the *conservation*, maintenance and compatible adaptive reuse of the property.
9. When a City-owned property on the Heritage Register is sold, leased or transferred to another owner, it will be designated under the *Ontario Heritage Act*. A Heritage Easement Agreement will

be secured and monitored, and public access maintained to its heritage attributes, where feasible. This policy may not apply to City-owned properties in Heritage Conservation Districts that are not considered to be individually *significant*.

10. A heritage management plan will be adopted by Council. The heritage management plan will be a comprehensive and evolving strategy for the identification, conservation and management of all properties on the Heritage Register, unidentified and potential heritage properties.
11. A protocol will be developed to co-ordinate and direct actions of the City and its agents in the event that a property on the Heritage Register is threatened by an emergency such as a fire, flood, willful damage or other unanticipated events. This protocol will address the *conservation* of the heritage property once the primary life and safety objectives of evacuating and ensuring public safety have been completed.
12. Designated heritage properties will be protected against deterioration by neglect through the enforcement of heritage property standards by-laws.
13. In collaboration with First Nations, Métis and the Provincial Government, the City will develop a protocol for matters related to identifying, evaluating and protecting properties and *cultural heritage landscapes* on the Heritage Register, archaeological sites and artifacts where they may be of interest to First Nations or Métis.
14. Potential and existing properties of cultural heritage value or interest, including *cultural heritage landscapes* and Heritage Conservation Districts, will be identified and included in area planning studies and plans with recommendations for further study, evaluation and *conservation*.

RAISING HERITAGE AWARENESS

15. The development of neighbourhood heritage initiatives will be encouraged to promote an understanding of local history and how our neighbourhoods and open spaces have evolved.
16. Properties on the Heritage Register and publicly known archaeological sites and artifacts will be promoted through educational programs, museums, local celebrations and other programming opportunities.
17. Commemoration of lost historical sites will be encouraged whenever a new private development or public work is undertaken in the vicinity of historic sites, such as those where major historical events occurred, important buildings or landscape features have disappeared or where important cultural activities have taken place. Interpretation of existing properties on the Heritage Register will also be encouraged.

INCENTIVES

18. Incentives for the *conservation* and maintenance of designated heritage properties will be created and made available to heritage property owners.

Commemoration and interpretation programs that recognize various cultural or ethnic groups can add to the overall understanding of the City's lost sites, including co-operation with First Nations in programs commemorating and interpreting sites of importance. This may include, among others, programs such as the emerging moccasin identifier program.

CHAPTER THREE

19. *Conservation* and maintenance of designated heritage properties funded in whole or in part through incentives such as grants, tax rebates or other mechanisms will achieve excellence in conservation, consistent with Council adopted standards and guidelines.
20. Publicly funded institutions such as universities, schools and hospitals will be required to enter into a Heritage Easement Agreement as a condition of accepting heritage conservation or maintenance incentives.
21. Additional gross floor area may be permitted in excess of what is permitted in the Zoning By-law for lands designated *Mixed Use Areas, Regeneration Areas, Employment Areas, Institutional Areas or Apartment Neighbourhoods* for a heritage building or structure on a designated heritage property that is part of a new development, provided that:
 - a) the application includes the *conservation* of a heritage building or structure on a property designated under the *Ontario Heritage Act*;
 - b) additional gross floor area specifically provided through this policy will not exceed that of the heritage building or structure being retained;
 - c) the additional floor area will not detract from the heritage property and will not conflict with any other Official Plan policies;
 - d) excellence in the *conservation* of the values, attributes, character and three-dimensional *integrity* of the heritage property including the buildings or structures thereon is achieved and additional density will not be granted for the incorporation of facades or isolated building elements into new development;
 - e) where the property is within a Heritage Conservation District, the proposed development conforms to the Heritage Conservation District plan and/or any guidelines for that district; and
 - f) the *conserved* heritage building or structure is protected in a Heritage Easement Agreement and the agreement and necessary by-laws are enacted prior to approval of the site plan for the entire development.

HERITAGE IMPACT ASSESSMENTS

22. Heritage Impact Assessment will address all applicable heritage conservation policies of the Official Plan and the assessment will demonstrate *conservation* options and mitigation measures consistent with those policies. A Heritage Impact Assessment shall be considered when determining how a heritage property is to be *conserved*.
23. Heritage Impact Assessment will evaluate the impact of a proposed *alteration* to a property on the Heritage Register, and/or to properties *adjacent* to a property on the Heritage Register, to the satisfaction of the City.
24. Heritage Impact Assessment will be required for the proposed *demolition* of a property on the Heritage Register. Where *demolition* of a property adjacent to a property on the Heritage Register is proposed, the City may require a study on the implications of

the *demolition* on the structural integrity of the property on the Heritage Register.

25. In addition to a Heritage Impact Assessment, the City may request a Heritage Property Conservation Plan to address in detail the *conservation* treatments for the subject heritage property. The City may also request a Heritage Interpretation Plan to promote a heritage property or area, to the public.

DEVELOPMENT ON PROPERTIES ON THE HERITAGE REGISTER

26. New construction on, or *adjacent* to, a property on the Heritage Register will be designed to *conserve* the cultural heritage values, attributes and character of that property and to mitigate visual and physical impact on it.
27. Where it is supported by the cultural heritage values and attributes of a property on the Heritage Register, the *conservation* of whole or substantial portions of buildings, structures and landscapes on those properties is desirable and encouraged. The retention of facades alone is discouraged.
28. The owner of a designated heritage property will be encouraged to enter into a Heritage Easement Agreement where the City considers additional protection beyond designation desirable due to the location, proposed *alteration*, and/or the nature of that property.
29. Heritage buildings and/or structures located on properties on the Heritage Register should be *conserved* on their original location. However, where it is supported by the cultural heritage values and attributes of a property on the Heritage Register a heritage building may be relocated within its property or development site where:
- the heritage building or structure is not attached to or adjoining another building or structure;
 - the location, orientation, situation or view of the heritage building is not identified in the Official Plan or as a cultural heritage value or attribute of the property, and/or the proposed relocation will not negatively affect the cultural heritage values or attributes of the property;
 - the portion of the heritage building or structure that contains the identified cultural heritage values and attributes is being *conserved* in its entirety and will not be demolished, disassembled and/or reconstructed;
 - the relocation on site does not conflict with any applicable Heritage Conservation District plans;
 - a Heritage Property Conservation Plan is submitted that demonstrates that the *removal* and relocation of the building or structure within its existing property will not pose any physical risk to the heritage building and/or structure, its cultural heritage values and attributes, to the satisfaction of the City; and
 - these and any other related conditions are secured in a Heritage Easement Agreement prior to *removal* and relocation on site.

Heritage Impact Assessments enable the City to obtain information about the potential impacts a development or *alteration* may have on a property on the Heritage Register. A Heritage Impact Assessment shall consider and have regard for the property's cultural heritage values and attributes as identified by Council and will provide a basis for establishing how impacts may be mitigated or avoided, whether the impacts are acceptable, and how the cultural heritage values and attributes will be *conserved*.

A Heritage Property Conservation Plan is a detailed technical description of how the conservation strategy contained in an approved Heritage Impact Assessment will be implemented. It may also be requested to assist in the review of complex restoration projects. The conservation plan is expected to build on the information provided in the HIA. It generally contains, but is not limited to, the following:

- A description of the approved conservation strategy as contained in a referenced HIA, including treatments and principles to be applied to the cultural heritage resources being conserved;
- Identification of any proposed changes to previously approved strategies;
- Detailed scope of work including an updated condition assessment, all necessary technical and engineering studies or reports, architectural and restoration plans and drawings, and a full written description of proposed interventions accompanied by a detailed cost estimate;
- A strategy for the monitoring and protection of the heritage property, and adjacent heritage properties, during construction;
- Schedule for conservation work, inspection, maintenance, and phases;
- Sign guidelines and plans, lighting plans and detailed landscape plans, as required by the City; and
- Recommendations for short or long term maintenance and the qualifications for anyone responsible for conservation work.

CHAPTER THREE

Mitigation of identified physical and visual impacts may be achieved by the implementation of recommendations set out in a Heritage Property Conservation Plan or Heritage Impact Assessment and can include considerations such as scale, massing, materials, height, building orientation and location relative to the heritage property.

Council has adopted *Heritage Conservation Districts in Toronto: Procedures, Policies and Terms of Reference* for the study and planning of all Heritage Conservation Districts in the City.

HERITAGE CONSERVATION DISTRICTS

30. Potential Heritage Conservation Districts will be identified and evaluated to determine their significance and cultural heritage values, in a Heritage Conservation District study. Heritage Conservation Districts that have been evaluated to be *significant* for their cultural heritage value will be designated and *conserved*.
31. Heritage Conservation District studies and plans will, among other things:
 - a) be conducted in accordance with Council adopted guidelines and terms of reference;
 - b) include protocols for amendment and periodic review; and
 - c) include provisions addressing the relationship between the Heritage Conservation District Plan and the Official Plan and provincial policy within the context of the Heritage Conservation District Plan's directions for *conserving* the cultural heritage values and character of the Heritage Conservation District, its attributes, and the properties within it, including but not limited to identifying any required changes to the Official Plan and zoning by-law.
32. Impacts of site *alterations*, developments, municipal improvements, and/or public works within or *adjacent* to Heritage Conservation Districts will be assessed to ensure that the *integrity* of the districts' heritage values, attributes, and character are *conserved*. This assessment will be achieved through a Heritage Impact Assessment, consistent with Schedule 3 of the Official Plan, to the satisfaction of the City.
33. Heritage Conservation Districts should be managed and *conserved* by approving only those *alterations*, additions, new *development*, *demolitions*, removals and public works in accordance with respective Heritage Conservation District plans.

ARCHAEOLOGICAL RESOURCES

34. The Archaeological Management Plan will be implemented and maintained to manage archaeological resources and areas of archaeological potential.
35. Development and site *alteration* will be permitted on lands containing archaeological resources or areas of archaeological potential only where the archaeological resources have been assessed, documented and *conserved*. Any *alterations* to known archaeological sites will only be performed by licensed archaeologists.
36. Preservation in situ is the preferred *conservation* strategy for an archaeological site. Where mitigative measures and/or alternative development approaches would not feasibly allow for in situ *conservation*, archaeological resources may be subject to excavation whereby the information and artifact assemblages are safeguarded in an alternative location, to the City's satisfaction.
37. Where an archaeological site or resource is found to have cultural heritage value, and is being *conserved*, in situ *conservation* should be secured in a heritage easement agreement.
38. Upon receiving information that lands proposed for development

may include archaeological resources or constitute an area of archaeological potential, the owner of such land will undertake studies by a licensed archaeologist to:

- a) assess the property in compliance with Provincial Standards and Guidelines for Consulting Archaeologists, and to the satisfaction of the City;
 - b) assess the impact of the proposed development on any archaeological resources;
 - c) identify methods to mitigate any negative impact that the proposed development may have on any archaeological resources, including methods of protection on-site or interpretation and curating; and
 - d) provide to the City a Provincial concurrence letter recognizing the completion of the Archaeological Assessment where one is issued by the Province.
39. Where archaeological resources are encountered or documented, as part of a development application or public work, and found to be First Nations or Métis in origin:
- a) the City will provide a copy of the Stage 1 and 2 Archaeological Assessment report(s) to those First Nations or Métis with the closest cultural affiliation as identified by the City to those resources, and in whose traditional territories the archaeological resources were found prior to the development proceeding;
 - b) engagement by the proponent and their licensed archaeologist with the First Nation or Métis with the closest cultural affiliation as identified by the City and in whose traditional territory the *significant* archaeological resources are situated, should occur to obtain input on appropriate *conservation* or interpretation approaches; and
 - c) publicly owned lands with *significant* archaeological resources of First Nations or Métis origin may be deemed not suitable for development.
40. Archaeological discoveries, and their cultural narratives, should be interpreted for the public through innovative architectural and/or landscape architectural design, public art installations, or other public realm projects associated with the site.
41. The City will provide a repository to take possession of all archaeological artifacts and records of archaeological assessment activities undertaken in the City, for the purpose of maintenance, research and exhibition.
42. The City may require an Archaeological Assessment for marine archaeological remains and artifacts, to be conducted by a licensed marine archaeologist, when a development is proposed in the water or along the waterfront and/or shoreline.

CULTURAL HERITAGE LANDSCAPES

43. Potential *cultural heritage landscapes* will be identified and evaluated to determine their significance and cultural heritage values. *Significant cultural heritage landscapes* will be included on the Heritage Register and/or designated under either Part IV or Part V of the *Ontario Heritage Act*.

CHAPTER THREE

The City will establish a citywide guideline for identifying and evaluating potential *cultural heritage landscapes* prior to including individual *cultural heritage landscapes* on the Heritage Register or designating them under the *Ontario Heritage Act*. Such a guideline will be adopted by Council and will include direction for the clear delineation of the boundaries of cultural heritage landscapes at the time of their listing or designation, as appropriate.

Views of prominent heritage properties are important. Those views can support the prominence and surroundings of heritage properties, and raise awareness of them. The view of a heritage property may also support or relate to the cultural heritage values and attributes of a property on the Heritage Register, where this is documented in a designation bylaw or view study.

VIEWS OF HERITAGE PROPERTIES

The policies for the protection of views to heritage properties of this section should also be read with specific regard for the view policies in Section 3.1.1 of this Plan, where applicable.

44. The view to a property on the Heritage Register as described in Schedule 4 will be conserved unobstructed where the view is included on Map 7a or 7b.
45. The Queens Park Legislative Assembly, Old City Hall and City Hall are public ceremonial sites of exceptional importance and prominence. Protection of views from the public realm to these three properties, identified on Maps 7a and 7b, will include the prevention of any further intrusions visible above and behind the building silhouette, as well as protecting the view to the buildings from any further obstruction. The identified views from the public realm, to and beyond these properties, will be *conserved*.
46. A Heritage Impact Assessment may be required where a development application may have an impact on a view described on Schedule 4, Section A as a heritage building, structure or landscape identified on Map 7a or 7b, to the satisfaction of the City. Views identified on Maps 7a and 7b may also need to be assessed for their potential cultural heritage value.

HERITAGE PLACES OF WORSHIP

47. Religious heritage properties constitute a substantial portion of the City's cultural and architectural heritage. Those religious heritage properties that remain in active use for worship purposes will be subject to the policies of this Section of the Plan which, in the event of any conflict, will take precedence over the other policies of this Plan.
48. Religious properties may be listed on the Heritage Register and designated under Parts IV and V of the *Ontario Heritage Act*. The designating by-law will be consistent with the policies of this Official Plan.
49. The liturgical elements of any religious heritage property in active use for worship will be excluded from the heritage conservation provisions of this Plan. For the purposes of this section, "liturgical element" means a building element, ornament or decoration that is a symbol or material thing traditionally considered by a religious organization to be part of the rites of public worship.
50. Faith groups will advise the City as to the identified liturgical elements to be identified in the designating by-law.
51. So long as the place of worship remains in active use for religious purposes interior alterations related to the rites of worship including removal, alteration or installation of structures, fixtures and/or liturgical elements will not be subject to the heritage policies of this Plan.
52. If a heritage review is required for the interior alterations not related to the rites of worship it will be undertaken by the City and faith groups with the mutual goal of conserving the property's cultural heritage values and respecting and protecting the faith

group's rites of worship.

53. The City will, in consultation with faith groups, establish a protocol to implement these policies.

Heritage Conservation Definitions

For the purposes of Section 3.1.5 the following definitions will apply:

Adjacent: means those lands adjoining a property on the Heritage Register or lands that are directly across from and near to a property on the Heritage Register and separated by land used as a private or public road, highway, street, lane, trail, right-of-way, walkway, green space, park and/or easement, or an intersection of any of these; whose location has the potential to have an impact on a property on the heritage register; or as otherwise defined in a Heritage Conservation District Plan adopted by by-law.

Alteration: is any change to a property on the Heritage Register in any manner including its restoration, renovation, repair or disturbance, or a change, *demolition* or *removal* of an *adjacent* property that may result in any change to a property on the Heritage Register.

Conserved: means the identification, protection, management and use of built heritage resources, cultural heritage landscapes and archaeological resources in a manner that ensures their cultural heritage value or interest is retained under the *Ontario Heritage Act*. This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment and/or Heritage Impact Assessment. Mitigative measures and/or alternative development approaches can be included in these plans and assessments. Conservation and conserve have corresponding meanings.

Cultural Heritage Landscape: a defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Aboriginal community. The area may involve features such as structures, spaces, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. Examples may include, but are not limited to, heritage conservation districts designated under the *Ontario Heritage Act*, villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways, viewsheds, natural areas and industrial complexes of heritage significance, and areas recognized by federal or international designation authorities (e.g. a National Historic Site or District designation, or a UNESCO World Heritage Site).

Demolition: is the complete destruction of a heritage structure and property from its site, including the disassembly of structures and properties on the Heritage Register for the purpose of reassembly at a later date.

Integrity: as it relates to a heritage property or an archaeological site/resource, is a measure of its wholeness and intactness of the cultural heritage values and attributes. Examining the conditions of integrity requires assessing the extent to which the property includes all elements necessary to express its cultural heritage value; is of adequate size to ensure the complete representation of the features and processes that convey the property's significance; and the extent to which it suffers from adverse affects of development and/or neglect. Integrity should be assessed within a Heritage Impact Assessment.

Removal: is the complete and permanent dislocation of a heritage resource from its site, including relocation of structures to another property.

Significant: in regard to cultural heritage and archaeology, resources that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event, or a people.

3.2 THE HUMAN ENVIRONMENT

Strong communities are the foundation of a healthy city. It is necessary for the economic health of our cities to have communities where Torontonians are engaged, children are valued, diversity is celebrated and residents have equitable access to housing, support services and recreational opportunities. Vibrant and healthy communities are a defining element of the human ecology of a city, where each of us is connected to and affected by, the welfare of our neighbours.

Over time, the Plan's land use strategy will influence the pattern of development that affects access to open space, jobs, housing opportunities, food, public transit and services. Other development policies addressing housing, community services and facilities, parks and open space, and the arts are needed in support of that strategy and to ensure that our future is one of social interaction, integration and well-being.

3.2.1 HOUSING

Adequate and affordable housing is a basic requirement for everyone. Where we live and our housing security contribute to our well-being and connect us to our community. Current and future residents must be able to access and maintain adequate, affordable and appropriate housing. The City's quality of life, economic competitiveness, social cohesion, as well as its balance and diversity depend on it.

Specific policies are needed when a particular kind of housing, whether it be type, tenure or level of affordability, is not sufficiently supplied by the market to meet demand or maintain diversity in the housing stock.



**Tab 6 - City of Toronto Application Support Material:
Terms of Reference for Archaeological Assessments
and Heritage Impact Assessment/Conservation
Strategy**

Application Support Material: Terms of Reference

<https://www.toronto.ca/city-government/planning-development/application-forms-fees/building-toronto-together-a-development-guide/application-support-material-terms-of-reference/>

To ensure the interests of the City are met and to adequately assess the technical aspects of your proposal, the City requires submission of a number of information items with your application. This page provides definitions and detailed descriptions of the plans, reports and studies the City may require in order to assess development proposals and the completeness of development applications.

Please note that not all of these requirements will apply to your proposal and that the level of detail required for these reports and studies varies widely. Your pre-application consultation meeting will determine the requirement for, and scope of, any plans, reports and studies that must be provided with your initial submission to consider your application complete.

Terms of Reference are being prepared for the following reports/studies. In the interim, the requirements and details of these plans/reports/studies, should you need one, can be addressed during your pre-application consultation meeting.

- Accessibility Design Standards Checklist
- Construction Management Plan
- Draft Zoning By-law Amendment (text and schedule)
- Environmental Impact Study
- Erosion/Sediment Control Plan

Archaeological Assessment

Description

An archaeological resource assessment identifies and evaluates the presence of archaeological resources also known as archaeological sites. Archaeological resources or sites include the physical remains and contextual setting of any structure, event, place, feature, or object which, because of the passage of time, is on or below the surface of the land or water, and is important to understanding the history of a people or place.

Since 2004 the City of Toronto, Heritage Preservation Services (HPS), has been developing an archaeological management plan (AMP) to govern when archaeological assessments are required within City lands. This planning tool is a predictive model and provides information on which lands are likely to contain archaeological resources and should be subject to an assessment.

When Required

An archaeological assessment is required for the following application types if the property is on the City's database of lands containing archaeological potential:

- Official Plan Amendment
- Zoning By-law Amendment
- Plans of Subdivision
- Site Plan Control
- Consent and/or Minor Variance applications

Whether a property has archaeological resource potential can be confirmed at the [searchable database TO maps](#). Use the map's legend and activate the archaeological potential tab to search property addresses directly.

An archaeological assessment may also be required if a property is identified on the City of Toronto's Inventory of Heritage Properties as part of the Heritage Impact Assessment process (See terms of reference for Heritage Impact Assessments).

Rationale

An archaeological assessment is required on lands that hold archaeological potential in order to ascertain the presence or absence of archaeological resources. If these resources are present, the archaeological assessment will evaluate the significance of these resources and outline measures to mitigate the impact of development on these resources. Mitigation measures include on-site preservation and avoidance of the archaeological site entirely, as per the City of Toronto's Official Plan, 10 (b), or alternatively the site is subject to full documentation and removal.

The archaeological assessment will inform the review of an application by City Planning staff. The rationale for the requirement to provide an archaeological assessment is based on the findings of the City of Toronto's archaeological management plan together with the legislative authority stemming from: the Ontario Heritage Act, Section 2 (d) of the Planning Act, Section 2.6.3 of the Provincial Policy Statement (2005), Section 3.1.5 Heritage Resources of the City of Toronto's Official Plan, the Environmental Assessment Act (1997), the Environmental Protection Act, O.Reg.359/09, the Aggregate Resources Act, and the Cemeteries Act.

Required Contents

An archaeological assessment is divided into stages 1-4, as per the Ministry of Tourism and Culture 2011 Standards and Guidelines for Consultant Archaeologists for land-based archaeology.

The assessment must adhere to both the Standards and Guidelines for work conducted within lands which comprise the City of Toronto.

Stage 1

Background Study and Property Inspection – The consultant archaeologist reviews the geographical and historical information for lands which are part of the development proposal, and completes a detailed land use study. The land use study is to include a review of historical land use and ownership records (e.g. assessment rolls, census records, commercial directories).

For City of Toronto proposals/projects, a property inspection is mandatory and not optional.

Stage 2

Property Assessment – A field examination takes place which may require either a surface or pedestrian survey or test pit surveys of the subject property. Special conditions such as brownfield properties or deeply buried urban contexts will require alternative strategies and should be discussed with Heritage Preservation Services staff in advance of work. If aboriginal archaeological sites may be encountered during Stage 2 work due to proximity to known archaeological sites in the area or local or oral history, First Nations engagement and consultation will be required at Stage 2 assessment. Special conditions should be discussed with HPS staff prior to the assessment being undertaken.

Stage 3

Site Specific Assessment – When potential archaeological sites are identified during the course of Stage 2 work, additional detailed information is obtained through a Stage 3 assessment. This will delineate and evaluate the significance of the site found and make recommendations for appropriate mitigation measures. For some sites, no further work will be recommended at the end of Stage 3. First Nations engagement and consultation will be required should aboriginal archaeological sites be discovered at Stage 3. The City of Toronto's Official Plan Policy 10 c) states that "indigenous cultural remains should be identified, recorded, protected and preserved" rather than be subject to full archaeological assessment including documentation and removal.

Stage 4

Mitigation of Development Impacts – Stage 4 includes implementing long-term protection strategies for archaeological sites to be impacted by the project. If after full consultation with the City of Toronto, the proponent, the Ministry of Tourism and Culture, and the consultant archaeologist, protection of the site cannot be achieved,

the consultant archaeologist may excavate the site to fully document features and remove artifacts prior to further soil disturbance activities taking place on site.

Additional submission requirements:

Provide two colour copies of all archaeological assessments completed, the Borden registration form if filed, and an electronic copy of all reports in PDF format.

Should the archaeological consultant recommendations include a program of archaeological monitoring during the construction process, an archaeological monitoring and mitigation strategy will be required as a condition of development approval.

Should the assessment result in the discovery of an archaeological site, or significant archaeological resources, the proponent will be required to prepare and implement a commemoration and interpretation strategy as a condition of the development approval.

Comments

Archaeological assessments are to be completed together with any associated mitigation well in advance of any soil disturbance. Archaeological assessments cannot be completed during certain times of the year (i.e. snow cover, frozen ground, excessive rain/wet conditions).

Heritage Impact Assessment/Conservation Strategy

Description

A Heritage Impact Assessment (HIA) is a study to evaluate the impact the proposed development or site alteration will have on the cultural heritage resource(s) and to recommend an overall approach to the conservation of the resource(s). This analysis, which must be prepared by a qualified heritage conservation professional, will address properties identified in the City of Toronto's Inventory of Heritage Properties (which includes both listed and designated properties) as well as any yet unidentified cultural heritage resource(s) found as part of the site assessment.

This study will be based on a thorough understanding of the significance and heritage attributes of the cultural heritage resource(s), identify any impact the proposed development or site alteration will have on the resource(s), consider mitigation options, and recommend a conservation strategy that best conserves the resource(s) within the context of the proposed development or site alteration.

The conservation strategy will apply conservation principles, describe the conservation work, and recommend methods to avoid or mitigate negative impacts to the cultural heritage resource(s). Minimal intervention should be the guiding principle for all work. Further, the conservation strategy recommendations will be in sufficient detail to inform decisions and direct the Conservation Plan.

Where there is the potential of impacting archaeological resources an Archaeological Assessment will be undertaken as an additional study.

When Required

A HIA is required for the following application types if the property is on the City of Toronto's Inventory of Heritage Properties:

- Official Plan Amendment
- Zoning By-law Amendment
- Plans of Subdivision
- Site Plan Control

A HIA may be required by staff for the following additional application types:

- Consent and/or Minor Variance and Building Permit applications for any property included on the City of Toronto's Inventory of Heritage Properties
- Where properties adjacent to a cultural heritage resource are subject to Official Plan Amendment, Zoning By-law Amendment, Plans of Subdivision, Site Plan Control and/or Consent and/or Minor Variance applications

Heritage Permit applications for any property designated under Part IV (individual) or Part V (Heritage Conservation District) of the Ontario Heritage Act

Rationale

The HIA will inform the review of an application involving a cultural heritage resource(s) included on the City of Toronto's Inventory of Heritage Properties. The rationale for the requirement to provide an HIA arises from: the Ontario Heritage Act; Section 2(d) of the Planning Act; Section 2.6.3 of the Provincial Policy Statement (2005); Chapter 103: Heritage, City of Toronto Municipal Code; and Section 3.1.5, Policies 1-13 of the City of Toronto's Official Plan.

Format

The HIA will be broad in scope but provide sufficient detail to communicate the site issues and inform the evaluation of the recommended conservation approach for the cultural heritage resource(s). The study will be submitted in hard copy and PDF format.

Principles

The HIA will apply appropriate conservation principles such as:

- The Parks Canada Standards and Guidelines for the Conservation of Historic Places in Canada (2003);
- Ontario Ministry of Culture's Eight Guiding Principles in the Conservation of Historic Properties (1997);
- Ontario Ministry of Culture's Heritage Conservation Principle's for Land Use Planning (2007); and
- Well Preserved: the Ontario Heritage Foundation's Manual of Principles and Practice for Architectural Conservation (1988).

Required Contents / Format

The HIA will include, but is not limited to, the following information:

Introduction to Development Site

- A location plan indicating subject property (Property Data Map and aerial photo).
- A concise written and visual description of the site identifying significant features, buildings, landscape and vistas.
- A concise written and visual description of the cultural heritage resource(s) contained within the development site identifying significant features,

buildings, landscape, vistas and including any heritage recognition of the property (City of Toronto's Inventory of Heritage Properties, Ontario Heritage Properties Database, Parks Canada National Historic Sites of Canada, and/or Canadian Register of Historic Places) with existing heritage descriptions as available.

- A concise written and visual description of the context including adjacent heritage properties and their recognition (as above), and any yet unidentified potential cultural heritage resource(s).
- Present owner contact information.

Background Research and Analysis

- Comprehensive written and visual research and analysis related to the cultural heritage value or interest of the site (both identified and unidentified): physical or design, historical or associative, and contextual.
- A development history of the site including original construction, additions and alterations with substantiated dates of construction.
- Research material to include relevant historic maps and atlases, drawings, photographs, sketches/renderings, permit records, land records, assessment rolls, City of Toronto directories, etc.

Statement of Significance

- A statement of significance identifying the cultural heritage value and heritage attributes of the cultural heritage resource(s). This statement will be informed by current research and analysis of the site as well as pre-existing heritage descriptions. This statement is to follow the provincial guidelines set out in the Ontario Heritage Tool Kit.
- The statement of significance will be written in a way that does not respond to or anticipate any current or proposed interventions. The City may, at its discretion and upon review, reject or use the statement of significance, in whole or in part, in crafting its own statement of significance (Reasons for Listing or Designation) for the subject property.
- Professional quality record photographs of the cultural heritage resource in its present state.

Assessment of Existing Condition

- A comprehensive written description and high quality color photographic documentation of the cultural heritage resource(s) in its current condition.

Description of the Proposed Development or Site Alteration

- A written and visual description of the proposed development or site alteration.

Impact of Development or Site Alteration

- An assessment identifying any impact the proposed development or site alteration may have on the cultural heritage resource(s). Negative impacts on a cultural heritage resource(s) as stated in the Ontario Heritage Tool Kit include, but are not limited to:
 - Destruction of any, or part of any, significant heritage attributes or features
 - Alteration that is not sympathetic, or is incompatible, with the historic fabric and appearance
 - Shadows created that alter the appearance of a heritage attribute or change the viability of an associated natural feature or plantings, such as a garden
 - Isolation of a heritage attribute from its surrounding environment, context or a significant relationship
- Direct or indirect obstruction of significant views or vistas within, from, or of built and natural features
- A change in land use (such as rezoning a church to a multi-unit residence) where the change in use negates the property's cultural heritage value
- Land disturbances such as a change in grade that alters soils, and drainage patterns that adversely affect a cultural heritage resource, including archaeological resources

Considered Alternatives and Mitigation Strategies

- An assessment of alternative options, mitigation measures, and conservation methods that may be considered in order to avoid or limit the negative impact on the cultural heritage resource(s). Methods of minimizing or avoiding a negative impact on a cultural heritage resource(s) as stated in the Ontario Heritage Tool Kit include, but are not limited to:
 - Alternative development approaches
 - Isolating development and site alteration from significant built and natural features and vistas
 - Design guidelines that harmonize mass, setback, setting, and materials
 - Limiting height and density
 - Allowing only compatible infill and additions
 - Reversible alterations

Conservation Strategy

- The preferred strategy recommended to best protect and enhance the cultural heritage value and heritage attributes of the cultural heritage resource(s) including, but not limited to:
 - A mitigation strategy including the proposed methods;
 - A conservation scope of work including the proposed methods; and
 - An implementation and monitoring plan.
- Recommendations for additional studies/plans related to, but not limited to: conservation; site specific design guidelines; interpretation/commemoration; lighting; signage; landscape; stabilization; additional record and documentation prior to demolition; and long-term maintenance.
- Referenced conservation principles and precedents.

Appendices

- A bibliography listing source materials used and institutions consulted in preparing the HIA.

Links

- [City of Toronto's Inventory of Heritage Properties](#)
- [Parks Canada National Historic Sites of Canada](#)
- [Canadian Register of Historic Places](#)



**Tab 7 - Ontario Heritage Act - Bill 108 Amendments:
Schedule 11**

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

1ST SESSION, 42ND LEGISLATURE, ONTARIO
68 ELIZABETH II, 2019

Bill 108

(Chapter 9 of the Statutes of Ontario, 2019)

An Act to amend various statutes with respect to housing, other development and various other matters

The Hon. S. Clark

Minister of Municipal Affairs and Housing

1st Reading	May 2, 2019
2nd Reading	May 29, 2019
3rd Reading	June 6, 2019
Royal Assent	June 6, 2019



**SCHEDULE 11
ONTARIO HERITAGE ACT**

1 (1) Section 1 of the *Ontario Heritage Act* is amended by adding the following definition:

“prescribed” means prescribed by regulations made under this Act; (“prescrit”)

(2) Section 1 of the Act is amended by adding the following subsection:

Definition of “alter” in certain provisions

(2) Despite subsection (1), for the purposes of sections 33, 34.5, 69 and such other provisions as may be prescribed, the definition of “alter” in subsection (1) does not include to demolish or to remove and “alteration” does not include demolition or removal.

2 Section 6 of the Act, as re-enacted by subsection 112 (1) of Schedule 8 to the *Cutting Unnecessary Red Tape Act, 2017*, is amended by striking out “by regulation” at the end.

3 The Act is amended by adding the following section:

Principles

26.0.1 A council of a municipality shall consider the prescribed principles, if any, when the council exercises a decision-making authority under a prescribed provision of this Part.

4 Subsection 26 (2) of the Act is repealed.

5 Subsection 26.1 (3) of the Act is amended by striking out “subsection 27 (1.2)” and substituting “subsection 27 (3)”.

6 Section 27 of the Act is repealed and the following substituted:

Register

27 (1) The clerk of a municipality shall keep a register of property situated in the municipality that is of cultural heritage value or interest.

Contents of register

(2) The register kept by the clerk shall list all property situated in the municipality that has been designated by the municipality or by the Minister under this Part and shall contain, with respect to each property,

- (a) a legal description of the property;
- (b) the name and address of the owner; and
- (c) a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property.

Same

(3) In addition to the property listed in the register under subsection (2), the register may include property that has not been designated under this Part but that the council of the municipality believes to be of cultural heritage value or interest and shall contain, with respect to such property, a description of the property that is sufficient to readily ascertain the property.

Consultation

(4) If the council of a municipality has appointed a municipal heritage committee, the council shall, before including a property that has not been designated under this Part in the register under subsection (3) or removing the reference to such a property from the register, consult with its municipal heritage committee.

Notice to property owner

(5) If a property that has not been designated under this Part has been included in the register under subsection (3), the council of the municipality shall, within 30 days after including the property in the register, provide the owner of the property with notice that the property has been included in the register.

Same

(6) The notice under subsection (5) shall include the following:

1. A statement explaining why the council of the municipality believes the property to be of cultural heritage value or interest.
2. A description of the property that is sufficient to readily ascertain the property.
3. A statement that if the owner of the property objects to the property being included in the register, the owner may object to the property’s inclusion by serving on the clerk of the municipality a notice of objection setting out the reasons for the objection and all the relevant facts.

4. An explanation of the restriction concerning the demolition or removal, or the permitting of the demolition or removal, of a building or structure on the property as set out in subsection (9).

Objection

(7) The owner of a property who objects to a property being included in the register under subsection (3) shall serve on the clerk of the municipality a notice of objection setting out the reasons for the objection and all relevant facts.

Decision of council

(8) If a notice of objection has been served under subsection (7), the council of the municipality shall,

- (a) consider the notice and make a decision as to whether the property should continue to be included in the register or whether it should be removed; and
- (b) provide notice of the council's decision to the owner of the property, in such form as the council considers proper, within 90 days after the decision.

Restriction on demolition, etc.

(9) If a property that has not been designated under this Part has been included in the register under subsection (3), the owner of the property shall not demolish or remove a building or structure on the property or permit the demolition or removal of the building or structure unless the owner gives the council of the municipality at least 60 days notice in writing of the owner's intention to demolish or remove the building or structure or to permit the demolition or removal of the building or structure.

Same

(10) Subsection (9) applies only if the property is included in the register under subsection (3) before any application is made for a permit under the *Building Code Act, 1992* to demolish or remove a building or structure located on the property.

Same

(11) The notice required by subsection (9) shall be accompanied by such plans and shall set out such information as the council may require.

Extracts

(12) The clerk of a municipality shall issue extracts from the register referred to in subsection (1) to any person on payment of the fee set by the municipality by by-law.

Application of subs. (5) to (8)

(13) Subsections (5) to (8) do not apply in respect of properties that were included in the register under subsection (3) before section 6 of the Schedule 11 to the *More Homes, More Choice Act, 2019* comes into force.

7 (1) Clause 29 (1) (a) of the Act is repealed and the following substituted:

- (a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed, the property meets the prescribed criteria; and

(2) Subsection 29 (1.1) of the Act is amended striking out "Subject to subsection (2)" at the beginning and substituting "Subject to subsections (1.2) and (2)".

(3) Section 29 of the Act is amended by adding the following subsection:

Limitation

(1.2) If a prescribed event has occurred in respect of a property in a municipality, the council of the municipality may not give a notice of intention to designate the property under subsection (1) after 90 days have elapsed from the event, subject to such exceptions as may be prescribed.

(4) Clause 29 (4) (c) of the Act is amended by striking out "to the designation" and substituting "to the notice of intention to designate the property".

(5) Subsection 29 (4.1) of the Act is amended by,

- (a) striking out "the proposed designation" in clause (c) and substituting "the notice of intention to designate the property"; and
- (b) striking out "to the designation" in clause (d) and substituting "to the notice of intention to designate the property".

(6) Subsections 29 (6) to (17) of the Act are repealed and the following substituted:

Consideration of objection by council

(6) If a notice of objection has been served under subsection (5), the council of the municipality shall consider the objection and make a decision whether or not to withdraw the notice of intention to designate the property within 90 days after the end of the 30-day period under subsection (5).

Notice of withdrawal

(7) If the council of the municipality decides to withdraw the notice of intention to designate the property, either of its own initiative at any time or after considering an objection under subsection (6), the council shall withdraw the notice by causing a notice of withdrawal,

- (a) to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust; and
- (b) to be published in a newspaper having general circulation in the municipality.

If no notice of objection or no withdrawal

(8) If no notice of objection is served within the 30-day period under subsection (5) or a notice of objection is served within that period but the council decides not to withdraw the notice of intention to designate the property, the council may pass a by-law designating the property, provided the following requirements are satisfied:

1. The by-law must be passed within 120 days after the date of publication of the notice of intention under clause (3) (b) or, if a prescribed circumstance exists, within such other period of time as may be prescribed for the circumstance.
2. The by-law must include a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property and must comply with such requirements in relation to the statement and the description as may be prescribed and with such other requirements as may be prescribed.
3. The council must cause the following to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust:
 - i. A copy of the by-law.
 - ii. A notice that any person who objects to the by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under paragraph 4, a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.
4. The council must publish notice of the by-law in a newspaper having general circulation in the municipality, which must provide that any person who objects to the by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under this paragraph, a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

Deemed withdrawal

(9) If the council of the municipality has not passed a by-law under subsection (8) within the time set out in paragraph 1 of that subsection, the notice of intention to designate the property is deemed to be withdrawn and the municipality shall cause a notice of withdrawal,

- (a) to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust; and
- (b) to be published in a newspaper having general circulation in the municipality.

Same

(10) For clarity, the deemed withdrawal of a notice of intention to designate a property under subsection (9) does not prevent the council from giving a new notice of intention to designate the property in accordance with this section.

Appeal to Tribunal

(11) Any person who objects to the by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under paragraph 4 of subsection (8), a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

If no notice of appeal

(12) If no notice of appeal is given within the time period specified in subsection (11),

- (a) the by-law comes into force on the day following the last day of the period; and
- (b) the clerk shall ensure that a copy of the by-law is registered against the properties affected by the by-law in the appropriate land registry office and that a copy of the registered by-law is served on the Trust.

If notice of appeal

(13) If a notice of appeal is given within the time period specified in subsection (11), the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to such persons or bodies and in such manner as the Tribunal may determine.

Forwarding of record of decision

(14) If the council of the municipality made a decision on a notice of objection under subsection (6) and if a notice of appeal is given within the time period specified in subsection (11), the clerk of the municipality shall ensure that the record of the decision under subsection (6) is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

Powers of Tribunal

(15) After holding the hearing, the Tribunal shall,

- (a) dismiss the appeal; or
- (b) allow the appeal in whole or in part and,
 - (i) repeal the by-law,
 - (ii) amend the by-law in such manner as the Tribunal may determine,
 - (iii) direct the council of the municipality to repeal the by-law, or
 - (iv) direct the council of the municipality to amend the by-law in accordance with the Tribunal's order.

Dismissal without hearing of appeal

(16) Despite the *Statutory Powers Procedure Act* and subsections (13) and (15), the Tribunal may, on its own motion or on the motion of any party, dismiss all or part of the appeal without holding a hearing on the appeal if,

- (a) the Tribunal is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent ground upon which the Tribunal could allow all or part of the appeal, or
 - (ii) the appeal is not made in good faith, is frivolous or vexatious, or is made only for the purpose of delay;
- (b) the appellant has not provided written reasons in support of the objection to the by-law;
- (c) the appellant has not paid the fee charged under the *Local Planning Appeal Tribunal Act, 2017*; or
- (d) the appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal.

Representations

(17) Before dismissing all or part of an appeal on any of the grounds mentioned in subsection (16), the Tribunal shall,

- (a) notify the appellant of the proposed dismissal; and
- (b) give the appellant an opportunity to make representations with respect to the proposed dismissal.

Coming into force

(18) If one or more notices of appeal are given to the clerk within the time period specified in subsection (11),

- (a) the by-law comes into force when all of such appeals have been withdrawn or dismissed;
- (b) if the by-law is amended by the Tribunal under subclause (15) (b) (ii), the by-law, as amended by the Tribunal, comes into force on the day it is so amended; or
- (c) if the by-law is amended by the council pursuant to subclause (15) (b) (iv), the by-law, as amended by the council, comes into force on the day it is so amended.

Registration of by-law

(19) The clerk of a municipality shall ensure that a copy of a by-law that comes into force under subsection (18) is registered against the properties affected by the by-law in the appropriate land registry office and that a copy of the registered by-law is served on the Trust.

Transition

(20) If, on the day subsection 2 (8) of Schedule F to the *Government Efficiency Act, 2002* comes into force, the clerk of a municipality has given a notice of intention to designate a property as a property of historic or architectural value or interest but the council has not yet passed a by-law so designating the property and has not withdrawn its notice of intention,

- (a) this section does not apply to the notice of intention; and
- (b) despite its amendment by section 2 of Schedule F to the *Government Efficiency Act, 2002*, this section, as it read immediately before its amendment, continues to apply to the notice of intention.

Same

(21) If, on or before the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, the clerk of a municipality had given a notice of intention to designate a property that complied with subsection (4) as it read immediately before that day but, as of that day, the council had not yet passed a by-law designating the property under this section and had not withdrawn the notice,

- (a) the notice continues to have been validly given; and
- (b) the requirements of subsection (4) or (4.1), as enacted on that day by subsection 17 (2) of the *Ontario Heritage Amendment Act, 2005*, do not apply to the notice of intention.

8 (1) Subsections 30.1 (1) and (2) of the Act are repealed and the following substituted:

Amendment of designating by-law

(1) The council of a municipality may, by by-law, amend a by-law designating property made under section 29 and section 29 applies, with prescribed modifications, to an amending by-law.

Exception

(2) Despite subsection (1), subsections 29 (1) to (14) do not apply to an amending by-law if the only purpose or purposes of the amendments contained in the by-law are to do one or more of the following:

1. Clarify or correct the statement explaining the property's cultural heritage value or interest or the description of the property's heritage attributes.
2. Correct the legal description of the property.
3. Otherwise revise the by-law to make it consistent with the requirements of this Act or the regulations, including revisions that would make a by-law passed before subsection 7 (6) of Schedule 11 to the *More Homes, More Choice Act, 2019* comes into force satisfy the requirements prescribed for the purposes of paragraph 2 of subsection 29 (8), if any.

(2) Subsections 30.1 (7) to (10) of the Act are repealed and the following substituted:

Consideration of objection by council

(7) If a notice of objection is filed within the 30-day period under subsection (6), the council of the municipality shall consider the objection and make a decision whether or not to withdraw the notice of the proposed amendment within 90 days after the end of the 30-day period under subsection (6).

Notice of withdrawal

(8) If the council of the municipality decides to withdraw the notice of the proposed amendment, either on its own initiative at any time or after considering an objection under subsection (7), the council shall withdraw the notice by causing a notice of withdrawal,

- (a) to be served on the owner of the property and on the Trust; and
- (b) to be published in a newspaper having general circulation in the municipality.

If no notice of objection or no withdrawal

(9) If no notice of objection is filed within the 30-day period under subsection (6) or a notice of objection is served within that period but the council decides not to withdraw the notice of the proposed amendment, the council may pass an amending by-law and if it does so, the council shall do the following:

1. Cause the following to be served on the owner of the property and on the Trust:
 - i. A copy of the amending by-law.
 - ii. A notice that if the owner of the property objects to the amending by-law, the owner may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of the notice under this subparagraph, a notice of appeal setting out the objection to the amending by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.
2. Publish notice of the amending by-law in a newspaper having general circulation in the municipality.

Appeal to Tribunal

(10) If the owner of the property objects to the amending by-law, the owner may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of the notice under subparagraph 1 ii of subsection (9), a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

If no notice of appeal

(11) If no notice of appeal is given within the time period specified in subsection (10),

- (a) the amending by-law comes into force on the day following the last day of the period; and
- (b) the clerk shall ensure that a copy of the amending by-law is registered against the properties affected by the by-law in the appropriate land registry office and that a copy of the registered amending by-law is served on the Trust.

If notice of appeal

(12) If a notice of appeal is given within the time period specified in subsection (10), the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to such persons or bodies and in such manner as the Tribunal may determine.

Same

(13) If a notice of appeal is given within the time period specified in subsection (10), subsections 29 (15) to (19) apply with necessary modifications.

Forwarding of record of decision

(14) If the council made a decision on the proposed amending by-law under subsection (7) and if a notice of appeal is given within the time period specified in subsection (10), the clerk of the municipality shall ensure that the record of the decision under subsection (7) is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

Requirement to update old by-laws

(15) If the council of a municipality proposes to amend a by-law designating property made under section 29 that does not comply with requirements that are prescribed for the purposes of paragraph 2 of subsection 29 (8), if any, the council shall include in the amendment such changes as are necessary to ensure that the by-law satisfies those requirements.

Same, 2005 amendments

(16) If the council of a municipality proposes to amend a by-law designating property made under section 29 before the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, the council shall include in the amendment such changes as are necessary to ensure that the by-law satisfies the requirements of section 29, as it read on the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent.

9 Subsections 31 (5) to (7) of the Act are repealed and the following substituted:**Objection**

(5) A person who objects to a proposed repealing by-law shall, within 30 days after the date of publication of the notice of intention to repeal the by-law or part thereof, serve on the clerk of the municipality a notice of objection setting out the reasons for the objection and all relevant facts.

Consideration of objection by council

(6) If a notice of objection is filed within the 30-day period under subsection (5), the council of the municipality shall consider the objection and make a decision whether or not to withdraw the notice of intention within 90 days after the end of the 30-day period under subsection (5).

Notice of withdrawal

(7) If the council of the municipality decides to withdraw the notice of intention, either of its own initiative at any time or after considering an objection under subsection (6), the council shall withdraw the notice by causing a notice of withdrawal,

- (a) to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust; and
- (b) to be published in a newspaper having general circulation in the municipality.

If no notice of objection or no withdrawal

(8) If no notice of objection is filed within the 30-day period under subsection (5) or a notice of objection is served within that period but the council decides not to withdraw the notice of intention, the council may pass a by-law repealing the by-law or part thereof designating the property and if it does so, it shall do the following:

1. Cause the following to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust:

- i. A copy of the repealing by-law.
 - ii. A notice that any person who objects to the repealing by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under paragraph 2, a notice of appeal setting out the objection to the repealing by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.
2. Publish notice of the repealing by-law in a newspaper having general circulation in the municipality, which must provide that any person who objects to the repealing by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under this paragraph, a notice of appeal setting out the objection to the repealing by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

Appeal to Tribunal

(9) Any person who objects to the repealing by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under paragraph 2 of subsection (8), a notice of appeal setting out the objection to the repealing by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

If no notice of appeal

- (10) If no notice of appeal is given within the time period specified in subsection (9),
- (a) the repealing by-law comes into force on the day following the last day of the period;
 - (b) the clerk shall ensure that a copy of the repealing by-law is registered against the properties affected by the repealing by-law in the appropriate land registry office and that a copy of the registered repealing by-law is served on the Trust; and
 - (c) the clerk shall delete any reference to the property from the register referred to in subsection 27 (1).

If notice of appeal

(11) If a notice of appeal is given within the time period specified in subsection (9), the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to such persons or bodies and in such manner as the Tribunal may determine.

Same

(12) If a notice of appeal is given within the time period specified in subsection (9), subsections 29 (15) to (19) apply with necessary modifications.

Forwarding of record of decision

(13) If the council made a decision on the proposed repealing by-law under subsection (6) and if a notice of appeal is given to the clerk within the time period specified in subsection (9), the clerk of the municipality shall ensure that the record of the decision under subsection (6) is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

Deletion from register

(14) If a repealing by-law comes into effect under subsection 29 (18), as made applicable by subsection (12) of this section, the municipality shall cause the clerk to delete any reference to the property from the register referred to in subsection 27 (1).

10 Subsections 32 (2) to (23) of the Act are repealed and the following substituted:

Notice required

(2) Upon receiving an application under subsection (1), the council of the municipality shall cause notice of the application to be given by the clerk of the municipality in accordance with subsection (3).

Notice of application

- (3) Notice of an application shall be published in a newspaper having general circulation in the municipality and shall contain,
- (a) an adequate description of the property so that it may be readily ascertained;
 - (b) a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property, as set out in the by-law that is the subject of the application;
 - (c) a statement that further information respecting the application is available from the municipality; and
 - (d) a statement that notice of objection to the application may be served on the clerk within 30 days after the date of publication of the notice of the application under this subsection.

Objection

(4) A person who objects to an application shall, within 30 days after the date of the publication of the notice of application under subsection (3), serve on the clerk of the municipality a notice of objection setting out the reasons for the objection and all relevant facts.

Decision of council

(5) After consultation with its municipal heritage committee, if one is established, the council shall consider an application under subsection (1) and any objections served under subsection (4) and within 90 days after the end of the 30-day period under subsection (4) shall do either of the following:

1. Refuse the application and cause the following to be served on the owner of the property, on any person who objected under subsection (4) and on the Trust:
 - i. A notice of the council's decision.
 - ii. A notice that if the owner of the property objects to the council's decision, the owner may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after receipt of the notice under this subparagraph, a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.
2. Consent to the application, pass a by-law repealing the by-law or part thereof designating the property and shall do the following:
 - i. Cause the following to be served on the owner of the property, on any person who objected under subsection (4) and on the Trust:
 - A. A copy of the repealing by-law.
 - B. A notice that any person who objects to the decision may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under subparagraph ii, a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.
 - ii. Publish notice of the council's decision in a newspaper having general circulation in the municipality, which must provide that any person who objects to the decision may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under this subparagraph, a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

Extension of time

(6) The owner of the property and the council may agree to extend the time under subsection (5) and, if the council fails to notify the owner of the property of the council's decision within such extended time as may be agreed upon, the council is deemed to have consented to the application.

Appeal to Tribunal, refusal of application

(7) If the owner of the property objects to the council's decision to refuse the application, the owner may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the receipt of the notice under subparagraph 1 ii of subsection (5), a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

Same, consent of application

(8) Any person who objects to the council's decision to consent to the application and to pass a repealing by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under subparagraph 2 ii of subsection (5), a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

If no notice of appeal

(9) If no notice of appeal is given within the time period specified in subsection (7) or (8), as the case may be, the decision of the council under subsection (5) is final and, if the council consented to the application and passed a repealing by-law,

- (a) the repealing by-law comes into force on the day following the last day of the period;
- (b) the clerk shall ensure that a copy of the repealing by-law is registered against the property affected by the by-law in the appropriate land registry office and that a copy of the registered repealing by-law is served on the Trust; and
- (c) the clerk shall delete any reference to the property from the register referred to in subsection 27 (1).

If notice of appeal

(10) If a notice of appeal is given within the time period specified in subsection (7) or (8), as the case may be, the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to such persons or bodies and in such manner as the Tribunal may determine.

Forwarding of record of decision

(11) If a notice of appeal is given within the time period specified in subsection (7) or (8), as the case may be, the clerk of the municipality shall ensure that the record of the decision under subsection (5) is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality.

Powers of Tribunal

(12) After holding the hearing, the Tribunal shall do the following:

1. If the appeal relates to a decision of council to refuse the application,
 - i. dismiss the appeal, or
 - ii. allow the appeal in whole or in part and,
 - A. repeal the by-law or part thereof designating the property, or
 - B. direct the council of the municipality to repeal the by-law or part thereof designating the property in accordance with the Tribunal's order.
2. If the appeal relates to a decision of council to consent to the application and to pass a repealing by-law,
 - i. dismiss the appeal, or
 - ii. allow the appeal in whole or in part and,
 - A. repeal the repealing by-law,
 - B. amend the repealing by-law in such manner as the Tribunal may determine,
 - C. direct the council of the municipality to repeal the repealing by-law, or
 - D. direct the council of the municipality to amend the repealing by-law in accordance with the Tribunal's order.

Dismissal without hearing of appeal

(13) Despite the *Statutory Powers Procedure Act* and subsections (10) and (12) of this section, the Tribunal may, on its own motion or on the motion of any party, dismiss all or part of the appeal without holding a hearing on the appeal if,

- (a) the Tribunal is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent ground upon which the Tribunal could allow all or part of the appeal, or
 - (ii) the appeal is not made in good faith, is frivolous or vexatious, or is made only for the purpose of delay;
- (b) the appellant has not provided written reasons in support of the objection referred to in subsection (7) or (8), as the case may be;
- (c) the appellant has not paid the fee charged under the *Local Planning Appeal Tribunal Act, 2017*; or
- (d) the appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal.

Representations

(14) Before dismissing all or part of an appeal on any of the grounds mentioned in subsection (13), the Tribunal shall,

- (a) notify the appellant of the proposed dismissal; and
- (b) give the appellant an opportunity to make representations with respect to the proposed dismissal.

Coming into force

(15) If one or more notices of appeal are given to the clerk within the time period specified in subsection (7), the following rules apply:

1. A repealing by-law passed by the municipality under paragraph 2 of subsection (5) comes into force when all of such appeals have been withdrawn or dismissed.
2. The repeal of a by-law or a part of a by-law under sub-subparagraph 1 ii A of subsection (12) comes into force on the day it is so ordered by the Tribunal.

3. A by-law repealing a by-law or part thereof under sub-subparagraph 1 ii B of subsection (12) comes into force on the day the by-law is passed by the municipality.
4. The repeal of a repealing by-law under sub-subparagraph 2 ii A of subsection (12) comes into force on the day it is so ordered by the Tribunal.
5. If a repealing by-law is amended by the Tribunal under sub-subparagraph 2 ii B of subsection (12), the repealing by-law, as amended by the Tribunal, comes into force on the day it is so amended.
6. If a repealing by-law is repealed by a council under sub-subparagraph 2 ii C of subsection (12), the by-law that repeals the repealing by-law comes into force on the day it is passed.
7. If a repealing by-law is amended by a council under sub-subparagraph 2 ii D of subsection (12), the repealing by-law, as amended by council, comes into force on the day it is so amended.

Registration of by-law

(16) The clerk of a municipality shall ensure that a copy of the repealing by-law is registered against the properties affected by the by-law in the appropriate land registry office and that a copy of the registered repealing by-law is served on the Trust.

Deletion from register

(17) If a repealing by-law comes into effect under subsection (15), the municipality shall cause the clerk to delete any reference to the property from the register referred to in subsection 27 (1).

Reapplication

(18) If a prescribed circumstance applies, the owner of the property may not reapply to have the by-law or part thereof designating the property repealed within the time period determined in accordance with the regulations, except with the consent of the council.

11 Section 33 of the Act is repealed and the following substituted:

Alteration of property

33 (1) No owner of property designated under section 29 shall alter the property or permit the alteration of the property if the alteration is likely to affect the property's heritage attributes, as set out in the description of the property's heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the alteration.

Application

(2) An application under subsection (1) shall be accompanied by the prescribed information and material.

Other information

(3) A council may require that an applicant provide any other information or material that the council considers it may need.

Notice of complete application

(4) The council shall, upon receiving all information and material required under subsections (2) and (3), if any, serve a notice on the applicant informing the applicant that the application is complete.

Notification re completeness of application

(5) The council may, at any time, notify the applicant of the information and material required under subsection (2) or (3) that has been provided, if any, and any information and material under those subsections that has not been provided.

Decision of council

(6) The council, after consultation with its municipal heritage committee, if one is established, and within the time period determined under subsection (7),

- (a) shall,
 - (i) consent to the application,
 - (ii) consent to the application on terms and conditions, or
 - (iii) refuse the application; and
- (b) shall serve notice of its decision on the owner of the property and on the Trust.

Same

(7) For the purposes of subsection (6), the time period is determined as follows:

1. Unless paragraph 2 applies, the period is 90 days after a notice under subsection (4) is served on the applicant or such longer period after the notice is served as is agreed upon by the owner and the council.
2. If a notice under subsection (4) or (5) is not served on the applicant within 60 days after the day the application commenced, as determined in accordance with the regulations, the period is 90 days after the end of that 60-day period or such longer period after the end of the 60-day period as is agreed upon by the owner and the council.

Deemed consent

(8) If the council fails to notify the owner under clause (6) (b) within the time period determined under subsection (7), the council shall be deemed to have consented to the application.

Appeal to Tribunal

(9) If the council of a municipality consents to an application upon certain terms and conditions or refuses an application, the owner may, within 30 days after receipt of the notice under clause (6) (b), appeal the council's decision to the Tribunal by giving a notice of appeal to the Tribunal and to the clerk of the municipality setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

If notice of appeal

(10) If a notice of appeal is given within the time period specified in subsection (9), the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to the owner of the property and to such other persons or bodies as the Tribunal may determine.

Powers of Tribunal

(11) After holding a hearing, the Tribunal may order,

- (a) that the appeal be dismissed; or
- (b) that the municipality consent to the application without terms and conditions or with such terms and conditions as the Tribunal may specify in the order.

Dismissal without hearing of appeal

(12) Despite the *Statutory Powers Procedure Act* and subsections (10) and (11), the Tribunal may, on its own motion or on the motion of any party, dismiss all or part of the appeal without holding a hearing on the appeal if,

- (a) the Tribunal is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent ground upon which the Tribunal could allow all or part of the appeal, or
 - (ii) the appeal is not made in good faith, is frivolous or vexatious, or is made only for the purpose of delay;
- (b) the appellant has not provided written reasons in support of the objection to the decision of the council of the municipality;
- (c) the appellant has not paid the fee charged under the *Local Planning Appeal Tribunal Act, 2017*; or
- (d) the appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal.

Representations

(13) Before dismissing all or part of an appeal on any of the grounds mentioned in subsection (12), the Tribunal shall,

- (a) notify the appellant of the proposed dismissal; and
- (b) give the appellant an opportunity to make representations with respect to the proposed dismissal.

Notice of Tribunal's decision

(14) The council shall serve notice of the Tribunal's decision under subsection (11) or (12) on the Trust.

Delegation of council's consent

(15) The power to consent to alterations to property under this section may be delegated by by-law by the council of a municipality to an employee or official of the municipality if the council has established a municipal heritage committee and has consulted with the committee prior to delegating the power.

Scope of delegation

(16) A by-law that delegates the council's power to consent to alterations to a municipal employee or official may delegate the power with respect to all alterations or with respect to such classes of alterations as are described in the by-law.

Transition

(17) If property is designated under this Part as property of historic or architectural value or interest, either before the day section 29 of this Act is amended by section 2 of Schedule F to the *Government Efficiency Act, 2002* or under subsection 29 (16) of this Act after that day,

- (a) subsection (1) of this section does not apply to the property;
- (b) despite its amendment by subsection 2 (16) of Schedule F to the *Government Efficiency Act, 2002*, subsection (1) of this section, as it read immediately before the day subsection 2 (16) of Schedule F to the *Government Efficiency Act, 2002* came into force, continues to apply to the property.

12 Subsection 34 (1) to (4) of the Act are repealed and the following substituted:**Demolition or removal**

(1) No owner of property designated under section 29 shall do either of the following, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal:

- 1. Demolish or remove, or permit the demolition or removal of, any of the property's heritage attributes, as set out in the description of the property's heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be.
- 2. 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, as set out in the description of the property's heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be.

Application

(2) An application under subsection (1) shall be accompanied by the prescribed information and material.

Other information

(3) A council may require that an applicant provide any other information or material that the council considers it may need.

Notice confirming complete application

(4) The council shall, upon receiving all information and material required under subsections (2) and (3), if any, serve a notice on the applicant informing the applicant that the application is complete.

Notification re completeness of application

(4.1) The council may, at any time, notify the applicant of the information and material required under subsection (2) or (3) that has been provided, if any, and any information and material under those subsections that has not been provided.

Decision of council

(4.2) The council, after consultation with its municipal heritage committee, if one is established, and within the time period determined under subsection (4.3),

- (a) shall,
 - (i) consent to the application,
 - (ii) consent to the application, subject to such terms and conditions as may be specified by the council, or
 - (iii) refuse the application;
- (b) shall serve notice of its decision on the owner of the property and on the Trust; and
- (c) shall publish its decision in a newspaper having general circulation in the municipality.

Same

(4.3) For the purposes of subsection (4.2), the time period is determined as follows:

- 1. Unless paragraph 2 applies, the period is 90 days after a notice under subsection (4) is served on the applicant or such longer period after the notice is served as is agreed upon by the owner and the council.
- 2. If a notice under subsection (4) or (4.1) is not served on the applicant within 60 days after the day the application commenced, as determined in accordance with the regulations, the period is 90 days after the end of that 60-day period or such longer period after the end of the 60-day period as is agreed upon by the owner and the council.

Deemed consent

(4.4) If the council fails to notify the owner under clause (4.2) (b) within the time period determined under subsection (4.3), the council shall be deemed to have consented to the application.

13 (1) Subsection 34.1 (1) of the Act is amended by striking out “subclause 34 (2) (a) (i.1) or refuses an application under subclause 34 (2) (a) (ii)” and substituting “subclause 34 (4.2) (a) (ii) or refuses an application under subclause 34 (4.2) (a) (iii)”.

(2) Subsections 34.1 (3) to (7) of the Act are repealed and the following substituted:

Content of notice

(3) A notice of appeal shall set out the objection to the council’s decision and the reasons in support of the objection and be accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

If notice of appeal

(4) If a notice of appeal is given within the time period specified in subsection (2), the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to such persons or bodies and in such manner as the Tribunal may determine.

Powers of Tribunal

(5) After holding a hearing, the Tribunal may order,

- (a) that the appeal be dismissed; or
- (b) that the municipality consent to the demolition or removal referred to in paragraph 1 or 2 of subsection 34 (1), as the case may be, without terms and conditions or with such terms and conditions as the Tribunal may specify in the order.

Dismissal without hearing of appeal

(6) Despite the *Statutory Powers Procedure Act* and subsections (4) and (5), the Tribunal may, on its own motion or on the motion of any party, dismiss all or part of the appeal without holding a hearing on the appeal if,

- (a) the Tribunal is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent ground upon which the Tribunal could allow all or part of the appeal, or
 - (ii) the appeal is not made in good faith, is frivolous or vexatious, or is made only for the purpose of delay;
- (b) the appellant has not provided written reasons in support of the objection to the decision of the council of the municipality;
- (c) the appellant has not paid the fee charged under the *Local Planning Appeal Tribunal Act, 2017*; or
- (d) the appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal.

Representations

(7) Before dismissing all or part of an appeal on any of the grounds mentioned in subsection (6), the Tribunal shall,

- (a) notify the appellant of the proposed dismissal; and
- (b) give the appellant an opportunity to make representations with respect to the proposed dismissal.

Notice of Tribunal’s decision

(8) The council shall serve notice of the Tribunal’s decision under subsection (5) or (6) to the Trust.

14 Section 34.3 of the Act is repealed and the following substituted:

Council consents to application under s. 34 — required steps or actions

34.3 (1) The council of a municipality shall take such steps or actions as may be prescribed if the owner of a property designated under section 29 has applied in writing to the council for consent to a demolition or removal referred to in paragraph 1 or 2 of subsection 34 (1) in respect of the property and,

- (a) the council consents to the application under subclause 34 (4.2) (a) (i) or (ii) or is deemed to have consented to the application under subsection 34 (4.4); or
- (b) the Tribunal has ordered that the municipality give its consent under clause 34.1 (5) (b).

Same

(2) A regulation made for the purposes of subsection (1) may prescribe different steps or actions that must be taken by a council in different circumstances or that no steps or actions need to be taken by a council in certain circumstances.

15 (1) Clause 34.5 (1) (a) of the Act is amended by striking out “the criteria prescribed by regulation” and substituting “the prescribed criteria”.

(2) Subsection 34.5 (2) of the Act is amended by striking out “or” at the end of clause (a) and by repealing clause (b) and substituting the following:

- (b) carry out or permit the demolition or removal of the property’s heritage attributes, as set out in the description of the property’s heritage attributes that was required to be served and registered under clause 34.6 (5) (a); or
- (c) carry out 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, as set out in the description of the property’s heritage attributes that was required to be served and registered under clause 34.6 (5) (a).

(3) Subsections 34.5 (4) and (5) of the Act are repealed and the following substituted:

Application for consent, alteration

(4) The owner of a property designated under subsection (1) may apply to the Minister for the Minister’s consent to an alteration of the property and subsections 33 (2) to (14), as they read immediately before the day section 11 of Schedule 11 to the *More Homes, More Choice Act, 2019* came into force, apply with necessary modifications to such an application.

Same

(5) For the purposes of the application of subsection 33 (4), as it read immediately before the day section 11 of Schedule 11 to the *More Homes, More Choice Act, 2019* came into force, to an application for the Minister’s consent made under subsection (4) of this section, subsection 33 (4) shall be deemed to require the Minister to consult with the Trust, and not with a municipal heritage committee, before rendering a decision under that subsection.

(4) Subsection 34.5 (6) of the Act is amended by striking out “consent to the demolition or removal of a building or structure on the property” at the end and substituting “consent to a demolition or removal referred to in clause (2) (b) or (c).”

(5) Subsection 34.5 (11) of the Act is amended by striking out “consent to the demolition or removal of a building or structure on property” in the portion before clause (a) and substituting “consent to a demolition or removal referred to in clause (2) (b) or (c) in respect of a property”.

16 Subsection 34.9 (6) of the Act is amended by striking out “Subsections 32 (5) to (10) and (13) apply” at the beginning and substituting “Subsections 32 (5) to (10) and (13), as they read immediately before the day section 10 of Schedule 11 to the *More Homes, More Choice Act, 2019* came into force, apply”.

17 The Act is amended by adding the following section:

Principles

39.1.2 A council of a municipality shall consider the prescribed principles, if any, when the council exercises a decision-making authority under a prescribed provision of this Part.

18 (1) Subsection 41 (2.1) of the Act is amended by striking out “any demolition or removal of buildings or structures on the property” at the end and substituting “any demolition or removal referred to in clause 34.5 (2) (b) or (c) in respect of the property”.

(2) Subsection 41 (2.2) of the Act is amended by striking out “any demolition or removal of buildings or structures on the property” in the portion before clause (a) and substituting “any demolition or removal referred to in subsection 34 (1) in respect of the property”.

(3) Subsection 41 (2.3) of the Act is amended by striking out “or demolition or removal of buildings or structures on the property” and substituting “or demolition or removal referred to in subsection 42 (1) in respect of the property”.

(4) Subsection 41 (4) of the Act is amended by striking out “by giving the clerk of the municipality” and substituting “by giving the Tribunal and the clerk of the municipality”.

(5) Subsection 41 (5) of the Act is amended,

- (a) by striking out “to the clerk” in the portion before clause (a); and
- (b) by adding “and that a copy of the registered by-law is served on the Trust” at the end of clause (b).

(6) Subsection 41 (6) of the Act is amended by,

- (a) striking out “to the clerk”; and
- (b) striking out “open to the public”.

(7) Clause 41 (9) (b) of the Act is amended by striking out “hold a hearing with respect to the proposed dismissal or”.

(8) Subsection 41 (10.1) of the Act is amended by adding “and that a copy of the registered by-law is served on the Trust” at the end.

19 (1) Paragraph 2 of subsection 42 (1) of the Act is repealed and the following substituted:

2. Erect any building or structure on the property or permit the erection of such a building or structure.
3. Demolish or remove, or permit the demolition or removal of, any attribute of the property if the demolition or removal would affect a heritage attribute described in the heritage conservation district plan that was adopted for the heritage conservation district in a by-law registered under subsection 41 (10.1).
4. 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 a heritage attribute described in the heritage conservation district plan that was adopted for the heritage conservation district in a by-law registered under subsection 41 (10.1).

(2) Subsection 42 (2.1) of the Act is amended by striking out “or to erect, demolish or remove a building or structure on the property” at the end and substituting “or to do anything referred to in paragraph 2, 3 or 4 of subsection (1) in respect of the property”.

(3) Subsection 42 (4.1) of the Act is amended by striking out “to demolish or remove any building or structure on property” and substituting “to do anything referred to in paragraph 2, 3 or 4 of subsection (1) in respect of the property”.

(4) Section 42 of the Act is amended by adding the following subsection:

Notice of Tribunal’s decision

(8.1) The council shall serve notice of the Tribunal’s decision under subsection (8) on the Trust.²⁰ (1) Paragraph 3 of subsection 48 (1) of the Act is amended by striking out “by regulation” wherever it appears.

20 (1) Paragraph 3 of subsection 48 (1) of the Act is amended by striking out “by regulation” wherever it appears.

(2) Subsection 48 (2) of the Act is amended by,

- (a) striking out “or belongs to a class of sites prescribed, by the regulations” at the end of clause (a) and substituting “or belongs to a prescribed class of sites”; and
- (b) striking out “or belongs to a class of activities prescribed, by the regulations” at the end of clause (c) and substituting “or belongs to a prescribed class of activities”.

(3) Clause 48 (8) (d) of the Act is amended by striking out “by the regulations” at the end.

(4) Clause 48 (8.2) (e) of the Act is amended by striking out “by the regulations”.

21 Subsection 56 (3) of the Act is amended by striking out “or prescribed by the regulations” at the end and substituting “or as may be prescribed”.

22 Clause 67 (1) (d) of the Act is repealed and the following substituted:

- (d) by a prescribed method.

23 Subsection 69 (3) of the Act is amended by striking out “demolishing or removing a building or structure in contravention of section 42” and substituting “demolishing or removing a building, structure or heritage attribute in contravention of section 42”.

24 (1) Subsection 70 (1) of the Act is amended by adding the following clauses:

- (o) prescribing or otherwise providing for anything that is required or permitted under this Act to be prescribed or otherwise provided for in the regulations, including governing anything required or permitted to be done in accordance with the regulations;
- (p) requiring additional records to be forwarded to the Tribunal for the purposes of Parts IV and V, including specifying the circumstances in which a record must be forwarded, who is required to forward the record and the timeframe in which it must be forwarded;
- (q) prescribing the material and information that must be included in a record required to be forwarded to the Tribunal by this Act or the regulations made under it;
- (r) providing for exceptions to a requirement to forward a record to the Tribunal set out in this Act or in the regulations made under it.

(2) Section 70 of the Act is amended by adding the following subsection:

Regulations re ss. 33 (2) and 34 (2)

(3) A regulation that prescribes information and material for the purposes of subsection 33 (2) or 34 (2) may provide that the information or material is such information or material as may be required by a municipal by-law or other prescribed instrument, or may provide that the information or material includes any information or material as may be required by a municipal by-law or other prescribed instrument.

25 The Act is amended by adding the following section:

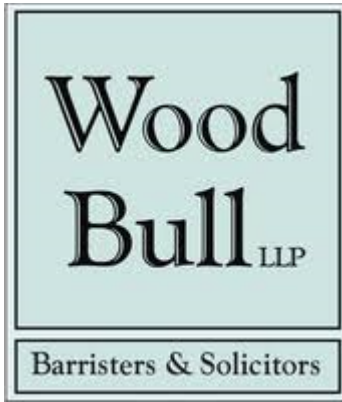
Regulations re transitional matters

71 The Lieutenant Governor in Council may make regulations providing for transitional matters as the Lieutenant Governor in Council considers necessary or advisable to,

- (a) facilitate the implementation of amendments to this Act made by Schedule 11 to the *More Homes, More Choice Act, 2019*; and
- (b) deal with any problems or issues arising as a result of the repeal, amendment, enactment or re-enactment of a provision of this Act by Schedule 11 to the *More Homes, More Choice Act, 2019*.

Commencement

26 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.



Tab 8 - Ontario Heritage Act, as amended by Bill 108

1 Definitions

Part IV Conservation of Property of Cultural Heritage Value or Interest

Français

Ontario Heritage Act

R.S.O. 1990, CHAPTER O.18

Consolidation Period: From July 1, 2019 to the [e-Laws currency date](#).

Last amendment: 2019, c. 9, Sched. 11.

Legislative History: 1993, c. 27, Sched.; 1996, c. 4, s. 55-65; 1997, c. 34, s. 2, 3; 1998, c. 18, Sched. B, s. 10; 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. A, s. 14; 2002, c. 18, Sched. F, s. 2; 2004, c. 16, Sched. D, Table; 2004, c. 17, s. 32; 2005, c. 6; 2006, c. 11, Sched. B, s. 11; 2006, c. 21, Sched. F, s. 136 (1); 2006, c. 32, Sched. D, s. 13; 2006, c. 34, s. 37; 2006, c. 35, Sched. C, s. 99; 2009, c. 24, s. 29; 2009, c. 33, Sched. 2, s. 52; 2009, c. 33, Sched. 11, s. 6; 2017, c. 20, Sched. 8, s. 112; 2017, c. 23, Sched. 5, s. 61-68; 2017, c. 34, Sched. 46, s. 37; 2019, c. 7, Sched. 17, s. 134; 2019, c. 7, Sched. 44; 2019, c. 9, Sched. 11.

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Definitions

1 In this Act,

“alter” means to change in any manner and includes to restore, renovate, repair or disturb and “alteration” has a corresponding meaning; (“transformer”, “transformation”)

“building permit” means a building permit issued under section 8 of the *Building Code Act, 1992*; (“permis de construire”)

“donation” includes any gift, testamentary disposition, deed or trust or other form of contribution; (“don”)

“heritage attributes” means, in relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest; (“attributs patrimoniaux”)

“inspect” includes to survey, photograph, measure and record; (“inspecter”)

“licence” means a licence issued under this Act; (“licence”)

“Minister” means the member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant Governor in Council; (“ministre”)

“municipality” means a local municipality and includes a band under the *Indian Act* (Canada) that is permitted to control, manage and expend its revenue money under section 69 of that Act; (“municipalité”)

“owner” means the person registered on title in the proper land registry office as owner; (“propriétaire”)

“permit” means a permit issued under this Act; (“permis”)

“person” includes a municipality; (“personne”)

Note: On a day to be named by proclamation of the Lieutenant Governor, section 1 of the Act is amended by adding the following definition: (See: 2019, c. 9, Sched. 11, s. 1 (1))

“prescribed” means prescribed by regulations made under this Act; (“prescrit”)

“regulations” means the regulations made under this Act; (“règlements”)

“Review Board” means the Conservation Review Board; (“Commission de révision”)

“Tribunal” means the Local Planning Appeal Tribunal; (“Tribunal”)

“Trust” means the Ontario Heritage Trust continued under section 5. (“Fiducie”) R.S.O. 1990, c. O.18, s. 1; 1993, c. 27, Sched.; 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. F, s. 2 (1, 2); 2005, c. 6, s. 2; 2017, c. 23, Sched. 5, s. 61.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 1 of the Act is amended by adding the following subsection: (See: 2019, c. 9, Sched. 11, s. 1 (2))

Definition of “alter” in certain provisions

(2) Despite subsection (1), for the purposes of sections 33, 34.5, 69 and such other provisions as may be prescribed, the definition of “alter” in subsection (1) does not include to demolish or to remove and “alteration” does not include demolition or removal. 2019, c. 9, Sched. 11, s. 1 (2).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

2002, c. 17, Sched. F, Table - 01/01/2003; 2002, c. 18, Sched. F, s. 2 (1, 2) - 26/11/2002

2005, c. 6, s. 2 (1-3) - 28/04/2005

2017, c. 23, Sched. 5, s. 61 (1, 2) - 03/04/2018

2019, c. 9, Sched. 11, s. 1 (1, 2) - not in force

PART IV
CONSERVATION OF PROPERTY OF CULTURAL HERITAGE VALUE OR INTEREST
 DEFINITIONS AND APPLICATION

Definition

26 (1) In this Part,

“property” means real property and includes all buildings and structures thereon. 2005, c. 6, s. 14.

Same

(2) In sections 27 to 34.4,

“designated property” means property designated by a municipality under section 29. 2005, c. 6, s. 14.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 26 (2) of the Act is repealed. (See: 2019, c. 9, Sched. 11, s. 4)

Publication of notice, City of Toronto

(3) Where the City of Toronto is required by this Part to publish a notice in a newspaper having general circulation in the municipality, notice given in accordance with a policy adopted by the City under section 212 of the *City of Toronto Act, 2006* is deemed to satisfy the requirement of this Part to publish notice in a newspaper. 2006, c. 11, Sched. B, s. 11 (1).

Publication of notice

(4) Where a municipality is required by this Part to publish a notice in a newspaper having general circulation in the municipality, notice given in accordance with a policy adopted by the municipality under section 270 of the *Municipal Act, 2001* is deemed to satisfy the requirement of this Part to publish notice in a newspaper. 2006, c. 32, Sched. D, s. 13 (1).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. F, s. 2 (4) - 26/11/2002

2005, c. 6, s. 14 - 28/04/2005

2006, c. 11, Sched. B, s. 11 (1) - 01/01/2007; 2006, c. 32, Sched. D, s. 13 (1) - 01/01/2007

2019, c. 9, Sched. 11, s. 4 - not in force

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2019, c. 9, Sched. 11, s. 3)

Principles

26.0.1 A council of a municipality shall consider the prescribed principles, if any, when the council exercises a decision-making authority under a prescribed provision of this Part. 2019, c. 9, Sched. 11, s. 3.

Section Amendments with date in force (d/m/y)

2019, c. 9, Sched. 11, s. 3 - not in force

Application

26.1 (1) This Part does not apply to property described in clause 25.2 (2) (a). 2005, c. 6, s. 14.

Conflict

(2) If a property described in clause 25.2 (2) (b) is designated under section 29 or under section 34.5, and if there is a conflict between a provision of the heritage standards and guidelines prepared under Part III.1 and a provision in Part IV as they apply to that property, the provision in Part IV prevails. 2005, c. 6, s. 14.

Exception

(3) Nothing in subsection (1) shall prevent a municipality acting under subsection 27 (1.2) from including in the register referred to in that subsection a reference to property described in clause 25.2 (2) (a). 2005, c. 6, s. 14.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 26.1 (3) of the Act is amended by striking out “subsection 27 (1.2)” and substituting “subsection 27 (3)”. (See: 2019, c. 9, Sched. 11, s. 5)

Section Amendments with date in force (d/m/y)

2005, c. 6, s. 14 - 28/04/2005

2019, c. 9, Sched. 11, s. 5 - not in force

REGISTER AND MUNICIPAL HERITAGE COMMITTEE

Register

27 (1) The clerk of a municipality shall keep a register of property situated in the municipality that is of cultural heritage value or interest. 2005, c. 6, s. 15.

Contents of register

(1.1) The register kept by the clerk shall list all property situated in the municipality that has been designated by the municipality or by the Minister under this Part and shall contain, with respect to each property,

- (a) a legal description of the property;
- (b) the name and address of the owner; and
- (c) a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property. 2005, c. 6, s. 15.

Same

(1.2) In addition to the property listed in the register under subsection (1.1), the register may include property that has not been designated under this Part but that the council of the municipality believes to be of cultural heritage value or interest and shall contain, with respect to such property, a description of the property that is sufficient to readily ascertain the property. 2005, c. 6, s. 15.

Consultation

(1.3) Where the council of a municipality has appointed a municipal heritage committee, the council shall, before including a property that has not been designated under this Part in the register under subsection (1.2) or removing the reference to such a property from the register, consult with its municipal heritage committee. 2005, c. 6, s. 15.

Extracts

(2) The clerk of a municipality shall issue extracts from the Register referred to in subsection (1) to any person on payment of the fee set by the municipality by by-law. R.S.O. 1990, c. O.18, s. 27 (2); 2002, c. 18, Sched. F, s. 2 (6).

Restriction on demolition, etc.

(3) If property included in the register under subsection (1.2) has not been designated under section 29, the owner of the property shall not demolish or remove a building or structure on the property or permit the demolition or removal of the building or structure unless the owner gives the council of the municipality at least 60 days notice in writing of the owner's intention to demolish or remove the building or structure or to permit the demolition or removal of the building or structure. 2006, c. 11, Sched. B, s. 11 (2).

Same

(4) Subsection (3) applies only if the property is included in the register under subsection (1.2) before any application is made for a permit under the *Building Code Act, 1992* to demolish or remove a building or structure located on the property. 2006, c. 11, Sched. B, s. 11 (2).

Same

(5) The notice required by subsection (3) shall be accompanied by such plans and shall set out such information as the council may require. 2006, c. 11, Sched. B, s. 11 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 27 of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 6)

Register

27 (1) The clerk of a municipality shall keep a register of property situated in the municipality that is of cultural heritage value or interest. 2019, c. 9, Sched. 11, s. 6.

Contents of register

(2) The register kept by the clerk shall list all property situated in the municipality that has been designated by the municipality or by the Minister under this Part and shall contain, with respect to each property,

- (a) a legal description of the property;
- (b) the name and address of the owner; and

- (c) a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property. 2019, c. 9, Sched. 11, s. 6.

Same

(3) In addition to the property listed in the register under subsection (2), the register may include property that has not been designated under this Part but that the council of the municipality believes to be of cultural heritage value or interest and shall contain, with respect to such property, a description of the property that is sufficient to readily ascertain the property. 2019, c. 9, Sched. 11, s. 6.

Consultation

(4) If the council of a municipality has appointed a municipal heritage committee, the council shall, before including a property that has not been designated under this Part in the register under subsection (3) or removing the reference to such a property from the register, consult with its municipal heritage committee. 2019, c. 9, Sched. 11, s. 6.

Notice to property owner

(5) If a property that has not been designated under this Part has been included in the register under subsection (3), the council of the municipality shall, within 30 days after including the property in the register, provide the owner of the property with notice that the property has been included in the register. 2019, c. 9, Sched. 11, s. 6.

Same

(6) The notice under subsection (5) shall include the following:

1. A statement explaining why the council of the municipality believes the property to be of cultural heritage value or interest.
2. A description of the property that is sufficient to readily ascertain the property.
3. A statement that if the owner of the property objects to the property being included in the register, the owner may object to the property's inclusion by serving on the clerk of the municipality a notice of objection setting out the reasons for the objection and all the relevant facts.
4. An explanation of the restriction concerning the demolition or removal, or the permitting of the demolition or removal, of a building or structure on the property as set out in subsection (9). 2019, c. 9, Sched. 11, s. 6.

Objection

(7) The owner of a property who objects to a property being included in the register under subsection (3) shall serve on the clerk of the municipality a notice of objection setting out the reasons for the objection and all relevant facts. 2019, c. 9, Sched. 11, s. 6.

Decision of council

(8) If a notice of objection has been served under subsection (7), the council of the municipality shall,

- (a) consider the notice and make a decision as to whether the property should continue to be included in the register or whether it should be removed; and
- (b) provide notice of the council's decision to the owner of the property, in such form as the council considers proper, within 90 days after the decision. 2019, c. 9, Sched. 11, s. 6.

Restriction on demolition, etc.

(9) If a property that has not been designated under this Part has been included in the register under subsection (3), the owner of the property shall not demolish or remove a building or structure on the property or permit the demolition or removal of the building or structure unless the owner gives the council of the municipality at least 60 days notice in writing of the owner's intention to demolish or remove the building or structure or to permit the demolition or removal of the building or structure. 2019, c. 9, Sched. 11, s. 6.

Same

(10) Subsection (9) applies only if the property is included in the register under subsection (3) before any application is made for a permit under the *Building Code Act, 1992* to demolish or remove a building or structure located on the property. 2019, c. 9, Sched. 11, s. 6.

Same

(11) The notice required by subsection (9) shall be accompanied by such plans and shall set out such information as the council may require. 2019, c. 9, Sched. 11, s. 6.

Extracts

(12) The clerk of a municipality shall issue extracts from the register referred to in subsection (1) to any person on payment of the fee set by the municipality by by-law. 2019, c. 9, Sched. 11, s. 6.

Application of subs. (5) to (8)

(13) Subsections (5) to (8) do not apply in respect of properties that were included in the register under subsection (3) before section 6 of the Schedule 11 to the *More Homes, More Choice Act, 2019* comes into force. 2019, c. 9, Sched. 11, s. 6.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. F, s. 2 (5, 6) - 26/11/2002

2005, c. 6, s. 15 - 28/04/2005

2006, c. 11, Sched. B, s. 11 (2) - 12/06/2006

2019, c. 9, Sched. 11, s. 6 - not in force

Municipal heritage committee

28 (1) The council of a municipality may by by-law establish a municipal heritage committee to advise and assist the council on matters relating to this Part, matters relating to Part V and such other heritage matters as the council may specify by by-law. 2002, c. 18, Sched. F, s. 2 (7).

Members

(2) The committee shall be composed of not fewer than five members appointed by the council. 2002, c. 18, Sched. F, s. 2 (7).

Continuation of old committees

(3) Every local architectural conservation advisory committee established by the council of a municipality before the day subsection 2 (7) of Schedule F to the *Government Efficiency Act, 2002* comes into force is continued as the municipal heritage committee of the municipality, and the persons who were the members of the local architectural conservation advisory committee immediately before that day become the members of the municipal heritage committee. 2002, c. 18, Sched. F, s. 2 (7).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

2002, c. 18, Sched. F, s. 2 (7) - 26/11/2002

DESIGNATION OF PROPERTIES BY MUNICIPALITIES

Designation by municipal by-law

29 (1) The council of a municipality may, by by-law, designate a property within the municipality to be of cultural heritage value or interest if,

- (a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed by regulation, the property meets the prescribed criteria; and

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 29 (1) (a) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 7 (1))

- (a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed, the property meets the prescribed criteria; and

- (b) the designation is made in accordance with the process set out in this section. 2005, c. 6, s. 17 (1).

Notice required

(1.1) Subject to subsection (2), if the council of a municipality intends to designate a property within the municipality to be of cultural heritage value or interest, it shall cause notice of intention to designate the property to be given by the clerk of the municipality in accordance with subsection (3). 2005, c. 6, s. 17 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (1.1) of the Act is amended striking out "Subject to subsection (2)" at the beginning and substituting "Subject to subsections (1.2) and (2)". (See: 2019, c. 9, Sched. 11, s. 7 (2))

Note: On a day to be named by proclamation of the Lieutenant Governor, section 29 of the Act is amended by adding the following subsection: (See: 2019, c. 9, Sched. 11, s. 7 (3))

Limitation

(1.2) If a prescribed event has occurred in respect of a property in a municipality, the council of the municipality may not give a notice of intention to designate the property under subsection (1) after 90 days have elapsed from the event, subject to such exceptions as may be prescribed. 2019, c. 9, Sched. 11, s. 7 (3).

Consultation

(2) Where the council of a municipality has appointed a municipal heritage committee, the council shall, before giving notice of its intention to designate a property under subsection (1), consult with its municipal heritage committee. R.S.O. 1990, c. O.18, s. 29 (2); 2002, c. 18, Sched. F, s. 2 (9).

Notice of intention

(3) Notice of intention to designate under subsection (1) shall be,

- (a) served on the owner of the property and on the Trust; and
- (b) published in a newspaper having general circulation in the municipality. R.S.O. 1990, c. O.18, s. 29 (3); 2005, c. 6, s. 1.

Contents of notice

(4) Notice of intention to designate property that is served on the owner of property and on the Trust under clause (3) (a) shall contain,

- (a) an adequate description of the property so that it may be readily ascertained;
- (b) a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property; and
- (c) a statement that notice of objection to the designation may be served on the clerk within 30 days after the date of publication of the notice of intention in a newspaper of general circulation in the municipality under clause (3) (b). 2005, c. 6, s. 17 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 29 (4) (c) of the Act is amended by striking out “to the designation” and substituting “to the notice of intention to designate the property”. (See: 2019, c. 9, Sched. 11, s. 7 (4))

Same

(4.1) Notice of intention to designate property that is published in a newspaper of general circulation in a municipality under clause (3) (b) shall contain,

- (a) an adequate description of the property so that it may be readily ascertained;
- (b) a statement explaining the cultural heritage value or interest of the property;
- (c) a statement that further information respecting the proposed designation is available from the municipality; and
- (d) a statement that notice of objection to the designation may be served on the clerk within 30 days after the date of publication of the notice of intention in a newspaper of general circulation in the municipality under clause (3) (b). 2005, c. 6, s. 17 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (4.1) of the Act is amended by striking out “the proposed designation” in clause (c) and substituting “the notice of intention to designate the property” and by striking out “to the designation” in clause (d) and substituting “to the notice of intention to designate the property”. (See: 2019, c. 9, Sched. 11, s. 7 (5))

Objection

(5) A person who objects to a proposed designation shall, within thirty days after the date of publication of the notice of intention, serve on the clerk of the municipality a notice of objection setting out the reason for the objection and all relevant facts. R.S.O. 1990, c. O.18, s. 29 (5); 1996, c. 4, s. 55 (2); 2009, c. 33, Sched. 11, s. 6 (4).

If no notice of objection

(6) If no notice of objection is served within the 30-day period under subsection (5), the council,

- (a) shall,
 - (i) pass a by-law designating the property,
 - (ii) cause a copy of the by-law, together with a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property,

- (A) to be served on the owner of the property and on the Trust, and
- (B) to be registered against the property affected in the proper land registry office, and
- (iii) publish notice of the by-law in a newspaper having general circulation in the municipality; or
- (b) shall withdraw the notice of intention to designate the property by causing a notice of withdrawal,
 - (i) to be served on the owner of the property and on the Trust, and
 - (ii) to be published in a newspaper having general circulation in the municipality. 2002, c. 18, Sched. F, s. 2 (11); 2005, c. 6, ss. 1, 17 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (6) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 7 (6))

Consideration of objection by council

(6) If a notice of objection has been served under subsection (5), the council of the municipality shall consider the objection and make a decision whether or not to withdraw the notice of intention to designate the property within 90 days after the end of the 30-day period under subsection (5). 2019, c. 9, Sched. 11, s. 7 (6).

Referral to Review Board

(7) Where a notice of objection has been served under subsection (5), the council shall, upon expiration of the thirty-day period under subsection (4), refer the matter to the Review Board for a hearing and report. R.S.O. 1990, c. O.18, s. 29 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (7) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 7 (6))

Notice of withdrawal

(7) If the council of the municipality decides to withdraw the notice of intention to designate the property, either of its own initiative at any time or after considering an objection under subsection (6), the council shall withdraw the notice by causing a notice of withdrawal,

- (a) to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust; and
- (b) to be published in a newspaper having general circulation in the municipality. 2019, c. 9, Sched. 11, s. 7 (6).

Hearing

(8) Pursuant to a reference by the council under subsection (7), the Review Board, as soon as is practicable, shall hold a hearing open to the public to determine whether the property in question should be designated, and the council, the owner, any person who has filed an objection under subsection (5) and such other persons as the Review Board may specify, are parties to the hearing. R.S.O. 1990, c. O.18, s. 29 (8).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (8) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 7 (6))

If no notice of objection or no withdrawal

(8) If no notice of objection is served within the 30-day period under subsection (5) or a notice of objection is served within that period but the council decides not to withdraw the notice of intention to designate the property, the council may pass a by-law designating the property, provided the following requirements are satisfied:

1. The by-law must be passed within 120 days after the date of publication of the notice of intention under clause (3) (b) or, if a prescribed circumstance exists, within such other period of time as may be prescribed for the circumstance.
2. The by-law must include a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property and must comply with such requirements in relation to the statement and the description as may be prescribed and with such other requirements as may be prescribed.
3. The council must cause the following to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust:
 - i. A copy of the by-law.
 - ii. A notice that any person who objects to the by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under paragraph 4, a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

4. The council must publish notice of the by-law in a newspaper having general circulation in the municipality, which must provide that any person who objects to the by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under this paragraph, a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 2019, c. 9, Sched. 11, s. 7 (6).

Place of hearing

(9) A hearing under subsection (8) shall be held at such place in the municipality as the Review Board may determine, and notice of such hearing shall be published in a newspaper having general circulation in the municipality at least ten days prior to the date of such hearing. R.S.O. 1990, c. O.18, s. 29 (9).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (9) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 7 (6))

Deemed withdrawal

(9) If the council of the municipality has not passed a by-law under subsection (8) within the time set out in paragraph 1 of that subsection, the notice of intention to designate the property is deemed to be withdrawn and the municipality shall cause a notice of withdrawal,

- (a) to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust; and
- (b) to be published in a newspaper having general circulation in the municipality. 2019, c. 9, Sched. 11, s. 7 (6).

Review Board may combine hearings

(10) The Review Board may combine two or more related hearings and conduct them in all respects and for all purposes as one hearing. R.S.O. 1990, c. O.18, s. 29 (10).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (10) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 7 (6))

Same

(10) For clarity, the deemed withdrawal of a notice of intention to designate a property under subsection (9) does not prevent the council from giving a new notice of intention to designate the property in accordance with this section. 2019, c. 9, Sched. 11, s. 7 (6).

Appeal to Tribunal

(11) Any person who objects to the by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under paragraph 4 of subsection (8), a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 2019, c. 9, Sched. 11, s. 7 (6).

(11) REPEALED: 2005, c. 6, s. 17 (4).

Report

(12) Within thirty days after the conclusion of a hearing under subsection (8), the Review Board shall make a report to the council setting out its findings of fact, its recommendations as to whether or not the property should be designated under this Part and any information or knowledge used by it in reaching its recommendations, and the Review Board shall send a copy of its report to the other parties to the hearing. R.S.O. 1990, c. O.18, s. 29 (12).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (12) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 7 (6))

If no notice of appeal

(12) If no notice of appeal is given within the time period specified in subsection (11),

- (a) the by-law comes into force on the day following the last day of the period; and
- (b) the clerk shall ensure that a copy of the by-law is registered against the properties affected by the by-law in the appropriate land registry office and that a copy of the registered by-law is served on the Trust. 2019, c. 9, Sched. 11, s. 7 (6).

Failure to report

(13) Where the Review Board fails to make a report within the time limited by subsection (12), such failure does not invalidate the procedure. R.S.O. 1990, c. O.18, s. 29 (13).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (13) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 7 (6))

If notice of appeal

(13) If a notice of appeal is given within the time period specified in subsection (11), the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to such persons or bodies and in such manner as the Tribunal may determine. 2019, c. 9, Sched. 11, s. 7 (6).

Decision of council

(14) After considering the report under subsection (12), the council, without a further hearing,

- (a) shall,
 - (i) pass a by-law designating the property,
 - (ii) cause a copy of the by-law, together with a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property,
 - (A) to be served on the owner of the property and on the Trust, and
 - (B) to be registered against the property affected in the proper land registry office, and
 - (iii) publish notice of the by-law in a newspaper having general circulation in the municipality; or
- (b) shall withdraw the notice of intention to designate the property by causing a notice of withdrawal,
 - (i) to be served on the owner of the property and on the Trust, and
 - (ii) to be published in a newspaper having general circulation in the municipality. 2002, c. 18, Sched. F, s. 2 (12); 2005, c. 6, ss. 1, 17 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (14) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 7 (6))

Forwarding of record of decision

(14) If the council of the municipality made a decision on a notice of objection under subsection (6) and if a notice of appeal is given within the time period specified in subsection (11), the clerk of the municipality shall ensure that the record of the decision under subsection (6) is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality. 2019, c. 9, Sched. 11, s. 7 (6).

Decision final

(14.1) The decision of the council under subsection (14) is final. 2002, c. 18, Sched. F, s. 2 (12).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (14.1) of the Act is repealed. (See: 2019, c. 9, Sched. 11, s. 7 (6))

Withdrawal of objection

(15) A person who has served a notice of objection under subsection (5) may withdraw the objection at any time before the conclusion of a hearing into the matter by serving a notice of withdrawal on the clerk of the municipality and on the Review Board. 2009, c. 33, Sched. 11, s. 6 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (15) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 7 (6))

Powers of Tribunal

(15) After holding the hearing, the Tribunal shall,

- (a) dismiss the appeal; or
- (b) allow the appeal in whole or in part and,
 - (i) repeal the by-law,
 - (ii) amend the by-law in such manner as the Tribunal may determine,
 - (iii) direct the council of the municipality to repeal the by-law, or
 - (iv) direct the council of the municipality to amend the by-law in accordance with the Tribunal's order. 2019, c. 9, Sched. 11, s. 7 (6).

No hearing

(15.1) If the Review Board has received notices of withdrawal for all the notices of objection that were served under subsection (5), the Review Board shall not hold a hearing into the matter or, if a hearing into the matter is in progress, shall discontinue the hearing and the council shall act in accordance with subsection (6) as if no notice of objection had been served. 2009, c. 33, Sched. 11, s. 6 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (15.1) of the Act is repealed. (See: 2019, c. 9, Sched. 11, s. 7 (6))

Transition

(16) If, on the day subsection 2 (8) of Schedule F to the *Government Efficiency Act, 2002* comes into force, the clerk of a municipality has given a notice of intention to designate a property as a property of historic or architectural value or interest but the council has not yet passed a by-law so designating the property and has not withdrawn its notice of intention,

- (a) this section does not apply to the notice of intention;
- (b) despite its amendment by section 2 of Schedule F to the *Government Efficiency Act, 2002*, this section, as it read immediately before its amendment, continues to apply to the notice of intention. 2002, c. 18, Sched. F, s. 2 (13).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (16) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 7 (6))

Dismissal without hearing of appeal

(16) Despite the *Statutory Powers Procedure Act* and subsections (13) and (15), the Tribunal may, on its own motion or on the motion of any party, dismiss all or part of the appeal without holding a hearing on the appeal if,

- (a) the Tribunal is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent ground upon which the Tribunal could allow all or part of the appeal, or
 - (ii) the appeal is not made in good faith, is frivolous or vexatious, or is made only for the purpose of delay;
- (b) the appellant has not provided written reasons in support of the objection to the by-law;
- (c) the appellant has not paid the fee charged under the *Local Planning Appeal Tribunal Act, 2017*; or
- (d) the appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal. 2019, c. 9, Sched. 11, s. 7 (6).

Same

(17) If, on or before the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, the clerk of a municipality had given a notice of intention to designate a property that complied with subsection (4) as it read immediately before that day but, as of that day, the council had not yet passed a by-law designating the property under this section and had not withdrawn the notice,

- (a) the notice continues to have been validly given; and
- (b) the requirements of subsection (4) or (4.1), as enacted on that day by subsection 17 (2) of the *Ontario Heritage Amendment Act, 2005*, do not apply to the notice of intention. 2005, c. 6, s. 17 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 29 (17) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 7 (6))

Representations

(17) Before dismissing all or part of an appeal on any of the grounds mentioned in subsection (16), the Tribunal shall,

- (a) notify the appellant of the proposed dismissal; and
- (b) give the appellant an opportunity to make representations with respect to the proposed dismissal. 2019, c. 9, Sched. 11, s. 7 (6).

Coming into force

(18) If one or more notices of appeal are given to the clerk within the time period specified in subsection (11),

- (a) the by-law comes into force when all of such appeals have been withdrawn or dismissed;

- (b) if the by-law is amended by the Tribunal under subclause (15) (b) (ii), the by-law, as amended by the Tribunal, comes into force on the day it is so amended; or
- (c) if the by-law is amended by the council pursuant to subclause (15) (b) (iv), the by-law, as amended by the council, comes into force on the day it is so amended. 2019, c. 9, Sched. 11, s. 7 (6).

Registration of by-law

(19) The clerk of a municipality shall ensure that a copy of a by-law that comes into force under subsection (18) is registered against the properties affected by the by-law in the appropriate land registry office and that a copy of the registered by-law is served on the Trust. 2019, c. 9, Sched. 11, s. 7 (6).

Transition

(20) If, on the day subsection 2 (8) of Schedule F to the *Government Efficiency Act, 2002* comes into force, the clerk of a municipality has given a notice of intention to designate a property as a property of historic or architectural value or interest but the council has not yet passed a by-law so designating the property and has not withdrawn its notice of intention,

- (a) this section does not apply to the notice of intention; and
- (b) despite its amendment by section 2 of Schedule F to the *Government Efficiency Act, 2002*, this section, as it read immediately before its amendment, continues to apply to the notice of intention. 2019, c. 9, Sched. 11, s. 7 (6).

Same

(21) If, on or before the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, the clerk of a municipality had given a notice of intention to designate a property that complied with subsection (4) as it read immediately before that day but, as of that day, the council had not yet passed a by-law designating the property under this section and had not withdrawn the notice,

- (a) the notice continues to have been validly given; and
- (b) the requirements of subsection (4) or (4.1), as enacted on that day by subsection 17 (2) of the *Ontario Heritage Amendment Act, 2005*, do not apply to the notice of intention. 2019, c. 9, Sched. 11, s. 7 (6).

Section Amendments with date in force (d/m/y)

1996, c. 4, s. 55 (1-3) - 03/04/1996

2002, c. 18, Sched. F, s. 2 (8-13) - 26/11/2002

2005, c. 6, s. 1, 16, 17 (1-6) - 28/04/2005

2009, c. 33, Sched. 11, s. 6 (4, 5) - 15/12/2009

2019, c. 9, Sched. 11, s. 7 (1-6) - not in force

Effect of notice of designation

Permits void

30 (1) If a notice of intention to designate a property as property of cultural heritage value or interest is given under section 29, any permit that allowed for the alteration or demolition of the property and that was issued by the municipality under any Act, including a building permit, before the day the notice was served on the owner of the property and on the Trust and published in a newspaper is void as of the day the notice of intention is given in accordance with subsection 29 (3). 2005, c. 6, s. 18.

Interim control of alteration, demolition or removal

(2) Sections 33 and 34 apply with necessary modifications to property as of the day notice of intention to designate the property is given under subsection 29 (3) as though the designation process were complete and the property had been designated under section 29. 2005, c. 6, s. 18.

Section Amendments with date in force (d/m/y)

2005, c. 6, s. 18 - 28/04/2005

Amendment of designating by-law

30.1 (1) The council of a municipality may, by by-law, amend a by-law designating property made under section 29 and section 29 applies with necessary modifications to an amending by-law as though it were a by-law to designate property under that section. 2005, c. 6, s. 19.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.1 (1) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 8 (1))

Amendment of designating by-law

(1) The council of a municipality may, by by-law, amend a by-law designating property made under section 29 and section 29 applies, with prescribed modifications, to an amending by-law. 2019, c. 9, Sched. 11, s. 8 (1).

Exception

- (2) Despite subsection (1), subsections 29 (1) to (6) do not apply to an amending by-law if the purpose of the amendment is,
- (a) to clarify or correct the statement explaining the property's cultural heritage value or interest or the description of the property's heritage attributes;
 - (b) to correct the legal description of the property; or
 - (c) to otherwise revise the language of the by-law to make it consistent with the requirements of this Act or the regulations. 2005, c. 6, s. 19.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.1 (2) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 8 (1))

Exception

(2) Despite subsection (1), subsections 29 (1) to (14) do not apply to an amending by-law if the only purpose or purposes of the amendments contained in the by-law are to do one or more of the following:

1. Clarify or correct the statement explaining the property's cultural heritage value or interest or the description of the property's heritage attributes.
2. Correct the legal description of the property.
3. Otherwise revise the by-law to make it consistent with the requirements of this Act or the regulations, including revisions that would make a by-law passed before subsection 7 (6) of Schedule 11 to the *More Homes, More Choice Act, 2019* comes into force satisfy the requirements prescribed for the purposes of paragraph 2 of subsection 29 (8), if any. 2019, c. 9, Sched. 11, s. 8 (1).

Same

(3) If the council of a municipality proposes to make an amendment described in subsection (2), the council shall give the owner of the designated property written notice of the proposed amendment in accordance with subsection (4). 2005, c. 6, s. 19.

Content of notice

- (4) A notice of a proposed amendment shall,
- (a) contain an explanation of the purpose and effect of the proposed amendment; and
 - (b) inform the owner of the right to object to the proposed amendment by filing a notice of objection with the clerk of the municipality within 30 days of receiving the notice. 2005, c. 6, s. 19.

Consultation with committee

(5) The council of a municipality shall consult with its municipal heritage committee, if one has been established, before giving notice of a proposed amendment to the owner of property under subsection (3). 2005, c. 6, s. 19.

Objection

(6) The owner of a property who receives notice of a proposed amendment from a municipality under subsection (3) may, within 30 days of receiving notice of the amendment, file a notice of objection to the amendment with the clerk of the municipality setting out the reasons for the objection and all relevant facts. 2005, c. 6, s. 19.

Where no objection

(7) If no notice of objection is filed within the 30-day period under subsection (6), the council of the municipality may pass the proposed amending by-law described in subsection (2). 2005, c. 6, s. 19.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.1 (7) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 8 (2))

Consideration of objection by council

(7) If a notice of objection is filed within the 30-day period under subsection (6), the council of the municipality shall consider the objection and make a decision whether or not to withdraw the notice of the proposed amendment within 90 days after the end of the 30-day period under subsection (6). 2019, c. 9, Sched. 11, s. 8 (2).

Application of s. 29

(8) If the owner of the property files a notice of objection under subsection (6) in relation to a proposed amendment described in subsection (2), subsections 29 (7) to (15.1) apply with necessary modifications to the notice of objection. 2005, c. 6, s. 19; 2009, c. 33, Sched. 11, s. 6 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.1 (8) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 8 (2))

Notice of withdrawal

(8) If the council of the municipality decides to withdraw the notice of the proposed amendment, either on its own initiative at any time or after considering an objection under subsection (7), the council shall withdraw the notice by causing a notice of withdrawal,

- (a) to be served on the owner of the property and on the Trust; and
- (b) to be published in a newspaper having general circulation in the municipality. 2019, c. 9, Sched. 11, s. 8 (2).

Notice of amendment

(9) The clerk of a municipality shall provide a copy of the by-law, as amended under this section, to the owner of the property and to the Trust and shall register the by-law against the property in the proper land registry office. 2005, c. 6, s. 19.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.1 (9) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 8 (2))

If no notice of objection or no withdrawal

(9) If no notice of objection is filed within the 30-day period under subsection (6) or a notice of objection is served within that period but the council decides not to withdraw the notice of the proposed amendment, the council may pass an amending by-law and if it does so, the council shall do the following:

1. Cause the following to be served on the owner of the property and on the Trust:
 - i. A copy of the amending by-law.
 - ii. A notice that if the owner of the property objects to the amending by-law, the owner may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of the notice under this subparagraph, a notice of appeal setting out the objection to the amending by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.
2. Publish notice of the amending by-law in a newspaper having general circulation in the municipality. 2019, c. 9, Sched. 11, s. 8 (2).

Requirement to update old by-laws

(10) If the council of a municipality proposes to amend a by-law designating property made under section 29 before the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, the council shall include in the amendment such changes as are necessary to ensure that the by-law satisfies the requirements of section 29, as it read on the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent. 2005, c. 6, s. 19.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 30.1 (10) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 8 (2))

Appeal to Tribunal

(10) If the owner of the property objects to the amending by-law, the owner may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of the notice under subparagraph 1 ii of subsection (9), a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 2019, c. 9, Sched. 11, s. 8 (2).

If no notice of appeal

- (11) If no notice of appeal is given within the time period specified in subsection (10),
- (a) the amending by-law comes into force on the day following the last day of the period; and

- (b) the clerk shall ensure that a copy of the amending by-law is registered against the properties affected by the by-law in the appropriate land registry office and that a copy of the registered amending by-law is served on the Trust. 2019, c. 9, Sched. 11, s. 8 (2).

If notice of appeal

(12) If a notice of appeal is given within the time period specified in subsection (10), the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to such persons or bodies and in such manner as the Tribunal may determine. 2019, c. 9, Sched. 11, s. 8 (2).

Same

(13) If a notice of appeal is given within the time period specified in subsection (10), subsections 29 (15) to (19) apply with necessary modifications. 2019, c. 9, Sched. 11, s. 8 (2).

Forwarding of record of decision

(14) If the council made a decision on the proposed amending by-law under subsection (7) and if a notice of appeal is given within the time period specified in subsection (10), the clerk of the municipality shall ensure that the record of the decision under subsection (7) is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality. 2019, c. 9, Sched. 11, s. 8 (2).

Requirement to update old by-laws

(15) If the council of a municipality proposes to amend a by-law designating property made under section 29 that does not comply with requirements that are prescribed for the purposes of paragraph 2 of subsection 29 (8), if any, the council shall include in the amendment such changes as are necessary to ensure that the by-law satisfies those requirements. 2019, c. 9, Sched. 11, s. 8 (2).

Same, 2005 amendments

(16) If the council of a municipality proposes to amend a by-law designating property made under section 29 before the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, the council shall include in the amendment such changes as are necessary to ensure that the by-law satisfies the requirements of section 29, as it read on the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent. 2019, c. 9, Sched. 11, s. 8 (2).

Section Amendments with date in force (d/m/y)

2005, c. 6, s. 19 - 28/04/2005

2009, c. 33, Sched. 11, s. 6 (6) - 15/12/2009

2019, c. 9, Sched. 11, s. 8 (1, 2) - not in force

Repeal of designating by-law, council's initiative

31 (1) Subject to subsection (2), where the council of a municipality intends to repeal a by-law or part thereof designating property, it shall cause notice of intention to repeal the by-law or part thereof to be given by the clerk of the municipality in accordance with subsection (3). R.S.O. 1990, c. O.18, s. 31 (1).

Consultation

(2) Where the council of a municipality has appointed a municipal heritage committee, the council shall, before repealing a by-law or part thereof designating property, consult with its municipal heritage committee. R.S.O. 1990, c. O.18, s. 31 (2); 2002, c. 18, Sched. F, s. 2 (14).

Notice of intention

(3) Notice of intention to repeal a by-law or part thereof under subsection (1) shall be,

- (a) served on the owner of the property and on the Trust; and
- (b) published in a newspaper having general circulation in the municipality. R.S.O. 1990, c. O.18, s. 31 (3); 2005, c. 6, s. 1.

Contents of notice

(4) Notice of intention to repeal a by-law or part thereof under subsection (1) shall contain,

- (a) an adequate description of the property so that it may be readily ascertained;
- (b) a statement of the reason for the proposed repealing by-law; and

- (c) a statement that notice of objection to the repealing by-law may be served on the clerk within thirty days of the date of publication of the notice of intention in a newspaper having general circulation in the municipality. R.S.O. 1990, c. O.18, s. 31 (4); 1996, c. 4, s. 56 (1).

Objection

(5) A person who objects to a proposed repealing by-law shall object to the repealing by-law in the manner set out in subsection 29 (5). R.S.O. 1990, c. O.18, s. 31 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 31 (5) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 9)

Objection

(5) A person who objects to a proposed repealing by-law shall, within 30 days after the date of publication of the notice of intention to repeal the by-law or part thereof, serve on the clerk of the municipality a notice of objection setting out the reasons for the objection and all relevant facts. 2019, c. 9, Sched. 11, s. 9.

Application

(6) Subsections 29 (6) to (15.1) as they apply to an intention to designate a property apply with necessary modifications to an intention to repeal a by-law or part thereof designating a property under this section. R.S.O. 1990, c. O.18, s. 31 (6); 1996, c. 4, s. 56 (2); 2009, c. 33, Sched. 11, s. 6 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 31 (6) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 9)

Consideration of objection by council

(6) If a notice of objection is filed within the 30-day period under subsection (5), the council of the municipality shall consider the objection and make a decision whether or not to withdraw the notice of intention within 90 days after the end of the 30-day period under subsection (5). 2019, c. 9, Sched. 11, s. 9.

Deletion from Register

(7) Where the council of a municipality passes a by-law repealing the designation of a property under this section, it shall cause the clerk of the municipality to delete any reference to the property from the Register referred to in subsection 27 (1). R.S.O. 1990, c. O.18, s. 31 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 31 (7) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 9)

Notice of withdrawal

(7) If the council of the municipality decides to withdraw the notice of intention, either of its own initiative at any time or after considering an objection under subsection (6), the council shall withdraw the notice by causing a notice of withdrawal,

- (a) to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust; and
- (b) to be published in a newspaper having general circulation in the municipality. 2019, c. 9, Sched. 11, s. 9.

If no notice of objection or no withdrawal

(8) If no notice of objection is filed within the 30-day period under subsection (5) or a notice of objection is served within that period but the council decides not to withdraw the notice of intention, the council may pass a by-law repealing the by-law or part thereof designating the property and if it does so, it shall do the following:

1. Cause the following to be served on the owner of the property, on any person who objected under subsection (5) and on the Trust:
 - i. A copy of the repealing by-law.
 - ii. A notice that any person who objects to the repealing by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under paragraph 2, a notice of appeal setting out the objection to the repealing by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.
2. Publish notice of the repealing by-law in a newspaper having general circulation in the municipality, which must provide that any person who objects to the repealing by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under this paragraph, a notice of appeal setting out the objection to the repealing by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 2019, c. 9, Sched. 11, s. 9.

Appeal to Tribunal

(9) Any person who objects to the repealing by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under paragraph 2 of subsection (8), a notice of appeal setting out the objection to the repealing by-law and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 2019, c. 9, Sched. 11, s. 9.

If no notice of appeal

(10) If no notice of appeal is given within the time period specified in subsection (9),

- (a) the repealing by-law comes into force on the day following the last day of the period;
- (b) the clerk shall ensure that a copy of the repealing by-law is registered against the properties affected by the repealing by-law in the appropriate land registry office and that a copy of the registered repealing by-law is served on the Trust; and
- (c) the clerk shall delete any reference to the property from the register referred to in subsection 27 (1). 2019, c. 9, Sched. 11, s. 9.

If notice of appeal

(11) If a notice of appeal is given within the time period specified in subsection (9), the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to such persons or bodies and in such manner as the Tribunal may determine. 2019, c. 9, Sched. 11, s. 9.

Same

(12) If a notice of appeal is given within the time period specified in subsection (9), subsections 29 (15) to (19) apply with necessary modifications. 2019, c. 9, Sched. 11, s. 9.

Forwarding of record of decision

(13) If the council made a decision on the proposed repealing by-law under subsection (6) and if a notice of appeal is given to the clerk within the time period specified in subsection (9), the clerk of the municipality shall ensure that the record of the decision under subsection (6) is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality. 2019, c. 9, Sched. 11, s. 9.

Deletion from register

(14) If a repealing by-law comes into effect under subsection 29 (18), as made applicable by subsection (12) of this section, the municipality shall cause the clerk to delete any reference to the property from the register referred to in subsection 27 (1). 2019, c. 9, Sched. 11, s. 9.

Section Amendments with date in force (d/m/y)

1996, c. 4, s. 56 (1, 2) - 03/04/1996

2002, c. 18, Sched. F, s. 2 (14) - 26/11/2002

2005, c. 6, s. 1 - 28/04/2005

2009, c. 33, Sched. 11, s. 6 (7) - 15/12/2009

2019, c. 9, Sched. 11, s. 9 - not in force

Repeal of designating by-law, owner's initiative

32 (1) An owner of property designated under this Part may apply to the council of the municipality in which the property is situate to repeal the by-law or part thereof designating the property. R.S.O. 1990, c. O.18, s. 32 (1).

Decision of council

(2) After consultation with its municipal heritage committee, where one is established, the council shall consider an application under subsection (1) and within ninety days of receipt thereof shall,

- (a) refuse the application and cause notice of its decision to be given to the owner and to the Trust; or
- (b) consent to the application and,
 - (i) cause notice of the intention to repeal the by-law to be served on the owner and the Trust, and

- (ii) publish notice of the intention to repeal the by-law in a newspaper of general circulation in the municipality. R.S.O. 1990, c. O.18, s. 32 (2); 2002, c. 18, Sched. F, s. 2 (15); 2005, c. 6, ss. 1, 20 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (2) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Notice required

(2) Upon receiving an application under subsection (1), the council of the municipality shall cause notice of the application to be given by the clerk of the municipality in accordance with subsection (3). 2019, c. 9, Sched. 11, s. 10.

Extension of time

(3) The applicant and the council may agree to extend the time under subsection (2) and, where the council fails to notify the applicant of its decision within such extended time as may be agreed upon, the council shall be deemed to have consented to the application. R.S.O. 1990, c. O.18, s. 32 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (3) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Notice of application

(3) Notice of an application shall be published in a newspaper having general circulation in the municipality and shall contain,

- (a) an adequate description of the property so that it may be readily ascertained;
- (b) a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property, as set out in the by-law that is the subject of the application;
- (c) a statement that further information respecting the application is available from the municipality; and
- (d) a statement that notice of objection to the application may be served on the clerk within 30 days after the date of publication of the notice of the application under this subsection. 2019, c. 9, Sched. 11, s. 10.

Application for hearing

(4) Where the council refuses the application under subsection (2), the owner may within thirty days after receipt of the notice under subsection (2) apply to the council for a hearing before the Review Board. R.S.O. 1990, c. O.18, s. 32 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (4) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Objection

(4) A person who objects to an application shall, within 30 days after the date of the publication of the notice of application under subsection (3), serve on the clerk of the municipality a notice of objection setting out the reasons for the objection and all relevant facts. 2019, c. 9, Sched. 11, s. 10.

Referral to Review Board

(5) The council shall, upon receipt of an application under subsection (4), refer the matter to the Review Board for a hearing and report, and shall publish a notice of the hearing in a newspaper having general circulation in the municipality at least ten days prior to the date of the hearing. R.S.O. 1990, c. O.18, s. 32 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (5) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Decision of council

(5) After consultation with its municipal heritage committee, if one is established, the council shall consider an application under subsection (1) and any objections served under subsection (4) and within 90 days after the end of the 30-day period under subsection (4) shall do either of the following:

1. Refuse the application and cause the following to be served on the owner of the property, on any person who objected under subsection (4) and on the Trust:
 - i. A notice of the council's decision.
 - ii. A notice that if the owner of the property objects to the council's decision, the owner may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after receipt of the notice under this subparagraph, a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.

2. Consent to the application, pass a by-law repealing the by-law or part thereof designating the property and shall do the following:
 - i. Cause the following to be served on the owner of the property, on any person who objected under subsection (4) and on the Trust:
 - A. A copy of the repealing by-law.
 - B. A notice that any person who objects to the decision may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under subparagraph ii, a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*.
 - ii. Publish notice of the council's decision in a newspaper having general circulation in the municipality, which must provide that any person who objects to the decision may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under this subparagraph, a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 2019, c. 9, Sched. 11, s. 10.

Hearing

(6) The Review Board shall as soon as is practicable hold a hearing open to the public to review the application, and the council and the owner and such other persons as the Review Board may specify are parties to the hearing. R.S.O. 1990, c. O.18, s. 32 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (6) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Extension of time

(6) The owner of the property and the council may agree to extend the time under subsection (5) and, if the council fails to notify the owner of the property of the council's decision within such extended time as may be agreed upon, the council is deemed to have consented to the application. 2019, c. 9, Sched. 11, s. 10.

Place of hearing

(7) A hearing under subsection (6) shall be held at such place in the municipality as the Review Board may determine. R.S.O. 1990, c. O.18, s. 32 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (7) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Appeal to Tribunal, refusal of application

(7) If the owner of the property objects to the council's decision to refuse the application, the owner may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the receipt of the notice under subparagraph 1 ii of subsection (5), a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 2019, c. 9, Sched. 11, s. 10.

Same, consent of application

(8) Any person who objects to the council's decision to consent to the application and to pass a repealing by-law may appeal to the Tribunal by giving the Tribunal and the clerk of the municipality, within 30 days after the date of publication under subparagraph 2 ii of subsection (5), a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 2019, c. 9, Sched. 11, s. 10.

(8) REPEALED: 2005, c. 6, s. 20 (2).

Report

(9) Within thirty days after the conclusion of a hearing under subsection (6), the Review Board shall make a report to the council setting out its findings of fact, its recommendations as to whether or not the application should be approved, and any information or knowledge used by it in reaching its recommendations, and shall send a copy of its report to the other parties to the hearing. R.S.O. 1990, c. O.18, s. 32 (9).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (9) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

If no notice of appeal

(9) If no notice of appeal is given within the time period specified in subsection (7) or (8), as the case may be, the decision of the council under subsection (5) is final and, if the council consented to the application and passed a repealing by-law,

- (a) the repealing by-law comes into force on the day following the last day of the period;
- (b) the clerk shall ensure that a copy of the repealing by-law is registered against the property affected by the by-law in the appropriate land registry office and that a copy of the registered repealing by-law is served on the Trust; and
- (c) the clerk shall delete any reference to the property from the register referred to in subsection 27 (1). 2019, c. 9, Sched. 11, s. 10.

Failure to report

(10) Where the Review Board fails to make a report within the time limited by subsection (9), such failure does not invalidate the procedure. R.S.O. 1990, c. O.18, s. 32 (10).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (10) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

If notice of appeal

(10) If a notice of appeal is given within the time period specified in subsection (7) or (8), as the case may be, the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to such persons or bodies and in such manner as the Tribunal may determine. 2019, c. 9, Sched. 11, s. 10.

Decision of council

(11) After considering a report under subsection (9), the council without further hearing shall,

- (a) refuse the application and cause notice of its decision to be given to the owner; or
- (b) consent to the application and,
 - (i) cause notice of the intention to repeal the by-law to be served on the owner and the Trust, and
 - (ii) publish notice of the intention to repeal the by-law in a newspaper of general circulation in the municipality. 2005, c. 6, s. 20 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (11) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Forwarding of record of decision

(11) If a notice of appeal is given within the time period specified in subsection (7) or (8), as the case may be, the clerk of the municipality shall ensure that the record of the decision under subsection (5) is forwarded to the Tribunal within 15 days after the notice of appeal is given to the clerk of the municipality. 2019, c. 9, Sched. 11, s. 10.

Decision final

(11.1) A decision made under clause (11) (a) is final. 2005, c. 6, s. 20 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (11.1) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Powers of Tribunal

(12) After holding the hearing, the Tribunal shall do the following:

1. If the appeal relates to a decision of council to refuse the application,
 - i. dismiss the appeal, or
 - ii. allow the appeal in whole or in part and,
 - A. repeal the by-law or part thereof designating the property, or
 - B. direct the council of the municipality to repeal the by-law or part thereof designating the property in accordance with the Tribunal's order.
2. If the appeal relates to a decision of council to consent to the application and to pass a repealing by-law,
 - i. dismiss the appeal, or
 - ii. allow the appeal in whole or in part and,

- A. repeal the repealing by-law,
- B. amend the repealing by-law in such manner as the Tribunal may determine,
- C. direct the council of the municipality to repeal the repealing by-law, or
- D. direct the council of the municipality to amend the repealing by-law in accordance with the Tribunal's order. 2019, c. 9, Sched. 11, s. 10.

(12) REPEALED: 2005, c. 6, s. 20 (4).

Withdrawal of application

(13) The owner may withdraw an application made under subsection (4) at any time before the conclusion of a hearing into the matter by serving a notice of withdrawal on the clerk of the municipality and on the Review Board and, upon receipt of the notice of withdrawal, the Review Board shall not hold a hearing into the matter or, if a hearing into the matter is in progress, shall discontinue the hearing and the council shall act in accordance with subsection (2) as if no application had been made under subsection (4). 1996, c. 4, s. 57.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (13) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Dismissal without hearing of appeal

(13) Despite the *Statutory Powers Procedure Act* and subsections (10) and (12) of this section, the Tribunal may, on its own motion or on the motion of any party, dismiss all or part of the appeal without holding a hearing on the appeal if,

- (a) the Tribunal is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent ground upon which the Tribunal could allow all or part of the appeal, or
 - (ii) the appeal is not made in good faith, is frivolous or vexatious, or is made only for the purpose of delay;
- (b) the appellant has not provided written reasons in support of the objection referred to in subsection (7) or (8), as the case may be;
- (c) the appellant has not paid the fee charged under the *Local Planning Appeal Tribunal Act, 2017*; or
- (d) the appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal. 2019, c. 9, Sched. 11, s. 10.

Objection

(14) Any person may, within 30 days after the date of publication of the notice of intention under subclause (2) (b) (ii) or (11) (b) (ii), serve on the clerk of the municipality a notice of objection to the repeal of a by-law, or a part of a by-law, designating property as property of cultural heritage value or interest. 2005, c. 6, s. 20 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (14) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Representations

- (14) Before dismissing all or part of an appeal on any of the grounds mentioned in subsection (13), the Tribunal shall,
- (a) notify the appellant of the proposed dismissal; and
 - (b) give the appellant an opportunity to make representations with respect to the proposed dismissal. 2019, c. 9, Sched. 11, s. 10.

Content of notice of objection

(15) A notice of objection shall set out the reason for the objection. 2005, c. 6, s. 20 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (15) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Coming into force

(15) If one or more notices of appeal are given to the clerk within the time period specified in subsection (7), the following rules apply:

1. A repealing by-law passed by the municipality under paragraph 2 of subsection (5) comes into force when all of such appeals have been withdrawn or dismissed.

2. The repeal of a by-law or a part of a by-law under sub-subparagraph 1 ii A of subsection (12) comes into force on the day it is so ordered by the Tribunal.
3. A by-law repealing a by-law or part thereof under sub-subparagraph 1 ii B of subsection (12) comes into force on the day the by-law is passed by the municipality.
4. The repeal of a repealing by-law under sub-subparagraph 2 ii A of subsection (12) comes into force on the day it is so ordered by the Tribunal.
5. If a repealing by-law is amended by the Tribunal under sub-subparagraph 2 ii B of subsection (12), the repealing by-law, as amended by the Tribunal, comes into force on the day it is so amended.
6. If a repealing by-law is repealed by a council under sub-subparagraph 2 ii C of subsection (12), the by-law that repeals the repealing by-law comes into force on the day it is passed.
7. If a repealing by-law is amended by a council under sub-subparagraph 2 ii D of subsection (12), the repealing by-law, as amended by council, comes into force on the day it is so amended. 2019, c. 9, Sched. 11, s. 10.

If no objection made

(16) If no notice of objection is served within the 30-day period referred to in subsection (14), the council shall pass a by-law repealing the by-law, or the part of the by-law, that designated the property as property of cultural heritage value or interest and cause,

- (a) a copy of the repealing by-law to be served on the owner of the property and the Trust;
- (b) the reference to the property in the Register referred to in subsection 27 (1) to be deleted;
- (c) notice of the repealing by-law to be published in a newspaper of general circulation in the municipality; and
- (d) a copy of the repealing by-law to be registered against the property in the proper land registry office. 2005, c. 6, s. 20 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (16) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Registration of by-law

(16) The clerk of a municipality shall ensure that a copy of the repealing by-law is registered against the properties affected by the by-law in the appropriate land registry office and that a copy of the registered repealing by-law is served on the Trust. 2019, c. 9, Sched. 11, s. 10.

Referral of objection to Review Board

(17) If a notice of objection is served on the municipality under subsection (14), the council shall, upon expiration of the 30-day period referred to in that subsection, refer the matter to the Review Board for a hearing and report. 2005, c. 6, s. 20 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (17) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Deletion from register

(17) If a repealing by-law comes into effect under subsection (15), the municipality shall cause the clerk to delete any reference to the property from the register referred to in subsection 27 (1). 2019, c. 9, Sched. 11, s. 10.

Application

(18) Subsections 29 (7) to (13) apply with necessary modifications to the hearing and report by the Review Board required under subsection (17). 2005, c. 6, s. 20 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (18) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 10)

Reapplication

(18) If a prescribed circumstance applies, the owner of the property may not reapply to have the by-law or part thereof designating the property repealed within the time period determined in accordance with the regulations, except with the consent of the council. 2019, c. 9, Sched. 11, s. 10.

Decision of council

(19) After considering the report of the Review Board, the council shall, without a further hearing,

- (a) refuse the application and cause notice of its decision to be given to the owner; or

- (b) consent to the application, pass a by-law repealing the by-law, or the part of the by-law, that designated the property as property of cultural heritage value or interest and cause,
- (i) a copy of the repealing by-law to be served on the owner of the property and the Trust,
 - (ii) the reference to the property in the Register referred to in subsection 27 (1) to be deleted,
 - (iii) notice of the repealing by-law to be published in a newspaper of general circulation in the municipality, and
 - (iv) a copy of the repealing by-law to be registered against the property in the proper land registry office. 2005, c. 6, s. 20 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (19) of the Act is repealed. (See: 2019, c. 9, Sched. 11, s. 10)

Decision final

(20) The decision of the council under subsection (19) is final. 2005, c. 6, s. 20 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (20) of the Act is repealed. (See: 2019, c. 9, Sched. 11, s. 10)

Withdrawal of objection

(21) A person who has served a notice of objection under subsection (14) may withdraw the objection at any time before the conclusion of a hearing into the matter by serving a notice of withdrawal on the clerk of the municipality and on the Review Board. 2005, c. 6, s. 20 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (21) of the Act is repealed. (See: 2019, c. 9, Sched. 11, s. 10)

No hearing

(22) If the Review Board has received notices of withdrawal for all the notices of objection that were served under subsection (14), the Review Board shall not hold a hearing into the matter or, if a hearing into the matter is in progress, shall discontinue the hearing and the council shall act in accordance with subsection (16) as if no notice of objection had been served. 2009, c. 33, Sched. 11, s. 6 (8).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (22) of the Act is repealed. (See: 2019, c. 9, Sched. 11, s. 10)

Reapplication

(23) Where the council refuses an application under clause (11) (a) or (19) (a), the owner of the property may not reapply to have the by-law, or the part of the by-law, that designates the property as property of cultural heritage value or interest revoked for 12 months from the service of the notice under clause (19) (a), except with the consent of the council. 2005, c. 6, s. 20 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 32 (23) of the Act is repealed. (See: 2019, c. 9, Sched. 11, s. 10)

Section Amendments with date in force (d/m/y)

1996, c. 4, s. 57 - 03/04/1996

2002, c. 18, Sched. F, s. 2 (15) - 26/11/2002

2005, c. 6, s. 1, 20 (1-5) - 28/04/2005

2009, c. 33, Sched. 11, s. 6 (8) - 15/12/2009

2019, c. 9, Sched. 11, s. 10 - not in force

Alteration of property

33 (1) No owner of property designated under section 29 shall alter the property or permit the alteration of the property if the alteration is likely to affect the property's heritage attributes, as set out in the description of the property's heritage attributes that was required to be served and registered under subsection 29 (6) or (14), as the case may be, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the alteration. 2002, c. 18, Sched. F, s. 2 (16); 2005, c. 6, s. 21 (1).

Transition

(1.1) If property is designated under this Part as property of historic or architectural value or interest, either before the day section 29 of this Act is amended by section 2 of Schedule F to the *Government Efficiency Act, 2002* or under subsection 29 (16) of this Act after that day,

- (a) subsection (1) of this section does not apply to the property;

- (b) despite its amendment by subsection 2 (16) of Schedule F to the *Government Efficiency Act, 2002*, subsection (1) of this section, as it read immediately before the day subsection 2 (16) of Schedule F to the *Government Efficiency Act, 2002* came into force, continues to apply to the property. 2002, c. 18, Sched. F, s. 2 (16).

Application

- (2) An application under subsection (1) shall be accompanied by a detailed plan and shall set out such information as the council may require. R.S.O. 1990, c. O.18, s. 33 (2).

Notice of receipt

- (3) The council, upon receipt of an application under subsection (1) together with such information as it may require under subsection (2), shall cause a notice of receipt to be served on the applicant. R.S.O. 1990, c. O.18, s. 33 (3).

Decision of council

- (4) Within 90 days after the notice of receipt is served on the applicant under subsection (3), the council, after consultation with its municipal heritage committee, if one is established,

- (a) shall,
- (i) consent to the application,
 - (ii) consent to the application on terms and conditions, or
 - (iii) refuse the application; and
- (b) shall give notice of its decision to the owner of the property and to the Trust. 2002, c. 18, Sched. F, s. 2 (17); 2005, c. 6, s. 1.

Extension of time

- (5) The applicant and the council may agree to extend the time under subsection (4) and, where the council fails to notify the applicant of its decision within ninety days after the notice of receipt is served on the applicant or within such extended time as may be agreed upon, the council shall be deemed to have consented to the application. R.S.O. 1990, c. O.18, s. 33 (5).

Application for hearing

- (6) Where the council consents to an application upon certain terms and conditions or refuses the application, the owner may, within thirty days after receipt of the notice under subsection (4), apply to the council for a hearing before the Review Board. R.S.O. 1990, c. O.18, s. 33 (6).

Referral to Review Board

- (7) The council shall, upon receipt of a notice under subsection (6), refer the matter to the Review Board for a hearing and report, and shall publish a notice of the hearing in a newspaper having general circulation in the municipality, at least ten days prior to the date of such hearing. R.S.O. 1990, c. O.18, s. 33 (7).

Hearing

- (8) The Review Board shall as soon as is practicable hold a hearing open to the public to review the application, and the council and the owner and such other persons as the Review Board may specify are parties to the hearing. R.S.O. 1990, c. O.18, s. 33 (8).

Place for hearing

- (9) A hearing under subsection (8) shall be held at such place in the municipality as the Review Board may determine. R.S.O. 1990, c. O.18, s. 33 (9).

- (10) REPEALED: 2005, c. 6, s. 21 (2).

Report

- (11) Within thirty days after the conclusion of a hearing under subsection (8), the Review Board shall make a report to the council setting out its findings of fact, its recommendations as to whether or not the application should be approved, and any information or knowledge used by it in reaching its recommendations, and shall send a copy of its report to the other parties to the hearing. R.S.O. 1990, c. O.18, s. 33 (11).

Failure to report

- (12) Where the Review Board fails to make a report within the time limited by subsection (11), the failure does not invalidate the procedure. R.S.O. 1990, c. O.18, s. 33 (12).

Decision of council

(13) After considering the report under subsection (11), the council without a further hearing shall confirm or revise its decision under subsection (4) with such modifications as the council considers proper and shall cause notice of its decision to be served on the owner and the Trust and to the other parties to the hearing, and its decision is final. R.S.O. 1990, c. O.18, s. 33 (13); 2005, c. 6, s. 1.

Withdrawal of application

(14) The owner may withdraw an application made under subsection (6) at any time before the conclusion of a hearing into the matter by serving a notice of withdrawal on the clerk of the municipality and on the Review Board and, upon receipt of the notice of withdrawal, the Review Board shall not hold a hearing into the matter or, if a hearing into the matter is in progress, shall discontinue the hearing and the council shall act in accordance with subsection (4) as if no application had been made under subsection (6). 1996, c. 4, s. 58.

Delegation of council's consent

(15) The power to consent to alterations to property under this section may be delegated by by-law by the council of a municipality to an employee or official of the municipality if the council has established a municipal heritage committee and has consulted with the committee prior to delegating the power. 2005, c. 6, s. 21 (3).

Scope of delegation

(16) A by-law that delegates the council's power to consent to alterations to a municipal employee or official may delegate the power with respect to all alterations or with respect to such classes of alterations as are described in the by-law. 2005, c. 6, s. 21 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 33 of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 11)

Alteration of property

33 (1) No owner of property designated under section 29 shall alter the property or permit the alteration of the property if the alteration is likely to affect the property's heritage attributes, as set out in the description of the property's heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the alteration. 2019, c. 9, Sched. 11, s. 11.

Application

(2) An application under subsection (1) shall be accompanied by the prescribed information and material. 2019, c. 9, Sched. 11, s. 11.

Other information

(3) A council may require that an applicant provide any other information or material that the council considers it may need. 2019, c. 9, Sched. 11, s. 11.

Notice of complete application

(4) The council shall, upon receiving all information and material required under subsections (2) and (3), if any, serve a notice on the applicant informing the applicant that the application is complete. 2019, c. 9, Sched. 11, s. 11.

Notification re completeness of application

(5) The council may, at any time, notify the applicant of the information and material required under subsection (2) or (3) that has been provided, if any, and any information and material under those subsections that has not been provided. 2019, c. 9, Sched. 11, s. 11.

Decision of council

(6) The council, after consultation with its municipal heritage committee, if one is established, and within the time period determined under subsection (7),

(a) shall,

(i) consent to the application,

(ii) consent to the application on terms and conditions, or

(iii) refuse the application; and

(b) shall serve notice of its decision on the owner of the property and on the Trust. 2019, c. 9, Sched. 11, s. 11.

Same

(7) For the purposes of subsection (6), the time period is determined as follows:

1. Unless paragraph 2 applies, the period is 90 days after a notice under subsection (4) is served on the applicant or such longer period after the notice is served as is agreed upon by the owner and the council.
2. If a notice under subsection (4) or (5) is not served on the applicant within 60 days after the day the application commenced, as determined in accordance with the regulations, the period is 90 days after the end of that 60-day period or such longer period after the end of the 60-day period as is agreed upon by the owner and the council. 2019, c. 9, Sched. 11, s. 11.

Deemed consent

(8) If the council fails to notify the owner under clause (6) (b) within the time period determined under subsection (7), the council shall be deemed to have consented to the application. 2019, c. 9, Sched. 11, s. 11.

Appeal to Tribunal

(9) If the council of a municipality consents to an application upon certain terms and conditions or refuses an application, the owner may, within 30 days after receipt of the notice under clause (6) (b), appeal the council's decision to the Tribunal by giving a notice of appeal to the Tribunal and to the clerk of the municipality setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 2019, c. 9, Sched. 11, s. 11.

If notice of appeal

(10) If a notice of appeal is given within the time period specified in subsection (9), the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to the owner of the property and to such other persons or bodies as the Tribunal may determine. 2019, c. 9, Sched. 11, s. 11.

Powers of Tribunal

(11) After holding a hearing, the Tribunal may order,

- (a) that the appeal be dismissed; or
- (b) that the municipality consent to the application without terms and conditions or with such terms and conditions as the Tribunal may specify in the order. 2019, c. 9, Sched. 11, s. 11.

Dismissal without hearing of appeal

(12) Despite the *Statutory Powers Procedure Act* and subsections (10) and (11), the Tribunal may, on its own motion or on the motion of any party, dismiss all or part of the appeal without holding a hearing on the appeal if,

- (a) the Tribunal is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent ground upon which the Tribunal could allow all or part of the appeal, or
 - (ii) the appeal is not made in good faith, is frivolous or vexatious, or is made only for the purpose of delay;
- (b) the appellant has not provided written reasons in support of the objection to the decision of the council of the municipality;
- (c) the appellant has not paid the fee charged under the *Local Planning Appeal Tribunal Act, 2017*; or
- (d) the appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal. 2019, c. 9, Sched. 11, s. 11.

Representations

(13) Before dismissing all or part of an appeal on any of the grounds mentioned in subsection (12), the Tribunal shall,

- (a) notify the appellant of the proposed dismissal; and
- (b) give the appellant an opportunity to make representations with respect to the proposed dismissal. 2019, c. 9, Sched. 11, s. 11.

Notice of Tribunal's decision

(14) The council shall serve notice of the Tribunal's decision under subsection (11) or (12) on the Trust. 2019, c. 9, Sched. 11, s. 11.

Delegation of council's consent

(15) The power to consent to alterations to property under this section may be delegated by by-law by the council of a municipality to an employee or official of the municipality if the council has established a municipal heritage committee and has consulted with the committee prior to delegating the power. 2019, c. 9, Sched. 11, s. 11.

Scope of delegation

(16) A by-law that delegates the council's power to consent to alterations to a municipal employee or official may delegate the power with respect to all alterations or with respect to such classes of alterations as are described in the by-law. 2019, c. 9, Sched. 11, s. 11.

Transition

(17) If property is designated under this Part as property of historic or architectural value or interest, either before the day section 29 of this Act is amended by section 2 of Schedule F to the *Government Efficiency Act, 2002* or under subsection 29 (16) of this Act after that day,

- (a) subsection (1) of this section does not apply to the property;
- (b) despite its amendment by subsection 2 (16) of Schedule F to the *Government Efficiency Act, 2002*, subsection (1) of this section, as it read immediately before the day subsection 2 (16) of Schedule F to the *Government Efficiency Act, 2002* came into force, continues to apply to the property. 2019, c. 9, Sched. 11, s. 11.

Section Amendments with date in force (d/m/y)

1996, c. 4, s. 58 - 03/04/1996

2002, c. 18, Sched. F, s. 2 (16, 17) - 26/11/2002

2005, c. 6, s. 1, 21 (1-3) - 28/04/2005

2019, c. 9, Sched. 11, s. 11 - not in force

Demolition or removal of structure

34 (1) No owner of property designated under section 29 shall demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal. 2002, c. 18, Sched. F, s. 2 (18); 2005, c. 6, s. 22 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34 (1) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 12)

Demolition or removal

(1) No owner of property designated under section 29 shall do either of the following, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal:

1. Demolish or remove, or permit the demolition or removal of, any of the property's heritage attributes, as set out in the description of the property's heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be.
2. 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, as set out in the description of the property's heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be. 2019, c. 9, Sched. 11, s. 12.

Application

(1.1) An application made under subsection (1) shall be accompanied by any plans and set out any information the council may require. 2009, c. 33, Sched. 11, s. 6 (9).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34 (1.1) of the Act is repealed. (See: 2019, c. 9, Sched. 11, s. 12)

Notice of receipt

(1.2) The council, on receipt of an application under subsection (1) together with any information it may require under subsection (1.1), shall serve a notice of receipt on the applicant. 2009, c. 33, Sched. 11, s. 6 (9).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34 (1.2) of the Act is repealed. (See: 2019, c. 9, Sched. 11, s. 12)

Decision of council

(2) Within 90 days after the notice of receipt is served on the applicant under subsection (1.2) or within such longer period as is agreed upon by the owner and the council, the council, after consultation with its municipal heritage committee, if one is established,

- (a) may,
 - (i) consent to the application,
 - (i.1) consent to the application, subject to such terms and conditions as may be specified by the council, or
 - (ii) refuse the application;
- (b) shall give notice of its decision to the owner and to the Trust; and
- (c) shall publish its decision in a newspaper having general circulation in the municipality. 2002, c. 18, Sched. F, s. 2 (18); 2005, c. 6, ss. 1, 22 (2); 2009, c. 33, Sched. 11, s. 6 (10).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34 (2) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 12)

Application

(2) An application under subsection (1) shall be accompanied by the prescribed information and material. 2019, c. 9, Sched. 11, s. 12.

Other information

(3) A council may require that an applicant provide any other information or material that the council considers it may need. 2019, c. 9, Sched. 11, s. 12.

(3) REPEALED: 2005, c. 6, s. 22 (3).

Deemed consent

(4) If the council fails to notify the owner under clause (2) (b) within the time period mentioned in subsection (2), the council shall be deemed to have consented to the application. 2002, c. 18, Sched. F, s. 2 (18).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34 (4) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 12)

Notice confirming complete application

(4) The council shall, upon receiving all information and material required under subsections (2) and (3), if any, serve a notice on the applicant informing the applicant that the application is complete. 2019, c. 9, Sched. 11, s. 12.

Notification re completeness of application

(4.1) The council may, at any time, notify the applicant of the information and material required under subsection (2) or (3) that has been provided, if any, and any information and material under those subsections that has not been provided. 2019, c. 9, Sched. 11, s. 12.

Decision of council

(4.2) The council, after consultation with its municipal heritage committee, if one is established, and within the time period determined under subsection (4.3),

- (a) shall,
 - (i) consent to the application,
 - (ii) consent to the application, subject to such terms and conditions as may be specified by the council, or
 - (iii) refuse the application;
- (b) shall serve notice of its decision on the owner of the property and on the Trust; and
- (c) shall publish its decision in a newspaper having general circulation in the municipality. 2019, c. 9, Sched. 11, s. 12.

Same

(4.3) For the purposes of subsection (4.2), the time period is determined as follows:

1. Unless paragraph 2 applies, the period is 90 days after a notice under subsection (4) is served on the applicant or such longer period after the notice is served as is agreed upon by the owner and the council.

2. If a notice under subsection (4) or (4.1) is not served on the applicant within 60 days after the day the application commenced, as determined in accordance with the regulations, the period is 90 days after the end of that 60-day period or such longer period after the end of the 60-day period as is agreed upon by the owner and the council. 2019, c. 9, Sched. 11, s. 12.

Deemed consent

(4.4) If the council fails to notify the owner under clause (4.2) (b) within the time period determined under subsection (4.3), the council shall be deemed to have consented to the application. 2019, c. 9, Sched. 11, s. 12.

Transition

(5) If, on or before the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, an owner of property designated under section 29 had applied to a municipality for consent to demolish or remove a building or structure on the property and no decision had been made by the council of the municipality as of that day,

- (a) the council's decision shall be made in accordance with subsection (2), as amended by subsection 22 (2) of the *Ontario Heritage Amendment Act, 2005*; and
- (b) subsections (5) and (7), as they read immediately before the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, do not apply if the council decides to refuse the application. 2005, c. 6, s. 22 (4).

Same

(6) If, on or before the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, an owner of property designated under section 29 had applied to a municipality for consent to demolish or remove a building or structure on the property and the council of the municipality had refused the application under subsection (2), then, even though 180 days had elapsed since the date of the council's decision and the owner had complied with the requirements of clause (5) (b) or (7) (b), as they read immediately before that day,

- (a) subsections (5) and (7), as they read immediately before the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, do not apply with respect to the refusal of the application; and
- (b) the owner shall not demolish or remove the building or structure on the property. 2005, c. 6, s. 22 (4).

Same, exception

(7) Despite subsections (5) and (6), if, on the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, a situation described in subsection (6) existed and the owner of the property had not only prepared the property for the demolition or removal of a building or structure but was in the course of demolishing or removing the building or structure, then,

- (a) subsections (5) and (7), as they read immediately before the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, continue to apply to the refusal of the application;
- (b) the owner may continue the demolition or removal of the building or structure; and
- (c) sections 34.1, 34.2 and 34.3, as they read immediately before the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, continue to apply to the application. 2005, c. 6, s. 22 (4).

(8) REPEALED: 2005, c. 6, s. 22 (4).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. F, s. 2 (18) - 26/11/2002

2005, c. 6, s. 1, 22 (1-4) - 28/04/2005

2009, c. 33, Sched. 11, s. 6 (9, 10) - 15/12/2009

2019, c. 9, Sched. 11, s. 12 - not in force

Appeal to Tribunal

34.1 (1) If the council of a municipality consents to an application subject to terms and conditions under subclause 34 (2) (a) (i.1) or refuses an application under subclause 34 (2) (a) (ii), the owner of the property that was the subject of the application may appeal the council's decision to the Tribunal within 30 days of the day the owner received notice of the council's decision. 2017, c. 23, Sched. 5, s. 64.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34.1 (1) of the Act is amended by striking out "subclause 34 (2) (a) (i.1) or refuses an application under subclause 34 (2) (a) (ii)" and substituting "subclause 34 (4.2) (a) (ii) or refuses an application under subclause 34 (4.2) (a) (iii)". (See: 2019, c. 9, Sched. 11, s. 13 (1))

Notice of appeal

(2) An owner of property who wishes to appeal the decision of the council of a municipality shall, within 30 days of the day the owner received notice of the council's decision, give notice of appeal to the Tribunal and to the clerk of the municipality. 2017, c. 23, Sched. 5, s. 64.

Content of notice

(3) A notice of appeal shall set out the reasons for the objection to the decision of the council of the municipality and be accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 2017, c. 23, Sched. 5, s. 64.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34.1 (3) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 13 (2))

Content of notice

(3) A notice of appeal shall set out the objection to the council's decision and the reasons in support of the objection and be accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 2019, c. 9, Sched. 11, s. 13 (2).

Hearing

(4) Upon receiving notice of an appeal, the Tribunal shall set a time and place for hearing the appeal and give notice of the hearing to the owner of the property and to such other persons or bodies as the Tribunal may determine. 2017, c. 23, Sched. 5, s. 64.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34.1 (4) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 13 (2))

If notice of appeal

(4) If a notice of appeal is given within the time period specified in subsection (2), the Tribunal shall hold a hearing and, before holding the hearing, shall give notice of the hearing to such persons or bodies and in such manner as the Tribunal may determine. 2019, c. 9, Sched. 11, s. 13 (2).

Notice of hearing

(5) The Tribunal shall give notice of a hearing in such manner as the Tribunal determines necessary. 2017, c. 23, Sched. 5, s. 64.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34.1 (5) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 13 (2))

Powers of Tribunal

(5) After holding a hearing, the Tribunal may order,

- (a) that the appeal be dismissed; or
- (b) that the municipality consent to the demolition or removal referred to in paragraph 1 or 2 of subsection 34 (1), as the case may be, without terms and conditions or with such terms and conditions as the Tribunal may specify in the order. 2019, c. 9, Sched. 11, s. 13 (2).

Powers of Tribunal

(6) After holding a hearing, the Tribunal may order,

- (a) that the appeal be dismissed; or
- (b) that the municipality consent to the demolition or removal of a building or structure without terms and conditions or with such terms and conditions as the Tribunal may specify in the order. 2017, c. 23, Sched. 5, s. 64.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34.1 (6) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 13 (2))

Dismissal without hearing of appeal

(6) Despite the *Statutory Powers Procedure Act* and subsections (4) and (5), the Tribunal may, on its own motion or on the motion of any party, dismiss all or part of the appeal without holding a hearing on the appeal if,

- (a) the Tribunal is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent ground upon which the Tribunal could allow all or part of the appeal, or
 - (ii) the appeal is not made in good faith, is frivolous or vexatious, or is made only for the purpose of delay;

- (b) the appellant has not provided written reasons in support of the objection to the decision of the council of the municipality;
- (c) the appellant has not paid the fee charged under the *Local Planning Appeal Tribunal Act, 2017*; or
- (d) the appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal. 2019, c. 9, Sched. 11, s. 13 (2).

Decision final

(7) The decision of the Tribunal is final. 2017, c. 23, Sched. 5, s. 64.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34.1 (7) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 13 (2))

Representations

- (7) Before dismissing all or part of an appeal on any of the grounds mentioned in subsection (6), the Tribunal shall,
- (a) notify the appellant of the proposed dismissal; and
 - (b) give the appellant an opportunity to make representations with respect to the proposed dismissal. 2019, c. 9, Sched. 11, s. 13 (2).

Notice of Tribunal's decision

(8) The council shall serve notice of the Tribunal's decision under subsection (5) or (6) to the Trust. 2019, c. 9, Sched. 11, s. 13 (2).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. F, s. 2 (18) - 26/11/2002

2005, c. 6, s. 23 - 28/04/2005

2017, c. 23, Sched. 5, s. 64 - 03/04/2018

2019, c. 9, Sched. 11, s. 13 (1, 2) - not in force

Transition, appeal to Tribunal

34.2 (1) Within 90 days of the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, the owner of property designated under section 29 who, before that day, had been refused an application to demolish or remove a building or structure from the property under subsection 34 (2) by the council of a municipality, may appeal the decision to the Tribunal if,

- (a) the owner has lost his right to demolish or remove the building or structure 180 days after the day the council of the municipality refused the application under subsection 34 (2) by virtue of subsection 34 (6); and
- (b) subsection 34 (7) does not apply to the application. 2005, c. 6, s. 23; 2017, c. 23, Sched. 5, s. 62.

Notice of appeal

(2) An owner of property who wishes to appeal the decision of the council of a municipality under subsection (1) shall, within 90 days of the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, give notice of appeal to the Tribunal and to the clerk of the municipality. 2005, c. 6, s. 23; 2017, c. 23, Sched. 5, s. 62.

Application

(3) Subsections 34.1 (3) to (7) apply with necessary modifications to an appeal under this section. 2005, c. 6, s. 23.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. F, s. 2 (18) - 26/11/2002

2005, c. 6, s. 23 - 28/04/2005

2017, c. 23, Sched. 5, s. 62 - 03/04/2018

Repeal of by-law designating property

34.3 (1) The council of a municipality shall pass a by-law to repeal a by-law or the part thereof designating a property under section 29 if the owner of the property has applied in writing to the council for consent to the demolition or removal of a building or structure on the property and,

- (a) the council consents to the application under subclause 34 (2) (a) (i) or (i.1) or is deemed to have consented to the application under subsection 34 (4); or
- (b) the Tribunal has ordered that the municipality give its consent under clause 34.1 (6) (b). 2005, c. 6, s. 24; 2017, c. 23, Sched. 5, s. 62.

Duties upon passing a repealing by-law

- (2) When the council passes a repealing by-law under this section, the council shall cause,
 - (a) a copy of the repealing by-law to be served on the owner of the property and on the Trust;
 - (b) notice of the repealing by-law to be published in a newspaper having general circulation in the municipality;
 - (c) reference to the property to be deleted from the Register referred to in subsection 27 (1); and
 - (d) a copy of the repealing by-law to be registered against the property affected in the proper land registry office. 2002, c. 18, Sched. F, s. 2 (18); 2005, c. 6, s. 1.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 34.3 of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 14)

Council consents to application under s. 34 — required steps or actions

34.3 (1) The council of a municipality shall take such steps or actions as may be prescribed if the owner of a property designated under section 29 has applied in writing to the council for consent to a demolition or removal referred to in paragraph 1 or 2 of subsection 34 (1) in respect of the property and,

- (a) the council consents to the application under subclause 34 (4.2) (a) (i) or (ii) or is deemed to have consented to the application under subsection 34 (4.4); or
- (b) the Tribunal has ordered that the municipality give its consent under clause 34.1 (5) (b). 2019, c. 9, Sched. 11, s. 14.

Same

(2) A regulation made for the purposes of subsection (1) may prescribe different steps or actions that must be taken by a council in different circumstances or that no steps or actions need to be taken by a council in certain circumstances. 2019, c. 9, Sched. 11, s. 14.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. F, s. 2 (18) - 26/11/2002

2005, c. 6, s. 1, 24 - 28/04/2005

2017, c. 23, Sched. 5, s. 62 - 03/04/2018

2019, c. 9, Sched. 11, s. 14 - not in force

Transition

34.4 A process relating to a matter dealt with in any of sections 34 to 34.3 that was commenced but not completed under an Act or a part of an Act repealed by section 4 of Schedule F to the *Government Efficiency Act, 2002*, that was continued under sections 34 to 34.3 of this Act by this section on the day subsection 2 (18) of Schedule F to the *Government Efficiency Act, 2002* came into force, and that was not complete on the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent, shall be continued under sections 34 to 34.3 as they read on and after the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent. 2005, c. 6, s. 25.

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. F, s. 2 (18) - 26/11/2002

2005, c. 6, s. 25 - 28/04/2005

DESIGNATION OF PROPERTIES BY MINISTER

Designation by Minister

34.5 (1) After consultation with the Trust, the Minister may, by order, designate any property within a municipality or in unorganized territory as property of cultural heritage value or interest of provincial significance if,

- (a) the property meets the criteria prescribed by regulation; and

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 34.5 (1) (a) of the Act is amended by striking out “the criteria prescribed by regulation” and substituting “the prescribed criteria”. (See: 2019, c. 9, Sched. 11, s. 15 (1))

(b) the designation is made in accordance with the process set out in section 34.6. 2005, c. 6, s. 26.

Effect of designation

(2) If property is designated by the Minister under subsection (1), the owner of the property shall not,

- (a) carry out or permit an alteration of the property of a kind described in subsection (3) unless the Minister consents to the alteration; or
- (b) carry out or permit the demolition or removal of a building or structure on the property unless the Minister consents to the demolition or removal or the Tribunal orders the demolition or removal under subsection (6). 2005, c. 6, s. 26; 2017, c. 23, Sched. 5, s. 62.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34.5 (2) of the Act is amended by striking out “or” at the end of clause (a) and by repealing clause (b) and substituting the following: (See: 2019, c. 9, Sched. 11, s. 15 (2))

- (b) carry out or permit the demolition or removal of the property’s heritage attributes, as set out in the description of the property’s heritage attributes that was required to be served and registered under clause 34.6 (5) (a); or
- (c) carry out 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, as set out in the description of the property’s heritage attributes that was required to be served and registered under clause 34.6 (5) (a).

Alterations to property

(3) Clause (2) (a) applies in respect of alterations that are likely to affect the property’s heritage attributes as described in the notice of intention to designate the property given under section 34.6. 2005, c. 6, s. 26.

Application for consent, alteration

(4) The owner of a property designated under subsection (1) may apply to the Minister for the Minister’s consent to an alteration of the property and subsections 33 (2) to (14) apply with necessary modifications to such an application. 2005, c. 6, s. 26.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34.5 (4) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 15 (3))

Application for consent, alteration

(4) The owner of a property designated under subsection (1) may apply to the Minister for the Minister’s consent to an alteration of the property and subsections 33 (2) to (14), as they read immediately before the day section 11 of Schedule 11 to the *More Homes, More Choice Act, 2019* came into force, apply with necessary modifications to such an application. 2019, c. 9, Sched. 11, s. 15 (3).

Same

(5) For the purposes of the application of subsection 33 (4) to an application for the Minister’s consent made under subsection (4), subsection 33 (4) shall be deemed to require the Minister to consult with the Trust, and not with a municipal heritage committee, before rendering a decision under that subsection. 2005, c. 6, s. 26.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34.5 (5) of the Act is repealed and the following substituted: (See: 2019, c. 9, Sched. 11, s. 15 (3))

Same

(5) For the purposes of the application of subsection 33 (4), as it read immediately before the day section 11 of Schedule 11 to the *More Homes, More Choice Act, 2019* came into force, to an application for the Minister’s consent made under subsection (4) of this section, subsection 33 (4) shall be deemed to require the Minister to consult with the Trust, and not with a municipal heritage committee, before rendering a decision under that subsection. 2019, c. 9, Sched. 11, s. 15 (3).

Same, demolition or removal

(6) The owner of a property designated under subsection (1) may apply to the Minister for the Minister’s consent to the demolition or removal of a building or structure on the property. 2005, c. 6, s. 26.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34.5 (6) of the Act is amended by striking out “consent to the demolition or removal of a building or structure on the property” at the end and substituting “consent to a demolition or removal referred to in clause (2) (b) or (c).” (See: 2019, c. 9, Sched. 11, s. 15 (4))

Decision of Minister

(7) Within 90 days after receipt of an application under subsection (6), or within such longer period as is agreed upon by the owner and the Minister, the Minister, having consulted with the Trust, may,

- (a) consent to the application;
- (b) consent to the application, subject to such terms and conditions as may be specified by the Minister; or
- (c) refuse the application. 2005, c. 6, s. 26.

Notice of decision

(8) The Minister shall, within the time period specified in subsection (7), give notice of its decision under subsection (7) to the owner of the property and to the Trust and,

- (a) in the case of property situated in a municipality, shall publish the decision in a newspaper having general circulation in the municipality; and
- (b) in the case of property situated in unorganized territory, shall publish its decision or otherwise make its decision known in a manner and at such times as the Minister considers adequate to give the public in the territory reasonable notice. 2005, c. 6, s. 26.

Deemed consent

(9) If the Minister fails to give notice of its decision to the owner within the time period specified in subsection (7), the Minister shall be deemed to have consented to the application. 2005, c. 6, s. 26.

Application, appeal to Tribunal

(10) Section 34.1 applies with necessary modifications where the Minister refuses an application for consent under clause (7) (c) or consents to the application, subject to terms and conditions specified by the Minister under clause (7) (b). 2005, c. 6, s. 26.

Delegation

(11) The Minister may delegate in writing his or her power to consent to the alteration of a property designated under subsection (1) and to consent to the demolition or removal of a building or structure on property designated under subsection (1),

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34.5 (11) of the Act is amended by striking out “consent to the demolition or removal of a building or structure on property” in the portion before clause (a) and substituting “consent to a demolition or removal referred to in clause (2) (b) or (c) in respect of a property”. (See: 2019, c. 9, Sched. 11, s. 15 (5))

- (a) to the Trust, or to an official of the Trust designated by the Trust for the purposes of such a delegation; or
- (b) in the case of property situated in a municipality, to the council of the municipality or to an official of the municipality designated by the council of the municipality for the purposes of such a delegation. 2005, c. 6, s. 26.

Scope of delegation

(12) The Minister may limit a delegation under subsection (11) so as to delegate the power to consent to only one of the types of changes to property described in subsection (11), or to such combination thereof as may be specified in the delegation, or to consent to such classes of alterations as are set out in the delegation. 2005, c. 6, s. 26.

Section Amendments with date in force (d/m/y)

2005, c. 6, s. 26 - 28/04/2005

2017, c. 23, Sched. 5, s. 62 - 03/04/2018

2019, c. 9, Sched. 11, s. 15 (1-5) - not in force

Designation process

34.6 (1) If the Minister intends to designate property as property of cultural heritage value or interest of provincial significance, the Minister shall ensure that a notice of intention to designate the property is,

- (a) served on the owner of the property and, if the property is situated in a municipality, on the clerk of the municipality;
- (b) in the case of property situated in a municipality, published in a newspaper of general circulation in the municipality; and

- (c) in the case of property situated in unorganized territory, published or otherwise made known in the territory in a manner and at such times as the Minister considers adequate to give the public in the territory reasonable notice. 2005, c. 6, s. 26.

Content of notice

- (2) A notice of intention to designate property served on an owner of property and on the clerk of a municipality under clause (1) (a) shall contain,
 - (a) an adequate description of the property so that it may be readily ascertained;
 - (b) a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property; and
 - (c) a statement that notice of objection to the designation may be served on the Minister, within 30 days after the day the notice of intention was first published or made known to the public under clause (1) (b) or (c). 2005, c. 6, s. 26.

Same

- (3) A notice of intention to designate property published under clause (1) (b) or (c) shall contain,
 - (a) an adequate description of the property so that it may be readily ascertained;
 - (b) a statement explaining the cultural heritage value or interest of the property;
 - (c) a statement that further information respecting the proposed designation is available from the Minister; and
 - (d) a statement that notice of objection to the designation may be served on the Minister, within 30 days after the day the notice of intention was first published or made known to the public under clause (1) (b) or (c). 2005, c. 6, s. 26.

Objection

- (4) Within 30 days after the day the notice of intention was first published or made known to the public under clause (1) (b) or (c), a person may serve on the Minister a notice of objection setting out the reason for the objection and all relevant facts. 2005, c. 6, s. 26.

If no notice of objection

- (5) If no notice of objection is served within the 30-day period referred to in subsection (4), the Minister,
 - (a) shall make an order designating the property as property of cultural heritage value or interest of provincial significance and shall,
 - (i) cause a copy of the order together with a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property,
 - (A) to be served on the owner of the property, on the Trust and, if the property is situated in a municipality, on the clerk of the municipality, and
 - (B) to be registered against the property affected in the proper land registry office,
 - (ii) in the case of property situated in a municipality, publish notice of the order in a newspaper of general circulation in the municipality, and
 - (iii) in the case of property situated in unorganized territory, publish notice of the order or otherwise make it known in the territory in a manner and at such times as the Minister considers adequate to give the public in the territory reasonable notice; or
 - (b) shall withdraw the notice of intention to designate the property by causing a notice of withdrawal,
 - (i) to be served on the owner of the property, on the Trust and, if the property is situated in a municipality, on the clerk of the municipality,
 - (ii) in the case of property situated in a municipality, to be published in a newspaper of general circulation in the municipality, and
 - (iii) in the case of property situated in unorganized territory, to be published or otherwise made known in the territory in a manner and at such times as the Minister considers adequate to give the public in the territory reasonable notice. 2005, c. 6, s. 26.

Referral of objection to Review Board

(6) If a notice of objection is served on the Minister under subsection (4), the Minister shall, upon expiration of the 30-day period referred to in that subsection, refer the matter to the Review Board for a hearing and report. 2005, c. 6, s. 26.

Hearing

(7) If a matter is referred to the Review Board under subsection (6), the Review Board shall hold a hearing as soon as practicable to determine whether the property in question should be designated as property of cultural heritage value or interest of provincial significance. 2005, c. 6, s. 26.

Parties

(8) The Minister, the owner of the property in question, any person who has served a notice of objection under subsection (4) and such other persons as the Review Board may specify are parties to the hearing. 2005, c. 6, s. 26.

Open hearing

(9) A hearing under subsection (7) is open to the public. 2005, c. 6, s. 26.

Place of hearing

(10) A hearing under subsection (7) shall be held at such place in the municipality or in the unorganized territory, as the case may be, as the Review Board may determine. 2005, c. 6, s. 26.

Notice of hearing

(11) Notice of a hearing under subsection (7) shall be,

- (a) if the hearing is with respect to property situated in a municipality, published in a newspaper of general circulation in the municipality at least 10 days before the day of the hearing; and
- (b) if the hearing is with respect to property situated in unorganized territory, published or otherwise made known in the territory in a manner and at such times as the Review Board considers adequate to give the public in the territory reasonable notice of the hearing. 2005, c. 6, s. 26.

Combining hearings

(12) The Review Board may combine two or more related hearings and conduct them in all respects and for all purposes as one hearing. 2005, c. 6, s. 26.

Reports

(13) Within 30 days after the conclusion of a hearing under subsection (7) or as soon thereafter as is practicable, the Review Board shall make a report to the Minister setting out its findings of fact, its recommendations as to whether or not the property in question should be designated under section 34.5 and any information or knowledge used by it in reaching its recommendations. 2005, c. 6, s. 26.

Copies

(14) The Review Board shall send a copy of its report to the other parties to the hearing. 2005, c. 6, s. 26.

Decision of Minister

(15) After considering the report of the Review Board, the Minister, without further hearing, shall make any order or take any action set out in subsection (5) and follow the requirements of that subsection. 2005, c. 6, s. 26.

Decision final

(16) The decision of the Minister under subsection (15) is final. 2005, c. 6, s. 26.

Withdrawal of objection

(17) A person who has served a notice of objection under subsection (4) may withdraw the objection at any time before the conclusion of a hearing into the matter by serving notice of withdrawal on the Minister and on the Review Board. 2005, c. 6, s. 26.

No hearing

(18) If the Review Board has received notices of withdrawal for all the notices of objection that were served under subsection (4), the Review Board shall not hold a hearing into the matter or, if a hearing into the matter is in progress, shall discontinue the hearing and the council shall act in accordance with subsection (5) as if no notice of objection had been served. 2009, c. 33, Sched. 11, s. 6 (11).

Section Amendments with date in force (d/m/y)

2005, c. 6, s. 26 - 28/04/2005

2009, c. 33, Sched. 11, s. 6 (11) - 15/12/2009

Effect of notice of designation**Permits void**

34.7 (1) If a notice of intention to designate a property as property of cultural heritage value or interest of provincial significance is given under section 34.6, any permit that allowed for the alteration or demolition of the property and that was issued under any Act, including a building permit, before the day the notice was served on the owner of the property and on the Trust and published or made known under subsection 34.6 (1) is void as of that day. 2005, c. 6, s. 26.

Interim control of alteration, demolition or removal

(2) Subsections 34.5 (2) to (10) apply with necessary modifications to property as of the day a notice of intention to designate the property is given under section 34.6 as though the designation process were complete and the property had been designated under subsection 34.5 (1). 2005, c. 6, s. 26.

Section Amendments with date in force (d/m/y)

2005, c. 6, s. 26 - 28/04/2005

Repeal of order, Minister's initiative

34.8 (1) If, after consultation with the Trust, the Minister decides to repeal an order designating property as property of cultural heritage value or interest of provincial significance, the Minister shall give notice of intention to repeal the order in accordance with subsection (2). 2005, c. 6, s. 26.

Notice of intention

(2) A notice of intention to repeal an order designating property shall be served on the owner of the property and on the Trust and,

- (a) in the case of property situated in a municipality, shall be published in a newspaper of general circulation in the municipality; or
- (b) in the case of property situated in unorganized territory, shall be published or otherwise made known in the territory in a manner and at such times as the Minister considers adequate to give the public in the territory reasonable notice. 2005, c. 6, s. 26.

Content of notice

(3) A notice of intention to repeal an order designating property shall contain,

- (a) an adequate description of the property so that it may be readily ascertained;
- (b) a short statement of the reason for repealing the order; and
- (c) a statement that notice of objection to the repeal of the order may be served on the Minister, within 30 days after the day the notice of intention was first published or made known to the public under clause (2) (a) or (b). 2005, c. 6, s. 26.

Objection

(4) Within 30 days after the day the notice of intention was first published or made known to the public under clause (2) (a) or (b), a person may serve on the Minister a notice of objection to the repeal of an order designating property setting out the reason for the objection and all relevant facts. 2005, c. 6, s. 26.

Application

(5) Subsections 34.6 (5) to (18), as they apply to an intention to make an order to designate property, apply with necessary modifications to an intention to make an order repealing the designation of the property. 2005, c. 6, s. 26.

Section Amendments with date in force (d/m/y)

2005, c. 6, s. 26 - 28/04/2005

Repeal of order, owner's initiative

34.9 (1) An owner of a property designated under subsection 34.5 (1) may apply to the Minister for a repeal of the order designating the property. 2005, c. 6, s. 26.

Decision of Minister

- (2) Within 90 days of receipt of an application under subsection (1), the Minister, having consulted with the Trust, shall,
- (a) refuse the application and cause notice of its decision to be given to the owner and to the Trust; or
 - (b) consent to the application and,
 - (i) cause notice of the intention to repeal the order to be served on the owner and the Trust,
 - (ii) if the property is situated in a municipality, publish notice of the intention to repeal the order in a newspaper of general circulation in the municipality, and
 - (iii) if the property is situated in unorganized territory, publish or otherwise make known the notice of intention to repeal the order in a manner and at such times as the Minister considers adequate to give the public in the territory reasonable notice. 2005, c. 6, s. 26.

Extension of time

- (3) The applicant and the Minister may agree to extend the time under subsection (2) within which the Minister is to make a decision. 2005, c. 6, s. 26.

Deemed decision

- (4) If the Minister fails to notify the applicant of his or her decision within the 90-day period referred to in subsection (2) or within such further time as may have been agreed to under subsection (3), the Minister shall be deemed to have consented to the application. 2005, c. 6, s. 26.

Application for hearing

- (5) Within 30 days of receipt of a notice of a refusal of an application under clause (2) (a), the owner of the property in question may apply to the Minister for a hearing before the Review Board. 2005, c. 6, s. 26.

Application

- (6) Subsections 32 (5) to (10) and (13) apply with necessary modifications to a hearing by the Review Board under this section. 2005, c. 6, s. 26; 2009, c. 33, Sched. 11, s. 6 (12).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 34.9 (6) of the Act is amended by striking out “Subsections 32 (5) to (10) and (13) apply” at the beginning and substituting “Subsections 32 (5) to (10) and (13), as they read immediately before the day section 10 of Schedule 11 to the *More Homes, More Choice Act*, 2019 came into force, apply”. (See: 2019, c. 9, Sched. 11, s. 16)

Decision of Minister

- (7) After considering the report of the Review Board, the Minister, without further hearing, shall,
- (a) refuse the application and cause notice of its decision to be given to the owner and to the Trust; or
 - (b) consent to the application and,
 - (i) cause notice of the intention to repeal the order to be served on the owner and the Trust,
 - (ii) if the property is situated in a municipality, publish notice of the intention to repeal the order in a newspaper of general circulation in the municipality, and
 - (iii) if the property is situated in unorganized territory, publish or otherwise make known the notice of intention to repeal the order in a manner and at such times as the Minister considers adequate to give the public in the territory reasonable notice. 2005, c. 6, s. 26.

Objection

- (8) Within 30 days after the day the notice of intention was first published or made known to the public under clause (2) (b) or (7) (b), a person may serve on the Minister a notice of objection to the repeal of an order designating property setting out the reason for the objection and all relevant facts. 2005, c. 6, s. 26.

Application

- (9) Subsections 34.6 (5) to (18), as they apply to an intention to make an order to designate property, apply with necessary modifications to an intention to make an order repealing the designation of the property. 2005, c. 6, s. 26.

Reapplication

- (10) Where the Minister refuses an application under this section, the owner of the property may not reapply to have the order that designates the property as property of cultural heritage value or interest of provincial significance revoked for 12

months from day the owner receives notice of the Minister's decision, except with the consent of the Minister. 2005, c. 6, s. 26.

Section Amendments with date in force (d/m/y)

2005, c. 6, s. 26 - 28/04/2005

2009, c. 33, Sched. 11, s. 6 (12) - 15/12/2009

2019, c. 9, Sched. 11, s. 16 - not in force

GENERAL

Notice of change of ownership

35 (1) Where there is a change in the ownership of property designated under section 29 by a municipality, the new owner of the property shall give notice of the change to the clerk of the municipality within 30 days of becoming the owner of the property. 2005, c. 6, s. 27.

Same, Minister

(2) Where there is a change in the ownership of property designated under section 34.5 by the Minister, the new owner of the property shall give notice of the change to the Minister within 30 days of becoming the owner of the property. 2005, c. 6, s. 27.

Section Amendments with date in force (d/m/y)

2005, c. 6, s. 27 - 28/04/2005

Conflict

35.1 In the event of a conflict between an order by the Minister designating property under section 34.5 and a municipal by-law that affects the same property, the order prevails to the extent of the conflict, but in all other respects the by-law remains in full force and effect. 2005, c. 6, s. 27.

Section Amendments with date in force (d/m/y)

2005, c. 6, s. 27 - 28/04/2005

Stop order

35.2 (1) The Minister may issue a stop order with respect to any property in the Province to prevent the alteration of the property, any damage to the property or the demolition or removal of any building or structure on the property if the Minister is of the opinion that,

- (a) the property may be property of cultural heritage value or interest of provincial significance; and
- (b) the property is likely to be altered or damaged or a building or structure located on the property is likely to be removed or demolished. 2005, c. 6, s. 27.

Same

(2) The Minister may make an order under this section with respect to property designated under section 29 even if the municipality has consented to the alteration, demolition or removal in question. 2005, c. 6, s. 27.

Order

(3) A stop order issued under this section shall direct the owner of the property in question or any person in apparent possession of the property to ensure that any activity that is likely to result in the alteration of or damage to the property or the demolition or removal of any building or structure on the property not be commenced or be discontinued for a period of up to 60 days. 2005, c. 6, s. 27.

Assessment

(4) During the time that a stop order is in effect, the Minister, or any person authorized by the Minister in writing, may prepare a study to assist in determining whether the property is property of cultural heritage value or interest of provincial significance and which procedures, if any, should be commenced under this Act or otherwise, in order to protect and conserve the property. 2005, c. 6, s. 27.

Service of order

(5) The Minister may serve a stop order issued under this section on the owner of the property in question or any person in apparent possession of the property by any method of service described in subsection 67 (1) and by posting the order in a conspicuous place on the property to which it applies. 2009, c. 33, Sched. 11, s. 6 (13).

Service deemed effective

(6) Service under subsection (5) is effective from the earlier of the date of posting or the effective date of service described in subsections 67 (2) to (4). 2009, c. 33, Sched. 11, s. 6 (13).

Section Amendments with date in force (d/m/y)

2005, c. 6, s. 27 - 28/04/2005

2009, c. 33, Sched. 11, s. 6 (13) - 15/12/2009

Building standards by-law

35.3 (1) If a by-law passed under section 15.1 of the *Building Code Act, 1992* setting out standards for the maintenance of property in the municipality is in effect in a municipality, the council of the municipality may, by by-law,

- (a) prescribe minimum standards for the maintenance of the heritage attributes of property in the municipality that has been designated by the municipality under section 29 or by the Minister under section 34.5; and
- (b) require property that has been designated under section 29 or 34.5 and that does not comply with the standards to be repaired and maintained to conform with the standards. 2005, c. 6, s. 27.

Application

(2) Sections 15.2, 15.3, 15.4, 15.5 and 15.8 of the *Building Code Act, 1992* apply with necessary modifications to the enforcement of a by-law made under subsection (1). 2005, c. 6, s. 27.

Section Amendments with date in force (d/m/y)

2005, c. 6, s. 27 - 28/04/2005

Purchase or lease by-laws

36 (1) The council of a municipality may pass by-laws providing for acquiring, by purchase, lease or otherwise, any property or part thereof designated under this Part, including any interest therein, for the use or purposes of this Part and for disposing of such property, or any interest therein, by sale, lease or otherwise, when no longer so required, upon such terms and conditions as the council considers necessary for the purposes of this Part. R.S.O. 1990, c. O.18, s. 36 (1).

Expropriating by-law

(2) Subject to the *Expropriations Act*, the council of every municipality may pass by-laws providing for the expropriation of any property designated under this Part and required for the purposes of this Part and may sell, lease or otherwise dispose of the property, when no longer so required, upon such terms and conditions as the council considers necessary for the purposes of this Part. R.S.O. 1990, c. O.18, s. 36 (2).

Delegation

(3) The council of a municipality that forms part of an upper-tier municipality may delegate its power under this Part to the council of the upper-tier municipality. 2002, c. 17, Sched. F, Table.

Section Amendments with date in force (d/m/y)

2002, c. 17, Sched. F, Table - 01/01/2003

Easements

37 (1) Despite subsection 36 (1), after consultation with its municipal heritage committee, if one is established, the council of a municipality may pass by-laws providing for the entering into of easements or covenants with owners of real property or interests in real property, for the conservation of property of cultural heritage value or interest. 2002, c. 18, Sched. F, s. 2 (19).

Idem

(2) Any easement or covenant entered into by a council of a municipality may be registered, against the real property affected, in the proper land registry office. R.S.O. 1990, c. O.18, s. 37 (2).

Idem

(3) Where an easement or covenant is registered against real property under subsection (2), such easement or covenant shall run with the real property and the council of the municipality may enforce such easement or covenant, whether positive or negative in nature, against the owner or any subsequent owners of the real property, and the council of the municipality may enforce such easement or covenant even where it owns no other land which would be accommodated or benefited by such easement or covenant. R.S.O. 1990, c. O.18, s. 37 (3).

Assignment

(4) Any easement or covenant entered into by the council of a municipality under subsection (2) may be assigned to any person and such easement or covenant shall continue to run with the real property and the assignee may enforce the easement or covenant as if it were the council of the municipality and it owned no other land which would be accommodated or benefited by such easement or covenant. R.S.O. 1990, c. O.18, s. 37 (4).

Conflict

(5) Where there is a conflict between an easement or covenant entered into by a council of a municipality under subsection (1) and section 33 or 34, the easement or covenant shall prevail. R.S.O. 1990, c. O.18, s. 37 (5).

Section Amendments with date in force (d/m/y)

2002, c. 18, Sched. F, s. 2 (19) - 26/11/2002

Inspection

38 (1) For the purpose of carrying out this Part, any person authorized by the council of a municipality in writing may, upon producing proper identification, inspect at any reasonable time property designated or property proposed to be designated under this Part where a notice of intention to designate has been served and published under subsection 29 (3).

Obstruction of investigator

(2) No person shall obstruct a person authorized to make an investigation under this section or conceal or destroy anything relevant to the subject-matter of the investigation. R.S.O. 1990, c. O.18, s. 38.

Grants and loans

39 (1) The council of a municipality may pass by-laws providing for the making of a grant or loan to the owner of a property designated under this Part for the purpose of paying for the whole or any part of the cost of alteration of such designated property on such terms and conditions as the council may prescribe. R.S.O. 1990, c. O.18, s. 39 (1).

Loan is lien or charge on land

(2) The amount of any loan made under a by-law passed under subsection (1), together with interest at a rate to be determined by the council, may be added by the clerk of the municipality to the collector's roll and collected in like manner as municipal taxes over a period fixed by the council, not exceeding five years, and such amount and interest shall, until payment thereof, be a lien or charge upon the land in respect of which the loan was made. R.S.O. 1990, c. O.18, s. 39 (2).

Non-application of s. 106 of *Municipal Act, 2001*

(3) Section 106 of the *Municipal Act, 2001* does not apply to a grant or loan made under subsection (1). 2009, c. 33, Sched. 11, s. 6 (14).

Section Amendments with date in force (d/m/y)

2009, c. 33, Sched. 11, s. 6 (14) - 15/12/2009



**Tab 9 - Ontario Regulation 9/06, under the Ontario
Heritage Act - Criteria for Determining Cultural
Heritage Value or Interest**

Français

Ontario Heritage Act

ONTARIO REGULATION 9/06

CRITERIA FOR DETERMINING CULTURAL HERITAGE VALUE OR INTEREST

Consolidation Period: From January 25, 2006 to the [e-Laws currency date](#).

No amendments.

This is the English version of a bilingual regulation.

Criteria

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).

(2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
 - ii. displays a high degree of craftsmanship or artistic merit, or
 - iii. demonstrates a high degree of technical or scientific achievement.
2. The property has historical value or associative value because it,
 - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,
 - ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
 - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
3. The property has contextual value because it,
 - i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark. O. Reg. 9/06, s. 1 (2).

Transition

2. This Regulation does not apply in respect of a property if notice of intention to designate it was given under subsection 29 (1.1) of the Act on or before January 24, 2006. O. Reg. 9/06, s. 2.

Français

Back to top

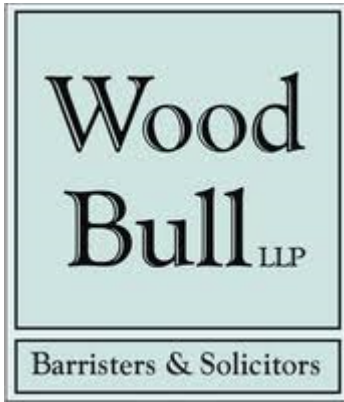


**Tab 10 - Ontario Heritage Act, Organization Flow
Chart (as amended by Bill 108)**



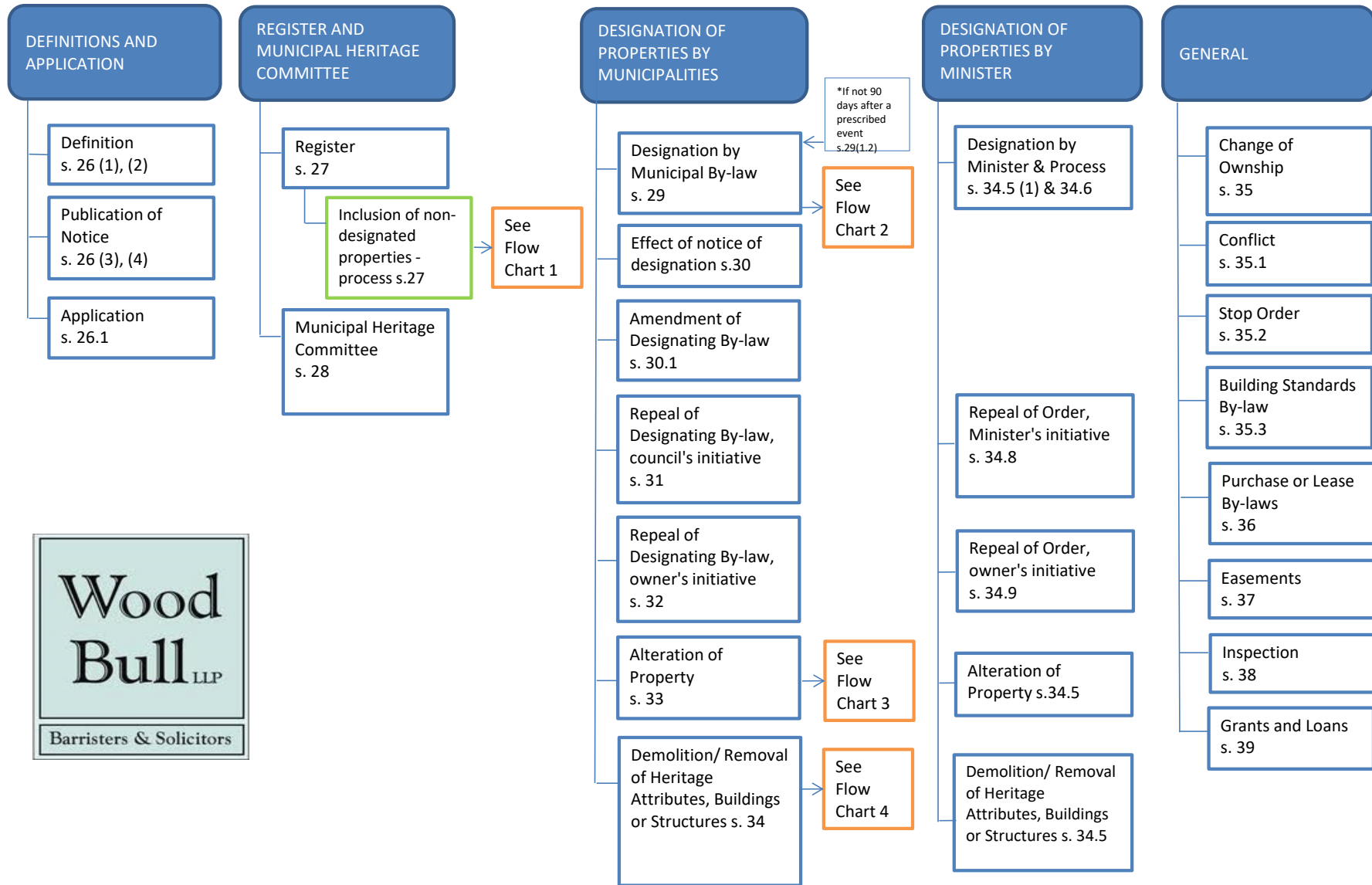
Ontario Heritage Act

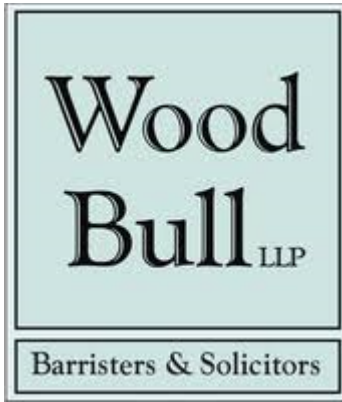




**Tab 11 - Ontario Heritage Act, Part IV Organization
Flow Chart (as amended by Bill 108)**

Outline - PART IV: Conservation of Property of Cultural Heritage Value or Interest (after Bill 108)





Tab 12 - Ontario Heritage Act, Part IV (After Bill 108)
Flow Charts 1 - 4

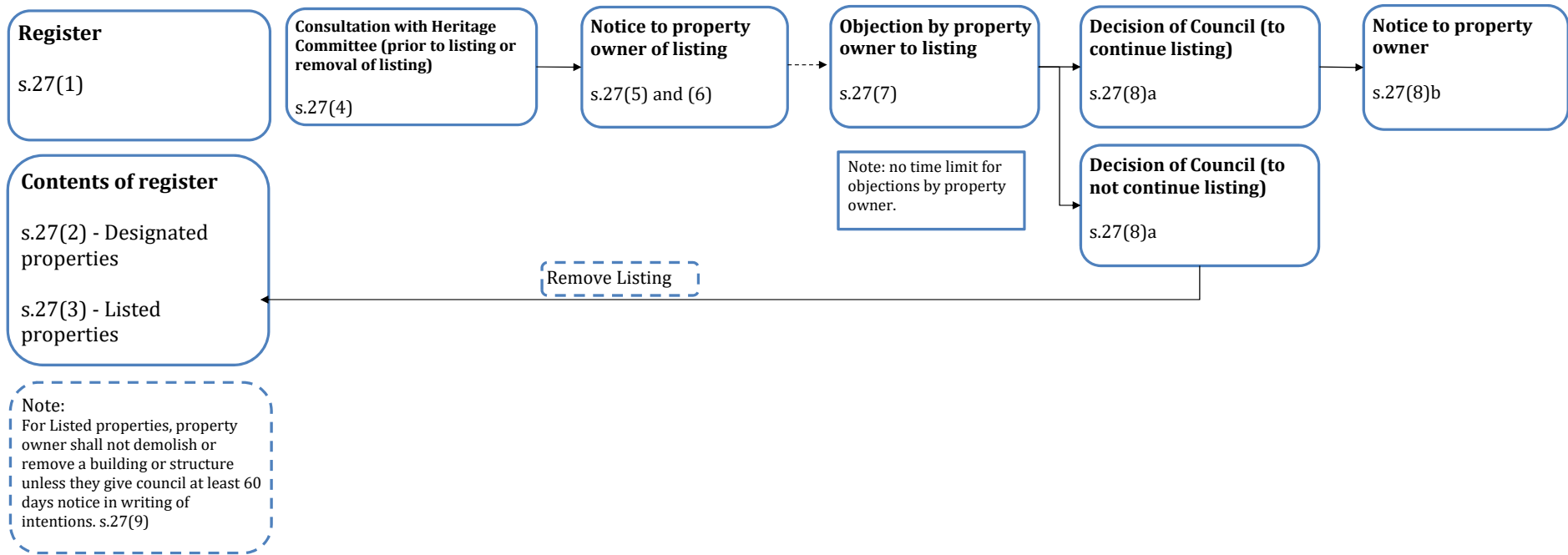


Tab 12 a)- Ontario Heritage Act, Part IV (After Bill 108)

Flow Chart 1 - Section 27 (Adding non-designated property to Municipal Registry)

FLOW CHART 1: ONTARIO HERITAGE ACT PROCESS - CULTURAL HERITAGE (PART IV) - Adding non-designated properties to a Municipal Registry under s.27 (after Bill 108)

MUNICIPAL COUNCIL DECISION PROCESS (applying prescribed Principles, where applicable)



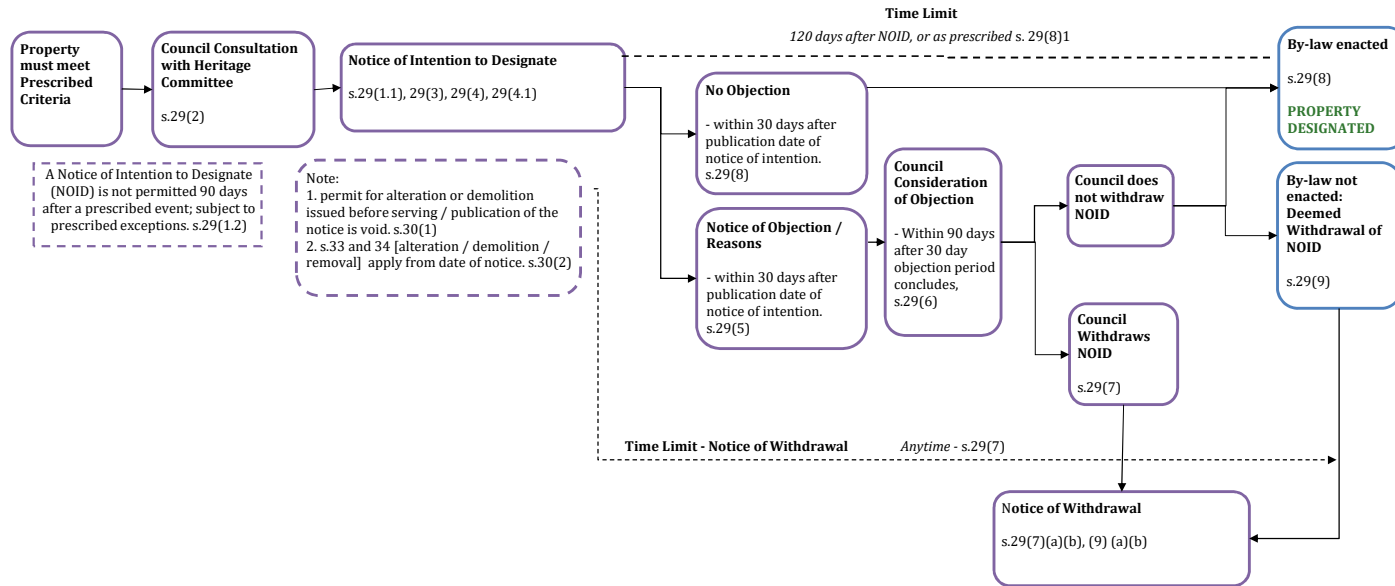


Tab 12 b) - Ontario Heritage Act, Part IV (After Bill 108)

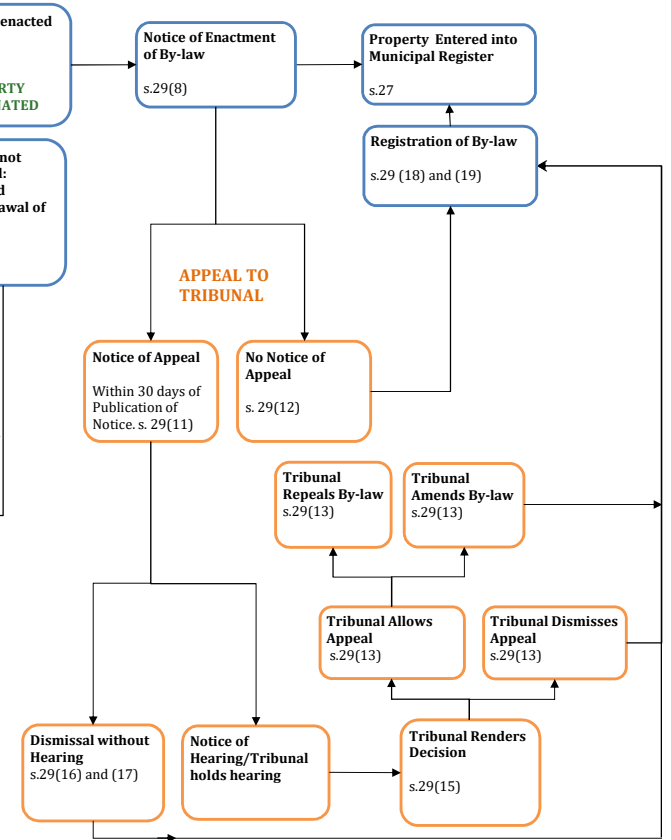
Flow Chart 2 - Section 29 (Designation of Property)

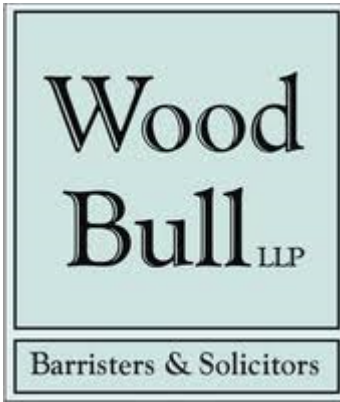
FLOW CHART 2: ONTARIO HERITAGE ACT PROCESS - CULTURAL HERITAGE (PART IV) - Designation of a Property by a Municipality under s.29 (after Bill 108)
 Council may, by by-law, designate a property to be of cultural heritage value or interest. s.29(1)

MUNICIPAL NOTICE OF INTENTION PROCESS



MUNICIPAL COUNCIL DECISION PROCESS
 (applying prescribed Principles, where applicable)



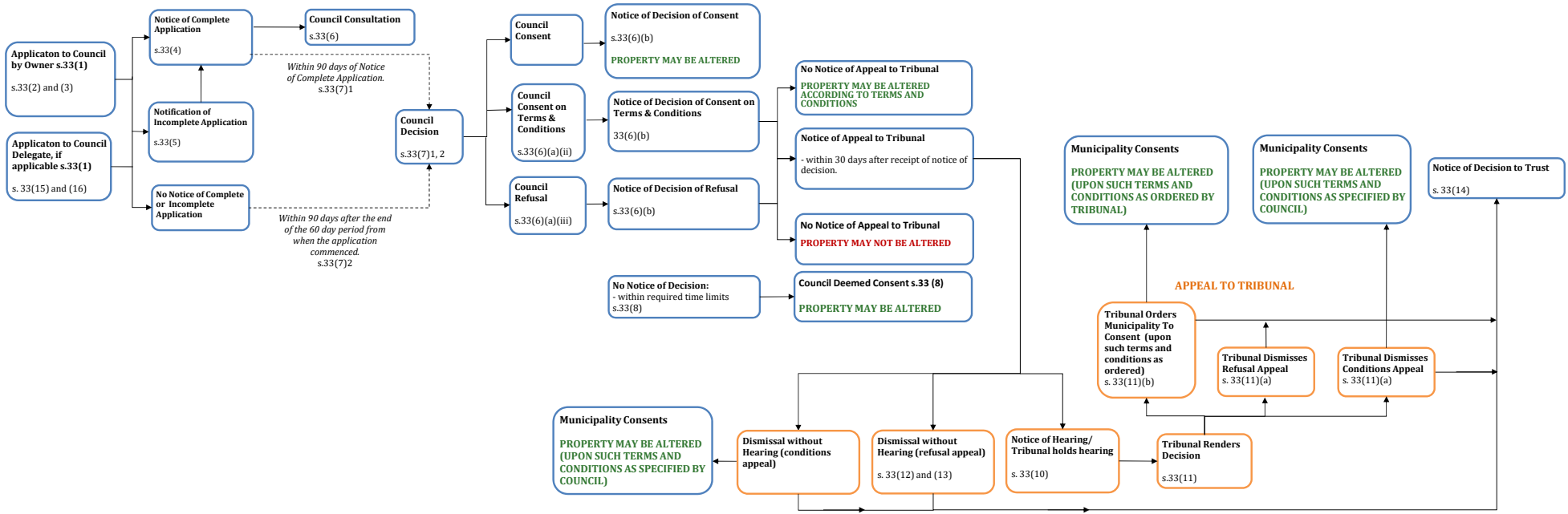


Tab 12 c)- Ontario Heritage Act, Part IV (After Bill 108)

**Flow Chart 3 - Section 33 (Alteration of Property
Which Affects Heritage Attributes of Designated
Property)**

FLOW CHART 3: ONTARIO HERITAGE ACT PROCESS - CULTURAL HERITAGE (PART IV) - Alteration of a Property Designated by a Municipality under s.33 (after Bill 108)
 No alteration where the alteration is likely to affect the property's heritage attributes as set out in the designating by-law, unless the owner applies to the council and receives consent in writing to make such alteration. s.33(1)

MUNICIPAL COUNCIL DECISION PROCESS (applying prescribed Principles, where applicable)





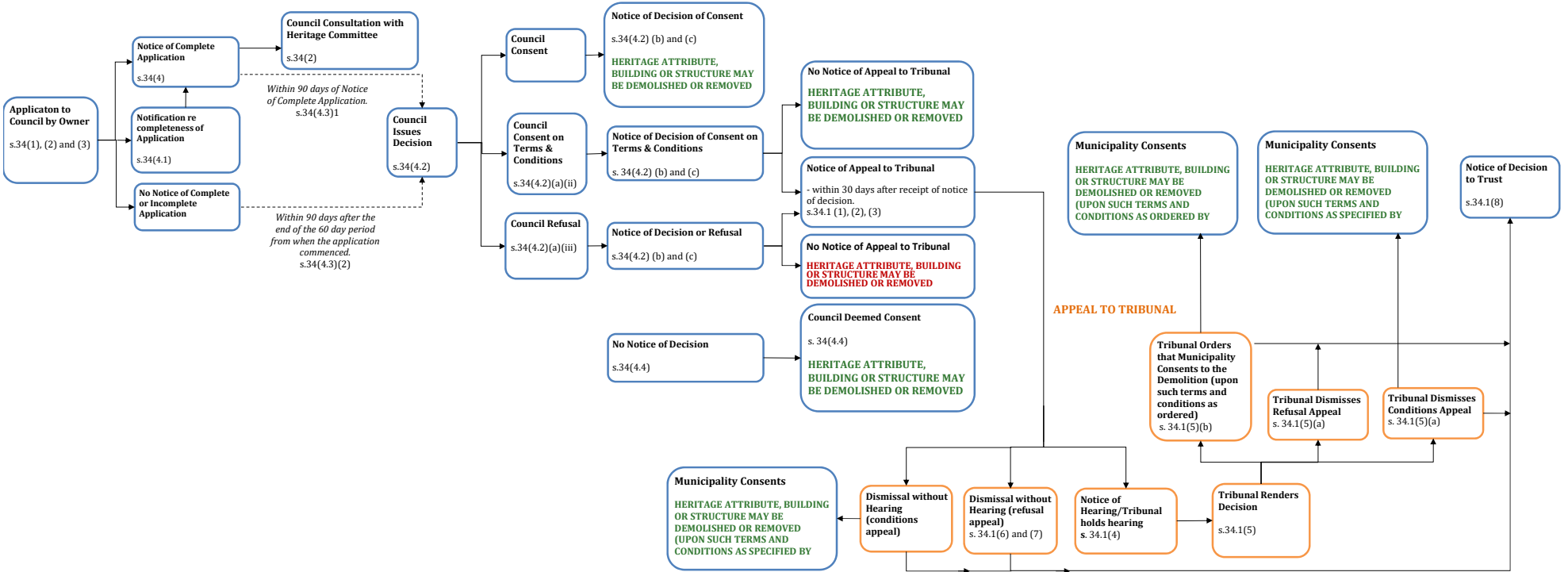
Tab 12 d)- Ontario Heritage Act, Part IV (After Bill 108)

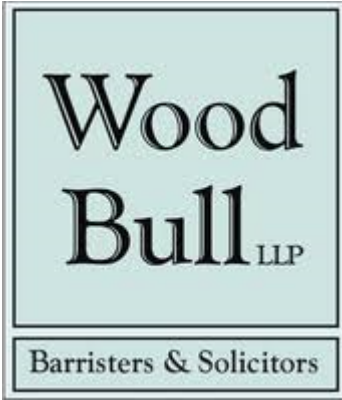
**Flow Chart 4 - Section 34 (Demolition of Heritage
Attributes, Buildings or Structures)**

FLOW CHART 4: ONTARIO HERITAGE ACT PROCESS - CULTURAL HERITAGE (PART IV) - Demolition/Removal of Heritage Attributes, Buildings or Structures under s.34 (after Bill 108)

No demolition or removal of a the property's heritage attributes, or buildings or structures (regardless of whether demolition or removal will affect the heritage attributes as set out in the designating by-law), unless the owner applies to the council and receives consent in writing to make such demolition or removal. s.34(1).

MUNICIPAL COUNCIL DECISION PROCESS (applying prescribed Principles, where applicable)





Tab 13 - Ontario Heritage Tool Kit (Pre-Bill 108)



Tab 13 a) - Ontario Heritage Tool Kit: Heritage Resources in the Land Use Planning Process: Cultural Heritage and Archaeology Policies of the Ontario Provincial Policy Statement, 2005



HERITAGE RESOURCES IN THE LAND USE PLANNING PROCESS

*Cultural Heritage and Archaeology Policies of the
Ontario Provincial Policy Statement, 2005*



Acknowledgements

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Information Sheet Series – Introduction

Winter 2006

WHAT ARE THE CULTURAL HERITAGE AND ARCHAEOLOGY POLICIES IN THE PROVINCIAL POLICY STATEMENT 2005?

2.6.1 *Significant built heritage resources and significant cultural heritage landscapes shall be conserved.*

2.6.2 *Development and site alteration shall only be permitted on lands containing archaeological resources or areas of archaeological potential if the significant archaeological resources have been conserved by removal and documentation, or by preservation on site. Where significant archaeological resources must be preserved on site, only development and site alteration which maintain the heritage integrity of the site may be permitted.*

What is the Provincial Policy Statement, 2005 of the Ontario Planning Act?

The Planning Act provides the legislative framework for land use planning in Ontario. It sets out:

- how the land use planning system works
- who makes decisions
- ways to resolve disputes and seek public input
- provincial and municipal roles in planning administration

Section 2 of the Act identifies matters of provincial interest, which includes the conservation of *significant* features of architectural, cultural, historical, archaeological or scientific interest.

Section 3 of the Act allows the province to issue policy statements on matters of provincial interest. The Provincial Policy Statement (PPS, 2005) is the framework for broad, integrated and long term planning. It provides policy direction to municipalities and approval authorities that make decisions on land use planning matters.

A New Provincial Policy Statement

The PPS, 2005 supports the principles of strong communities, a clean and healthy environment and economic growth for the long term in Ontario. It applies to all planning applications, matters or proceedings commenced on or after March 1, 2005.

The Act now requires that all decisions affecting land use planning matters “shall be consistent with” the PPS, 2005. This is a higher test than the former “shall have regard to.”

2.6.3 *Development* and site alteration may be permitted on *adjacent lands* to protected heritage property where the proposed *development* and *site alteration* has been evaluated and it has been demonstrated that the *heritage attributes* of the *protected heritage property* will be *conserved*.

Mitigative measures and/or alternative *development* approaches may be required in order to conserve the *heritage attributes* of the *protected heritage property* affected by the adjacent *development* or *site alteration*.

For more information on cultural heritage and *archaeological resources* contact:

Ontario Ministry of Culture

400 University Avenue, 4th Floor
Toronto, ON M7A 2R9

General_Info@mcl.gov.on.ca
(416) 212-0644

1 (866) 454-0049

web page:

<http://www.culture.gov.on.ca>

Additional information on the Provincial Policy Statement, 2005 is available on the Ministry of Municipal Affairs and Housing web page:
<http://www.mah.gov.on.ca>

In addition to the new “shall be consistent with” implementation standard, highlights of the PPS, 2005 include:

- new policy sections for Employment Areas, Public Spaces, Parks and Open Space, Air Quality and Energy that provide strong, clear direction on key issues that affect our communities
- enhanced policies which provide stronger protection for Ontario’s natural and cultural heritage resources
- definitions of several new and revised terms for clearer guidance (terms italicized in these Information Sheets are defined in the PPS, 2005)

Protecting cultural heritage and archaeological resources

PPS, 2005 Section 2.0: Wise Use and Management of Resources recognizes that Ontario’s long-term prosperity, environmental health, and social well-being depend on protecting natural heritage, water, agricultural, mineral, and cultural heritage and *archaeological resources* for their economic, environmental and social benefits.

PPS Section 2.6 sets out cultural heritage and archaeology policies:

Policy 2.6.1 *Built heritage resources* and *cultural heritage landscapes*

Policy 2.6.2 *Archaeological resources* and *areas of archaeological potential*

Policy 2.6.3 *Adjacent lands* and *protected heritage property*

The PPS, 2005, together with the provisions of the Ontario Heritage Act and its regulations, strengthens the framework for the identification and protection of Ontario’s cultural heritage and *archaeological resources*.

The Ministry of Culture information sheet series is support material for PPS, 2005, and is intended to provide guidance and information regarding cultural heritage and *archaeological resource* conservation in land use planning. The series includes:

Introduction

Info Sheet #1: Built Heritage Resources

Info Sheet #2: Cultural Heritage Landscapes

Info Sheet #3: Archaeological Resources and Areas of Archaeological Potential

Info Sheet #4: Adjacent Lands and Protected Heritage Property

Info Sheet #5: Heritage Impact Assessments and Conservation Plans

*Note: This InfoSheet was developed to assist participants in the land use planning process and to understand the PPS, 2005 policies related to the conservation planning of cultural heritage and *archaeological resources*. The information in the InfoSheet should not be relied upon as a substitute for specialized legal or professional advice in connection with any particular matter.



InfoSheet #1

Winter 2006

Built Heritage Resources

WHAT IS THE PROVINCIAL POLICY STATEMENT 2005 FOR THE CONSERVATION OF SIGNIFICANT BUILT HERITAGE RESOURCES?

2.6.1 *Significant built heritage resources and significant cultural heritage landscapes shall be conserved.*

A policy for the conservation of significant built heritage resources

The Provincial Policy Statement (PPS, 2005) policy 2.6.1 for the conservation of *significant built heritage resources* is not new, but it is strengthened by the direction under Section 3 of the Planning Act that land use planning decisions by municipalities and approval authorities “shall be consistent with” the PPS, 2005.

Municipalities and approval authorities can incorporate more detailed *built heritage resource* conservation objectives and policies reflecting local heritage sites into Official Plans, land use planning documents, and related *development* approval procedures or decisions.

The PPS, 2005 defines *built heritage resources* as involving “one or more *significant* buildings, structures, monuments, installations or remains associated with architectural, cultural, social, political, economic or military history and identified as being important to a community. These resources may be identified through designation or heritage conservation easement under the Ontario Heritage Act, or listed by local, provincial or federal jurisdictions.”

Identifying built heritage resources

Built heritage resources are identified through:

- **Historical Research**
Consulting maps, land records, photographs, publications, primary and other sources;
- **Site Survey and Analysis**
Windshield surveys, intensive surveys, site surveys and analysis;
- **Evaluation**
Applying criteria for evaluating design, history and context.

BUILT HERITAGE RESOURCES EXAMPLES CAN INCLUDE, BUT ARE NOT LIMITED TO:

Residential, commercial, institutional, or industrial buildings



(Nancy Morand)



(Ministry of Culture)



(© 2006 Ontario Tourism)

Churches or places of worship



(Su Murdoch)

An inventory or mapping of properties that contain *significant built heritage resources*, can be compiled by local, provincial, or federal jurisdictions. Some of these properties may become a *protected heritage property* under the Ontario Heritage Act.

A municipal heritage committee can be appointed under the Ontario Heritage Act by a municipal Council to identify cultural heritage resources, including *built heritage resources*, and can advise Council on heritage conservation matters. For more information on identifying *built heritage resources*, see the “Heritage Property Evaluation: A Guide to Identifying, Researching and Evaluating Cultural Heritage Property in Ontario Communities” (Ministry of Culture).

Defining significance

The PPS, 2005 defines “*built heritage resources*” and it defines “*significant*.” For *built heritage resources* to be *significant* or have cultural heritage value or interest, they must be “valued for the important contribution they make to our understanding of the history of a place, an event, or a people.”

Typically, the significance of a *built heritage resource* is identified by evaluation criteria that define the characteristics that have cultural heritage value or interest to local, provincial, or federal jurisdictions. Criteria to define local cultural heritage significance is prescribed in a regulation made pursuant to section 29(1) (a) of the Ontario Heritage Act.

For a *protected heritage property* under the Ontario Heritage Act, the designation by-law and/or heritage conservation easement agreement should state the significance of the *built heritage resource*, and identify its *heritage attributes*. These are known as statements of cultural heritage value or interest.

The PPS, 2005 defines *heritage attributes* as “the principal features, characteristics, context, and appearance that contribute to the cultural heritage significance of a *protected heritage property*.” These attributes should be identified and considered when significance is being evaluated.

Built heritage resources

The identification, listing, evaluation and protection of *built heritage resources* is an ongoing process. The PPS, 2005 policies and land use planning processes are applicable to *built heritage resources* that have significance to the jurisdiction. *Built heritage resources* include:

- a property with a *significant built heritage resource* listed by local, provincial or federal jurisdictions using evaluation criteria;
- a *protected heritage property*, which means:
 - real property designated under Part IV (individual property), Part V (heritage conservation districts), or Part VI (archaeology) of the Ontario Heritage Act
 - a heritage conservation easement property under Parts II or IV of the Ontario Heritage Act
 - property that is the subject of a covenant or agreement between the owner of a property and a conservation body or level of government, registered on title and executed with the primary purpose of preserving, conserving and maintaining a cultural heritage feature or resource, or preventing its destruction, demolition or loss (Municipal jurisdiction(s) or the Ontario Heritage Trust can also confirm if a property is a *protected heritage property*)
- a *significant built heritage resource* that is newly identified as part of a proposal for *development* or *site alteration*

What is meant by “conserved”?

In the PPS, 2005, *conserved* means “the identification, protection, use and/or management of cultural heritage and *archaeological resources* in such a way that their heritage values, attributes and integrity are retained. This may be addressed through a conservation plan or heritage impact assessment.”

The Ontario Heritage Act enables municipalities to identify, list and protect properties with cultural heritage value or interest. It also gives municipalities and the Ontario Heritage Trust the ability to hold heritage conservation easements on real property. The Ontario Heritage Trust, an agency of the Ministry of Culture, is dedicated to identifying, preserving, protecting and promoting Ontario’s rich and varied heritage resources.

Monuments, such as a cenotaph, statue, cairn, or markers



(Kurt Schick)

Structures, such as a water tower, bridge, fence, or dam



(Ministry of Culture)

Mining headframes



(City of Timmins)

Gravestones or cemetery markers



(Ministry of Culture)

Interior features such as fireplaces, woodworks, or plaster works



(Su Murdoch)

Conserving built heritage resources in land use planning

The Planning Act allows municipalities and approval authorities to adopt Official Plan objectives and cultural heritage conservation policies and approval procedures. These can include, but are not limited to:

- Demolition control by-laws
- Interim control bylaws
- Subdivision development agreements
- Financial incentives such as Community Improvement Plans

Ontario Heritage Act provisions to be considered include:

- Architectural design guidelines
- Heritage property listing and designation provisions
- Heritage conservation easements
- Recognition / role of municipal heritage committee
- Grants and loans for heritage conservation

In light of the above planning tools, municipalities and/or planning approval authorities, through their Official Plan and other planning policy documents, can identify, protect, use and/or manage *significant built heritage resources* within its jurisdiction.

To conserve a *significant built heritage resource*, a municipality or approval authority may require a heritage impact assessment (or equivalent study) to evaluate proposed *development* or *site alteration* to demonstrate that a *significant built heritage resource* will be *conserved*. Mitigative (avoidance) measures or alternative *development* or *site alteration* approaches may be required.

A conservation plan (or equivalent study) may be required as a long term strategy for conserving the *significant built heritage resource*. (See InfoSheet #5 on heritage impact assessments and conservation plans.)

For more information on *built heritage resources* contact:

Ontario Ministry of Culture

400 University Avenue, 4th Floor
Toronto, ON M7A 2R9

General_Info@mcl.gov.on.ca
(416) 212-0644

1 (866) 454-0049

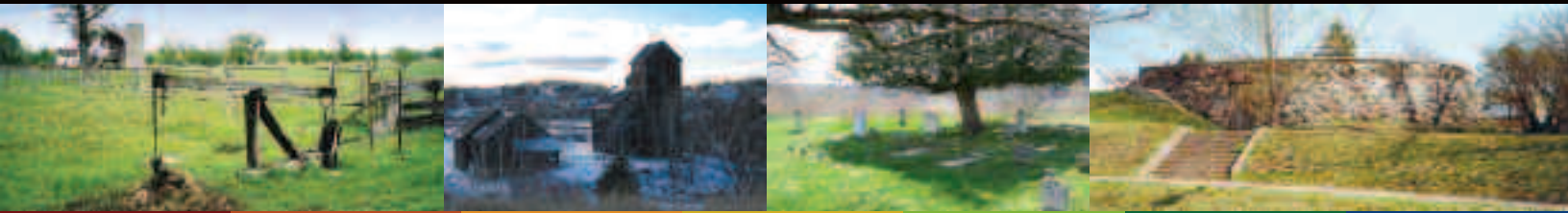
web page:

<http://www.culture.gov.on.ca>

Additional information on the Provincial Policy Statement, 2005 is available on the Ministry of Municipal Affairs and Housing web page:

<http://www.mah.gov.on.ca>

*Note: This InfoSheet was developed to assist participants in the land use planning process and to understand the PPS, 2005 policies related to the conservation planning of cultural heritage and *archaeological resources*. The information in the InfoSheet should not be relied upon as a substitute for specialized legal or professional advice in connection with any particular matter.



InfoSheet #2

Winter 2006

Cultural Heritage Landscapes

WHAT IS THE PROVINCIAL POLICY STATEMENT 2005 DIRECTION FOR THE CONSERVATION OF SIGNIFICANT CULTURAL HERITAGE LANDSCAPES?

2.6.1 *Significant built heritage resources and significant cultural heritage landscapes shall be conserved.*

A policy for the conservation of significant cultural heritage landscapes

The Provincial Policy Statement (PPS, 2005) policy 2.6.1 for the conservation of *significant cultural heritage landscapes* is not new, but it is strengthened by the direction under Section 3 of the Planning Act that land use planning decisions by municipalities and approval authorities “shall be consistent with” the PPS, 2005.

Municipalities and approval authorities can incorporate more detailed *cultural heritage landscape* conservation objectives and policies reflecting local heritage places, landscapes and districts into Official Plans, land use planning documents, and related *development* approval procedures or decisions.

The PPS, 2005 expands the definition of *cultural heritage landscape* as “a defined geographical area of heritage significance which has been modified by human activities and is valued by a community. A landscape involves a grouping(s) of individual heritage features such as structures, spaces, archaeological sites and natural elements, which together form a *significant* type of heritage form, distinctive from that of its constituent elements or parts. Examples may include, but are not limited to, heritage conservation districts designated under the Ontario Heritage Act; and villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, railways and industrial complexes of cultural heritage value.”

Types of cultural heritage landscapes

There are generally three main types of *cultural heritage landscapes*. The following are taken from the Operational Guidelines adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Committee in 1992, and are widely accepted as the three primary landscape types:

- **Designed landscapes:** those which have been intentionally designed e.g. a planned garden or in a more urban setting, a downtown square.

A natural feature with cultural association, such as specimen trees or plantings being part of a larger *cultural heritage landscape*.



(Ministry of Culture)

- **Evolved landscapes:** those which have evolved through the use by people and whose activities have directly shaped the landscape or area. This can include a ‘continuing’ landscape where human activities and uses are still on-going or evolving e.g. residential neighbourhood or mainstreet; or in a ‘relict’ landscape, where even though an evolutionary process may have come to an end, the landscape remains historically *significant* e.g. an abandoned mine site or settlement area.
- **Associative landscapes:** those with powerful religious, artistic or cultural associations of the natural element, as well as with material cultural evidence e.g. a sacred site within a natural environment or a historic battlefield.

Identifying cultural heritage landscapes

Cultural heritage landscapes are identified through:

- **Historical Research**

Consulting maps, land records, photographs, publications, primary and other sources

- **Site Survey and Analysis**

Windshield surveys, intensive surveys, site surveys and analysis of the various features and characteristics which make up the *cultural heritage landscape* as well as delineation of landscape boundaries

- **Evaluation**

Applying criteria for evaluating design, history, and context of the entire subject area

An inventory or map of properties or geographic areas that contain *significant cultural heritage landscapes* can be compiled by local, provincial or federal jurisdiction(s).

Some of these properties and geographic areas may become a *protected heritage property* under the Ontario Heritage Act.

A municipal heritage committee can be appointed under the Ontario Heritage Act by a municipal Council to identify heritage resources, including both heritage conservation districts and *cultural heritage landscapes* within their community. For more information on identifying *cultural heritage landscapes*, see the “Heritage Property Evaluation: A Guide to Identifying, Researching and Evaluating Cultural Heritage Property in Ontario Communities” (Ministry of Culture).

Defining significance

The PPS defines “*cultural heritage landscapes*” and it defines “*significant*”. For *cultural heritage landscapes* to be *significant*, they must be “valued for the important contribution they make to our understanding of the history of a place, an event, or a people.”

Typically, the significance of a *cultural heritage landscape* is identified by evaluation criteria that define the characteristics that have cultural heritage value or interest to local, provincial or federal jurisdictions. Criteria to define local cultural heritage significance is prescribed in a regulation made pursuant to section 29(1) (a) of the Ontario Heritage Act.

For a *protected heritage property* under the Ontario Heritage Act, the designation bylaw and/or heritage conservation easement agreement should state the significance of the *cultural heritage landscape*, and identify its *heritage attributes*. These are known as statements of cultural heritage value or interest.

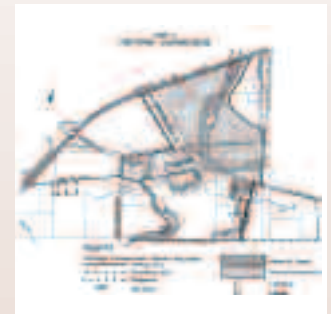
The PPS, 2005 defines *heritage attributes* as “the principal features, characteristics, context, and appearance that contribute to the cultural heritage significance of a *protected heritage property*.” *Significant cultural heritage landscapes* are often protected as, or are part of, a heritage conservation district that is described in a heritage conservation district plan under the Ontario Heritage Act.

Cultural heritage landscapes

The identification, listing, evaluation and protection of *cultural heritage landscapes* is an ongoing process. The PPS, 2005 policies and land use planning processes are applicable to *cultural heritage landscapes* that have significance to the jurisdiction. *Cultural heritage landscapes* include:

- a property with a *significant cultural heritage landscape* listed by local, provincial or federal jurisdictions using evaluation criteria;
- a *protected heritage property*, which means:
 - real property designated under Part IV (individual property), Part V (heritage conservation districts), or Part VI (archaeology) of the Ontario Heritage Act
 - a heritage conservation easement property under Parts II or IV of the Ontario Heritage Act
 - property that is the subject of a covenant or agreement between the owner of a property and a conservation body or level of government, registered on title and executed with the primary purpose of preserving, conserving and maintaining a cultural heritage feature or resource, or preventing its destruction, demolition or loss
(Municipal jurisdiction(s) or the Ontario Heritage Trust can also confirm if a property is a *protected heritage property*)
- a *significant cultural heritage landscape* that is newly identified, as part of a proposal for *development* or *site alteration*

An example where boundaries were delineated and landscape elements were identified is the Blair heritage conservation district in the City of Cambridge.



(City of Cambridge)

An example of a more traditional Part V OHA designated heritage conservation district containing landscape attributes is the Town “Square” in Goderich.



(Town of Goderich)

EXAMPLES OF CULTURAL HERITAGE LANDSCAPES:

A former industrial site where main and secondary buildings, technological artifacts, infrastructure, transport networks and open spaces are in an arrangement that depicts the working of the site.

A unique grouping of a building and formal garden within a larger heritage conservation district.

A riverscape with bridges and trails.



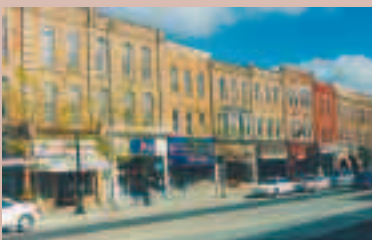
(Ministry of Culture)

A farmscape.



(City of Waterloo)

Other geographic areas or special places of cultural heritage value or interest such as main streets.



(Su Murdoch)

Defining cultural heritage landscape boundaries

Within a *cultural heritage landscape*, there are often heritage buildings, structures, ruins, trees, plantings, *archaeological resources* and other features or attributes that collectively illustrate a historical theme or activity. There is usually evidence of change over time, through site evolution and/or natural regeneration. There are also historic and/or visual qualities that can include viewsheds or site lines from within the landscape area, as well as specific observation points from outside its boundaries. Defining the *cultural heritage landscape* boundaries can involve a range of considerations, including but not limited to the use of: roadways; rights-of-way; river corridors; fences; edges of tree lines and hedge rows; property lines; landforms; and lakeshores. It is therefore important for boundaries of a *cultural heritage landscape* to be clearly defined for conservation purposes within a land use planning context.

What is meant by “conserved”?

In the PPS, 2005 *conserved* “means the identification, protection, use and/or management of cultural heritage and *archaeological resources* in such a way that their heritage values, attributes and integrity are retained. This may be addressed through a conservation plan or heritage impact assessment.”

The conservation of a *significant cultural heritage landscape* considers not only the preservation of specific features which make up the landscape, but also the relationships of such features inside and outside its boundaries. Consideration should also be given to the surrounding context within which a *cultural heritage landscape* is located and the need for conservation strategies such as buffer zones.

The Ontario Heritage Act enables municipalities to identify, list and protect properties with cultural heritage value or interest. It also gives municipalities and the Ontario Heritage Trust the ability to hold heritage conservation easements on real property. The Ontario Heritage Trust, an agency of the Ministry of Culture, is dedicated to identifying, preserving, protecting and promoting Ontario’s rich and varied heritage resources.

Conserving cultural heritage landscapes in land use planning

The Planning Act allows municipalities and approval authorities to adopt Official Plan objectives and cultural heritage policies and approval procedures. For the conservation of *significant cultural heritage landscapes*, planning tools include, but are not limited to:

- Heritage conservation district policies, guidelines, & studies
- Area design guidelines
- Height and setback restrictions / site plan control
- Landscape impact assessments
- Secondary plan policies for special areas
- Special zoning by-laws with heritage criteria overlay
- Subdivision development agreements
- Community improvement plans
- Stewardship
- Financial incentives
- Landscape conservation plans
- Park area / corridor area management plans

In light of the above planning tools, municipalities and/or planning approval authorities, through their Official Plan and other planning policy documents, can further identify, protect and manage *significant cultural heritage landscapes* within their jurisdiction.

To conserve a *significant cultural heritage landscape*, a municipality or approval authority may require a heritage impact assessment (or equivalent study) to evaluate proposed *development* or *site alteration* to demonstrate that a *significant cultural heritage landscape* will be *conserved*. Mitigative (avoidance) measures or alternative *development* or *site alteration* approaches may be required.

A conservation plan (or equivalent study) may be required as a long term strategy for conserving the *significant cultural heritage landscape*. (See InfoSheet #5 on heritage impact assessments and conservation plans.)

A *cultural heritage landscape* may be scenic and contain notable natural features, but is primarily important for its *significant* historical associations.



(Ministry of Culture)



(Ministry of Culture)

For more information on *cultural heritage landscapes* contact:

Ontario Ministry of Culture

400 University Avenue, 4th Floor
Toronto, ON M7A 2R9

General_Info@mcl.gov.on.ca

(416) 212-0644

1 (866) 454-0049

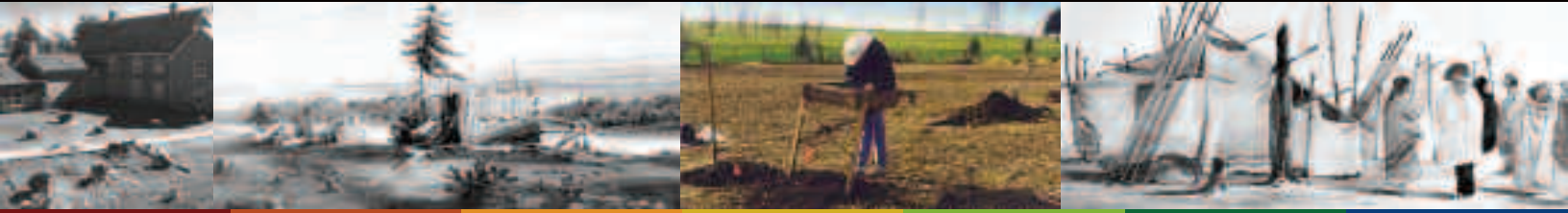
web page:

<http://www.culture.gov.on.ca>

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InfoSheet #3

Archaeological Resources and Areas of Archaeological Potential

Winter 2006

WHAT IS THE PROVINCIAL POLICY STATEMENT 2005 POLICY FOR THE CONSERVATION OF ARCHAEOLOGICAL RESOURCES AND AREAS OF ARCHAEOLOGICAL POTENTIAL?

2.6.2 *Development and site alteration* shall only be permitted on lands containing *archaeological resources* or *areas of archaeological potential* if the *significant archaeological resources* have been *conserved* by removal and documentation, or by preservation on site. Where *significant archaeological resources* must be preserved on site, only *development* and *site alteration* which maintain the heritage integrity of the site may be permitted.

A policy for the conservation of archaeological resources and areas of archaeological potential

Provincial Policy Statement (PPS, 2005) 2.6.2 for the conservation of *archaeological resources* and *areas of archaeological potential* is not new, but it is strengthened by changes to the Planning Act requiring that planning decisions by municipalities and approval authorities “shall be consistent with” provincial policy statements.

Municipalities and approval authorities are to incorporate more detailed archaeological conservation objectives and policies reflecting local *archaeological resources* and *areas of archaeological potential* into their official plans, land use planning documents and related *development* approval processes.

The PPS, 2005 defines *archaeological resources* as including “artifacts, archaeological sites, and marine archaeological sites. The identification and evaluation of such resources are based upon archaeological fieldwork undertaken in accordance with the Ontario Heritage Act.”

Identifying archaeological resources and areas of archaeological potential

The identification of *archaeological resources* is based on archaeological assessment by a licensed professional archaeologist. Archaeological licensing and reporting are governed by the Ontario Heritage Act and its regulations. Licensed archaeologists must comply with Ministry of Culture standards and guidelines when carrying out and reporting on archaeological fieldwork. The Ontario Heritage Act prohibits anyone from disturbing an archaeological site without a licence.

The Ministry of Culture maintains a database of archaeological site locations and a register of archaeological fieldwork reports. A municipality or approval authority may obtain site locations and mapping for land use planning purposes, after a data sharing agreement with the province is ratified.

WHAT ARE ARCHAEOLOGICAL RESOURCES?

Archaeological resources include artifacts, archaeological sites, and marine archaeological sites. The identification and evaluation of such resources are based upon archaeological fieldwork undertaken in accordance with the Ontario Heritage Act. (PPS, 2005)

Archaeological site means any property that contains an artifact or any other physical evidence of past human use or activity that is of cultural heritage value or interest. Artifact means any object, material or substance that is made, modified, used, deposited or affected by human action and is of cultural heritage value or interest. Marine archaeological site means an archaeological site that is fully or partially submerged or that lies below or partially below the high-water mark of any body of water. (Ontario Heritage Act Regulation 170/04)

The identification of *areas of archaeological potential* is based on provincial criteria (refer to page 4). An archaeological master plan containing geographical information system (GIS) mapping of known *archaeological resource* locations and *areas of archaeological potential*, can define these areas even more precisely within municipal boundaries. Municipalities or planning authorities often develop archaeological master plans as an important planning tool for staff, and the mapping generated is used to trigger archaeological assessments of *areas of archaeological potential*.

What is involved in archaeological assessments?

As a condition of approval for *development* or *site alteration* of *areas of archaeological potential*, a municipality or approval authority will require a proponent to undertake an archaeological assessment. There are four stages of archaeological fieldwork, moving from identification of *areas of archaeological potential* and *archaeological resources* to assessment of their significance. The final stage is mitigation of *significant archaeological resources*. Further information about the assessment process will be available in technical guides and manuals developed by the Ministry of Culture.

Defining significance

While all *archaeological resources* contribute to the record of Ontario's past, to be "*significant*" they must be "valued for the important contribution they make to our understanding of the history of a place, an event, or a people" (PPS, 2005). The Ministry of Culture's Standards and Guidelines for Consultant Archaeologists uses the term "heritage value", as found in the Ontario Heritage Act, to express similar concepts. The level of significance of an *archaeological resource* may influence how it is to be mitigated from *development* and *site alteration*, either by removal and documentation or preservation on site.

What is meant by "conserved"?

Archaeological resources are often on or below ground, or form part of a cultural landscape. Their integrity can be compromised by any land use activity, including, but not limited to, grading, soil removal, construction, shoreline stabilization, alteration to watercourses, extraction of aggregates and the clearing of woodlots or forested areas.

In the PPS, 2005 “*conserved*” means “the identification, protection, use and/or management of cultural heritage and *archaeological resources* in such a way that their heritage values, attributes and integrity are retained.”

As stated in Policy 2.6.2, a *significant archaeological resource* can be *conserved* by removal and documentation, or by preservation on site. Only a licensed professional archaeologist may remove and document *archaeological resources* through controlled excavation.

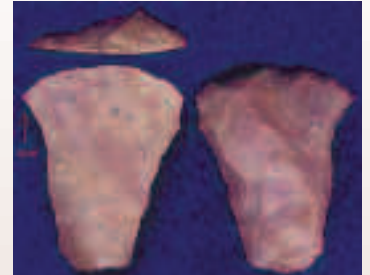
If preserved on site, only *development* and *site alteration* that maintains the integrity of the *archaeological resource* may be permitted. This may occur, for example, when an aboriginal village site extending over a large area is preserved by designating the area as green space.

A *significant archaeological resource* can become a *protected heritage property* under the Ontario Heritage Act, Parts IV (individual property), V (heritage conservation districts), VI (archaeology), or protected by an archaeological zoning by-law or heritage conservation easement agreement.

A licensed professional archaeologist can advise a *development* proponent or approval authority on the appropriate measures needed to conserve an *archaeological resource*.

Conserving archaeological resources in land use planning

The conservation of *significant archaeological resources* will involve using appropriate protection tools within the land use planning process. A municipality or approval authority, through its Official Plan objectives, archaeological conservation policies and approval procedures, can identify and manage *areas of archaeological potential* and *archaeological resources* within its jurisdiction. An archaeological master plan containing detailed mapping of all *areas of archaeological potential* is an efficient and effective way of ensuring *significant archaeological resources* are *conserved* during land use planning and *development* activities.



(Ministry of Culture)



(Jones Consulting Group Ltd.)

Examples of *significant archaeological resources* can include, but are not limited to, aboriginal villages, seasonal camps, spiritual sites and landscapes, lithic scatters, ossuaries, shipwrecks, military site(s), European settlement(s) and other evidence of occupation.



(Huronia Museum)



(Ministry of Culture)

**WHAT ARE AREAS OF
ARCHAEOLOGICAL POTENTIAL?**

Areas of archaeological potential means areas with the likelihood to contain *archaeological resources*. Criteria for determining archaeological potential are established by the Province, but municipal approaches which achieve the same objectives may also be used. Archaeological potential is confirmed through archaeological fieldwork undertaken in accordance with the Ontario Heritage Act. (PPS, 2005)

For more information on *archaeological resources* and *areas of archaeological potential* contact:

Ontario Ministry of Culture

400 University Avenue, 4th Floor
 Toronto, ON M7A 2R9
 General_Info@mcl.gov.on.ca
 (416) 212-0644
 1 (866) 454-0049
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Additional information on the Provincial Policy Statement, 2005 is available on the Ministry of Municipal Affairs and Housing web page:
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Provincial criteria for determining archaeological potential:

- Known archaeological sites within 250 metres
- Water source (primary, secondary, ancient) within 300 metres
- Elevated topography (e.g., knolls, drumlins, eskers, plateaux)
- Pockets of sandy soil in a clay or rocky area
- Unusual land formations (e.g., mounds, caverns, waterfalls)
- Resource-rich area (concentrations of animal, vegetable or mineral resources)
- Non-aboriginal settlement (e.g., monuments, cemeteries)
- Historic transportation (e.g., road, rail, portage)
- Property protected under Ontario Heritage Act
- Local knowledge
- Recent disturbance (extensive and intensive)

Further information on tools for identifying and managing *archaeological resources* will be available in technical guides and manuals developed by the Ministry of Culture.

*Note: This Info Sheet was developed to help participants in the land use planning process to understand the PPS, 2005 policies related to the conservation of cultural heritage and *archaeological resources*. The information in the Info Sheet should not be relied upon as a substitute for specialized legal or professional advice in connection with any particular matter.

Header images: *Archaeological site* (Ministry of Culture database), "At Barrie on Lake Simcoe, Upper Canada 1841", George Russell Dartnell (National Archives of Canada), *Archaeological site* (Ministry of Culture database), "Indian Wigwams, Upper Canada 1832", Henry Byam Martin (National Archives of Canada).



InfoSheet #4

Adjacent Lands and Protected Heritage Property

Winter 2006

WHAT IS THE PROVINCIAL POLICY STATEMENT, 2005 FOR ADJACENT LANDS AND CONSERVING THE HERITAGE ATTRIBUTES OF A PROTECTED HERITAGE PROPERTY?

2.6.3 *Development* and site alteration may be permitted on *adjacent lands* to protected heritage property where the proposed *development* and *site alteration* has been evaluated and it has been demonstrated that the *heritage attributes* of the *protected heritage property* will be *conserved*.

Mitigative measures and/or alternative *development* approaches may be required in order to conserve the *heritage attributes* of the *protected heritage property* affected by the adjacent *development* or *site alteration*.

A policy for development and site alteration on adjacent lands to a protected heritage property

The Provincial Policy Statement (PPS, 2005) policy 2.6.3 for *development* and *site alteration* on *adjacent lands* to a *protected heritage property* is new. The policy provides that mitigative measures or alternative *development* approaches may be required to conserve the *heritage attributes* of a *protected heritage property*.

Municipalities and approval authorities can now incorporate more detailed conservation objectives and policies reflecting local heritage resources, *heritage attributes*, and any limitations on *development* for lands adjacent to *protected heritage property* into their Official Plans, land use planning documents, and their related *development* approval procedures or processes.

What is meant by adjacent lands?

For purpose of policy 2.6.3, the PPS, 2005 defines *adjacent lands* “as those lands contiguous to a *protected heritage property* or as otherwise defined in the municipal Official Plan.”

The Official Plan can define the extent of *adjacent lands* and distances from *development* areas required to minimize or mitigate or avoid an impact on the *heritage attributes* of an Ontario Heritage Act designated heritage building, archaeological site, and/or heritage conservation district. Buffer areas can be defined based on the specific *heritage attributes* identified for the *protected heritage property*.

What is a protected heritage property?

The Ontario Heritage Act enables municipalities, planning authorities, and the province to identify and protect real property with cultural heritage value or interest.

HERITAGE ATTRIBUTES EXAMPLES:

- A protected heritage house that is *significant* for its architectural style. The significance may be embodied in the physical elements designed in a particular style. Elements such as facade details, windows, building heights involving massing and orientation may be all considered to be the *heritage attributes*.
- A designated heritage building or heritage conservation district may contain *significant cultural heritage landscape* features such as gardens, narrow streetscape patterns, prominent structures. These features and views to and from them can support the significance of the property, and may be considered to be *heritage attributes*.
- An important aspect of the history of a people may be represented by the physical layout of a *protected heritage property* containing ruins or an archaeological site.

A *protected heritage property* as defined in the PPS, 2005 means:

- Real property designated under Part IV (individual property), Part V (heritage conservation districts), or Part VI (archaeology) of the Ontario Heritage Act;
- A heritage conservation easement property under Parts II or IV of the Ontario Heritage Act; and
- Property that is the subject of a covenant or agreement between the owner of a property and a conservation body or level of government, registered on title and executed with the primary purpose of preserving, conserving, and maintaining a cultural heritage feature or resource, or preventing its destruction, demolition or loss.

What are heritage attributes and how are these identified?

The PPS, 2005 defines *heritage attributes* as “the principal features, characteristics, context and appearance that contribute to the cultural heritage significance of a *protected heritage property*.”

For a *protected heritage property*, the designation by-law or heritage conservation easement agreement should identify the cultural heritage value or interest and describe the *heritage attributes* of the cultural heritage or *archaeological resource*. The municipality should ensure that *heritage attributes* of a *protected heritage property* are effectively identified and described in the designation by-law or heritage conservation easement agreement. The level of detail should be sufficient to guide the approval, modification, or denial of a proposed *development* or *site alteration* that affects a *protected heritage property*.

Designation by-laws and heritage conservation easement agreements that inadequately describe significance and the *heritage attributes* of a property may need to be improved. This can be done through historical research, site survey and analysis, and evaluation to clarify the intent of the by-law or easement agreement. The municipality or Ontario Heritage Trust can verify if a property or geographical area is a *protected heritage property*.

What does it mean to conserve the heritage attributes?

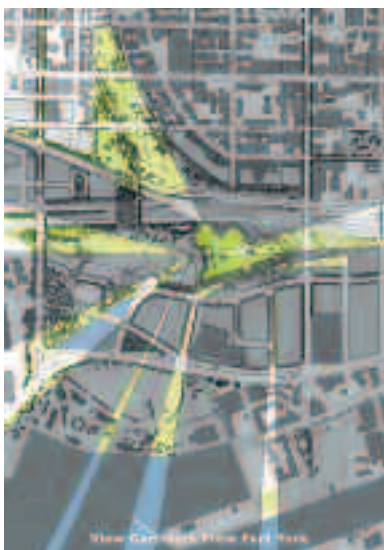
The PPS, 2005 defines “*conserved*” as “the identification, protection, use and/or management of cultural heritage and *archaeological resources* in such a way that their heritage values, attributes and integrity are retained. This may be addressed through a conservation plan or heritage impact assessment.” The term *conserved* is defined in the PPS, 2005 because of the importance of early identification, protection and

management of cultural heritage resources and its *heritage attributes* during the land use and *development* process.

PPS 2005 policy 2.6.3 provides that “mitigative measures and/or alternative *development* approaches may be required to conserve the *heritage attributes* of the *protected heritage property* affected by the adjacent *development* or *site alteration*.”

To conserve the *heritage attributes* of a *protected heritage property*, a municipality or approval authority may require a heritage impact assessment to evaluate the proposed *development* or *site alteration* on *adjacent lands*, and to demonstrate that the *heritage attributes* of the *protected heritage property* will be *conserved*. A conservation plan may be required as a long term strategy for conserving the *heritage attributes* of the *protected heritage property*.

The following graphics are sample illustrations of evaluations and impact assessments for the designated heritage conservation district of Fort York in Toronto. This district’s *heritage attributes* include views to and from the Fort. In addition, potential archaeological features and sites located on the adjacent properties are also considered to be *heritage attributes*.



(Ministry of Culture)

(Graphics courtesy of University of Toronto Centre for Landscape Research for the Friends of Fort York)

COMPONENTS OF A HERITAGE IMPACT ASSESSMENT FOR THE EVALUATION OF HERITAGE ATTRIBUTES MUST:

Address the significance and *heritage attributes* of a cultural heritage resource;

Identify any impact a proposed *development* or *site alteration* may have on the cultural heritage resources;

Evaluate and/or recommend alternative conservation methods to mitigate the impact of a proposed *development* or *site alteration* on cultural heritage resources.

Below is an example of a provincially and nationally *significant cultural heritage landscape* evaluated for its context and character. Views from the Brock Monument near Niagara-on-the-Lake are considered to be *heritage attributes*.



(Ministry of Culture)

Conserving heritage attributes in land use planning

Municipalities and approval authorities can adopt Official Plan policies, objectives and other heritage conservation policies and approval procedures for conserving *heritage attributes*. An impact on the *heritage attributes* of a *protected heritage property* can be minimized or avoided, for example, by mitigative measures and/or alternative *development* approaches, buffer zones, zoning, setback, design guidelines, regulation of density and height, and other site plan control mechanisms.

The graphic below is an example of a heritage design guideline image for heritage conservation districts. Similar municipal guidelines can be applied for other protected heritage sites and areas, as an effective tool for guiding *adjacent land development* proposals early in the land planning process. This will allow for mitigative measures and alternative *development* approaches to be considered for the conservation of *heritage attributes*, such as context and character.



(Ministry of Culture)

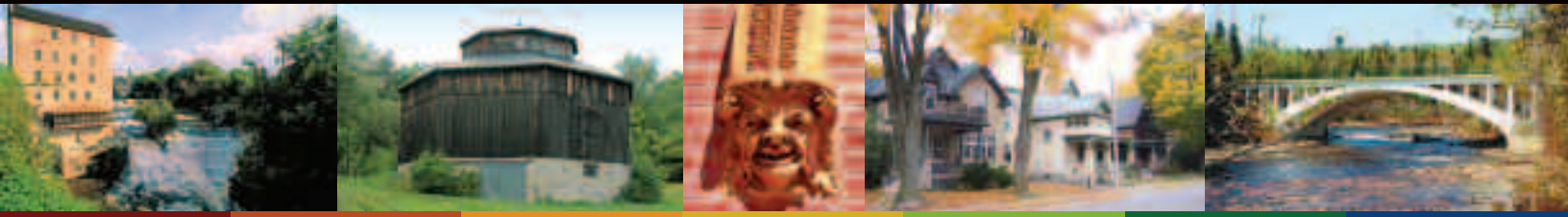
For more information on *adjacent lands* and *protected heritage property* contact:

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Header photos: Dunlop Street East, Barrie (Jones Consulting Group Ltd.), Ottawa (Ministry of Culture), Toronto (Ministry of Culture), Hedford Church Cemetery, Richmond Hill (Su Murdoch)



InfoSheet #5

Heritage Impact Assessments and Conservation Plans

Winter 2006

Preserved Goldie Mill Ruins located in the City of Guelph



(Leanne Piper)

Heritage impact assessments and conservation plans as conditions of development and site alteration

With regard to cultural heritage and *archaeological resources*, the Provincial Policy Statement, 2005 issued under the authority of the Planning Act defines “*conserved*” as “the identification, protection, use and/or management of cultural heritage and *archaeological resources* in such a way that their heritage values, attributes and integrity are retained. This may be addressed through a conservation plan or heritage impact assessment.”

To conserve a cultural heritage resource, a municipality or approval authority may require a heritage impact assessment and/or a conservation plan to guide the approval, modification, or denial of a proposed *development* or *site alteration* that affects a cultural heritage resource. To ensure implementation of a conservation plan, a municipality may require an owner to post a letter of credit, bond or certified cheque as part of the *development* approval process.

This applies to all properties or geographic areas containing cultural heritage resources that are *significant* or “valued for the important contribution they make to our understanding of the history of a place, an event, or a people.” (PPS, 2005). Properties and geographic areas include: all listed, inventoried, mapped heritage properties by local, provincial or federal jurisdiction(s); *protected heritage property(s)*; newly identified cultural heritage sites which may need further evaluation; and areas that can be identified as having known archaeological sites or archaeological potential.

Using tools such as heritage impact assessments and conservation plans, municipalities and approval authorities can further enhance their own heritage preservation objectives.

PRINCIPLES IN THE CONSERVATION OF HISTORIC PROPERTIES

Respect for Documentary Evidence

Do not base restoration on conjecture.

Respect for Original Location

Do not move buildings unless there is no other means to save them.

Respect for Historic Material

Repair/conservate rather than replace building materials and finishes, except where absolutely necessary.

Respect for Original Fabric

Repair with like materials.

Respect for the Building's History

Do not restore to one period at the expense of another period.

Reversibility

Alterations should allow a resource to return to its original conditions.

Legibility

New work to be distinguishable from old.

Maintenance

With continuous care, future restoration will not be necessary.

A **heritage impact assessment (or equivalent study)** is a study to determine if any cultural heritage resources (including those previously identified and those found as part of the site assessment) or in any *areas of archaeological potential*, are impacted by a specific proposed *development* or *site alteration*. It can also demonstrate how the cultural heritage resource will be *conserved* in the context of redevelopment or *site alteration*. Mitigative or avoidance measures or alternative *development* or *site alteration* approaches may be recommended. For archaeological assessments, fieldwork must be undertaken by licensed professional archaeologists in accordance with the Ontario Heritage Act and its regulations. (refer to InfoSheet #3 entitled *Archaeological Resources and Areas of Archaeological Potential*).

A **conservation plan (or equivalent study)** is a document that details how a cultural heritage resource can be *conserved*. The conservation plan may be supplemental to a heritage impact assessment, but it is typically a separate document. The recommendations of the plan should include descriptions of repairs, stabilization and preservation activities as well as long term conservation, monitoring and maintenance measures.

What is the content of a heritage impact assessment?

A heritage impact assessment generally contains, but is not limited to the following information:

1. Historical Research, Site Analysis and Evaluation

If the available identification and description of the significance and *heritage attributes* of the cultural heritage resource are inadequate for the purposes of the heritage impact assessment, or the cultural heritage resource is newly identified, research, site survey and analysis, and evaluation are required. An explanation of the methodology used must accompany a clear statement of the conclusions regarding the significance and *heritage attributes* of the cultural heritage resource.

2. Identification of the Significance and Heritage Attributes of the Cultural Heritage Resource

This is usually a summary of the cultural heritage value or interest and the *heritage attributes* contained in a heritage property municipal designation bylaw, heritage conservation easement agreement, or other listings. This summary should clearly articulate the cultural heritage value or interest and *heritage attributes* of the heritage resource. If the property is not a *protected heritage property* but is listed or is newly identified and may possess heritage significance, statements of cultural heritage value or interest and the *heritage attributes* should still be developed.

3. Description of the Proposed Development or Site Alteration

This description details the rationale and purpose for the *development* or *site alteration*, the proposed works and graphical layout, and how the *development* or *site alteration* fits with the objectives of the municipality or approval authority.

4. Measurement of Development or Site Alteration Impact

Any impact (direct or indirect, physical or aesthetic) of the proposed *development* or *site alteration* on a cultural heritage resource must be identified. The effectiveness of any proposed conservation or mitigative or avoidance measures must be evaluated on the basis of established principles, standards and guidelines for heritage conservation.

5. Consideration of Alternatives, Mitigation and Conservation Methods

Where an impact on a cultural heritage resource is identified, and the proposed conservation or mitigative measures including avoidance, are considered ineffective, other conservation or mitigative measures, or alternative *development* or *site alteration* approaches must be recommended.

6. Implementation and Monitoring

This is a schedule and reporting structure for implementing the recommended conservation or mitigative or avoidance measures, and monitoring the cultural heritage resource as the *development* or *site alteration* progresses.

7. Summary Statement and Conservation Recommendations

This is a description of:

- the significance and *heritage attributes* of the cultural heritage resource;
- the identification of any impact that the proposed *development* will have on the cultural heritage resource;
- an explanation of what conservation or mitigative measures, or alternative *development* or *site alteration* approaches are recommended to minimize or avoid any impact on the cultural heritage resource;
- if applicable, clarification of why some conservation or mitigative measures, or alternative *development* or *site alteration* approaches are not appropriate.

NEGATIVE IMPACTS

Negative impact on a cultural heritage resource include, but are not limited to:

Destruction of any, or part of any, *significant heritage attributes* or features;

Alteration that is not sympathetic, or is incompatible, with the historic fabric and appearance;

Shadows created that alter the appearance of a *heritage attribute* or change the viability of a natural feature or plantings, such as a garden;

Isolation of a *heritage attribute* from its surrounding environment, context or a *significant* relationship;

Direct or indirect obstruction of *significant* views or vistas within, from, or of built and natural features;

A change in land use such as rezoning a battlefield from open space to residential use, allowing new *development* or *site alteration* to fill in the formerly open spaces;

Land disturbances such as a change in grade that alters soils, and drainage patterns that adversely affect an *archaeological resource*.

MITIGATION OR AVOIDANCE

Methods of minimizing or avoiding a negative impact on a cultural heritage resource include, but are not limited to:

- Alternative *development* approaches
- Isolating *development* and *site alteration* from *significant* built and natural features and vistas
- Design guidelines that harmonize mass, setback, setting, and materials
- Limiting height and density
- Allowing only compatible infill and additions
- Reversible alterations
- Buffer zones, site plan control, and other planning mechanisms

For more information contact:

Ontario Ministry of Culture

400 University Avenue, 4th Floor

Toronto, ON M7A 2R9

General_Info@mcl.gov.on.ca

(416) 212-0644

1 (866) 454-0049

web page:

<http://www.culture.gov.on.ca>

Additional information on the Provincial Policy Statement, 2005 is available on the Ministry of Municipal Affairs and Housing web page:
<http://www.mah.gov.on.ca>

What is the content of a conservation plan?

A Conservation Plan generally contains, but is not limited to the following information:

1. **Identification** of the conservation principles appropriate for the type of cultural heritage resource being *conserved*;
2. **Analysis** of the cultural heritage resource, including documentation of the resource, descriptions of cultural heritage value or interest, assessment of resource conditions and deficiencies, discussion of historical, current and proposed use;
3. **Recommendations** for conservation measures and interventions, short or long term maintenance programs, implementation, and the qualifications for anyone responsible for the conservation work;
4. **Schedule** for conservation work, inspection, maintenance, costing, and phases of rehabilitation or restoration work;
5. **Monitoring** of the cultural heritage resource and the *development* of a long term reporting structure.

Who is qualified to prepare a heritage impact assessment and conservation plan?

Heritage impact assessments and conservation plans for *built heritage resources* and *cultural heritage landscapes* must be prepared by qualified individuals, such as architectural and landscape consultants with knowledge of accepted standards of historical research, identification, evaluation, and methods of conservation and mitigation. For properties containing *archaeological resources* or *areas of archaeological potential*, only licensed professional archaeologists can carry out technical assessments and alter known archaeological sites.

Further information on heritage impact assessments and conservation plans will be available in future technical guides and manuals developed by the Ministry of Culture.

*Note: This InfoSheet was developed to assist participants in the land use planning process and to understand the PPS, 2005 policies related to the conservation planning of cultural heritage and *archaeological resources*. The information in the InfoSheet should not be relied upon as a substitute for specialized legal or professional advice in connection with any particular matter.

Header photos: Elora Mill (Copyright 2006 Ontario Tourism), Cunnington-Osborne Farm Complex, Caledon (Sally Drummond), Whig-Standard Building, Kingston (Marcus Létourneau), Victoria Park Heritage Conservation District, Kitchener (Ministry of Culture), Black Bay Bridge, Thunder Bay (Ministry of Culture)



**Tab 13 b) - Ontario Heritage Tool Kit: Heritage
Property Evaluation: A Guide to Listing, Researching
and Evaluating Cultural Heritage Property in Ontario
Communities**



HERITAGE PROPERTY EVALUATION

*A Guide to Listing, Researching and Evaluating
Cultural Heritage Property in Ontario Communities*

Ontario Heritage Tool Kit





A.J. Casson (1898-1992)
Village House c.1955
oil on hardboard
50.9 x 61.0 cm
Gift of Mr. and Mrs. C.A.G. Matthews
McMichael Canadian Art Collection
1974.13.1

This guide is one of several published by the Ministry of Culture as part of the Ontario Heritage Tool Kit. It is designed to help municipal Councils, municipal staff, Municipal Heritage Committees, land use planners, heritage professionals, heritage organizations, property owners, and others understand the heritage conservation process in Ontario.



All across Ontario, communities are working together to protect and promote our cultural heritage properties.

Our cultural heritage reflects the expressions and aspirations of those who have gone before us as well as today's culturally diverse communities.

"Since I immigrated to Canada in 1960 to a small northern community, I have watched firsthand how people of many nationalities have worked together to make our community a vibrant place. As a councillor, this is what motivates me to work for the community.... I believe that municipal councillors have a responsibility to preserve our stories, documents and historical landmarks.... They represent the challenges and struggles met by our communities in their growth and evolution."

Helen Lamon, Township of Michipicoten Councillor

Cultural heritage can take many forms – buildings and monuments, bridges and roadways, streetscapes and landscapes, barns and industrial complexes, cemeteries, museums,

archives and folktales. They enrich us, inspire us and guide us forward to build vibrant, liveable communities for future generations.

The conservation of cultural heritage properties is vital to a community's overall cultural and economic development plan. An integrated approach to cultural and economic planning leads to the revitalization of main streets, neighbourhoods and individual properties, creates employment, encourages new business, brings tourist dollars and can even increase property values.

Identification and evaluation are a vital part of the conservation process. This guide is designed to help identify and evaluate the cultural heritage value or interest of properties in our communities. It outlines the Ontario Heritage Act requirements (section 27) for a municipal register of property of cultural heritage value or interest. It also assists in evaluating heritage properties against criteria prescribed in Ontario Regulation 9/06 of the Ontario Heritage Act for the purposes of protection (designation) under section 29 of the Act.



What's in this guide?

- 1. Cultural Heritage Properties** 5

This section describes what is meant by “cultural heritage property” and “cultural heritage value or interest,” and outlines the framework for heritage conservation in Ontario. The provisions for protection of Natural Features, Cultural Heritage Landscapes and Archaeological Resources and Areas of Archaeological Potential are explained. A checklist, Cultural Heritage Properties: From Survey to Protection, is included.
- 2. Compiling a Register of Cultural Heritage Properties** 8

The requirements of the Ontario Heritage Act and the basics for compiling a Register of Cultural Heritage Properties are outlined.
- 3. The Importance of Research and Site Analysis** 18

The importance of historical research and site analysis is introduced in this section.
- 4. Municipal Criteria: Ontario Regulation 9/06** 20

This presents Ontario Regulation 9/06, Prescribing Criteria for Determining Property of Cultural Heritage Value or Interest, its meaning and use. Included in this section is a summary: Listing and Evaluation in the Municipal Designation Process.

5. Researching a Property 28

This is a how-to guide for undertaking historical research and examining the physical evidence of a property.

Resources and Further Information 41

Note: The Ministry of Culture has published this Guide as an aid to municipalities. Municipalities are responsible for making local decisions including compliance with applicable statutes and regulations. Before acting on any of the information provided in this Guide, municipalities should refer to the actual wording of the legislation and consult their legal counsel for specific interpretations.



Cultural Heritage Properties

1

The Ontario Heritage Act provides a framework for the conservation of properties and geographic features or areas that are valued for the important contribution they make to our understanding and appreciation of the history of a place, an event or people.

These properties and features or areas contain built heritage resources, cultural heritage landscapes, heritage conservation districts, archaeological resources and/or areas of archaeological potential that have cultural heritage value or interest. These are the cultural heritage properties that are important in our everyday lives, give us a sense of place, and help guide planning in our communities.

The conservation of cultural heritage properties encompasses a range of activities directed at identification, evaluation, conservation and celebration. Properties can be protected for the long term under the Ontario Heritage Act through municipal designation bylaws and heritage conservation easement agreements.



Inge-Va, Perth (Photo courtesy of Ontario Heritage Trust)

The Ontario Planning Act and Provincial Policy Statement support heritage conservation as part of land-use planning.

Cultural heritage properties include:

- Residential, commercial, institutional, agricultural or industrial buildings
- Monuments, such as a cenotaph, public art or a statue
- Structures, such as a water tower, culvert, fence or bridge
- Natural features that have cultural heritage value or interest
- Cemeteries, gravestones or cemetery markers
- Cultural heritage landscapes
- Spiritual sites
- Building interiors
- Ruins
- Archaeological sites, including marine archaeology
- Areas of archaeological potential
- Built/immoveable fixture or chattel attached to real property

The task for each municipality is to identify, evaluate and conserve those cultural heritage properties that have lasting cultural heritage value or interest to their community. This process begins with compiling a register of properties of cultural heritage value or interest to the community.

Cultural Heritage Properties: From Survey to Protection

- **Learn** about the cultural heritage of the community
- **Survey** properties in the community using a recording form
- **Screen** the surveyed properties using preliminary criteria
- **List** screened properties of cultural heritage value or interest on the municipal register of cultural heritage properties
- **Research** properties that are candidates for protection (designation) under section 29 of the Ontario Heritage Act
- **Evaluate** properties for protection under section 29 using the criteria in Ontario Regulation 9/06 and determine best means of conservation
- **Protect** properties under the Ontario Heritage Act or other conservation measures

DESIGNATION UNDER SECTION 29, ONTARIO HERITAGE ACT

Natural Features

For a natural feature to be designated under section 29, it must have a cultural association. An example is the maple tree in Toronto that inspired Alexander Muir in 1867 to compose “The Maple Leaf Forever.” Natural features without a cultural association can be protected by other mechanisms.

Cultural Heritage Landscapes

A cultural heritage landscape can be designated as a unit under section 29 or protected as part of a larger heritage conservation district under Part V. (See Heritage Conservation Districts, A Guide to District Designation Under the Ontario Heritage Act) These are geographical areas that involve a grouping of features such as buildings, spaces, archaeological sites and natural elements, which collectively form a significant type of cultural heritage resource. Examples might include villages, parks, gardens, battlefields, main streets and other streets of special interest, golf courses, farmscapes, neighbourhoods, cemeteries, historic roads and trailways and industrial complexes.

Archaeological Resources

Archaeological resources and areas of archaeological potential (including the grounds associated with a historic structure that may contain artifacts that yield information about the site) can be protected under section 29 (individual properties), Part V (Heritage Conservation Districts) and Part VI of the Ontario Heritage Act. Part VI addresses the management of archaeological resources and areas of archaeological potential. The archaeological assessment process is set out in provincial standards and guidelines. Only an archaeologist licensed under the Act can undertake fieldwork. For these reasons, this guide is not designed for archaeological resources and areas of archaeological potential.



2

COMPILING A REGISTER OF Cultural Heritage Properties

Which Properties Should Be Placed On the Register?

Under subsection 27(1) of the Ontario Heritage Act, the municipal clerk is required to keep a current register of properties of cultural heritage value or interest situated in their municipality.

This register must include all properties in the municipality that are designated under Part IV of the Ontario Heritage Act by the municipality or by the Minister of Culture and shall include:

- (a) a legal description of the property;
- (b) the name and address of the owner; and
- (c) a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property. *OHA, ss. 27(1.1)*

The Ontario Heritage Act also allows a property that has not been designated, but that the municipal Council believes to be

of cultural heritage value or interest, to be placed on the register. This is commonly referred to as listing. A description sufficient to identify the property is required.

OHA, ss. 27(1.2)

Under this provision, a municipal council may choose to include for example, properties protected by heritage conservation easements, and/or recognized by provincial or federal jurisdictions, such as properties commemorated by the Historic Sites and Monuments Board of Canada, or properties listed on the provincial register.



Alton Mill, Caledon. (Photo courtesy of Sally Drummond, Town of Caledon)

Cultural heritage properties can be added to the register at any time by council. In municipalities where there is a municipal heritage committee, the Ontario Heritage Act requires that council consult with the committee before a non-designated property is added or removed from the register.

OHA, ss. 27(1.3)

The register is a planning document that can be consulted by municipal decision makers when development proposals or permits are being considered. Mapping listed properties using Geographic Information Systems (GIS) or other cultural mapping also can be a useful component of the broader data collection and management framework of the municipality. Property owners and the public should be aware of the existence of the register, mapping and other cultural heritage property management tools.

Why List a Property?

Listing a property of cultural heritage value or interest is the first step a municipality should take in the identification and evaluation of a property that may warrant some form of heritage conservation, recognition and/or long-term protection such as designation.

In many cases, listed (non-designated) properties are candidates for protection under section 29 of the Ontario Heritage Act. These require further research and an assessment using a more comprehensive evaluation that is consistent with Ontario Regulation 9/06 prescribing criteria for determining property of cultural heritage value or interest.

Although listing non-designated properties does not offer any protection under the Ontario Heritage Act, section 2 of the Provincial Policy Statement of the Planning Act acknowledges listed properties.

A REGISTER OF CULTURAL HERITAGE PROPERTIES:

- Recognizes properties of cultural heritage value in a community
- Fosters civic identity and pride by drawing attention to the heritage and development of a community
- Promotes knowledge and enhances an understanding of a community's cultural heritage
- Provides easily accessible information about cultural heritage value for land-use planners, property owners, developers, the tourism industry, educators and the general public
- Is a central element of a municipal cultural plan that begins with mapping local cultural resources and then leverages these resources for economic development and community building



Waterloo Pioneer Memorial Tower (Photo courtesy of Canadian Parks Service)

PPS Policy 2.6.1 states: “*Significant built heritage resources and significant cultural heritage landscapes shall be conserved.*”

The PPS defines built heritage resources as: “One or more significant buildings, structures, monuments, installations or remains associated with architectural, cultural, social, political, economic, or military history and identified as being important to a community. These resources may be identified through designation or heritage conservation easements under the Ontario Heritage Act, or **listed** by local, provincial, or federal jurisdictions.”

The PPS defines a cultural heritage landscape as: “A defined geographical area of heritage significance which has been modified by human activities and is valued by a community. It involves a grouping(s) of individual heritage features such as structures, spaces, archaeological sites and natural elements, which together form a significant type of heritage form, distinctive from that of its constituent elements or parts. Examples may include, but are not limited to, heritage conservation districts designated under the Ontario Heritage Act; and villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways and industrial complexes of cultural heritage value.”

Together, the Ontario Heritage Act and the Provincial Policy Statement of the Planning Act offer methods for conserving cultural heritage properties. This makes listing cultural heritage properties on the municipal register an important tool in managing their conservation.

Getting Started

When creating a register of cultural heritage properties, or adding to an existing register of designated properties, each municipality can decide on the best approach for surveying and researching properties in the community. This decision is based on the available resources and expertise.

Compiling the register can be as simple as completing a survey or recording form and photographing properties from the nearest public vantage point. Good practice includes ensuring that the essential details of street address and legal property description, type of heritage feature, and general observations on the physical characteristics and context are recorded, by description and photography. If maintained as an electronic database, this information can easily be cross-referenced, updated, studied and made available for research.

Registers that use some preliminary evaluation criteria should be compiled by individuals with some training or expertise in recognizing and evaluating cultural heritage properties. An inexperienced recorder is more likely to list the obvious “old looking” buildings or landmarks in good condition. An experienced recorder or heritage consultant will be able to see past the current appearance of a property and recognize its potential for cultural heritage value or interest.

Councils of municipalities with a municipal heritage committee could assign the task of compiling the register to the committee and provide any municipal resources and staff support that might be needed.

Sample: Property Survey Recording Form

This form collects the information useful as an initial survey of properties that may be listed on the municipal register of cultural heritage properties. Other categories of local importance can be added. Recorders are encouraged to learn about the heritage of the community as a whole before undertaking this survey.

Recorder

- 1 Date of recording
- 2 Name of recorder
 - Municipal Heritage Committee
 - Municipal Staff
 - Heritage Consultant
 - Student
 - Other
- 3 What is your level of expertise in identifying and describing a cultural heritage property?
 - Beginner
 - Some Experience
 - Expert

Property Identification

- 4 Street address and legal description
- 5 Name of building, if any
- 6 Name and address of owner

Design or Physical Value

- 7 Identify the type of property
Examples: Residential, commercial, institutional, agricultural or industrial building; monument such as a cenotaph, statue or public art; structure such as a water tower, culvert, fence or bridge; natural feature that has cultural heritage value or interest; cemetery, grave-stone or cemetery marker; cultural heritage landscape; spiritual site; interior; ruins or other feature

- 8 Identify the materials used
Examples: Wood, stone, metal, plastic or other
- 9 Does the property display any particular qualities of artistic merit, craftsmanship, technical or scientific achievement, expression or innovation?

Historical or Associative Value

- 10 What do you know about this property from research or local traditions? List sources
- 11 Does the property have any features similar to other properties?

Contextual Value

- 12 Does the property define, maintain or support the character of an area?
- 13 Is the property physically, functionally, visually or historically linked to its surroundings?
- 14 Is the property a landmark?

Status

- 15 Identify any physical or other risks to the condition and/or integrity of the property and/or individual features

Photographs

- 16 Photographs should be taken from the nearest publicly accessible viewpoint. (Do not enter a property without permission.) The front or prominent feature will be used as the key image. Identify all images with north, south, east and west orientation.

Recommendation

- 17 Make an initial recommendation or comment on whether or not to list a property on the municipal register. Give reasons.



Built in 1792, the Hay Bay Church near Adolphustown is the oldest United Church in existence today. The pioneers of Hay Bay were the makers of Canada. Architecturally, the Hay Bay Church is an example of rural public design. (Photo: Ministry of Culture)

Councils of municipalities without a municipal heritage committee may ask municipal staff to compile the register, or seek the assistance of a local heritage or community organization. Another option is to engage a heritage consultant with expertise in cultural heritage properties. The Ministry of Culture can be contacted for guidance on how to develop the register.

The Listing Process

In most Ontario municipalities, it is impractical to survey every (heritage and non-heritage) property and undertake sufficient research and analysis to confidently eliminate those with no cultural heritage value or interest. Some preliminary rationale or criterion for listing a property is needed to make compiling the register an efficient

task that is achievable within a reasonable time frame.

Ontario Regulation 9/06 must be applied to properties being considered for designation under section 29 of the Ontario Heritage Act. Screening properties for potential protection in accordance with the criteria in the regulation is a higher evaluation test than required for listing non-designated properties on the register. The evaluation approach and categories of Design/Physical Value, Historical/Associative Value, and Contextual Value set out in the regulation, however, are useful to consider when developing a preliminary rationale or criteria for listing properties. This also will provide continuity in the evaluation of properties on the register that may later be considered for designation under section 29.

BASICS OF A MUNICIPAL REGISTER OF CULTURAL HERITAGE PROPERTIES

1	<p>The Ontario Heritage Act requires that the register include all properties that are protected by the municipality (under section 29) or by the Minister of Culture (under section 34.5). <i>OHA, ss. 27(1.1)</i> For these properties there must be:</p> <ul style="list-style-type: none"> • a legal description of the property; • the name and address of the owner; and • a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes.
2	<p>The Ontario Heritage Act allows a municipality to include on the register property that is not designated but considered by the municipal council to be of cultural heritage value or interest. There must be sufficient description to identify the property. <i>OHA, ss. 27(1.2)</i></p>
3	<p>A municipality may consider including properties on the register that are protected by heritage conservation easements and/or recognized by provincial or federal jurisdictions.</p>
4	<p>The rationale or selection criteria used to survey the community and compile the register should be clearly stated.</p>
5	<p>The recorder(s) undertaking the survey of properties should have knowledge of the heritage of the community and some training in identifying and evaluating cultural heritage properties.</p>
6	<p>Information about all properties should be recorded in a consistent and objective way.</p>
7	<p>Not all cultural heritage properties are old. Many recent structures hold cultural heritage value or interest in their design, craftsmanship, function, ownership or for other reasons.</p>
8	<p>Using physical condition as a determining factor in whether or not to list a property on the register is not advised. A property may be in an altered or deteriorated condition, but this may not be affecting its cultural heritage value or interest.</p>
9	<p>A commitment to maintaining and revising the register through historical research and analysis of the listed properties will give the register more credibility in local heritage conservation and planning.</p>
10	<p>The register should be readily available to municipal staff and officials, property owners and the public.</p>
11	<p>The register can be a valuable tool for land-use planners, educators, tourism, and economic developers. For example, it can be used to plan Doors Open events, educational programs, celebrate historic events and anniversaries, promote a community and encourage innovative development.</p>

Know Your Community

When first developing a municipal register, it is recommended that the main themes and key developments, and any specific events, activities, people and circumstances that have shaped the community be identified. This is the important community context that should ensure that those properties with characteristics that hold cultural heritage value or interest to the community will be captured in the survey and on the register. Much of this background information can be learned from published histories, as well as libraries, museums, archives, historical associations and from residents. Whoever undertakes the survey should be familiar with the heritage of the community, as this will give them local knowledge and perspective when identifying properties for listing.

For example, knowing the boundaries of the first town plan or survey can help identify where the oldest properties may be found. Areas that were annexed as the town grew may also have value or interest to their original municipality before annexation, such as a bordering hamlet or township. Knowing the patterns of settlement, transportation routes and other local developments may indicate likely locations of former industrial sites, battlefields or



Mossington Bridge, Georgina (Photo: Ministry of Culture)

landmarks where ruins or structures associated with that activity or event may exist.

This basic documentation, combined with the recorder's experience in identifying cultural heritage properties, will guide the initial selection of properties to be listed on the register.

Rating a Property

Municipalities may find it useful to develop a system of comparative ratings for properties on the register. This can help with setting priorities for further research, heritage conservation and/or long-term protection under the Ontario Heritage Act.

There are several models for rating cultural heritage properties:

- Some evaluation criteria have a numeric rating system; for example, #1 has no cultural heritage value or interest, while #10 warrants long-term protection.
- An alphabetical rating system may assist to categorize; for example, an A has protection and conservation priority; B is conserved in some manner, but not designated; C should be documented before demolition or has minimal cultural heritage value or interest.
- A checklist of questions about the design/physical, historical/associative and contextual values of the property can generate discussion that concludes with a Yes/No. The discussion response and explanatory notes form the argument for or against heritage conservation. No numeric or alphabetical rating is used.



Whalen Building, Thunder Bay (Photo: Ministry of Culture)

Making Comparisons

A municipality compiling its first register will learn a great deal about its cultural heritage properties during the surveying phase. Caution should be used in applying rating systems until a sufficient number of properties have been listed and researched to establish some base for comparisons.

If the survey is comprehensive and the information is recorded in a consistent and objective way, patterns or themes in the cultural heritage value or interest of the listed properties often emerge.

For example, the survey may reveal that one architectural style is characteristic of a neighbourhood; a certain type of technology is used for several industries; there is a popular local building material; there were design changes in types of engineering works such as bridges; or some cemetery headstones have unique markings. A particular decorative motif in the gable of a house may

be a clue to the work of a local craftsman; a change in that motif may have some significance in his career.

A comprehensive survey will also show differences and similarities in the features or heritage attributes of the listed properties. Typical or similar examples can be compared to each other, and will also highlight the uniqueness of other examples. Several properties may be associated with a particular event, but only one may stand out as a vivid expression of what that event truly meant to the community.

As the register is compiled, it may become evident that an inventory of a specific type of cultural heritage property would be useful. For example, separate inventories for barns, cultural heritage landscapes or very old and increasingly rare buildings such as those that predate Canada's confederation in 1867 will help with the evaluation of these types of cultural heritage properties.

Selecting Properties for Further Research

Recognizing patterns, themes, similarities and differences is an important part of studying and understanding a community's heritage. It also makes it easier to develop a rating system or checklist of questions that truly reflects what holds cultural heritage value or interest in the community. It can help with choosing properties that warrant further research and heritage conservation.

For example, a community may have been founded when a prospector discovered a valuable mineral. The earliest industrial structures, dwellings and institutions date

to the opening of the mine and the first years of the mine's operation. The mine may now be closed and a secondary economy may have taken its place. The cultural heritage properties associated with the mining heritage of the community are found, through the survey of community properties, to be disappearing. The properties associated with mining will have a higher priority for further research and possibly protection under the Ontario Heritage Act.

Another example could be in a community where a fire destroyed structures built on the main street. Any structures or remnants that survived the fire, or have evidence of the fire, are likely rare. These are important to understanding the character of this early, pre-fire period of community history. Their loss now would have consequences to the study of the community's heritage. These properties should be given priority in undertaking further research and conservation.



Former Walkerville Post Office, Windsor (Photo courtesy of Nancy Morand, City of Windsor)



Dunlop Street Fire in 1875, Barrie (Photo: Simcoe County Archives)

A Work-in-Progress

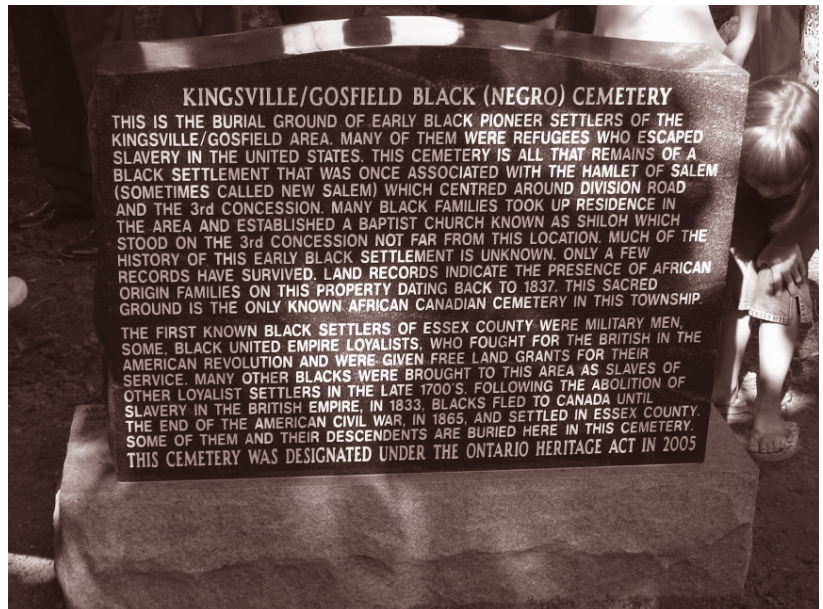
The register is essentially a work-in-progress that is revised and updated as needed and as local resources become available. The register is never a finite document; it should continue to grow, change and be updated as the cultural heritage values or interest of the community also change. No final decisions about the cultural heritage value or interest of a property on the register should be made without undertaking further historical research and site analysis of that specific property.



Townsite Shaft 1 Headframe, Cobalt (Photo: Ministry of Culture)



Gosfield Black (Negro) Cemetery, Kingsville (Photo courtesy of Yolanda Asschert, Kingsville Municipal Heritage Advisory Committee)





3

THE IMPORTANCE OF Research and Site Analysis

The historical research and site analysis needed for listing a property on a register of cultural heritage properties is often preliminary in its scope. Properties being proposed for protection under section 29 of the Ontario Heritage Act require more in-depth study by a qualified individual or committee. This involves:

- Understanding and knowledge of the overall context of a community's heritage and how the property being evaluated fits within this context;
- Researching the history and cultural associations of the property being evaluated; and
- Examining the property for any physical evidence of its heritage features or attributes, past use or cultural associations. The physical context and site are also important to examine. For example, other buildings, structures or infrastructure nearby may be associated with this particular property.

This background information is best compiled through extensive historical research and site analysis. Neither is useful without the other. For example, the historical research might suggest that a house was built at a certain date. The architectural style, construction techniques and building materials may confirm or deny this as the date of construction.



*Cenotaph in Confederation Park, Peterborough
(Photo courtesy of City of Peterborough)*

Historical Research

Historical research is necessary for compiling the specific history and development of a property and to identify any association it has to the broader context of community heritage. This involves the use of land records, maps, photographs, publications, archival materials and other documentation.

Research should reveal dates of construction, original and later uses, significant people or events, technologies, philosophy, factors such as natural disasters or fires and other details about the property. This information is useful in the identification and evaluation of the cultural heritage value or interest of the property. It also provides clues for examining and interpreting the physical evidence.

For detailed guidance on how to undertake historical research and site analysis, refer to Section 5: Researching a Property.

Site Analysis

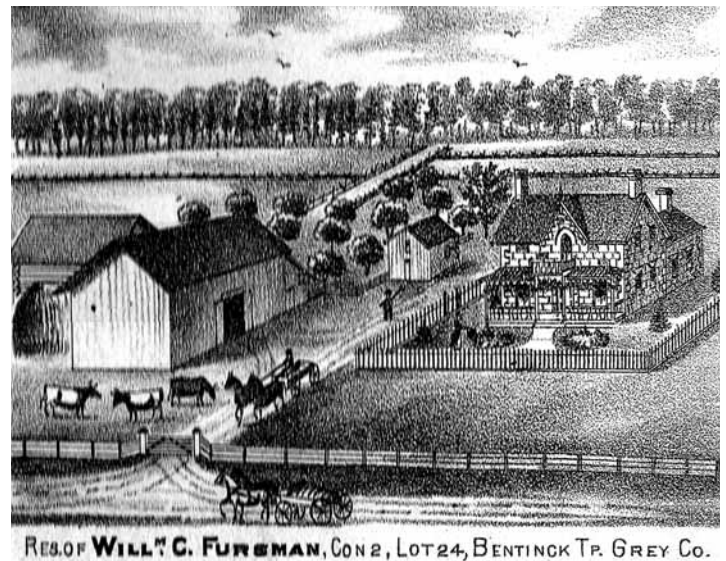
Ideally, a property being evaluated should be examined at least twice. A preliminary site visit will give some context and raise questions to be addressed by the historical research.

The historical research findings may reveal use of the property, key dates or associations not previously known. A second site visit is an opportunity to look for physical evidence of these findings. Explanations or inconsistencies may be revealed in the existing features, missing elements or some hint or remnant that can now be examined in more detail. These are tests of observation and interpretation.

Recording the property using photographs, measurements and notes will help when applying evaluation criteria and compiling a list of heritage attributes. The evolution of architectural style, construction techniques, materials, technology, associated landscapes and other factors are essential clues when analyzing a cultural heritage property.

Evaluation and Report

The findings of the historical research and site analysis constitute the background information that will be used in deciding the appropriate course of action for conserving a cultural heritage property. The findings are best assembled in a written report that is thorough and accurate. The report is a permanent record of the property and should be readily available to council, municipal staff, municipal heritage committees, property owners, heritage consultants and the public.



Fursman Farm, Grey County (Photo: Illustrated Atlas of the Dominion of Canada, 1881)



4

MUNICIPAL CRITERIA

Ontario Regulation 9/06

Non-designated properties listed on the municipal register of cultural heritage properties and newly identified properties may be candidates for heritage conservation and protection. Section 29 of the Ontario Heritage Act enables municipalities to pass bylaws for the protection (designation) of individual real properties that have cultural heritage value or interest to the municipality. Heritage designation is a protection mechanism with long-term implications for the alteration and demolition of a cultural heritage property.

Individual properties being considered for protection under section 29 must undergo a more rigorous evaluation than is required for listing. The evaluation criteria set out in Regulation 9/06 essentially form a test against which properties must be assessed. The better the characteristics of the property when the criteria are applied to it, the greater the property's cultural heritage value or interest, and the stronger the argument for its long-term protection.

To ensure a thorough, objective and consistent evaluation across the province, and to assist municipalities with the process, the Ontario Heritage Act provides that:

29(1) The council of a municipality may, by bylaw, designate a property within the municipality to be of cultural heritage value or interest if,

(a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed by regulation, the property meets the prescribed criteria; . . .

Regulation 9/06 prescribes the criteria for determining property of cultural heritage value or interest in a municipality. The regulation requires that, to be designated, a property must meet "one or more" of the criteria grouped into the categories of Design/Physical Value, Historical/Associative Value and Contextual Value.

This does not mean that the property is only evaluated within “one” category or must meet a criterion in each category in order to allow for protection. When more categories are applied, more is learned about the property and its relative cultural heritage value or interest. As a result, a more valid decision regarding heritage conservation measures can be made. Council must be satisfied that the property meets at least one of the criteria set out in Regulation 9/06 before it can be designated under section 29.

Regulation 9/06 was developed for the purposes of identifying and evaluating the cultural heritage value or interest of a property proposed for protection under section 29.



The Rideau Canal Corridor is a unique cultural heritage landscape. (Photo Copyright 2006 Ontario Tourism)



Limestone townhouses, Kingston (Photo courtesy of Marcus Létourneau, City of Kingston)

ONTARIO REGULATION 9/06

MADE UNDER THE

ONTARIO HERITAGE ACT

CRITERIA FOR DETERMINING CULTURAL HERITAGE VALUE OR INTEREST

Criteria

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act.

(2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
 - ii. displays a high degree of craftsmanship or artistic merit, or
 - iii. demonstrates a high degree of technical or scientific achievement.
2. The property has historical value or associative value because it,
 - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,

- ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
- iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.

3. The property has contextual value because it,
 - i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark.

Transition

2. This Regulation does not apply in respect of a property if notice of intention to designate it was given under subsection 29 (1.1) of the Act on or before January 24, 2006.



Woodstock Museum, Woodstock (Photo Copyright 2006 Ontario Tourism)

Through the evaluation process of Regulation 9/06, it should be possible to:

- Recognize a property that warrants long-term protection under section 29, and give reasons;
- Recognize a property for which levels of heritage conservation, other than section 29, are more appropriate;
- Determine that a property has no cultural heritage value or interest to the jurisdiction;

- Formulate the statement explaining the cultural heritage value or interest of the property, as required in a section 29 designation bylaw; and,
- Identify clearly the physical features or heritage attributes that contribute to, or support, the cultural heritage value or interest, as required in a section 29 designation bylaw.

A successful municipal cultural heritage conservation program starts with meeting the standards of Regulation 9/06. Many municipalities have methods for evaluating the cultural heritage value or interest of a property being considered for protection. Existing or new evaluation models must apply the criteria specified in Regulation 9/06. Existing evaluation models may have to be revised to take into account the mandatory criteria set out in the regulation.

It is advisable that an approach or model to apply the criteria be adopted as a standard municipal procedure or policy. The adoption of a policy or standard practice enables council, municipal heritage committees, municipal staff including planning and building officials, land use planners, heritage organizations, property owners and the public to apply the criteria in a consistent and defensible manner.

Who does the Evaluating?

Under the Ontario Heritage Act, a municipal heritage committee can be appointed to advise council on matters relating to the Act and other heritage conservation matters. This can include compiling the register of cultural heritage properties and using criteria for evaluating the cultural heritage value or interest of a property. By using a committee, the objectivity of the evaluation is maintained.

For municipalities without a municipal heritage committee, others such as heritage planning staff, municipal staff, community or heritage organizations, a heritage expert, or an individual who understands the purpose of evaluating the cultural heritage value or interest of a property, could undertake the evaluation. Knowledge of the heritage of the community and expertise in cultural heritage properties are recommended.

The municipal evaluation criteria should be such that, whoever undertakes the evaluation, there is a reasonable expectation that the process will lead to valid decisions about the heritage conservation of the property.

Ultimately, a municipal designation bylaw and its statement of cultural heritage value or interest is subject to appeal and must be defensible at the Conservation Review Board. Council has the final decision on whether to proceed with protection under the Ontario Heritage Act. When council refuses to issue a demolition permit for a designated property, the matter can be appealed to the Ontario Municipal Board, which makes the final decision.

ONE STRUCTURE – MANY VALUES AND INTERESTS

Knowing the characteristics and evolution of local construction techniques and materials will help when evaluating cultural heritage properties. For example, depending on the community, a stone structure could hold different cultural heritage values or interests:

- It represents the earliest type of building form, and stone construction is no longer typical; or
- It represents the typical building form and/or has a particular quality in design or physical value, historical or associative value and/or contextual value; or
- The use of stone is unique and its use is possibly a reflection on the owner or builder who went to extraordinary means to acquire the materials; or
- Other reasons depending on the cultural heritage of the community.



*White Otter Castle, Atikokan
(Photo courtesy of Dennis Smyk)*



The St. Cyril & Methodius Ukrainian Cathedral Church in the City of St. Catharines was designed by well-known architect Rev. Philip Ruh in the Byzantine style of Ukrainian churches in Western Canada. The interior is adorned with iconography by artist Igor Suhacev. (Photo: Ministry of Culture)

LISTING AND EVALUATION IN THE MUNICIPAL DESIGNATION PROCESS

1

REGISTER OF CULTURAL HERITAGE PROPERTIES

A property the municipal Council believes to be of cultural heritage value or interest is listed on the municipal register of cultural heritage properties.

2

RESEARCH AND ANALYSIS

When a property on the register becomes a candidate for protection under section 29 of the Ontario Heritage Act, research about the property's history and cultural associations, and a physical site analysis are undertaken.

- **Community Context**

Knowledge of the history, achievements and aspirations of the community gives perspective to what cultural heritage value or interest may be held by the property.

- **Historical Research**

Historical research involves consulting land records, maps, photographs, publications, archival materials and other documentation to learn the history and cultural associations of the property. A preliminary site visit can be useful in formulating research questions about the property.

- **Site Analysis**

A site analysis can involve photographs, measurements, observation and analysis of the physical characteristics of the property. The historical research findings compared with the physical evidence should ensure collaboration in the known information about the property.

3

EVALUATION

Within the context of the heritage of the community, the findings of the historical research and site analysis are used to evaluate the property for Design/Physical Value, Historical/Associative Value and Contextual Value in accordance with Ontario Regulation 9/06.

4

STATEMENT OF CULTURAL HERITAGE VALUE OR INTEREST

Prepare a statement of cultural heritage value or interest and a description of the physical features or heritage attributes of the property that support that heritage value or interest.

5

CONSERVATION AND PROTECTION

Depending on the outcome of the evaluation, the property may warrant long-term protection under section 29 of the Ontario Heritage Act, or other heritage conservation and land-use planning measures.

Integrity

A cultural heritage property does not need to be in original condition. Few survive without alterations on the long journey between their date of origin and today. Integrity is a question of whether the surviving physical features (heritage attributes) continue to represent or support the cultural heritage value or interest of the property.

For example, a building that is identified as being important because it is the work of a local architect, but has been irreversibly altered without consideration for design, may not be worthy of long-term protection for its physical quality. The surviving features no longer represent the design; the integrity has been lost. If this same building had a prominent owner, or if a celebrated event took place there, it may hold cultural heritage value or interest for these reasons, but not for its association with the architect.



*Forster-Rawlinson Log House & Barns,
Richmond Hill
(Photo: Ministry of Culture)*

Cultural heritage value or interest may be intertwined with location or an association with another structure or environment. If these have been removed, the integrity of the property may be seriously diminished. Similarly, removal of historically significant materials, or extensive reworking of the original craftsmanship, would warrant an assessment of the integrity.

There can be value or interest found in the evolution of a cultural heritage property. Much can be learned about social, economic, technological and other trends over time. The challenge is being able to differentiate between alterations that are part of an historic evolution, and those that are expedient and offer no informational value.

An example would be a sawmill originally powered by a waterwheel. Many mills were converted to steam turbine technology, and later to diesel or electrical power. Being able to document or present the evolution in power generation, as evidenced in this mill, has cultural heritage value or interest.



Physical Condition

Physical condition is another difficult consideration. Some cultural heritage properties are found in a deteriorated state but may still maintain all or part of their cultural heritage value or interest. The ability of the structure to exist for the long term, and determining at what point repair and reconstruction erode the integrity of the heritage attributes, must be weighed against the cultural heritage value or interest held by the property.

The Case of St. Raphael's Roman Catholic Church

St. Raphael's Roman Catholic Church in South Glengarry County was built in 1818 under the supervision of Alexander Macdonell, the vicar general who was appointed in 1826 as the first Roman Catholic Bishop of Upper Canada. This large stone church served

a congregation of Scottish Highlanders who had settled in the easternmost county of Upper Canada in 1786. St. Raphael's is recognized as the founding church for the English-speaking Catholics of Ontario. A fire in 1970 destroyed the roof, 1830s-era tower and the interior decorations. Fortunately, the outer walls were spared and thus its plan, impressive scale and fine masonry work remain.

Despite its fire-damaged condition, the property was designated under the Ontario Heritage Act and in the 1990s was declared a National Historic Site. Its condition, although regretful, did not take away its cultural heritage value and interest. The ruins silhouetted against the rural landscape "powerfully engages the minds of all who see it, evoking those early days in the history of the Church and preserving the memory of those intrepid settlers."

(Source: Friends of St. Raphael's Ruins)



St. Raphael's Roman Catholic Church, Glengarry County (Photo: Ministry of Culture)



5

Researching a Property

Researching a cultural heritage property involves reviewing documentary sources, merging this primary information with the physical evidence, and making some conclusions about the history and evolution of the property. This background information is needed to evaluate the cultural heritage value or interest of the property to the community.

Community Context

The more that is known about the overall history and development of a community, the easier it will be to make sense of the property research puzzle. Secondary sources such as community, family, institutional and business histories can outline the community context and help answer some initial questions such as:

- When and why was the community established?
- Where is the property located relative to local development? Is it in the historic core or an area of later growth? Is it near an early waterway, road, crossroads or railway line?
- Do any people, events, places, commercial activities or other factors contribute to the cultural heritage of the community?
- Were there any floods, fires, tornadoes or other disasters that may have altered the property?
- When were the local mills, brickworks, iron foundries or other manufacturers of products relevant to the property established?
- When did the railway arrive to bring imported products?
- Are there any traditions associated with a former occupant, builder, event, design, type of engineering or use of the property?



*Originally part of a large complex of pulp, paper, iron and steel and power plant, the St. Marys Paper Inc./Abitibi-Price Building is one of the finest examples of Romanesque revival architecture in an industrial context in Ontario.
(Photo: Ministry of Culture)*

Historical Research

Land Records

Determining dates of construction and use of a cultural heritage property starts with tracing the legal ownership of the real property or land. In Ontario, it is the parcel of land that is bought and sold, not the individual improvements on it (except for condominiums). Few land records accurately record what buildings or features exist on the property over time.

Historically, once an area was surveyed by the “Crown” (province) into a grid of concessions and lots, ranges, or plans, it was opened for settlement. The survey created the legal description. This is not the same as the street address. This legal description, for example, Lot 12, Concession 6, Oro Township, or Lot 6, north side, Blake Street, Plan 6, is key to finding the relevant land records.

Pre-Patent Land Records

An application by an individual for a grant or purchase of Crown land was called a petition. It contained an explanation of why the petitioner might be entitled to receive a land grant (free or paying fees only); or is a request to buy or lease Crown land.

If the Crown approved the petition, the surveyor general assigned a lot and issued a Ticket of Location stating required settlement duties, such as clearing part of the lot and erecting a shanty. Government land agents might later inspect the lot to verify the satisfactory completion of these duties. (Township Papers Collection) Once all requirements were met, a first deed was issued.

The final step in transferring ownership from the Crown involved having the lot surveyed and paying a fee for the Crown patent. The patent was only mandatory when the lot was to be sold to a non-family member. Generations of one family could live on the lot before the patent was issued. This needs to be considered when studying early structures and compiling a complete history of the lot. The patent date is rarely the date of arrival of the owner or the date of construction of the first features on the property. Many of these events predate the patent.

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ONTARIO ARCHIVES LAND RECORD INDEX
ALPHABETICAL LISTING BY NAME OF LOCATEE

NAME OF LOCATEE	TOWNSHIP / TOWN / CITY	LOT	CONC.	DATE ID	ISSUE DATE	TRANS. TYPE	TYPE OF		ARCHIVAL REFERENCE
							LEASE /	SALE	
DRINKWATER JAMES RESIDENCE	CHINGUACOUSY	E 1/2 20	4WHST	8	18241124 18241208	FG	FF	DEED NO.	01 C13 054 105
DRINKWATER JRS RESIDENCE	COCHRANE	S1/2 6	3	1	19080620 19080727	FG	V	DEED NO.	01 CV118 003 043
DRINKWATER JNO SR RESIDENCE	ORILLIA NO		2	1	18320804 NO	FG		DEED NO.	01 C14 023 011
DRINKWATER JNO SR RESIDENCE	ORILLIA NO	W1/2 1	3	1	18320804 NO	FG		DEED NO.	01 C14 023 011
DRINKWATER JOHN RESIDENCE	ORILLIA ORILLIA	W1/2 1	3ND	5	18350522 NO	S	CR	DEED NO.	01 C1114 010 016
DRINKWATER JOHN H S RESIDENCE	ORILLIA ORILLIA	1	2ND	8	18400527 NO	S	CR	DEED NO.	01 C1114 010 069
DRINKWATER THOS H RESIDENCE	TISDALE ORILLIA	W1/2 1	5	1	19040722 19080603	FG	V	DEED NO.	01 CV118 007 022

Ontario Archives

The Ontario Archives Land Record Index is organized alphabetically by surname of the locatee (person issued the lot) and by township/town/city. Each entry is coded and notes the archival reference to the original record ("RG Series, Vol., Pg"). The extract provided above is by locatee: The first entry in the above sample indicates that James Drinkwater was a resident of Chinguacousy township when he received the east half of Lot 20, Concession 4, West Hurontario Street ("E1/2 20 4WHST") by an Order-in-Council (Date ID "8") issued November 24, 1824. This was a free grant (Transaction type "FG") for which he paid full fees (Type FG."FF"). He was "located" (Date ID "1" issued a Ticket of Location) on December 8, 1824.

It is also possible that the person issued the patent is not the original occupant of the lot. The patentee may have been a non-resident owner who leased the lot to a tenant. The first occupant may have abandoned the lot before receiving the patent and the lot was re-issued by the Crown. The first occupant may have negotiated the “sale” of the lot on the condition that the next “owner” could apply for the patent using the occupant’s name. (This was a common, but illegal, practice.)

When disputes arose over who was entitled to apply for the patent, the matter was referred to the Heir and Devisee Commission. The heir or family descendant, devisee (recipient through a will), or person “sold” the lot by the first occupant, could present evidence of their patent claim to this court of review.

The early system of granting Crown land in Ontario involved several steps and was frequently adjusted. Before making any conclusions about the early history of a property, several records should be checked. Hopefully, the findings will collaborate and give some insight into the origin of the earliest physical evidence on the property.

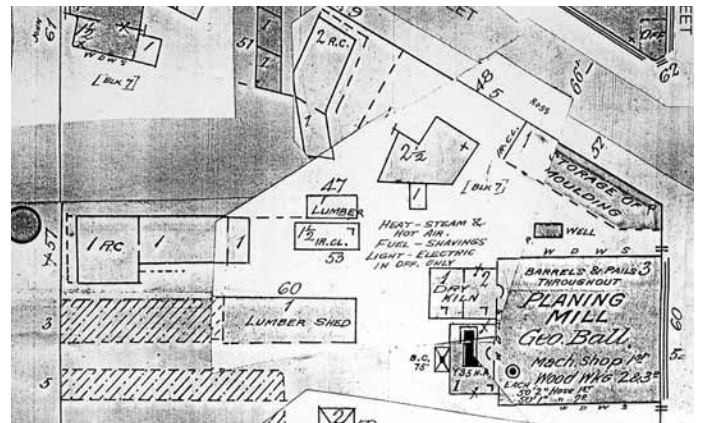
Several collections relating to pre-patent transactions are indexed as the Ontario Archives Land Record Index (1780s to about 1918). The Upper Canada Land Petitions, Heir and Devisee Commission records (1804-1895), and Township Papers are available at the Ontario Archives in Toronto and the National Archives of Canada in Ottawa. Some public libraries, regional archives, and genealogical resource centres may have copies.

Land Registry Offices

It is only when the patent is issued that a file for the lot is opened at the county or district Land Registry Office. There were two systems of filing all subsequent legal documents relating to the lot: the land registry system and the land titles system.

In the land registry system, this lot file is known as the conveyances abstract or Abstract of Title. It starts with the patent and assigns a number to each legally registered transaction (called instruments) for the lot, listing them in chronological order to today. These include mortgages, deeds (sometimes called Bargain and Sales, B&S), grants, leases, discharges, deposits, liens, bylaws, wills, court orders, surveys, site plans and other documents regarding the property. The Abstract is the index to these registered instruments.

The land titles system was primarily used in northern Ontario. The legal ownership of the lot is certified and entered into land titles. When the lot is sold again, it is not necessary to verify any transactions earlier than the date it was entered into land titles. Lots in the land registry system have been slowly converted to land titles. A system based on land titles is now used at all Land Registry Offices. Each parcel of land is assigned a



*Fire insurance plans are a useful source of information
(Photo: Insurors' Advisory Organization Inc.)*

Property Identification Number (PIN).
The PIN number is used to access the recent (40-year average) history of a parcel of land.

For historical research, it is usually necessary to go beyond the 40-year history.

The current legal description (or PIN) of the parcel of land being researched is the key to accessing the Abstract and instruments that relate to the parcel and eventually to the larger lot of which the parcel may only be a part. The history or “root” of the parcel is traced from today, back through all the subdivisions, to the original size of the whole lot at the date of the patent. It is critical to trace only the chronology of the specific parcel of interest by tracking the survey boundaries or assigned description of that parcel. It may be necessary to look at a second or third Abstract, as the parcel is reconstituted to its original lot and concession or plan description.

Reading the Abstract and the instruments can reveal information about a property. Clues such as the occupation of the owner, for example an innkeeper or miller, may identify the use of the property. When a parcel too small for farming is severed from a larger lot, it may mean the construction of possibly a second dwelling, inn, church, school or cemetery. When industries are sold, the physical assets may be described. Right of way agreements suggest the need to access a new or existing structure, water source, road or railway line. Family relationships, court settlements, mechanic’s liens describing unpaid work done and other clues contained in the instruments establish a framework of names, dates and uses that are relevant to the property and needed to search other documentary sources.

Ontario,
REGISTRY OFFICE,
BARRIE,
County of Simcoe.

3 Certify, that the following are correct Extracts from the
Lot Number *Twenty three in the first*

Abstract does not purport to give entries from the general register.

REGISTERED No. OF THE INSTRUMENT.	THE NATURE OF THE INSTRUMENT.	THE DATE.	THE DATE OF REGISTRY.	NAME, RESIDENCE AND ADDITION OF GRANTOR, LESSOR DEVISOR, OR PLAINTIFF, MENTIONED IN SAID INSTRUMENT.	NAME, RESIDENCE DEVISOR
	<i>Patent</i>	<i>15 Oct 1835</i>		<i>The Crown</i>	<i>Septre</i>
<i>2672</i>	<i>BrS</i>	<i>15 Nov 1836</i>	<i>10 Aug 1838</i>	<i>Septre's Heir? of of Williamsburgh</i>	<i>John T</i>
<i>2673</i>	<i>BrS.</i>	<i>8 Aug 1838</i>	<i>10 Aug 1838</i>	<i>John Tait et al</i>	<i>Thomas</i>
<i>P 13819</i>	<i>BrS.</i>	<i>23 Aug 1844</i>	<i>27 Nov 1854</i>	<i>Thomas Crisp et al</i>	<i>Thomas</i>
<i>P 58616</i>	<i>BrS.</i>	<i>6 Oct 1870</i>	<i>8 Oct 1870</i>	<i>Charles J Chapman et al of Slayner</i>	<i>William</i>
<i>P 58617</i>	<i>BrS.</i>	<i>6 Oct 1870</i>	<i>8 Oct 1870</i>	<i>William Thompson et al</i>	<i>James</i>

Land Registry Offices are open to the public. Abstracts and instruments before 1958 are also available on microfilm at the Ontario Archives.

Property Tax Assessment Rolls

Property tax assessment rolls have been compiled annually since the early 19th century. The rolls that survive are usually found in municipal offices, regional archives, museums and in provincial and national archives. Each identifies the name of the occupant (tenant or owner), the legal description, some personal and statistical information and a breakdown of real and personal property assessed values. Real property includes the land, buildings and fixed assets. Personal property includes taxable income and movable assets such as carriages and livestock. An increase in the

assessed value is a good indicator of some improvement on the property being completed, such as building construction. A few municipalities have dates of construction recorded on the tax roll.

The tax rolls should be reviewed for each year but particularly for the years that correspond to significant names or dates learned at the Land Registry Office. The information in each tax roll needs to be compared within the single year and from one year to the next. There are several possible comparisons:

- Compare the real property value with nearby properties of equal size, as examples:
Your lot is assessed at \$50 and most lots in the vicinity are assessed at \$200 each, it may be that your lot is vacant; or,

HART & RIDDELL, Stationers, 27 Wellington St. West, Toronto.

ABSTRACT OF TITLE.

only Instruments Recorded at this Office upon The East Bay of Toronto
Concession of the Twp of Toronto in the County of Simcoe and Province of Ontario.

NAME AND ADDITION OF GRANTEE, LESSEE, OR DEFENDANT, MENTIONED IN THE INSTRUMENT.	CONSIDERATION OR MORTGAGE MONEY.	THE PART OF SAID LOT MENTIONED IN THE INSTRUMENT... AND REMARKS.
James Mackey		Lot 29 Cont Toronto = 200 acres
of the County of Simcoe	\$876	Lot 29 Cont 1 Toronto = 200 acres
Christie of W. G. Cunningham	\$100.	Lot 29 Cont Toronto = 200 acres,
Chapman of W. G. Cunningham	\$150.	Lot 29 Cont Toronto = 200 acres,
Newman of Seymour	\$3800.	all of lot 150 acres, "called Broken Lot,"
J. Chapman wife of	\$3800.	all of lot 150 acres "called Broken Lot"

Simcoe County Land Registry Office

Your lot is assessed at \$200 and comparable lots are valued at \$400, you may have a frame house while the others are brick and therefore of a higher assessed value; or,

Your lot may be assessed at \$3,000, in which case it may be a substantial estate or it has other assets such as a commercial or industrial operation.

This answer may be obvious from the occupation of the resident (and other research findings).

- Note the changes in the assessed value of the real property from one year to the next.

For example, in 1875 and 1876 the value is \$50, but in 1877, it rises to \$400. A building may have been completed enough by 1877 to account for the higher assessed value. This may coincide with a change in ownership or mortgaging registered at the Land Registry Office.

There are some factors to consider when using tax assessment rolls. Few assessors made annual inspections of each lot so any change in value may be one to several years behind the actual date of the improvement. A slight increase in the assessed value may be indicative of a major renovation to an existing structure, not new construction.

Fluctuation in value can be the result of a widespread economic situation, such as a recession that devalues the real estate market. There is also the possibility that the structure burned, was not reassessed during reconstruction and returned at the same assessed value as before the fire. Investigating other research sources should explain these apparent puzzles and inconsistencies.

Other Research Sources:

- Personal and agricultural census records exist for most jurisdictions each decade from 1842 to 1911. Some identify individuals and family groups, location, dwelling, industries, production rates, and other information.
- Directories are published lists of individuals and businesses organized by location. Some were compiled by commercial publishers using tax assessment rolls or land records. Others list only subscribers, with the result that the lists are incomplete.
- Photographs are a valuable source. Many institutional collections are filed by location, name or type of structure.
- Illustrated atlases may plot buildings on a map and have artistic depictions of structures and landscapes. Historic maps can also be useful.
- Newspapers contain an assortment of information and some are indexed.
- Insurance plans of urban areas are measured outlines of structures coded for type of construction, building materials, use and fire risk.
- Business records, private manuscript materials (for example, diaries, letters, scrapbooks) and municipal records may provide relevant information.
- Other materials held by the National Archives of Canada, Ontario Archives, local archives and libraries, museums, and historical, architectural and genealogical research societies and groups.



Bird's Eye View drawings depict the locations of buildings in a community. Orillia 1875 (Photo: Beautiful Old Orillia, Orillia Museum of Art and History)

Site Analysis and Physical Evidence

Through historical research, a profile of the ownership, use, history, development and associations of a property should begin to emerge. For some properties, it is the association with certain people, events or aspects of the community that have value or interest, not the physical appearance. For other properties, there is a need to examine, interpret, and evaluate the physical evidence. When trying to identify and interpret any physical evidence presented by the property, knowledge of the following topics is useful:

- architectural styles
- construction technology
- building materials and hardware
- building types including residential, commercial, institutional, agricultural and industrial
- interiors

- infrastructure such as bridges, canals, roads, fences, culverts, municipal and other engineering works
- landscaping and gardens
- cemeteries and monuments
- spiritual places that have a physical form

Having a sense of what to look for will help develop observation skills and answer some important questions such as:

- What is the architectural style? When was it popular in your community? Are there additions or upgrades that can be dated based on style?
- What elements or features are typical of the architectural style or building type?
- What level or type of technology seems to be original? For example, are there remnants of earlier methods of accomplishing some mechanical task?
- What building materials are used in the basic construction and any additions? Is it log, frame, concrete, steel, glass or some unique material?

- What are the decorative features such as coloured and patterned brick, terracotta tiles, ornamental stone, wood trim, brackets or carvings? Do they appear to be handmade and unique, or commercially made and common in the community? (Some of these innovations and trends can be dated.)
- Are similar examples of the style, form, type, decoration or engineering works found elsewhere in the community?
- What is the original shape of the window opening and type of sash?

Benchmark Dates

There are benchmark dates for the popularity of an architectural style, new developments in construction techniques, building materials, philosophies toward a particular practice and other innovations. This is true overall for Ontario but also applies to when each community was willing and able to incorporate these developments and innovations locally. It is this variation in local experience that is the overriding factor in identifying which properties have cultural heritage value or interest to each community.



Fireplace Mantel, 1904 (Photo: Universal Design Book)

Building Materials

The closer the initial development of a property is to the date of the founding of a community, the more likely the building materials were locally available. The most common early structures used logs cut from the lot, notched together and raised to the height that could be reached by non-mechanical means. Timber framing, where the logs were squared with an axe or pit sawn, was the next level of sophistication. It required someone capable of joining the structural frame together using, for example, mortise and tenon construction. Communities with an abundance of natural building stone could have early stone structures.

The early 19th century development of steam power reliable enough to drive sawmill machinery resulted in the production of standard dimension lumber. The use of logs and timbers for construction could be replaced with lumber. The availability of lumber and the development of cut or “square” nails that were less expensive than blacksmith made nails signalled an end to the complex joinery of mortise and tenon construction. Dimensioned lumber could be quickly nailed together to create a building frame.

The 19th century also witnessed the decline in hand craftsmanship and the rise in manufactured products produced locally or stocked by local suppliers. Examples are the planing mills producing mouldings and trim; lath mills that meant the narrow strips of wood needed for plastered walls no longer needed to be hand split; window sash and door factories; and foundries casting iron support columns, decorative ironworks and hardware. Knowing the dates these mills or manufacturers were established or their products available locally can help to date a structure.



Advertisement, 1899 (Photo: Canadian Architect and Builder)

Brick making is an old technology but brick construction was not universal in early Ontario. Enough bricks needed for the fireplace hearth and chimney or a brick structure could be made in a temporary kiln on the site. Communities on waterways may have acquired the bricks used by ships as ballast weight and removed to reload the hull with cargo. Once a machine to commercially produce bricks was patented, and the expansion of the railway network allowed their transport, more communities had the option of brick construction. Opening local brickworks would, over time, change the look of a community. Locally available clay and sand may have produced a regional brick colour and texture. A local mason may have favoured a combination of brick colours and laid them in a particular bond and decorative pattern.

The 20th century brought innovations such as structural steel, reinforced concrete, elevators, plastics, composite materials and artificial stone.

These resulted in increased height, scale, interior spaciousness and embellishment to structures. Structural steel and reinforced concrete also allowed load bearing to be allocated to selected points. Now window openings could be large, delicate and thinly separated as they were no longer integral to the structural strength of the wall. A new approach to design developed in the architectural community.

Glassmaking made advances from hand blown with obvious imperfections, to glass rolled in sheets. The size of the glass for window panes increased, while the number of panes used in each window sash, decreased. A window with two sashes of 12 panes each (12 x 12), became a 6 x 6, then a 2 x 2, 1 x 1, until large sheets of glass were capable of becoming a wall structure. The exception to this chronology are the 20th century Period Revival styles that used multipaned sash to introduce a sense of antiquity.



This would be described as a 12 over 12 window sash (Photo: Su Murdoch)

Some architectural styles favoured certain shapes of window openings such as flat, pointed or round-headed. Gothic Revival re-introduced the use of stained glass.

As urban areas became densely populated, etched and art glass was used to let in light and maintain privacy. Glass was used as door panels, transoms over doors and dividers in an attempt to lighten otherwise dimly lit interiors.

Architectural Style

In Ontario, the founding architectural styles of the 18th and early 19th century are Georgian, Neoclassical and Regency.

The Gothic Revival style and its increasing level of complexity and decoration dominated the 19th century, but there were other popular styles during this period. The 20th century saw the rise of Period Revivals and “modern” styles with simple lines and often innovative designs made possible by the new materials available.

Many publications about architectural styles are available as reference. These will also identify which design features or elements are typical of each style.

For example, the balanced façade, returned eaves and classical doorcase with its sidelights and a transom, are elements typical of Georgian styling.

Pointed window openings and roof gables, steep roofs and fanciful trim are featured on Gothic Revival buildings.

Although many structures are a mix of styles, most have a dominant style impression. Recognizing that dominant style is a clue to its date.



*Georgian Style,
McGregor-Cowan House,
Windsor (Photo courtesy
of Nancy Morand,
City of Windsor)*



Gothic Revival Style, Burton House, Allandale (Photo: Simcoe County Archives)

Interiors

Interiors also changed with technological developments. For example, in some communities the fireplace as the only source of heat, cooking and evening light may have dominated the interior of a settlement period dwelling. Open hearths were a fire hazard and as soon as possible the kitchen was segregated to an outbuilding, basement, rear or side wing. Smaller heating fireplaces and heating stoves were installed in the main house and eventually replaced with central heating. As cooking stoves became safer and affordable, more kitchens became part of the main floor plan. (Just as many bathrooms came indoors with the invention of flush toilets and availability of pressurized water.)

Physical evidence of this evolution may be found, for example, in the discovery of the hearth behind a wall, or stovepipe holes that were later cut through a wall as they were not part of the original framing.

Another example of technological evolution is in lighting. By the mid 19th century, candle and oil lamps were being replaced with kerosene lamps. Gaslight was soon available but its sulphurous fume killed plants, tarnished metal, and discoloured paint. Most kept it outside until the 1886 invention of a safer gas mantle. It brought brilliant light into rooms after dark and changed the way interiors were designed. If a local gasworks was established, gaslight became possible and buildings were equipped with the necessary pipes and fixtures. The early 20th century witnessed the development of local hydroelectric plants, changing the standard in many communities to electric lighting.

Each change in lighting may have left some physical evidence such as ceiling hooks for oil and kerosene lamps, gas pipes and early knob and tube electrical wiring.



Dining room, Kingsmith House, Toronto (Photo: Ontario Association Architects, 1933)

Context and Environment

A cultural heritage property may have a single feature, or it may be in some context or environment that has associative value or interest. These could be, for example, a unique landscape feature, garden, pathways or outbuildings. An industrial site may have evidence of the flow of the production process. The neighbourhood may have workers' cottages. A former tollbooth or dock may be near a bridge. There may be ruins on the property that represent an earlier or associated use. These elements are also important to examine for clues to the property. There is often evidence of these "lost" landscape features or remnants such as fences, hedgerows, gardens, specimen and commemorative trees, unusual plantings, gazebos, ponds, water features or walkways. These may have made a significant difference to how the main building related to the street or another structure on the property.

Consideration should always be given to adjacent properties. This is especially important in an urban or traditional town setting where properties abut. The front, side and rear yard setbacks may have been prescribed by early zoning regulations within a planned community, or perhaps evolved over time without any plan.

The views to and from a property can also be significant. Views can be considered from an historic perspective, how did views develop or was there a conscious effort to create and/or protect views), and the relevance of views to and from the site today.

Evaluation

A cultural heritage property does not have to be a pure form or best example of a style, or incorporate the latest available in technological innovation, materials or philosophy.

Its cultural heritage value or interest is in what was created given the resources of the community at a particular time in its history. Ultimately, the questions to be answered are those posed in the criteria for determining property of cultural heritage value or interest as outlined in this guide.

RESEARCHING A PROPERTY

Community Context

- Learn about community history and activities that may hold cultural heritage value or interest

Visit the property

Historical Research

- Search pre-patent land records for early properties
- Search Land Registry Office property Abstracts and registered documents
- Review property tax assessment rolls
- Review sources such as census records, directories, photographs, maps, newspapers, insurance plans, business records and family materials

Site Analysis and Physical Evidence

- Develop knowledge of construction, materials, architectural style and other related topics
- Analyse and record the physical characteristics of the property

Evaluation and Report

- Merge the historical research information with the physical evidence
- Make conclusions and deductions based on the supporting documentation
- Identify any cultural heritage value or interest of the property
- Describe the heritage attributes that support that value or interest



RESOURCES AND Further Information

Strengthened in 2005, the Ontario Heritage Act was passed in 1975 and has resulted in the protection of several thousand properties in Ontario. Many of these designated properties are identified in the Ontario Heritage Properties Database available online through the Ministry of Culture website (www.culture.gov.on.ca). The Ontario Heritage Trust, as an agency of the Ministry of Culture, maintains a register of all designated and easement properties in Ontario as well as properties of cultural heritage value or interest.

The Canadian Register of Historic Places, an on-line, searchable database showcasing historic properties Canada-wide, is being developed under the Historic Places Initiative, a federal-provincial-territorial partnership. It can be viewed at www.historicplaces.ca

Several publications providing guidance on conserving Ontario's cultural heritage properties are available from the Ministry of Culture and Publications Ontario.

For more information on the Ontario Heritage Act and conserving your community heritage, contact the Ministry of Culture or the Ontario Heritage Trust at:

Ministry of Culture

900 Bay Street
4th Floor, Mowat Block
Toronto, ON M7A 1C2
Tel: 416-212-0644
1-866-454-0049
TTY: 416-325-5170
www.culture.gov.on.ca

Ontario Heritage Trust

10 Adelaide Street East
Toronto, ON M5C 1J3
Tel: (416) 325-5000
www.heritagetrust.on.ca

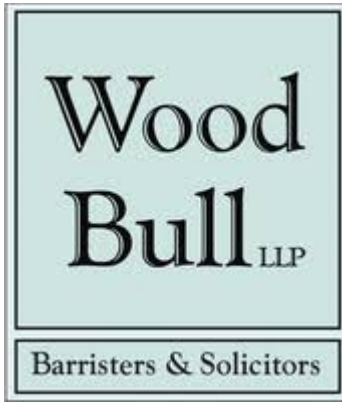
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**Tab 13 c) - Ontario Heritage Tool Kit: Designating
Heritage Properties: A Guide to Municipal
Designation of Individual Properties Under the
Ontario Heritage Act**



DESIGNATING HERITAGE PROPERTIES

*A Guide to Municipal Designation of Individual
Properties Under the Ontario Heritage Act*

Ontario Heritage Tool Kit





Franklin Carmichael (1890-1945)
A Northern Silver Mine 1930
oil on canvas
101.5 x 121.2 cm
Gift of Mrs. A.J. Latner
McMichael Canadian Art Collection
1971.9

This guide is one of several published by the Ministry of Culture as part of the Ontario Heritage Tool Kit. It is designed to help municipal Councils, municipal staff, Municipal Heritage Committees, land use planners, heritage professionals, heritage organizations, property owners, and others understand the heritage conservation process in Ontario.



Every community in Ontario has its own unique culture and heritage.

Each city, town, township or county has places, spaces and stories that enrich it, inspire it, enlighten it and guide it in its growth and development.

These places are integral parts of the identity of our communities, but they also play a significant role in economic development by helping to enhance a community's quality of life, strengthen its distinctiveness, stimulate revitalization and attract tourist dollars.

Under the Ontario Heritage Act, municipalities can pass bylaws to formally designate properties of cultural heritage value or interest. Formal designation of heritage properties is one way of publicly acknowledging a property's heritage value to a community. At the same time, designation

helps to ensure the conservation of these important places for the benefit and enjoyment of present and future generations.

In April 2005, the Ontario Heritage Act was strengthened to provide municipalities and the province with enhanced powers to conserve Ontario's Heritage. A number of improvements were made with respect to designation, providing a clearer process and better protection for designated properties – including protection from demolition.

Properties can be designated individually or as part of a larger area or Heritage Conservation District. This guide concentrates on individual property designation under section 29 in Part IV of the Ontario Heritage Act. It explains what designation is, describes the steps in the process, and explores how it helps to conserve heritage properties into the future.



What’s in this guide?

- 1. Introduction to Designation** 5
This section describes what designation is and how it works to protect cultural heritage properties.
- 2. The Designation Process** 7
A step-by-step description of the designation process is provided, including a discussion of the role of the municipality, the Municipal Heritage Committee and the property owner.
- 3. Preparing the Designation Bylaw and Related Material** 13
This section explains each of the different written requirements for a designation and provides advice on how these should be prepared.
- 4. Conserving the Heritage Value of a Designated Property** 23
This section describes how designation can work to conserve the heritage value of a property by managing alterations and supporting ongoing maintenance and conservation.

5. Preventing Demolition 28

This part of the guide relates to a request for demolition of a building or structure on a designated property and how demolition can be prevented.

6. Amending a Designation Bylaw 30

When and how should a designation bylaw be amended? This section helps to answer these questions and also discusses when and how a designation bylaw would be repealed.

7. Resources and Further Information 32

Appendix: Designation Flowcharts 33

Although the individual processes are described throughout this guide, this appendix provides a series of detailed flowcharts for easy reference.



Chiefswood – the birthplace of poet Pauline Johnson, was designated by Band Council resolution by the Six Nations of the Grand River. (Photo courtesy of Chiefswood Museum)

Note: The Ministry of Culture has published this Guide as an aid to municipalities. Municipalities are responsible for making local decisions including compliance with applicable statutes and regulations. Before acting on any of the information provided in this Guide, municipalities should refer to the actual wording of the legislation and consult their legal counsel for specific interpretations.



Introduction to Designation

1

Our cultural heritage is what we value from the past, and what we want to preserve for future generations.

Identifying and protecting places in our communities that have *cultural heritage value* is an important part of planning for the future, and of helping to guide change while keeping the buildings, structures and landscapes that give each of our communities its unique identity.

Municipalities have a key role to play in conserving places that have cultural heritage value. The designation of individual properties under the Ontario Heritage Act is one tool that municipalities have used to protect thousands of heritage properties in hundreds of communities across Ontario.

Heritage designation:

- **RECOGNIZES** the importance of a property to the local community;
- **PROTECTS** the property's cultural heritage value;
- **ENCOURAGES** good stewardship and conservation; and
- **PROMOTES** knowledge and understanding about the property.

Designation under the Ontario Heritage Act applies to real property, and helps to recognize and protect the heritage features on that property.

Property designation is not limited to buildings or structures but can include groups of buildings, cemeteries, natural features, cultural landscapes or landscape features, ruins, archaeological and marine archaeological sites, or areas of archaeological potential.

Designation not only publicly recognizes and promotes awareness of heritage properties, it also provides a process for ensuring that changes to a heritage property are appropriately managed and that these changes respect the property's heritage value. This includes protection from demolition.



*The Comfort Sugar Maple Tree, designated under the Ontario Heritage Act by the Town of Pelham, is one of the oldest sugar maples in Canada.
(Photo: Ministry of Culture)*



The Designation Process

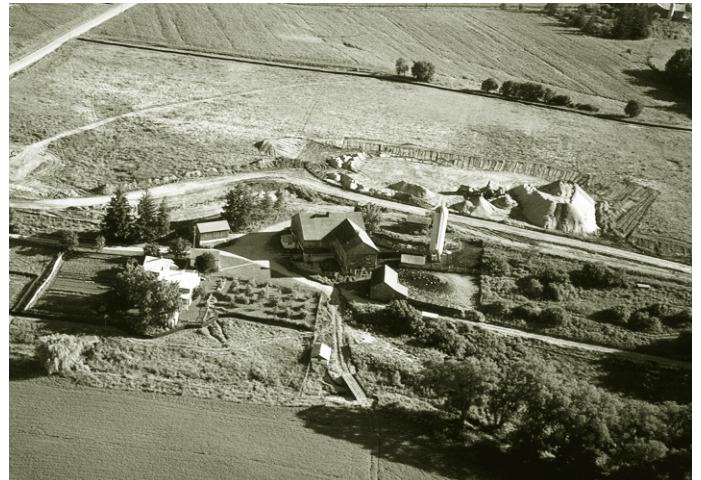
2

There are six key steps to designating an individual property under section 29 of the Ontario Heritage Act. These include:

1. Identifying the property as a candidate for designation;
2. Researching and evaluating the property;
3. Serving *Notice of Intention to Designate*, with an opportunity for objection;
4. Passing and registering the designation bylaw;
5. Listing the property on the municipal register; and
6. Listing on the provincial register.

Once designated, the property is also eligible for listing on the Canadian Register of Historic Places.

A flowchart outlining the designation process is provided in the appendix.



The Elam Martin Farmstead was designated in 2001 as one of the last remaining Mennonite farmsteads in the City of Waterloo. (Photo courtesy of the City of Waterloo)

Step 1: Identifying the property

Identifying local heritage resources is the first step toward conserving and protecting them.

Properties of cultural heritage value or interest are usually identified by Municipal Heritage Committees, or through a local community process such as an inventory of cultural resources, a municipal cultural planning process, or a community planning study.

Many municipalities keep registers of property of cultural heritage value or interest. The Ontario Heritage Act allows property that has not been designated, but that municipal council believes to be of cultural heritage value or interest, to be listed on the municipal register. Many of these listed properties are eventually recommended for designation.

A property can also be recommended for designation by a property owner, or through the suggestion of an individual or group in the community. In some cases, this can occur because a property is threatened with demolition. Initiating a designation is one way of protecting a threatened heritage property to allow more time for considering alternatives.



The St. Cyril & Methodius Ukrainian Catholic Church in the City of St. Catharines was designed by well-known architect Rev. Philip Ruh in the Byzantine style of Ukrainian churches in Western Canada. The interior is adorned with iconography by artist Igor Suhacev. (Photo: Ministry of Culture)

Step 2: Researching and evaluating the property

Careful research and an evaluation of the candidate property must be done before a property can be recommended for designation. Criteria are set out in a regulation made under the Ontario Heritage Act to determine whether property is of cultural heritage value or interest. See the Ministry of Culture's *Heritage Property Evaluation: A Guide to Listing, Researching and Evaluating Cultural Heritage Property in Ontario Communities* for further information on this process – this guide provides advice on evaluating properties to determine their cultural heritage value or interest.

A designation report should be prepared for council's consideration, containing the written statements and descriptions required to support the designation. These are discussed in more detail in the next section.

Before deciding whether or not to proceed with a designation, council must consult with its Municipal Heritage Committee (where one has been established). A Municipal Heritage Committee is instrumental in ensuring that all relevant heritage information is considered and assisting in the evaluation of the property.

DESIGNATION AND THE PROPERTY OWNER

The property owner is a key player in a designation under the Ontario Heritage Act. As early as possible in the process, designation should be discussed with owners to ensure that they are actively engaged in the process. There are many myths and misconceptions about designation that may need to be clarified. Once they understand the process, many owners are interested in designation as a way of expressing pride in their property and ensuring it is protected for the future.

Municipal Heritage Committees across Ontario have built positive relationships with owners of designated properties to support them in their conservation efforts, and owners value the advice and information committee members and municipal staff provide.

OWNERS AND TENANTS

In cases where a property being considered for designation is occupied by tenants, owners should be encouraged to notify those tenants of the potential designation and any implications it may have for work they plan to undertake on the property. In the case of a potential cemetery designation, the owner should be encouraged to notify the burial rights holders, if known.

Step 3: Serving Notice of Intention to Designate

If council passes a motion to proceed with designating a property, it must notify the owner as well as the Ontario Heritage Trust (formerly called the Ontario Heritage Foundation) and publish a *Notice of Intention to Designate* in a local newspaper.¹

Under section 29 of the Ontario Heritage Act, the notice to the owner and the Ontario Heritage Trust must include the following:

- The *Description of Property* so that it can be readily ascertained;
- The *Statement of Cultural Heritage Value or Interest*, which identifies the property's heritage significance;
- The *Description of Heritage Attributes* outlining the particular features that should be protected for the future; and
- A statement that notice of objection to the designation must be filed with the municipality within 30 days after the date of publication of the newspaper notice.

The notice in the newspaper must include the same information as above, except the *Description of Heritage Attributes*. The newspaper notice could include a statement that further information respecting the proposed designation is available from the municipality.

If no objections are filed with the municipality within 30 days after the date of the publication of notice in the newspaper, council can proceed to pass a bylaw designating the property.

1. Throughout this guide, where notices must be published in a newspaper, the newspaper must have general circulation in the municipality.

If an objection to a designation is filed with the municipality within the 30-day period, council must refer the objection to the Conservation Review Board (CRB) for a hearing. The Ontario Heritage Act mandates this tribunal to conduct hearings and make recommendations to council regarding objections to proposals to designate, as well as other council decisions under Part IV of the Ontario Heritage Act.



Following the hearing, the CRB writes a report to council with its recommendation on whether or not the property should be designated. Council is not bound to follow the recommendation of the CRB, however. After considering the CRB recommendation, council may decide to go ahead with the designation, or to withdraw its intention to designate.

This street light standard is on the west side of Queen Street, at the approach to the main Chatham Public Library entrance and was designated in 1986. (Photo courtesy of the Municipality of Chatham-Kent)

PROTECTION FOR A THREATENED PROPERTY

Sometimes, it is only when a property is threatened that a community recognizes its value. Municipal councils can use the *Notice of Intention to Designate* as a way of preventing the demolition or alteration of a threatened property that may be worthy of designation. This gives council an opportunity to consider the significance of the property, and alternatives to alteration or demolition, before the damage is done.

If a *Notice of Intention to Designate* is issued for a property, the property will be subject to certain interim protections. Any existing permit that allowed for the alteration or demolition of the property, including a building permit or a demolition permit, becomes void. Any proposed demolition or alteration affecting the property's heritage attributes will require council's consent.

The owner's consent is not required for a designation to proceed. In some cases, council may have to act in the public interest to conserve a significant property, despite objections by the owner. The owner can then appeal to the Conservation Review Board, which provides a recommendation back to council.

In November 2003, an Ontario Divisional Court decision in the case of *Tremblay v. Lakeshore (Town)* held that requiring the owner's consent before considering the designation of a property was not consistent with the intent of the Ontario Heritage Act. This court decision suggests that a council should consider a request for designation, regardless of whether or not the owner supports it. This means that if council is approached with a request for a designation, it must consult with its Municipal Heritage Committee (where one exists) and discuss the matter at a council meeting.

Step 4: Passing and registering the heritage designation bylaw

Once council decides to proceed with designation, it may then pass a designation bylaw.

A copy of the bylaw, with the *Statement of Cultural Heritage Value or Interest* and the *Description of Heritage Attributes*, is registered on the title of the property at the local land registry office. Notice that the bylaw has passed is given to the property owner and to the Ontario Heritage Trust, and is published in the newspaper.

Step 5: Listing the property on the municipal register

Under section 27 of the Ontario Heritage Act, designated properties must then be listed on the municipal register of property that is of cultural heritage value or interest, kept by the municipal clerk. The listing includes the following:

- *Legal Description* of the property;
- Name and address of the owner;

- *Statement of Cultural Heritage Value or Interest*; and
- *Description of Heritage Attributes* of the property.

Step 6: Listing on the provincial register

Once a property has been designated and notice has been given to the Ontario Heritage Trust, the property is then listed on the provincial register of heritage properties. This register, which can be accessed at www.culture.gov.on.ca, is a valuable resource tool for learning about and promoting heritage properties across the province. It also sets heritage properties in a provincial context. Municipalities, heritage groups and members of the public can search by keyword, property type or municipality to learn what properties have been protected in Ontario.



The Pagani House, built in 1961 and designed by architect Richard Pagani as his own home, is one of the best examples in Guelph of modern design. (Photo courtesy of Frank Hochstenbach)

Listing on the Canadian Register

Once designated, the property also becomes eligible for nomination and listing on the Canadian Register of Historic Places. While listing to the Canadian Register is recommended, it is not a requirement of the Ontario Heritage Act.

The province will nominate a designated property to the Canadian Register when the municipality has provided the necessary documentation. This documentation is provided as part of a request for nomination, which can be completed online.

CANADIAN REGISTER OF HISTORIC PLACES WWW.HISTORICPLACES.CA

The Canadian Register of Historic Places, developed under the Historic Places Initiative, a federal-provincial-territorial partnership, is an online register of locally, provincially and federally recognized heritage properties from across Canada.

Inclusion on the Canadian Register is honorific and does not place additional controls on a property. It provides communities with the opportunity to build awareness, understanding and support for their cultural heritage resources by making information on these resources available in an accessible format.

In Ontario, properties and districts that have been designated under the Ontario Heritage Act are eligible for listing. Municipalities must formally request the nomination of their designated properties and provide additional documentation on the heritage property. This request and documentation can be submitted online.

Properties owned or recognized at the provincial and federal levels will be nominated to the Canadian Register through the Ministry of Culture and the federal government.



PREPARING THE

Designation Bylaw and Related Material

3

In putting forward a property for designation, there are four key pieces of information that must be prepared.

1. *Description of Property (so that the property can be readily ascertained);*
2. *Statement of Cultural Heritage Value or Interest;*
3. *Description of Heritage Attributes; and*
4. *Legal Description.*

How should these statements and descriptions be written?

Municipal staff, property owners and others are generally familiar with the concept of a *Legal Description*, which describes the property and its boundaries using legal terminology and plans of survey (where appropriate). The other statements noted above may, however, be less familiar.

These statements and descriptions must be carefully written so as to:

- Raise community awareness and understanding about the importance of the property;
- Meet the requirements of the Ontario Heritage Act, and ensure that designations are defensible before the Conservation Review Board;
- Help the property owner, council, Municipal Heritage Committee and municipal staff make good decisions about alterations to the property; and,
- Facilitate nomination of the property to the Canadian Register of Historic Places.

WHEN ARE DESIGNATION STATEMENTS AND DESCRIPTIONS USED?

Before a designation bylaw is passed (OHA, ss 29(4))

- The *Notice of Intention to Designate* published in the newspaper, sent to the property owner and sent to the Ontario Heritage Trust, must include the *Description of Property* and the *Statement of Cultural Heritage Value or Interest*. This statement and description inform the public about what is being designated and why. The *Statement of Cultural Heritage Value or Interest* is also the basis upon which any person can object to or question the proposed designation.

In the designation bylaw (OHA, clauses 29(6)(a) and 29(14)(a))

- The *Legal Description*, the *Statement of Cultural Heritage Value or Interest* and the *Description of Heritage Attributes* are included (usually as a schedule) in the designation bylaw and registered on the title of the property, so that subsequent owners will be informed of the property's cultural heritage value and heritage attributes.

On the municipal register of property of cultural heritage value or interest (OHA, ss 27)

- The *Legal Description*, the *Statement of Cultural Heritage Value or Interest* and the *Description of Heritage Attributes* for designated properties are included in the municipal register, maintained by the clerk of the municipality.

When alterations are proposed to a designated property (OHA, ss 33)

- The *Statement of Cultural Heritage Value or Interest* and the *Description of Heritage Attributes* help to guide future alterations to the designated property by clearly identifying the heritage attributes of the property that should be protected and conserved.

In listing on the provincial register (OHA, ss 23)

- Once a property is listed on the provincial register, the *Description of Property*, the *Statement of Cultural Heritage Value or Interest* and the *Description of Heritage Attributes* will play an important role in communicating information about the significance of the property to the public and future property owners.

In listing on the Canadian Register of Historic Places

- A well-written *Description of Property*, *Statement of Cultural Heritage Value or Interest* and *Description of Heritage Attributes* can be used together as a Statement of Significance, one of the key requirements for nomination to the Canadian Register of Historic Places.

Recommended approaches to writing these statements and descriptions are provided below.

1. *Description of Property* – describes what will be designated so that the property can be readily ascertained.

The *Description of Property* describes the general character of the property and identifies those aspects of the property to which the designation applies. In addition to providing information so that the location of the property can be identified (i.e. municipal address and neighbourhood if appropriate), it should outline the principal resources that form part of the designation (i.e. buildings, structures, landscapes,

remains, etc.) and identify any discernible boundaries.

The *Description of Property* should be no longer than two or three sentences.

2. *Statement of Cultural Heritage Value or Interest* – describes why the property is being designated.

The *Statement of Cultural Heritage Value or Interest* should convey why the property is important and merits designation, explaining cultural meanings, associations and connections the property holds for the community. This statement should reflect one or more of the standard designation criteria prescribed in the designation criteria regulation under the Ontario Heritage Act (Ontario Regulation 9/06).



Designed and erected in 1924, the Parkdale Fire Station is a rare surviving example in Ottawa of a fire station that incorporates pre-1930 fire fighting technology. It is now being adaptively re-used as artists' studios and gallery space. (Photo: Ministry of Culture)

Designed by Ludwig Mies van der Rohe, the TD Centre in Toronto was the tallest building in Canada from 1967 to 1972. A leading example of the International style, it altered the Toronto cityscape and influenced many buildings throughout the country. (Photo: Ministry of Culture)



These criteria include:

- **Design or physical value**, meaning that the property
 - Is a rare, unique, representative or early example of a style, type, expression, material or construction method; or
 - Displays a high degree of craftsmanship or artistic merit; or
 - Demonstrates a high degree of technical or scientific achievement.
- **Historical or associative value**, meaning that the property
 - Has direct associations with a theme, event, belief, person, activity, organization, or institution that is significant to a community; or
 - Yields, or has potential to yield, information that contributes to an understanding of a community or culture; or
 - demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.



The Buxton Schoolhouse, now a museum, is a memorial to the Elgin Settlement, established by fugitives of the American system of slavery in the pre-Civil War years. (Photo Copyright 2006 Ontario Tourism)



The Hillary House in Aurora is one of the finest examples of Gothic revival architecture in Ontario. The property is designated under the Ontario Heritage Act and is also a National Historic Site. (Photo courtesy of Michael Seaman, Town of Aurora)

- **Contextual value**, meaning that the property
 - Is important in defining, maintaining or supporting the character of an area; or
 - Is physically, functionally, visually or historically linked to its surroundings; or
 - Is a landmark.

The *Statement of Cultural Heitage Value or Interest* should provide sufficient information to explain the significance of the property but should be no longer than two or three paragraphs, explaining the core aspects of the property's cultural heritage value. It should not provide a broad history of the property, but should focus on what makes the property important. A detailed description of the property's history can be included in the broader designation report and kept on file with other supporting documentation.



The Roseland Park Country Club in the City of Windsor was designed by world-renowned golf architect Donald Ross. (Original Plan provided by Jeff Mingay, Tufts Archive in Pinehurst and photo courtesy of the Convention & Visitors Bureau of Windsor, Essex County & Pelee Island.)



The Townsite Shaft 1 Headframe in Cobalt is a local landmark and also a striking reminder of the rich mining history of the region. (Photo: Ministry of Culture)



The Black Bay Bridge in the City of Thunder Bay is one of the first single span, reinforced concrete bridges ever constructed. Constructed in 1912, this singular span bridge was designed to harmonize with the beauty and grandeur of the landscape. (Photo: Ministry of Culture)

3. *Description of Heritage Attributes* – describes the key attributes or elements of the property that must be retained to conserve its cultural heritage value or interest.

Heritage attributes are those attributes (i.e. materials, forms, location and spatial configurations) of the property, buildings and structures that contribute to the property's cultural heritage value or interest, and which should be retained to conserve that value.

Heritage attributes include, but are not limited to:

- Style, massing, scale or composition;
- Features of a property related to its function or design;
- Features related to a property's historical associations;
- Interior spatial configurations, or exterior layout;
- Materials and craftsmanship; or
- Relationship between a property and its broader setting.

The *Description of Heritage Attributes* lists the key attributes of the property. It is not an exhaustive account of the property's heritage attributes. The identification of heritage attributes is a selective process. Only those principal features or characteristics that together characterize the core heritage values of the property should be included.

Heritage attributes should be identified and described in relation to the heritage value that they contribute to. Where more than one value has been outlined in the *Statement of Cultural Heritage Value or Interest*, more than one list should be provided to distinguish between the attributes associated with each value.

Only attributes that relate to the values described in the *Statement of Cultural Heritage Value or Interest* should be included.

Examples

The following are examples of statements and descriptions for designated properties in Peterborough, Sault Ste. Marie and Caledon. The statements and descriptions found in the existing designation bylaws have been updated to meet the requirements of the Ontario Heritage Act, 2005, based on the advice in the section above.

EXAMPLE 1: A PROPERTY THAT INCLUDES A SINGLE BUILDING

Description of Property – Verulam, 236 Burnham Street

Verulam is a three-storey residential building, located on the west side of Burnham Street in the former village of Ashburnham, now Peterborough's East City.

Statement of Cultural Heritage Value or Interest

Verulam's cultural heritage value lies in it being one of the best examples of the Second Empire Style of private dwelling architecture in Peterborough. Typical of this style, it features a mansard roof, vertical lines, decorative window trim and brackets. Built in 1877, its proportions and architectural style suggest that Verulam is the work of local architect and engineer, John E. Belcher, who created a number of other Second Empire style buildings in the City of Peterborough.

Verulam's cultural heritage value also lies in its association with John James Lundy, Peterborough's thirteenth mayor. John James Lundy purchased the lot in 1876, the same year he became mayor, and it served as his private residence and a place for social gatherings of Peterborough's elite for the next forty years.

Description of Heritage Attributes

Key exterior attributes that embody the heritage value of Verulam as one of the best examples of Second Empire dwellings in Peterborough include its:

- mansard roof with gabled and elliptical dormer windows;
- rectangular plan, with protruding three storey frontispieces in both the front and rear façades;
- tall windows with moulded surrounds;
- two additional wings on the east façade of the house; and
- tall single stacked chimneys.



(Photo courtesy of the City of Peterborough)

EXAMPLE 2: A CULTURAL LANDSCAPE

Description of Property – Old Town Cemetery, 1186 Queen Street East

The Old Town or Queen Street Cemetery is a small 19th-century cemetery found on the north side of Queen Street, between Pim and Elizabeth Streets.

Statement of Cultural Heritage Value or Interest

The Old Town Cemetery is of cultural heritage value as the last remaining 19th century rural municipal cemetery in Sault Ste. Marie. In use between 1863 and 1914, the gravesites found in the cemetery provide important insight into the lives of Sault Ste. Marie's inhabitants and reflect the key historical themes in the development of the city during this period.

The Old Town Cemetery is also of value as a good example of 19th century rural municipal cemetery design in a Northern Ontario community. It is characterized by a naturalistic setting to attract and comfort the living, the creation of a secure space for the dead, the use of markers and monuments to perpetuate the memory of individuals of historic importance and a park-like layout for public use.

Description of Heritage Attributes

Key attributes of the cemetery that reflect its value as an important link to the history of Sault Ste. Marie include:

- its original markers and monuments, with their surviving inscriptions;
- the variety of styles, materials and symbolism represented in the markers and monuments; and
- the range of size and sophistication of markers and monuments, from modest to elaborate.

Key attributes of the cemetery that reflect its value as an example of 19th century rural municipal cemetery design in northern Ontario include:

- its location, orientation and dimensions;
- its monuments, sculptures and structures;
- its park-like setting, including its mature trees; and
- the original plan and placement of gravesites.



(Photo: Ministry of Culture)

EXAMPLE 3: A COMPLEX OF BUILDINGS ON A SINGLE PROPERTY

Description of Property – Alton Mill, 1402 Queen Street

The Alton Mill is a late 19th-century industrial stone complex located on the bank of Shaw's Creek in the heart of the village of Alton. The 3.4 hectare property comprises the main two-storey stone mill building and three-storey water tower, a brick chimney stack, a stone livery, the remains of the stone wool warehouse and the adjacent mill pond and dam.

Statement of Cultural Heritage Value or Interest

The Alton Mill is one of only two late 19th-century industrial stone complexes remaining in the once-thriving industrial village of Alton. Established in 1881 as the Beaver Knitting Mill by industrialist and 'free thinker' William Algie, it was renowned nation-wide for the production of fleece-lined long underwear. The mill, often referred to as the 'Lower Mill', was subsequently owned by two other leading local industrialists, John Dods of the Dods Knitting Company and Frederick N. Stubbs of the Western Rubber Company. Stubbs purchased and converted the mill for the manufacture of rubber products in the mid-1930s.

The mill complex represents the longest-running, water-powered mill on the upper Credit River system, remaining in operation until 1982. Built between 1881 and 1913, the existing mill buildings are typical of industrial stone construction of the late 19th century, and reflect alterations, changes in use and the effects of flood and fire over a century of industrial operation.

Situated in the heart of the village amidst residential buildings of a similar age, the Alton Mill complex is a well-known local landmark that has defined the industrial character and history of the village of Alton since its construction.

Description of Heritage Attributes

Key attributes that express the value of the mill complex as an example of late 19th-century industrial style that reflects alterations, changes in use and the effects of flood and fire throughout a century of operation include its:

- plain but imposing design of rectangular buildings of coursed stone construction;
- varied ashlar renderings and symmetrical fenestration patterns associated with different period additions;
- interior features of the main mill building including steel fire doors and hardware, plank flooring, interior wood columns and steel tie-rod support systems, office paneling and glazing and remnant industrial machinery; and
- ancillary features including a square stone water tower with brick quoins and a hipped roof, a brick chimney stack, a remnant stone wool warehouse; a stone livery; the mill pond and associated dam and mill race.

Key attributes that express the value of the mill complex as a landmark that continues to define the industrial character and history of the village include:

- its location in the village core, adjacent to the mill pond and creek in the heart of the village, which forms significant vistas from Queen Street, a principal road running parallel to the creek and mill pond, and the 'Pinnacle', a prominent landform directly north of the mill.



(Photo courtesy of Sally Drummond, Town of Caledon)

DESIGNATION STATEMENTS AND DESCRIPTIONS – CHECKLIST

1

DESCRIPTION OF PROPERTY

- Has the general character and extent of what is being designated been briefly outlined, including the principal resources (i.e. buildings, structures, landscapes, remains, etc.) that form part of the designation?
- Has enough information been provided so that the property can be readily ascertained?
- Has the description been kept short – two or three sentences long?

2

STATEMENT OF CULTURAL HERITAGE VALUE OR INTEREST

- Have all the core values of the property been clearly conveyed?
- Have the standard evaluation criteria for determining cultural heritage value or interest been reflected?
- Has the statement been kept concise and to the point – two or three paragraphs long?

3

DESCRIPTION OF HERITAGE ATTRIBUTES

- Have the key heritage attributes of the property, those that need to be retained for the cultural heritage value of the property to be conserved, been identified?
- Has the relationship between the individual attributes and the heritage values identified in the *Statement of Cultural Heritage Value* been clearly demonstrated?
- Has the description kept to the property's existing attributes, not ones that could or should be added?



CONSERVING THE HERITAGE VALUE of a Designated Property

4

Property owners and municipalities share a concern about the cultural heritage value of the heritage property. They understand that caring for the property's heritage attributes protects its heritage value.

If a property is important for its architectural design or original details, and that design is irreparably changed, it loses its value and its integrity. Imagine the difference between a Georgian house built at the beginning of the 19th-century that has its original floors, windows and details, compared with a house of a similar vintage, that has been covered with aluminium siding and has been “updated” with vinyl windows and modern finishes.

If a property is designated for its association with a significant person or event, but the physical evidence from that period has disappeared, the property's cultural heritage value is diminished. What a difference it makes to see the symbols and hideaway

places associated with the Underground Railroad in a building, compared with only the ability to say “this happened here.”

The same consideration applies to properties that are designated for their contextual qualities – trees that have stood for a hundred years, a view that was seen by generations before us, a complex of industrial buildings that tell the story of the work that went on there. A building, structure or other feature that has lost its context, has lost an important part of its heritage value.

Designation of heritage properties provides a process for ensuring that their cultural heritage value is conserved over time. The following section focuses on how alterations to designated properties are managed, and the kinds of support that can be provided to assist with conservation.

Making alterations to designated properties

The alteration process under section 33 of the Ontario Heritage Act helps to ensure that the heritage attributes of a designated property, and therefore its heritage value, are conserved. If the owner of a designated property wishes to make alterations to the property that affect the property's heritage attributes, the owner must obtain written consent from council.

This applies not only to alterations of buildings or structures but also to alterations of other aspects of a designated property, such as landscape features or natural features, which have been identified as heritage attributes.

In general, this should be a cooperative process, where a property owner submits an application for the proposed work, and receives advice and guidance from the Municipal Heritage Committee and/or municipal staff. Council

makes the final decision on heritage permit applications unless this power has been delegated to municipal staff under Section 33(15) of the Ontario Heritage Act.

INSURANCE AND DESIGNATED PROPERTIES

Premiums should not go up as a result of a heritage designation. A variety of other reasons cause insurance companies to increase premiums for older buildings if there is a higher level of risk, such as out-dated wiring, old heating systems, etc. In fact, some companies do not insure buildings over a certain age. Designation itself, however, does not place additional requirements on the insurer and therefore should not affect premiums.



Heritage buildings can be adapted to a remarkable range of new uses, as can be seen in Toronto's Distillery District. (Photo Copyright 2006 Ontario Tourism)

The process for alterations is described below and outlined in a flowchart provided in the appendix:

1. Application to Council:

The owner applies to council to alter the property. All relevant information, including a detailed plan, must be included. When all the information required by Council has been received, notice of receipt of the complete application is sent to the owner. Some municipalities have formalized the heritage alteration permit process to facilitate changes to designated properties.

2. Review of Application:

Council reviews the application and seeks the advice of its Municipal Heritage Committee, where one has been established. In some municipalities, applications for alterations are sent directly to the committee or to municipal staff.



The new addition on the Woodstock Public Library respects the heritage value of the property. (Photo: Ministry of Culture)

3. Decision:

Within 90 days after notice of receipt of the complete application has been sent to the owner,² council or its delegate decides whether to consent to the alteration, to consent with terms and conditions, or to refuse the application altogether. Council notifies the applicant of its decision.

4. Referral Process:

If the owner objects to council's decision, the owner may apply to council for a hearing before the Conservation Review Board. Applications must be made within 30 days of receipt of council's decision. Council must then refer the matter to the Review Board for a hearing and publish notice of the hearing in a newspaper at least 10 days prior to the hearing. The Review Board then holds the hearing to review the alteration application.

5. Final Decision:

Following the hearing, the Conservation Review Board prepares a report including its recommendation to council. After considering the report, council decides whether to confirm or alter its original decision. The final decision rests with council. Council notifies the applicant and any other parties to the hearing, of its final decision.

General maintenance work, such as repainting exterior trim or replacement or repairs to an existing asphalt roof, and alterations and repairs to property features that are not

2. Unless an extension is agreed upon, failure of council to notify the owner within 90 days (after the applicant is notified that their application has been received) shall be deemed consent.

covered by the designation bylaw do not usually require heritage approvals. However, property owners may still need a building permit, and should be encouraged to check with their local building department.

Owners of designated properties, like other property owners, must maintain their properties to the basic standards set out in municipal maintenance and occupancy bylaws. As of April 2005, municipalities may also stipulate special minimum maintenance standards for the heritage attributes of designated properties.

International charters and agreements have established guiding principles for the conservation of heritage properties around the world. Conservation guidelines based on these principles have been developed at all levels of government. For more information on making sensitive alterations to heritage properties, you may wish to refer to:

- the conservation principles outlined on the Ministry of Culture website at www.culture.gov.on.ca; and/or
- the *Standards and Guidelines for the Conservation of Historic Places in Canada* at www.historicplaces.ca, developed under the Historic Places Initiative, a federal-provincial-territorial partnership.



These stones mark the final resting place of many Irish immigrants who died at Chaffey's Lock during the construction of the Rideau Canal. (Photo: Ministry of Culture)

ALTERATIONS TO CEMETERIES

The operation and management of cemeteries in Ontario falls under the Cemeteries Act, administered by the Ministry of Government Services. Many municipalities have taken an increasing interest in designation as a way of recognizing and protecting cemeteries – either through individual designation under Part IV of the Ontario Heritage Act, or as part of Heritage Conservation Districts under Part V.

If a cemetery is also designated under the Ontario Heritage Act, most day-to-day activities, including new burials, would not require heritage permits. As with other kinds of designated properties, a permit would be required if an activity or alteration is to be made that would affect the heritage attributes outlined in the designation. These might include the relocation of original markers, the removal of trees or other important landscape features, etc.

The Cemeteries Act contains specific procedures for the closure (i.e. removal) of cemeteries if the Registrar of cemeteries determines that the closure is “in the public interest.” These provisions apply to all cemeteries in Ontario including those that have been designated under the Ontario Heritage Act. For more information on the policy regarding the closure of designated cemeteries, refer to the Ministry of Government Services *Registrar's Bulletin No. 01-2005: Application for Closure of Heritage Cemetery Sites*.

Fortunately, many of Ontario's older cemeteries remain substantially intact, but they deserve thoughtful, long-term conservation planning. The Ministry of Culture's *Landscapes of Memories – A Guide for Conserving Historic Cemeteries: Repairing Tombstones*, contains information and technical advice intended to encourage the conservation of Ontario's heritage cemeteries in a way that recognizes their value as an irreplaceable heritage resource.

Providing support for conservation of designated properties

Municipal Heritage Committees and municipal staff can work with property owners to create conservation plans for heritage properties.

Many municipalities have also established financial incentive programs to assist property owners with the conservation of their designated heritage properties.

These include Heritage Property Tax Relief programs to support ongoing maintenance and conservation of designated properties. The province shares in the cost of these programs by funding the education portion of the property tax relief. For more information, refer to the Ministry of Culture's publication entitled, *Getting Started: Heritage Property Tax Relief – A Guide for Municipalities* at www.culture.gov.on.ca.

Grant and loan programs also exist at the provincial and federal levels to help with individual capital projects.



The restoration of Peterborough's former market hall was a key part of the city's broader heritage conservation and economic development program. (Photo courtesy of Erik Hanson, City of Peterborough)



5

Preventing Demolition

As of April 2005, designation under the Ontario Heritage Act gives council the power to prevent the demolition of a building or structure on a heritage property. If the owner of a designated property wishes to demolish or remove a building or structure, the owner must obtain written consent from council.

The process, under section 34, 34.1 & 34.3 of the Ontario Heritage Act, is as follows:

1. Application to Council:

The owner applies to council for a permit to demolish or remove the building or structure.

2. Review of Application:

Council has 90 days to review the application and seek the advice of its Municipal Heritage Committee, where one has been established.

In many cases, an alternative to demolition can be negotiated with the owner and agreed to at this stage. Council,

with the aid of its Municipal Heritage Committee and concerned citizens, has an opportunity to work with the property owner toward a means to conserve the threatened property.

Depending on the circumstances, there are several approaches:

- Sharing information with the owner about the property's heritage value and the benefits of heritage conservation;



The former mill in Elora is now operated as an inn and restaurant – a very successful adaptive re-use of a heritage property. (Photo Copyright 2006 Ontario Tourism)

- Exploring ideas about how the building or structure might contribute to a proposed development or future use of the site;
- Suggesting alternative uses for the building or the property;
- Providing an opportunity for the owner to sell the heritage property to the municipality or a purchaser who will conserve it; or
- Expropriating the property.

3. Decision:

Within the 90 day period,³ and after considering the advice of the Municipal Heritage Committee, council must decide whether to refuse the application, consent to it, or consent with terms and conditions.

If council does choose to allow the demolition, it is advisable to include terms and conditions. For example, council can require that the owner obtain a building permit for a replacement building on the property. This helps to prevent valuable heritage structures from being replaced by vacant lots. The owner would need to apply for the building permit through the normal municipal process, and will only receive such a permit for a new building that meets applicable zoning and other requirements.

At minimum, council should require full documentation of a heritage building or structure prior to its demolition, as well as documentation of any other heritage

resources on the property that may be affected.

Council notifies the applicant and the Ontario Heritage Trust of its decision. Council also publishes its decision in a local newspaper.

Where there is a potential impact on archaeological resources, an archaeological assessment should be undertaken in accordance with the Ontario Heritage Act.

4. Appeal Process:

An owner may appeal council's decision to deny the permit, or to consent to it with conditions, to the Ontario Municipal Board (OMB).

An appeal must be made within 30 days of receipt of council's decision. The appeal must set out the reasons for the objection to the decision. The appeal must also be accompanied by the fee prescribed under the Ontario Municipal Board Act.

Following receipt of the notice of appeal, the OMB gives notice of the hearing date and then holds the hearing. A member of the Conservation Review Board (CRB) may be appointed to sit on the panel of the OMB hearing the appeal.

5. Final Decision:

After holding the hearing, the OMB decides whether to dismiss the appeal, to order the municipality to consent to the demolition, or to consent with such terms and conditions as the OMB specifies. The OMB's decision is final.

A detailed flowchart outlining the demolition application process is provided in the appendix to this guide.

³ Failure of council to notify the owner within 90 days shall be deemed consent.



6

Amending a Designation Bylaw

Over time, municipal councils may need to update different parts of an existing designation bylaw. Generally, a bylaw may need to be amended because:

- Changes affecting the *Statement of Cultural Heritage Value or Interest* or the *Description of Heritage Attributes* have been made to the property or new information has emerged about the property's significance;
- the *Legal Description* has changed or must be corrected; or
- the information provided in the original bylaw does not provide sufficient information to guide and manage alterations to the property.

If the amendments to an existing bylaw are substantial, the procedure provided in Section 29 of the Ontario Heritage Act for passing the bylaw in the first instance would be the procedure to employ in amending it. A flowchart outlining this process is provided in the appendix.

For minor amendments to a designation bylaw, however, municipalities can follow an abbreviated process. As of April 2005, section 30.1(2) to (10) of the Ontario Heritage Act provides a process for amending designation bylaws that does not require the public notice required for designation.

A municipality should seek the advice of its solicitor when considering the options for amending a bylaw.

Bylaws can be amended under section 30.1(2) to (10) to:

- clarify or correct the *Statement of Cultural Heritage Value or Interest* or the *Description of Heritage Attributes*;
- correct the *Legal Description* of the property; or
- revise the language of the bylaw to make it consistent with the current requirements of the Act or its regulations.

Notice of the proposed amendment is sent to the owner of the property, who is given the opportunity to object. If the owner does not object within 30 days then council may pass the amending bylaw. If the owner chooses to object, the proposed amendment is referred to the Conservation Review Board (CRB) in a process similar to the objection process for designation. As with designations, council must consider the CRB report before deciding to go ahead with the amendment, or to withdraw its intention to amend the designation. Council is not bound, however, to follow the recommendation of the CRB.

A flowchart outlining this process is provided in the appendix to this guide.

Repeal of Designation Bylaws

There are rare instances where a designation bylaw may need to be repealed. If a building on a designated property has been relocated or demolished, council must repeal the designation bylaw in question to ‘clean up’ the legal title of the affected property. This also ensures that municipal and provincial registers of heritage properties are accurate and up to date. For a relocated designated building or structure, council may consider passing a new designation on the property that the building or structure has been relocated to.

As with the amending process, flowcharts outlining the repeal process are provided in the appendix to this guide.

In a case where an owner requests a repeal of the bylaw designating the owner’s property, it is important to determine the nature of the owner’s concerns. It is advisable for the municipality, through the Municipal Heritage Committee or municipal staff, to discuss the matter with the owner. Because properties are designated to protect and conserve them for future generations, the repeal of a designation bylaw is a serious matter that should be given careful consideration.



7

RESOURCES AND

Further Information

Heritage designation is an important way for communities to recognize and protect places of cultural heritage value. The efforts made today to conserve community heritage will ensure a lasting legacy for future generations.

For more information on the Ontario Heritage Act and conserving your community heritage, contact the Ministry of Culture or the Ontario Heritage Trust at:

Ministry of Culture

900 Bay Street
4th Floor, Mowat Block
Toronto, ON M7A 1C2
Tel: 416-212-0644
1-866-454-0049
TTY: 416-325-5170
www.culture.gov.on.ca

Ontario Heritage Trust

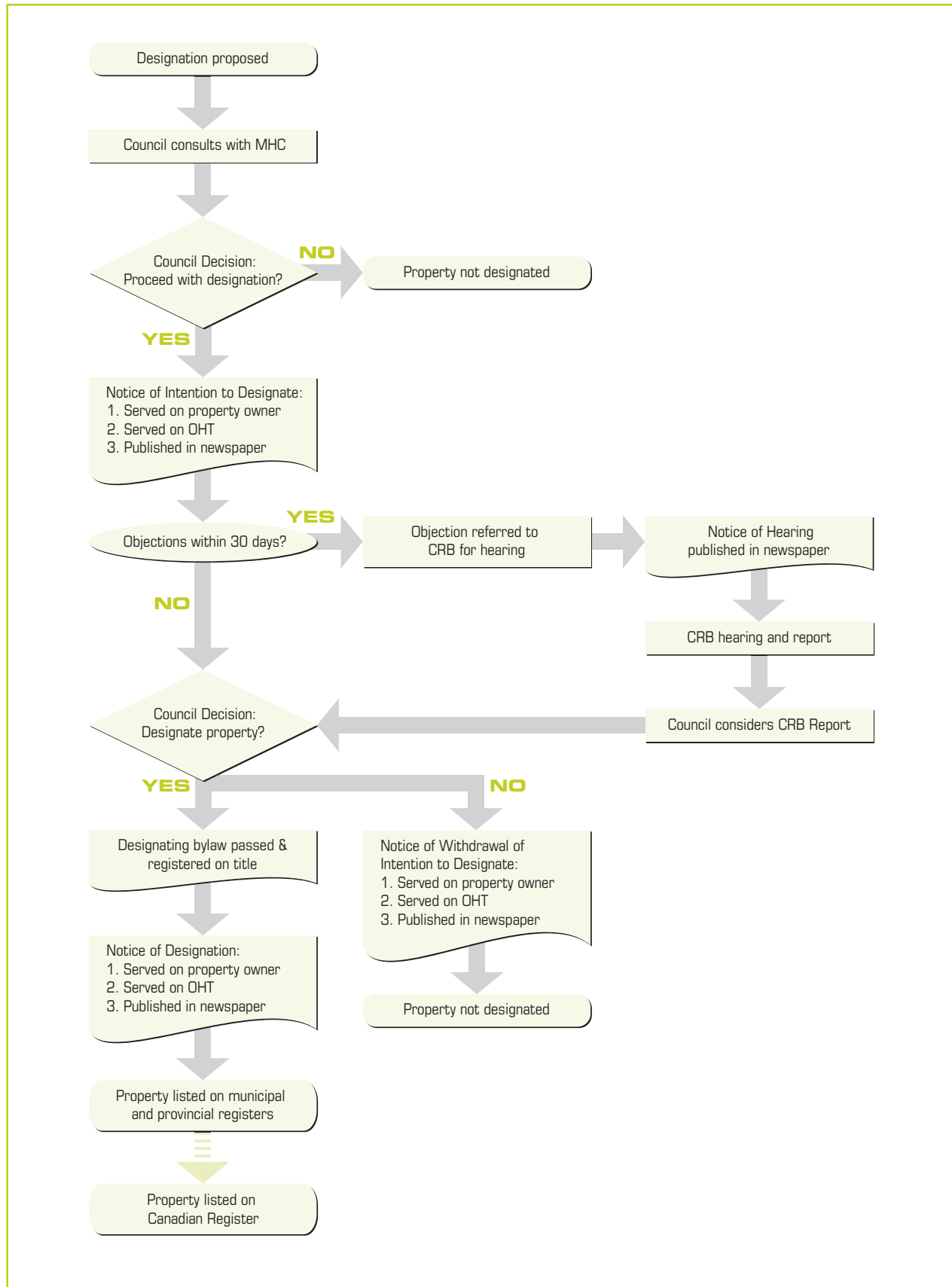
10 Adelaide Street East
Toronto, ON M5C 1J3
Tel: (416) 325-5000
www.heritagetrust.on.ca



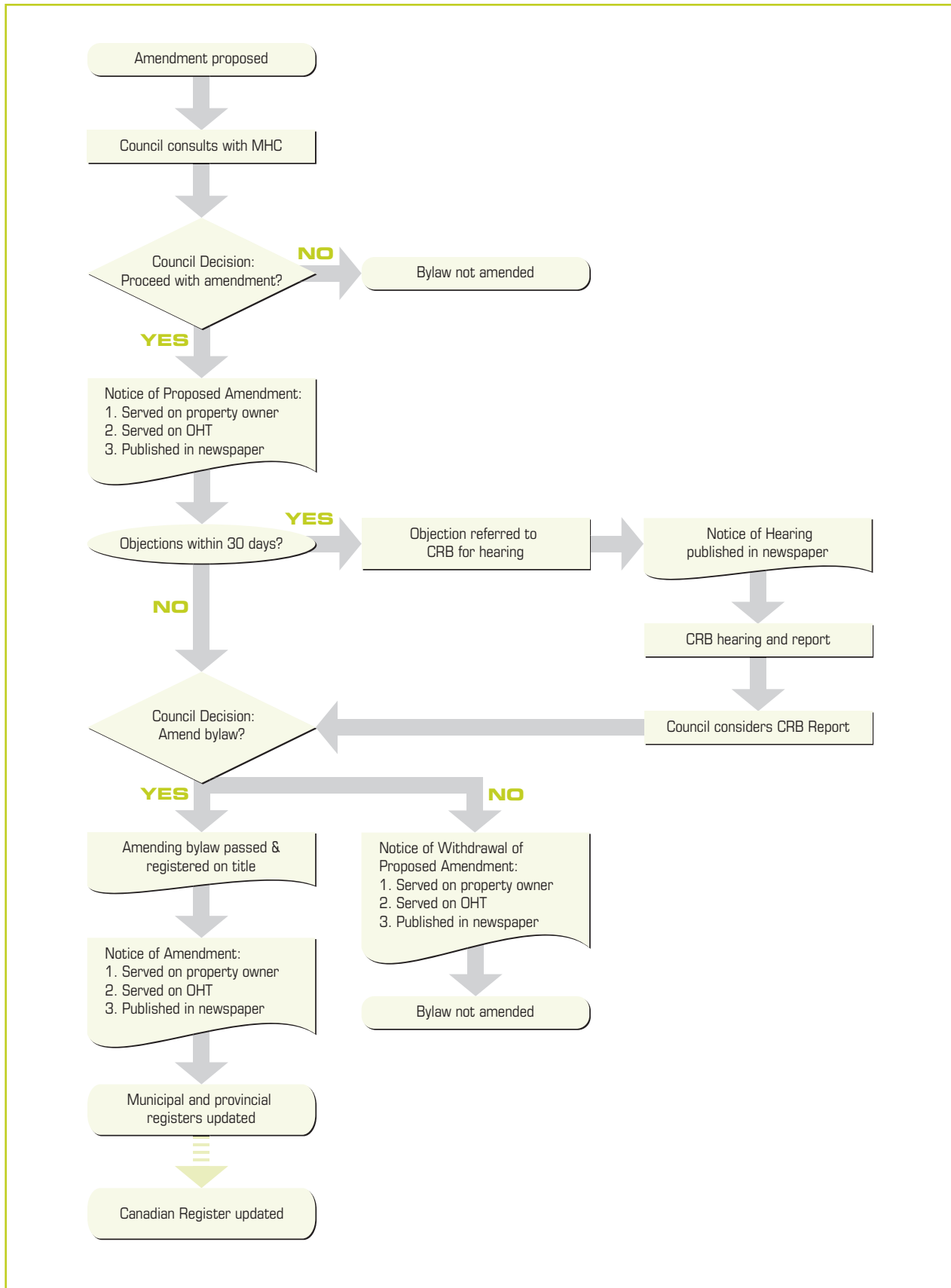
Appendix: Flowcharts

1. Designation by Municipal Bylaw
2. Amendment of Designating Bylaw
3. Amendment of Designating Bylaw (Exception)
4. Repeal of Designating Bylaw, Council's Initiative
5. Repeal of Designating Bylaw, Owner's Initiative
6. Alteration of Property
7. Demolition or Removal of Structure

1. Designation by Municipal Bylaw [Section 29 of the Ontario Heritage Act]

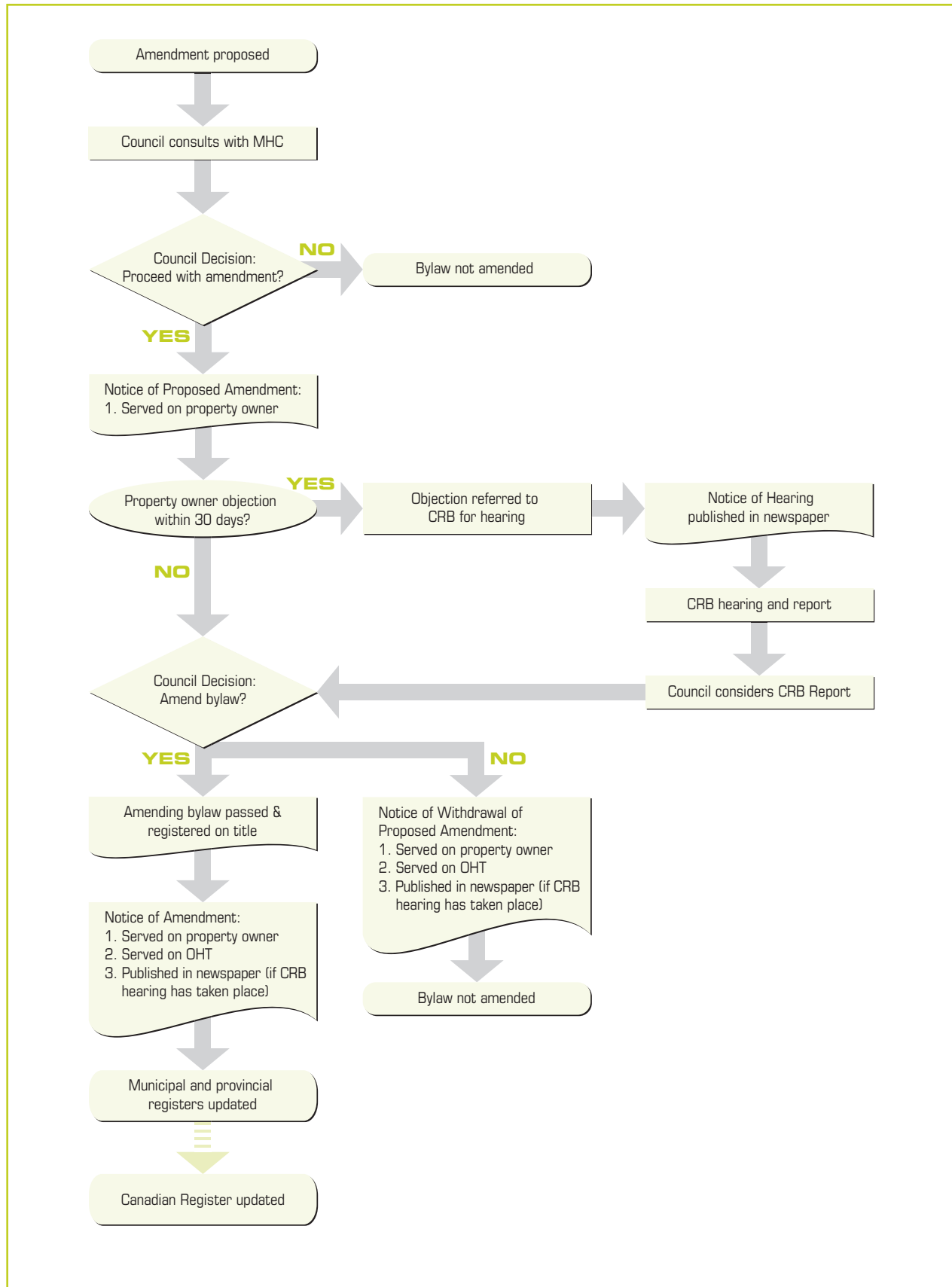


2. Amendment of Designating Bylaw (Section 30.1 (1) of the Ontario Heritage Act)



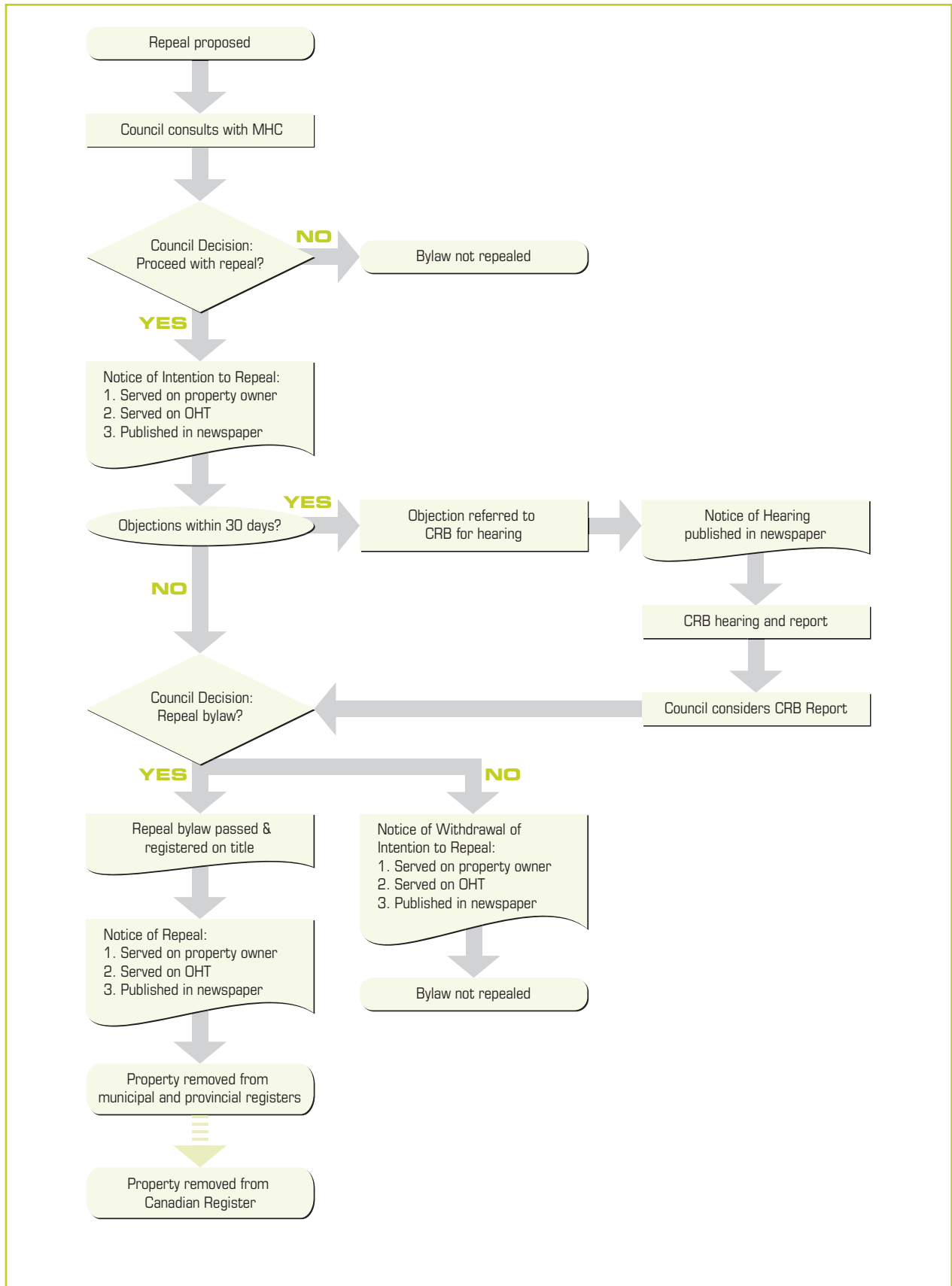
3. Amendment of Designating Bylaw (Exception)

(Section 30.1 (2) to (10) of the Ontario Heritage Act)



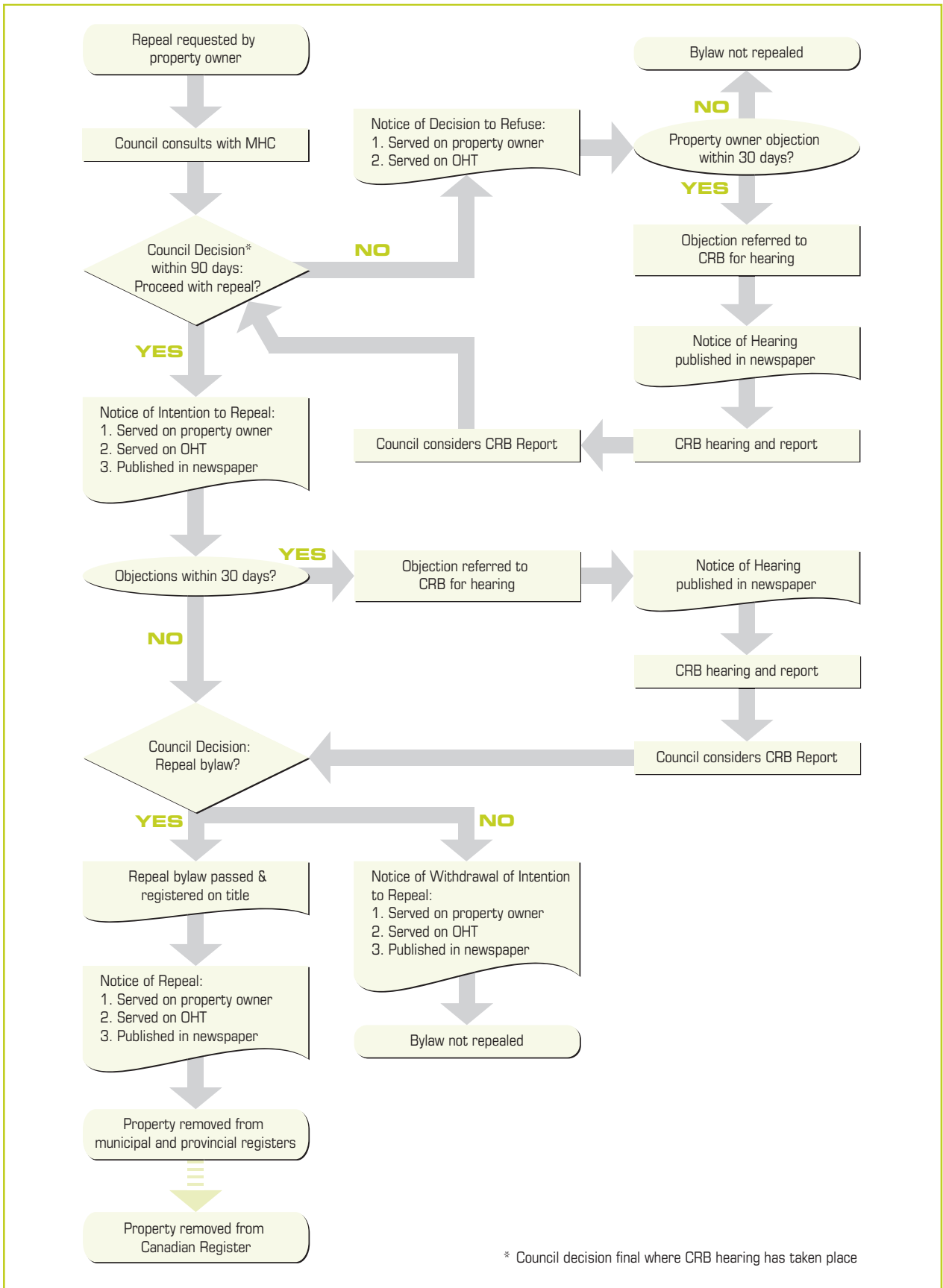
4. Repeal of Designating Bylaw, Council's Initiative

(Section 31 of the Ontario Heritage Act)

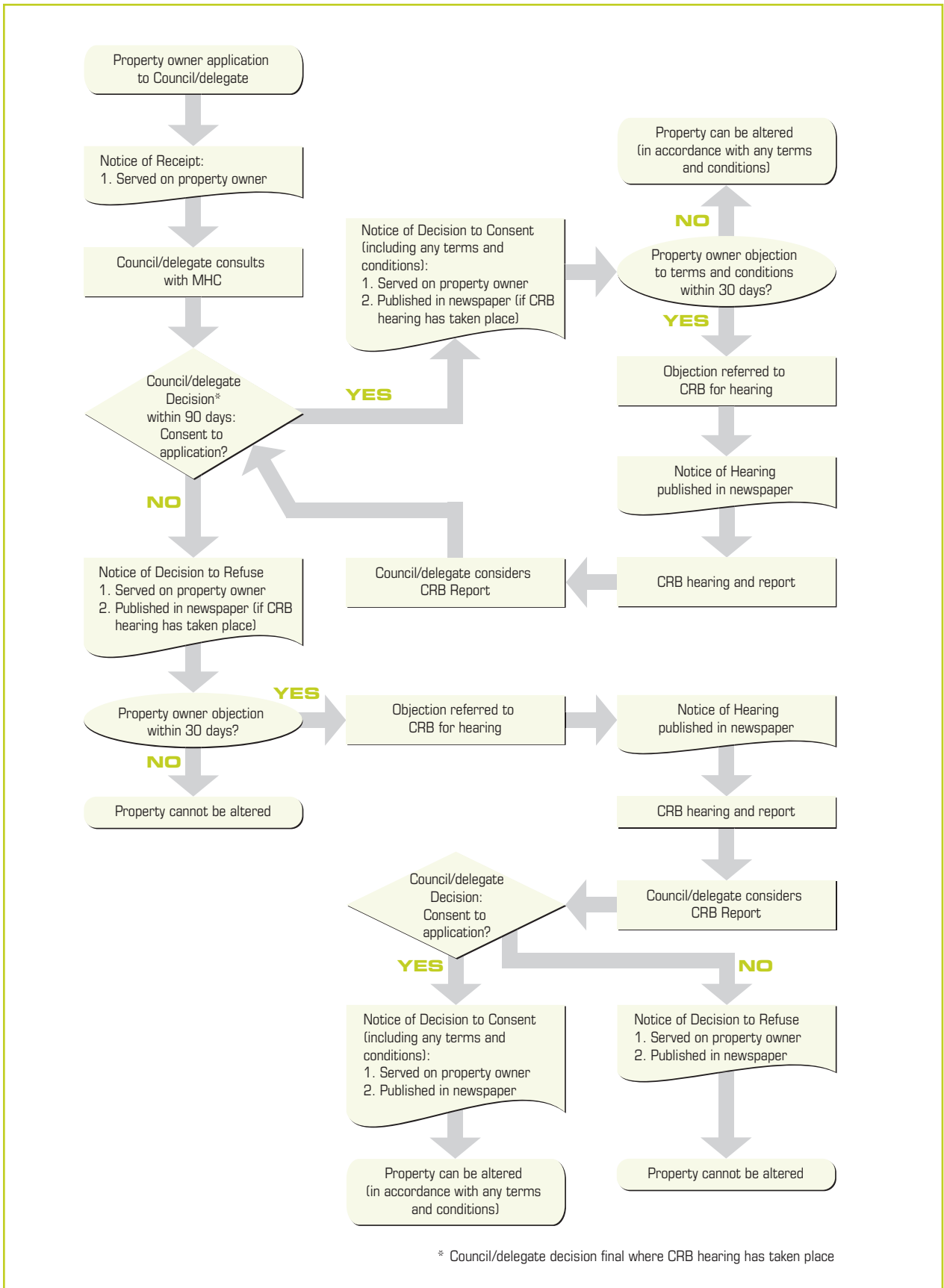


5. Repeal of Designating Bylaw, Owner's Initiative

(Section 32 of the Ontario Heritage Act)

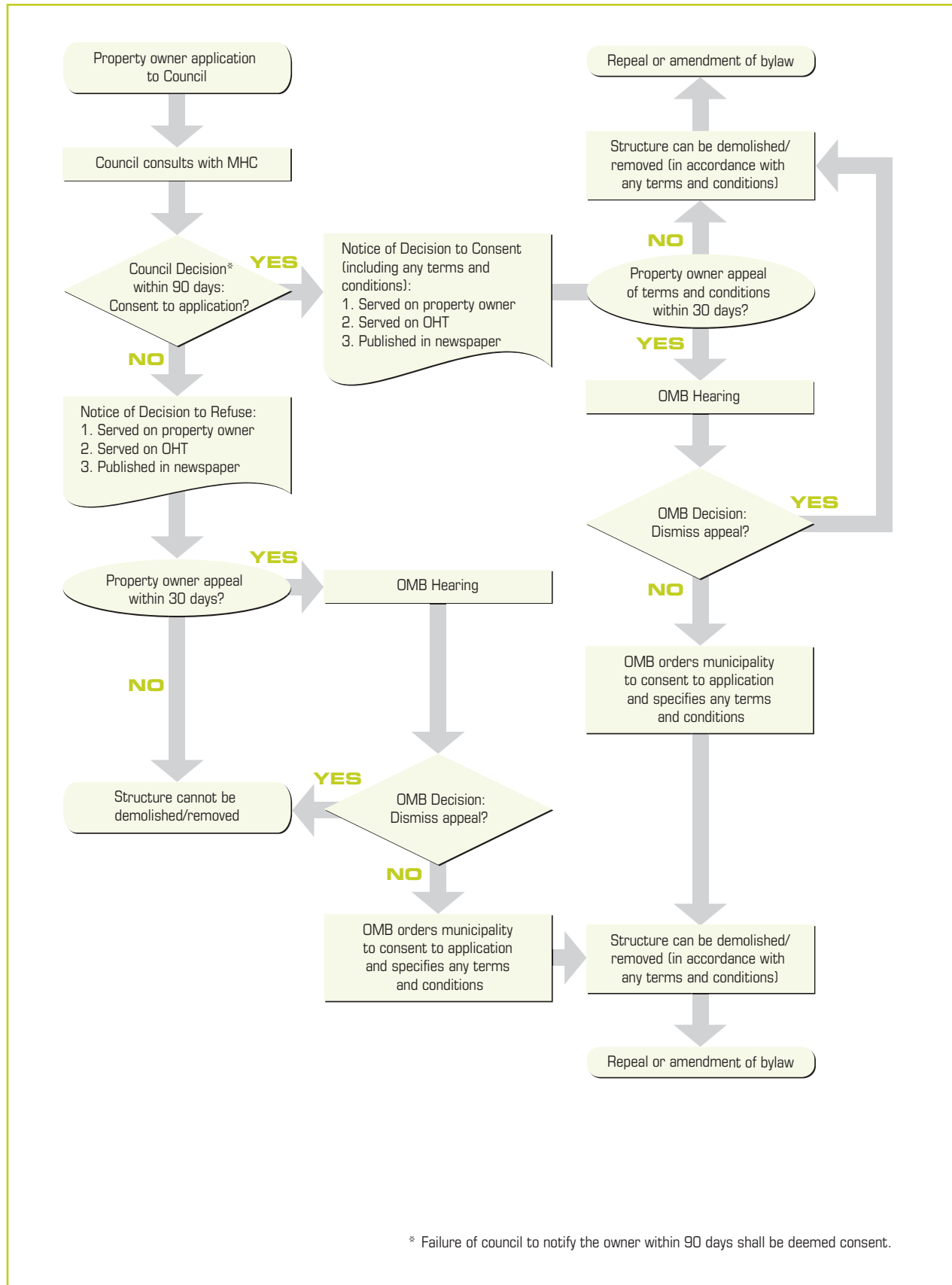


6. Alteration of Property (Section 33 of the Ontario Heritage Act)



7. Demolition or Removal of Structure

(Section 34, 34.1 & 34.3 of the Ontario Heritage Act)



* Failure of council to notify the owner within 90 days shall be deemed consent.

Acknowledgements

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Thanks also to the many others in the heritage community who helped with the development of this guide and have provided ongoing assistance and advice to staff at the Ministry of Culture.

The Government of Ontario gratefully acknowledges the Government of Canada's contribution to this publication.

Cover background image: City of Westport (Photo Copyright 2006 Ontario Tourism).

Page 1: (Left) Woodstock Museum, Woodstock (Photo Copyright 2006 Ontario Tourism).

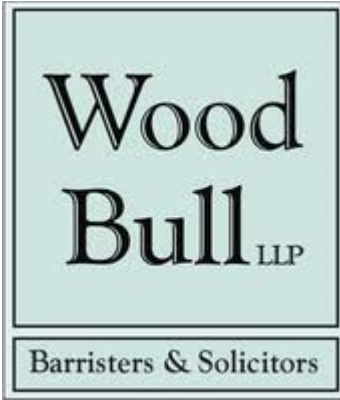
Page 3: (Right) Inge-Va, Perth (Photo courtesy of Ontario Heritage Foundation).

Page 28: (Left) Forster-Rawlinson Log House & Barns, Richmond Hill (Photo: Ministry of Culture), (Middle) McGregor-Cowan House, Windsor (Photo courtesy of Nancy Morand, City of Windsor).

Page 30: Limestone townhouses, Kingston; Grand River, Cambridge (Photos: Ministry of Culture), Southwestern Ontario (Photo Copyright 2006 Ontario Tourism).

Page 32: St. Marys Paper Inc, Sault Ste. Marie (Photo: Ministry of Culture), Southwestern Ontario and Market Square, Kingston (Photo Copyright 2006 Ontario Tourism).

Page 33: Former Walkerville Post Office, Windsor (Photo courtesy of Nancy Morand), Muskoka region and Pakenham Bridge, Mississipi Mills (Photo Copyright 2006 Ontario Tourism).



**Tab 14 - Cultural Heritage Landscapes/
Alteration - Demolition**



Tab 14 a) - Cultural Heritage Landscape:

Ontario Superior Court of Justice - *Town of Oakville v. Clublink*, 2018 ONSC 6386(CanLII)

E.M. MORGAN J.

I. Sections 33 and 34 of the *Ontario Heritage Act*

[1] Clublink Corporation ULC and Clublink Holdings Limited (together, “Clublink”), the owner of the renowned Glen Abbey Golf Course (the “Golf Course” or “Glen Abbey”), seeks to demolish the Golf Course and redevelop it as a residential community. The Town of Oakville (the “Town”) opposes this plan. It has designated the Golf Course and the property on which it is situated a heritage site under section 29, Part IV, of the *Ontario Heritage Act*, RSO 1990, c. O.18 (“*OHA*”).

[2] The dispute is, formally speaking, narrowly focused on a question of procedure: having had its property designated under s. 29 of the *OHA*, can Clublink now apply to the Town under s. 34(1) of the *OHA* for permission to demolish the entire Golf Course, or must it proceed under s. 33 and apply to alter the property? For the parties, this is a significant procedural distinction for a number of reasons. One of the most important of these reasons is a tactical one based on the different routes of appeal entailed in an application under each of these respective sections of the *OHA*.

[3] Clublink prefers the s. 34(1) option, as any decision by the Town council under that section carries with it a right of appeal to the Local Planning Appeal Tribunal (“LPAT”). LPAT has the authority to either uphold or overturn the decision of Town council under s. 34. By contrast, the Town prefers the s. 33 option, as the only right of “appeal” under that section is to the Conservation Review Board (“CRB”). The CRB, however, cannot overrule the decision of the Town, but rather only has powers to make recommendations to Town council, which retains the power to make a final decision on the property owner’s application.

[4] Beyond the narrow procedural issue at stake, each side in this controversy expresses great suspicion of the other’s ultimate ambitions. Clublink made it clear during the hearing of the matter that it fears that the Town will compel it to forever run an aging and outdated sporting facility. For its part, the Town made it clear it fears that Clublink will replace an extraordinarily picturesque property which is a centrepiece of the Oakville community with something altogether ordinary. Like dueling Joni Mitchells, Clublink accuses the Town of making it captive on a carousel of time, while the Town accuses Clublink of taking paradise and putting up a parking lot.

[5] Neither of these portraits is accurate. But perhaps more importantly, each side’s portrayal of the other significantly overstates the actual legal contest in this Application and Counter-Application. Neither the Town’s designation of Glen Abbey as a cultural heritage landscape, nor Clublink’s redevelopment proposal, is at stake here.

[6] The question considered in the Application and Counter-Application before me here is, as stated above, a strictly procedural one: can Clublink use section 34 of the *OHA*, which permits a property owner to apply to Town council for permission to “demolish or remove a building or structure on the property”, to seek consent for the removal of the Golf Course in its entirety (or nearly its entirety)?

[7] The Town submits that the Golf Course is not a “building or structure”, and that its natural and landscaped features such as trees, creeks, tees, greens, fairways, bunkers, and watercourses, are likewise not buildings or structures within the terms of section 34. Clublink submits that section 34 is a remedial section for properties designated under the *OHA* and that its terms are sufficiently broad to cover properties of all shapes and sizes including the Glen Abbey Golf Course.

II. The Glen Abbey property

[8] Clublink has owned the Glen Abbey property since February 1999, when it bought it from the Royal Canadian Golf Association, the predecessor of what is now known as Golf Canada. The property is located at municipal address 1313 and 1333 Dorval Drive, Oakville, Ontario (the “Property”). It consists of an 18-hole course designed by Jack Nicklaus to be a championship golf course that was constructed in the 1970s, together with a number of buildings. The roughly 94 hectares of the Property includes 32 hectares of valleylands located in the Sixteen Mile Creek Valley and approximately 62 hectares of tablelands above the valley.

[9] Situated on the Property is also a building known as the RayDor Estate, which is leased to Golf Canada and a number of other office tenants. This portion of the Property, which has the municipal address 1333 Dorval Drive, is not part of the Golf Course, and was already subject to a designation under the *OHA* at the time of Clublink’s purchase in 1999. This previous designation, which took place in 1993, remains in force. It relates to the RayDor Estate building alone, and by its express terms does “not extend outward to include the golf course”.

[10] In addition, in July 2016 ClubLink purchased part of the backyard of a residential property that abuts the Property, municipally known as 1301 Greeneagle Drive (the “Greeneagle Property”). The Greeneagle Property has never been part of the Golf Course or the Property, and prior to 2016 was owned by an owner unrelated to Clublink.

[11] The Town submits that for 30 years after its construction in the 1970’s, there was no talk by the owner of the Golf Course of converting it to any other use. Clublink submits that this is not quite accurate, and that on one or two occasions, including in the process of appraising it for property tax purposes, Clublink and its predecessor in title, together with the Town, did raise the potential for redeveloping the Golf Course and Property. Regardless of this debate among counsel, the fact is that the Golf Course has been consistently used as a championship golfing facility, has frequently been the home of the Canadian Open, and has been a prestigious scenic and recreational focal point for the Town of Oakville.

[12] In 2015, Clubink’s contract for hosting the Canadian Open was coming to an end. Although it still described Glen Abbey as one of its premier golfing properties, Clublink determined that it was economically advantageous to contemplate redeveloping the Property as a residential community, and to that end retained planners and commenced work on a redevelopment proposal. At about the same time, the Town engaged in what it calls a Cultural Heritage Landscape strategy and began identifying properties that could be designated as cultural heritage properties under the *OHA*.

[13] The parties each contend that the other commenced their respective process as a response rather than proactively, but in fact they each appear to have come to their processes as a result of independent decisions. In any case, for the purposes of this Application the reciprocal arguments about ‘who started it’ are not particularly relevant. There is nothing inherently wrong with a property owner submitting a redevelopment proposal, and likewise nothing inherently wrong with a municipality identifying a property as suitable for cultural heritage designation. The question is, the Town having designated the property under the *OHA*, what is the proper route for the owner to take in seeking to make far-reaching changes to the property in the nature of those proposed by Clublink?

[14] That said, a brief explanation of background is necessary to put the Town’s heritage designation and Clublink’s redevelopment proposal into the relevant policy context. In early 2015, the Town began the process of implementing its Cultural Heritage Landscape strategy by engaging in a three-stage process: a) phase 1 – conduct an inventory of public and private lands for potential cultural heritage landscapes and narrow the 50 identified potential significant cultural heritage sites to 8 possible sites for designation; b) phase 2 – conduct a detailed assessment of the 8 properties and narrow the high priority landscapes to 4 for potential designation; and c) phase 3 – implement appropriate measures for protection of the 4 properties identified as significant cultural heritage landscapes.

[15] At a meeting of Oakville municipal council in May 2017, council directed staff to give priority to Glen Abbey in implementing cultural heritage protection measures. This ultimately resulted in the designation of the Property (including the entire Golf Course and, apparently, the Greeneagle Property) under s. 29 of the *OHA*. Once designated, s. 33 of the *OHA* provides that the owner may not “alter the property or permit the alteration of the property if the alteration is likely to affect the property’s heritage attributes”.

[16] In its factum, counsel for the Town of Oakville describes the significance of the Golf Course, stating that it is one of Canada’s most famous courses, was designed as a tournament golf course that has hosted the Canadian Open, Canada’s premier golf tournament, and was the first one designed by legendary golfer and designer, Jack Nicklaus [para 34]. The Town’s written submissions go on to describe the features of the designated property that the designation seeks to preserve, noting that it contains “tees, greens, fairways, bunkers, hills, mounds, paths, trails, trees, vegetation, streams, creeks and ponds” [para 35].

[17] Counsel for the Town then goes on to observe what the Town perceives as the cultural significance of this landscape:

Since it opened in 1976, Town planning policy has recognized the importance of the Glen Abbey property a major golf-related recreation and tourist facility, which provides the Town with significant tourist, economic and cultural benefits, and accordingly, has constrained its present and future uses to uses that are compatible with the property's principle use as a golf course [para 36].

[18] To be sure, it is not the Town's position that having been designated a cultural heritage landscape, the Golf Course must be frozen in time. Counsel for the Town made it clear in their submissions in court that the Town understands that a golf course, like many other sporting facilities, needs updating and renewal as time goes on. The Town is not in principle opposed to renovating and modernizing the 1970's-era design, but requires Clublink to go through the procedure provided for in the *OHA* for applying for such changes – i.e. a s. 33 application to alter any heritage attributes of the Property.

[19] As indicated, in the meantime Clublink proceeded to work on its redevelopment proposal. It hired a heritage consultant who specified how various cultural heritage resources on the Glen Abbey property could be retained in the proposal. Thus, in addition to a range of housing, the redevelopment proposal envisions a preservation of all streams and waterways, including the Sixteen Mile Creek that runs through the property. Clublink's counsel describes in its factum the proposal as having been produced with an eye to preserving the public, community-oriented nature of the property by conveying significant portions of the park and woodland areas of the property to the municipality or other appropriate public authority [para 2].

[20] Counsel for Clublink goes on to state what Clublink perceives as a significant contribution to the heritage aspects of the Property:

Clublink contemplates that the entire valleylands, which includes Sixteen Mile Creek, and other portions of the property (totaling approximately 50 hectares or 124 acres) would be conveyed to a public authority without compensation as a condition of approval of the redevelopment. The result would be the conversion of privately owned green space, now accessible only to those who can access the golf course, to public green space open to everyone [para 15].

[21] As can be seen, the Town's conception of Glen Abbey's significance and Clublink's conception of its significance do not meet. Counsel for Clublink focused its development proposal on the Provincial Policy Statement with which s. 3(5) of the *Planning Act* requires new developments to conform. This includes heritage considerations as well as housing considerations, environmental considerations, protecting existing ecosystems, infrastructure considerations, and intensification of development. The Town, on the other hand, focused its designation proposal on preserving the Golf Course as a socio-cultural amenity, and implemented the Ministry of Tourism, Culture and Sport guidelines proclaiming that a cultural

heritage “landscape”, and not just a discrete property, could be designated under s. 29 of the *OHA*.

[22] In other words, while Clublink invoked planning principles, the Town invoked Culture and Sport principles. No amount of preservation of greenery, water, and aesthetic vistas can satisfy the Town, since what the Town wants to preserve is the Golf Course *qua* golf course. Likewise, no amount of permission to renovate or update the aging sporting facility can satisfy Clublink, since what Clublink wants is to demolish the Golf Course and build single-family housing on the portion that it does not turn over in a raw, natural state, to the public.

[23] The Town’s mistrust of Clublink’s development ambitions and Clublink’s mistrust of the Town’s cultural heritage preservation ambitions have led to a procedural stalemate. Clublink wishes to remove the Golf Course in its entirety, and has applied to Town council do so under s. 34(1) of the *OHA*. While Clublink is perhaps not optimistic about the Town’s response to this application, it takes comfort in the fact that s. 34 provides for the possibility of a binding appeal to LPAT. The decision of LPAT will therefore be the final one.

[24] The Town wishes to preserve the Golf Course, and has refused to accept and process Clublink’s s. 34(1) application. Rather, it has advised Clublink to apply under s. 33 of the *OHA* for permission to do alterations to heritage aspects of the Golf Course. While the Town is perhaps not optimistic about Clublink’s response to such an application, it takes comfort in the fact that s. 33 provides only for a non-binding recommendation on appeal to the CRB. The Town’s own decision will therefore be the final one.

III. Is a golf course a “structure”?

[25] Clublink submits that s. 34 is the correct procedural route for seeking the Town’s permission to demolish the Golf Course. This includes the demolition or removal of 16 buildings as well as the tees, greens, sand traps and other hazards, embankments, fairways, cart paths, irrigation and drainage systems, and other infrastructure of which the Golf Course is comprised.

[26] Section 34(1) of the *OHA* provides that,

No owner of property designated under section 29 shall demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal.

[27] There is little doubt that the various buildings that are part of the Golf Course fall within the ambit of s. 34(1). The real issue between the parties is whether the other unique characteristics of the Golf Course qualify as “structures” for the purposes of this section.

[28] The Town takes the view that the landscaping and other distinctive features of the Golf Course are not “structures” in this sense. It submits that a narrow interpretation of this provision

is necessary to implement the overall policy of the *OHA* in preserving cultural heritage, and that any broad or flexible interpretation of a word such as “structure” in s. 34(1) will result in the owner of a property designated under s. 29 sidestepping the municipality’s right to determine the cultural heritage value and attributes of a designated property. In this sense, the Town perceives Clublink’s resort to a s. 34 application as a form of “improper conduct”.

[29] Clublink takes a broader view of how s. 34(1) is to be interpreted. It submits that an application under this section is a specific right granted to owners of designated properties in order to protect it from potential overreaching by municipal authorities. It takes issue with the Town’s understanding of the purpose of the *OHA*, and characterizes the legislation’s purpose as incorporating the need “to balance the interests of the public, community and the owner”: *Tremblay v Lakeshore (Town)*, [2003] OJ No 4292, at para 27 (Div Ct). In this sense it sees redevelopment as consistent with the goals of the *OHA*, stressing that the policy under Part IV of the *OHA* – “Conservation of Property of Cultural Heritage Value or Interest” – is one of conservation, not preservation, and that “conservation work must be coordinated and integrated with planning and other future-oriented activities”: *Rams Head Development Inc. v Toronto*, 2010 CarswellOnt8559, at para 63 (OMB), quoting Parks Canada, *Standards and Guidelines for the Conservation of Historic Places in Canada*.

[30] The competing prongs of the *OHA*’s policy objectives were discussed at length by the Supreme Court of Canada in *St. Peter’s Evangelical Lutheran Church v Ottawa*, [1982] 2 SCR 616, 623-4. The Court observed that municipal concerns over heritage are to be exercised in a way that accommodates the owner’s economic interests.

The *Ontario Heritage Act* was enacted to provide for the conservation, protection and preservation of the heritage of Ontario. There is no doubt that the *Act* provides for and the Legislature intended that municipalities, acting under the provisions of the *Act*, should have wide powers to interfere with individual property rights. It is equally evident, however, that the Legislature recognized that the preservation of Ontario’s heritage should be accomplished at the cost of the community at large, not at the cost of the individual property owner, and certainly not in total disregard of the property owner’s rights. It provided a procedure to govern the exercise of the municipal powers, but at the same time to protect the property owner within the scope of the *Act* and in accordance with its terms.

[31] The dual aspect of the heritage policy was reiterated by the Court of Appeal in *Toronto College Centre Street Ltd. v Toronto (City)* (1986), 56 OR (2d) 522, at para 38. Cory JA, for a unanimous Court, stressed that the *OHA* is to be interpreted purposively, and that the purpose is to accomplish heritage conservation in a way that does not run counter to the property owner’s rights.

...the provisions of the Ontario Heritage Act, 1974 allowing municipal interference with private property rights should be construed purposively and liberally in order to allow municipalities to effectively preserve Ontario’s

heritage. On the other hand, the court recognized that there was a counterbalancing need to give equally liberal construction to those provisions of the Ontario Heritage Act, 1974 that were designed to protect the landowner's rights.

[32] The Court of Appeal went on in *Toronto College* to acknowledge that it is in the very nature of a designation under the *OHA* that the ability to fully exploit privately owned property will be curtailed. Thus, it was compelled to state, at para 42, that as a substantive matter, “[t]o achieve its aims the Act must interfere with private property rights.” This acknowledgement was then tempered with the observation that the other side of the coin from the *OHA*'s substantive objectives, which are tilted toward the municipality, are its procedures, which are tilted toward the owner. Thus, the Court was compelled to continue, at para 42, with the statement that, “[t]o counterbalance such interference numerous procedural safeguards are enacted for the benefit of the property owner.”

[33] It is evident that s. 34(1) of the *OHA*, with its right of appeal to the LPAT, is one such procedural safeguard. That is, if an owner of a designated property is not satisfied with the substantive determination by the municipal council as to whether demolition should be permitted to occur, the owner is protected by means of a procedural right to appeal the decision to a tribunal with authority to overturn the municipal decision. It almost goes without saying that the interpretation of the *OHA*, as with all statutes, is to reflect the object and intention of the legislature that enacted it: Sullivan and Dreidger, *Construction of Statutes* (4th ed., 2002), pp. 1-2. The objective of the legislature in providing procedural protection for the property owner, as identified by the Court of Appeal in *Toronto College*, therefore provides an important guidepost in interpreting and applying section 34(1).

[34] Section 26 of the *OHA* defines “property” as “real property and includes all buildings and structures thereon”. There is, however, no specific definition in the *OHA* for “structure” as it is used in section 34(1). The interpretation of this term, as indicated above, is to be in keeping with the statute's policy objectives, and is to involve consideration of the context of the provision within the statute and of the statute as a whole: Sullivan and Dreidger, p. 282. It is to be read in its “grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: *Re Rizzo and Rizzo Shoes Ltd.*, [1998] 1 SCR 27, at para 21.

[35] Counsel for the Town, in their written submissions, place considerable emphasis on the fact that the expert consultants retained by Clublink did not use the term “structures” to describe the golf course and its natural features, but rather primarily used this term to refer to buildings. It is the Town's view that Clublink's experts referred to the phrases “structure”, “building”, and “landscape” as distinct categories. It is equally the Town's view, and that of its experts, that landscape features such as greens, fairways, etc. are not in ordinary usage, nor in heritage usage, commonly referred to as “structures”.

[36] Counsel for Clublink responds to this argument by pointing out that the expert reports submitted on its behalf were done in support of its redevelopment proposal, and not in response to the s. 29 designation. Accordingly, Clublink submits that these reports did not consider whether the golf course and its various features were “structures” within the meaning of the *OHA* one way or another, and that they do not address the issue in the way the Town claims that they do. It is equally Clublink’s view, and that of its experts, that man-made features such as artificial ponds, sand and water hazards, mounds, berms, embankments, bridges, tees, etc., are in ordinary usage, as well as in construction usage, commonly referred to as “structures”.

[37] I do not find any of the experts particularly helpful in this regard. Debating the non-*OHA* meanings of a versatile term such as “structure” does little to advance the statutory interpretation question. What is more to the point is the way that the word is used in the very statutory context under consideration. Counsel for Clublink notes that the definition of “property” in s. 26 of the *OHA* states that this includes “real property and all buildings and structures thereon”; and, similarly, s. 34(1) itself refers to demolishing or removing a “building or structure on the property”. This language in the statute signals that “structures” are not limited to buildings but rather includes things other than just buildings.

[38] Further, the evidence is that the Golf Course was constructed in accordance with Jack Nicklaus’ professional design. It is not raw land, and it is substantially more than a landscaped garden. As Clublink points out, portions of the course have been renovated and rebuilt over time, and like all such constructions these features have a limited life. Counsel for Clublink emphasizes the evidence in the record of substantial irrigation infrastructure, subsurface drainage construction, earthwork spectator mounds or berms, artificial reservoir ponds, complex designed greens constructed in accordance with specific United States Golf Association standards, engineered bunkers, paved cart paths, etc.. All of these features require installation, physical maintenance, periodic renovation, and elaborate construction. Clublink submits that features that need to be constructed are structures that can be demolished.

[39] In other legal contexts, golf courses and other recreational facilities that have features similar to golf courses, have apparently been treated as structures. Thus, for example, in *Mount-Sutton Inc. v R*, 1999 CarswellNat 1186, the Federal Court of Appeal found that ski trails are a form of surface construction and can therefore be depreciated. The court in *Mount-Sutton* specifically emphasized, at para 21, that a designed and constructed ski trail is unlike “land or a plot of land on which a structure is erected (and which) cannot be depreciated.” Following this case, the federal government issued a tax bulletin in which it specifically recognized that, like ski trails, the most identifiable features of a golf course – greens, tees, fairways – are man-made surface constructions and are depreciable assets: ITTN Bulletin, June 14, 2001.

[40] If constructed golf course features are depreciable, they cannot be land or landscape but rather are something constructed on the land or landscape. The Alberta Government Municipal Board has used this logic to conclude that golf courses are “structures” for the purposes of municipal tax assessment. In *Calgary Golf & Country Club v Calgary (City)*, 2004 CarswellAlta 2378, at para 72 rev’d on other grounds, 2006 ABQB 312, the Board reasoned:

Golf course features like tees, greens and fairways are man-made and artificial constructions built on the land through bulldozing and other construction methods. They support human activities and in this specific case, the activity of golfing. Tees, greens and fairways and other golf features are thus like structures that support human activity and thus are building like.

[41] Employing analogous reasoning, the Ontario Municipal Board has held a landfill to be a “structure” within the meaning of the *Planning Act: Re City of Vaughan Official Plan Amendment 332 and Zoning By-law 364-91*, 1996 CarswellOnt 5842. Likewise, the British Columbia Supreme Court has found a drag strip to be a “structure” for zoning purposes: *British Columbia Custom Car Association v Mission (District)*, 1990 CarswellBC 534. Both decision-makers emphasized that these structures are “heavily engineered”, *Re Vaughan*, at para 28, and are a “thing constructed”: *BC Custom Car*, at para 35.

[42] I have little trouble accepting this logic. If a landfill and a drag strip are “structures” because of their engineered features, and if a golf course is a “structure” for income tax depreciation purposes and for municipal tax assessment purposes, then a golf course can certainly be a structure for cultural heritage purposes. While the statutory context of taxation is, of course, different from that of cultural heritage, the treatment of property features is the same. Tax depreciation looks to the cost of man-made construction, not of natural land or garden landscapes, and s. 34 of the *OHA* looks to the demolition or removal of man-made construction, not of natural land or garden landscapes. The constructed features of a golf course are “structures” for *OHA* purposes just as they are for the other, analogous statutory purposes.

[43] In any case, it is empirically the case that creating a golf course requires structural work on the underlying land. Indeed, if there were no structural changes to be made to a property in order to turn it into a championship golf course, an owner would hardly need to hire Jack Nicklaus.

[44] It is evident that it is the structural aspects of Glen Abbey – the routing, shape and slope of the fairways and greens, the elevated mounds and berms for audience viewing, the creation of sand traps and other hazards, the underground irrigation and drainage engineering, the routing and installation of cart paths, etc. – that make it a championship course and, from the Town’s point of view, a cultural heritage landscape in the first place. It is the architecture of the Golf Course, and not just some superficial, non-structural gardening or grooming of the landscape, that has made this Golf Course what it is.

IV. Disposition

[45] I find that the Glen Abbey Golf Course is both composed of structures and overall is a structure for the purposes of s. 34 of the *OHA*. Clublink has the right to make an application to the Town under s. 34(1) of the *OHA* for demolition and/or removal of buildings on Property and of the other structures of which the Golf Course is comprised. This includes the component parts

of the Golf Course: tees, greens, hazards, fairways, cart paths, berms, embankments, and other related constructions and infrastructure.

[46] The Town is ordered to process Clublink's s. 34 application.

[47] The parties may make written submissions as to costs. I would ask that these include a Bill of Costs and accompanying submissions of no more than 3 pages.

October 25, 2018

Morgan J.

CITATION: Town of Oakville v. Clublink, 2018 ONSC 6386
COURT FILES: CV-17-585698 and CV-17-587268
DATE: 20181025

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CORPORATION OF THE TOWN OF OAKVILLE

Applicant

– and –

CLUBLINK CORPORATION ULC and CLUBLINK HOLDINGS LIMITED

Respondents

AND BETWEEN:

CLUBLINK CORPORATION ULC and CLUBLINK HOLDINGS LIMITED

Applicants

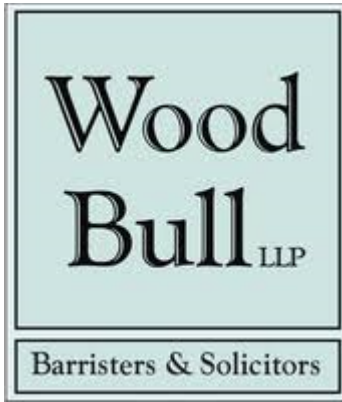
– and –

CORPORATION OF THE TOWN OF OAKVILLE

Respondent

REASONS FOR JUDGMENT

E.M. Morgan J.



Tab 14 b) - Cultural Heritage Landscape:

Court of Appeal for Ontario - *Oakville (Town) v. Clublink Corporation ULC*, 2019 ONCA 826 (CanLII)

COURT OF APPEAL FOR ONTARIO

CITATION: Oakville (Town) v. Clublink Corporation ULC, 2019 ONCA 826

DATE: 20191023

DOCKET: C66187

Doherty, Nordheimer and Harvison Young JJ.A.

BETWEEN

The Corporation of the Town of Oakville

Applicant/Respondent by Counter-Application
(Appellant)

and

Clublink Corporation ULC and Clublink Holdings Limited

Respondents/Applicants by Counter-Application
(Respondents)J. Thomas Curry, Derek Knoke, Jessica Starck and Rodney Northey, for the
appellant

Earl A. Cherniak, Q.C., Cynthia Kuehl and Mark Flowers, for the respondent

Heard: May 21, 2019

On appeal from the order of Justice Edward M. Morgan of the Superior Court of
Justice, dated October 25, 2018, with reasons reported at 2018 ONSC 6386, 84
M.P.L.R. (5th) 90.**Harvison Young J.A.:****A. OVERVIEW**

[1] The central issue in this appeal is, at first glance, a narrow one. It is whether the respondent Clublink's application to demolish the Glen Abbey golf

course is governed by the procedure and appeals as set out in s. 33 or s. 34 of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 (the “OHA”). As my colleague has noted, the interpretation of the word “structure” in s. 34 is at the centre of this issue. In my view, however, the issue cannot be resolved by an interpretative approach focussing solely on the word “structure”, and ss. 33 and 34, without a consideration of the entire context and object of the Act, and the intention of the Legislature: see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21. In the case of these provisions of the OHA, this also requires a consideration of its legislative history.

[2] In applying this approach to the interpretation of ss. 33 and 34, I conclude that Clublink properly framed its application under s. 34 and that the appeal must therefore be dismissed.¹ In essence, I conclude that a purposive and contextual approach to ss. 33 and 34 – and, in particular, an approach that takes into account the legislative history of the two provisions – indicates that Glen Abbey is properly construed as a “structure” for the purpose of s. 34 of the OHA.

[3] My colleague reaches a different conclusion. He concludes that a golf course cannot be a “structure” within the meaning of s. 34 of the OHA, relying primarily on the “ordinary meaning” of that term. In my respectful view, this approach gives too much weight to the “ordinary meaning” of the term “structure”

¹ The only caveat is with respect to the application judge’s order that Town process Clublink’s s. 34 application. The parties agree that the application judge erred in making this order, as Clublink’s request for *mandamus* had been withdrawn on consent.

– itself a contested concept – in a manner inconsistent with the modern approach to statutory interpretation. It fails to give effect not only to the broader context, purpose and legislative history of the *OHA*, but also to the broad meaning ascribed to the word “structure” elsewhere in the *OHA*.

[4] I also respectfully disagree with my colleague that the difference in the appeal routes set out in ss. 33 and 34 does not assist in resolving the issue presented by this appeal. As I will discuss further, the legislative history of the two provisions reveals that the addition of an appeal route to the Ontario Municipal Board (now the Local Planning Appeal Tribunal) independent of the municipal council, in respect of applications under s. 34, was a deliberate legislative decision. The introduction of this right of appeal was intended to act as a counterbalance to the municipality’s (then newly conferred) right to preclude an owner from demolishing a building or structure, in a manner that would wholly remove the cultural heritage attributes associated with the property. Far from being irrelevant to the issue presented by this case, the difference in appeal routes under ss. 33 and 34 is an important part of the scheme of the *OHA*. It is instructive of the types of applications the Legislature anticipated would be captured by each provision.

[5] In the course of these reasons, I will begin by outlining ss. 33 and 34. I will then summarize the application judge’s reasons and the positions of the parties on this appeal. My analysis of the interpretation of ss. 33 and 34 will begin with a

consideration of the purpose, object and legislative history of the *OHA*, and will address the issue of the proper interpretation of these provisions within that context.

B. BACKGROUND

The Factual Background

[6] Glen Abbey is located at property municipally known as 1313 and 1333 Dorval Drive in Oakville, Ontario. Glen Abbey is one of Canada's most famous golf courses. It was the first golf course solely designed by Jack Nicklaus, one of the greatest professional golfers of all-time. The design reflects a particular emphasis on the spectator experience. In addition to design value, the Town regards Glen Abbey as having significant historical value. Glen Abbey has hosted the Canadian Open golf tournament 30 times — three times more than any other course in Canada — and is directly associated with memorable events in Canadian golf history. The value of Glen Abbey to the Town is well described in the by-law that designated Glen Abbey to be of cultural heritage value. It says, in part:

The Property is a landmark within the Town of Oakville. The quality of the golf course, and its connection to the Canadian Open, have been important in defining the character of this community and giving it a distinct place within the larger Toronto metropolitan area, and beyond. The course is also a central defining feature of its immediate neighbourhoods, which were created in response to the construction of the course.

[7] Since 1977, the Town's Official Plan has identified Glen Abbey as an important feature of the Town and evidenced an intention that Glen Abbey permanently remain a golf course. This intention has remained consistent for 40 years in the Town's subsequent Official Plans and zoning.

[8] In February 1999, Clublink purchased Glen Abbey. The property is approximately 94 hectares (232 acres), including 32 hectares (78 acres) of valleylands located in the Sixteen Mile Creek Valley and approximately 62 hectares (154 acres) of tablelands above the valley. Situated on the property is an office building, unaffiliated with the operation of Glen Abbey as a golf course, known as the RayDor Estate. That building currently houses the offices of Golf Canada.

[9] In January 2014, the Town adopted a three-stage strategy to conserve significant cultural heritage landscapes across the Town. A cultural heritage landscape "refers to the recognizable imprint of human settlement and activities on land over time": Town, *Cultural Heritage Landscapes Strategy* (January 2014), at p. 2. It is not a concept found in the OHA, but, rather, is derived from the Provincial Planning Policy Statement, municipal by-laws and other planning instruments. As part of the Town's conservation strategy, heritage landscape experts evaluated over 60 potential landscapes and, as part of their evaluations, they visited Glen Abbey in September 2015.

[10] Approximately a month after that visit, on October 22, 2015, Clublink advised the Town that they intended to redevelop Glen Abbey into a residential and mixed-use community. Clublink proposed to build 3,000 to 3,200 residential units and 140,000 to 170,000 square feet of office and retail space. Glen Abbey would cease to exist.

[11] The Town responded to Clublink's redevelopment plan on February 1, 2016 by passing an interim control by-law under the *Planning Act*, R.S.O. 1990, c. P.13, to temporarily restrict redevelopment of Glen Abbey, pending the completion of relevant studies, including the cultural heritage landscape evaluation.

[12] In November 2016, Clublink submitted applications to amend the Town's Official Plan and zoning by-laws, and sought approval of a plan of subdivision, in furtherance of its proposed redevelopment of Glen Abbey. The applications proposed the construction of 3,222 residential units and 121,309 square feet of office and retail space.

[13] In May 2017, the Town moved to recognize Glen Abbey as a significant cultural heritage landscape, and on August 24, 2017, the Town published and served on Clublink a notice of intention to designate Glen Abbey and surrounding property as a property of cultural heritage value or interest under s. 29 of the *OHA*. This notice stated the property's cultural heritage value according to

provincial criteria and described the heritage attributes that contribute to this value.

[14] Clublink had the right, under s. 29(5) of the *OHA* to formally object to the proposed designation, but they did not do so.² Rather, on September 25, 2017, Clublink advised the Town that they intended to submit an application under s. 34 of the *OHA* to “demolish” and/or “remove” Glen Abbey.

[15] On September 27, 2017, the Town’s council considered Clublink’s redevelopment applications. Council refused Clublink’s first two applications – namely, for amendments to the Town’s Official Plan and amendments to the zoning by-laws. Council deferred the third application for approval of Clublink’s plan of subdivision but that application was ultimately rejected on November 6, 2017.

[16] On October 27, 2017, the Town notified Clublink that their s. 34 application was “legally beyond the scope of a section 34 *OHA* application” but was properly within the scope of s. 33 of the *OHA* which permits an owner to apply to “alter” a designated property.

[17] On November 1, 2017, the Town commenced this application for a determination of its rights under the *OHA* and for a declaration that s. 34 did not apply to Clublink’s proposed demolition or removal of Glen Abbey.

² An application to quash the by-law designating the property under s. 29 of the *OHA* was commenced by Clublink in December 2018 before the Superior Court of Justice.

[18] On November 21, 2017, Clublink formally submitted its s. 34 application to the Town. On November 27, 2017, Clublink commenced its own application in the Superior Court for a declaration that they could make an application under s. 34 of the *OHA* “for the demolition and removal of buildings and structures on the lands municipally known as 1313 and 1333 Dorval Drive ... including but not limited to the tees, greens, hazards, fairways and cart paths”.

[19] On December 20, 2017, the Town’s council officially passed a s. 29 by-law designating Glen Abbey and the surrounding property as a property of cultural heritage value or interest.

Sections 33 and 34: Why They Matter

[20] As I have already stated, this appeal turns on the interpretation of ss. 33 and 34 of the *OHA*. The central difference between ss. 33 and 34 lies in the procedural rights and appeal routes afforded to an applicant under each section: under s. 33, the municipal council retains the final word with respect to the application; under s. 34, the Local Planning Appeal Tribunal (“LPAT”) has the final word with respect to the application. This also explains the practical reason why the Town takes the position that the application is governed by s. 33, while Clublink takes the position that the application is governed by s. 34.

[21] Section 33(1) reads as follows:³

³ The text of the key provisions of the *OHA* implicated in this appeal are reproduced at Appendix A.

No owner of property designated under section 29 shall alter the property or permit the alteration of the property if the alteration is likely to affect the property's heritage attributes, as set out in the description of the property's heritage attributes that was required to be served and registered under subsection 29 (6) or (14), as the case may be, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the alteration.

[22] Section 33 requires the property owner to apply to the municipality if an "alteration" is likely to affect the property's heritage attributes, as reflected in the by-law designating the property under s. 29 of the *OHA*. In other words, the property owner is required to apply to municipal council if the proposed alteration will affect the reason for the property's designation. To this end, "alter" and "alteration" are defined broadly in s. 1 of the *OHA* to mean "to change in any manner and includes to restore, renovate, repair or disturb".

[23] If municipal council refuses an owner's application under s. 33, the owner may appeal to the Conservation Review Board. The Conservation Review Board is directed to hold a hearing and produce a report, in which it is to recommend whether the application should or should not be approved. The Conservation Review Board's report is not binding on the municipal council: *OHA*, ss. 33(6)-(13).

[24] Section 34(1) provides as follows:

No owner of property designated under section 29 shall demolish or remove a building or structure on the property or permit the demolition or removal of a

building or structure on the property unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal.

[25] Section 34 requires the property owner to apply to municipal council whenever it seeks to demolish or remove any building or structure on a designated property; there is no language that ties the requirement for municipal approval to whether the demolition will affect the reason for the heritage designation.

[26] In contrast to s. 33, if the municipal council refuses the owner's application under s. 34, the owner of the property can appeal to the LPAT. The municipal council is bound by the LPAT decision: *OHA*, ss. 34.1(1)-(7).

[27] Significantly, if the municipal council approves the application, or is directed by the LPAT to approve the application, the municipal council must repeal the by-law designating the property as being of cultural heritage value or interest under s. 29: *OHA*, s. 34.3. There is no corresponding requirement under s. 33.

The Application Judge's Reasons

[28] The application judge identified the issue raised by the consolidated applications as whether Clublink "having had its property designated under s. 29 of the *OHA*, can ... now apply to the Town under s. 34(1) of the *OHA* for permission to demolish the entire Golf Course, or must it proceed under s. 33

and apply to alter the property?": at para. 2. The application judge noted that it was clear that the demolition of the buildings on the designated property fell within the scope of s. 34(1). Thus, the real issue was whether the other features comprising the golf course were "structures" within the meaning of s. 34(1).

[29] The application judge ultimately concluded that "Glen Abbey ... is both composed of structures and overall is a structure for the purpose of s. 34 of the *OHA*", such that Clublink had properly framed its application under s. 34: at para. 45. The application judge reached this conclusion, in large measure, because the uncontroverted evidence before him established that Glen Abbey was the product of significant construction and engineering. Relying on judicial and administrative decisions from other contexts, he concluded that a golf course fit within the definition of a "structure" as being a "thing constructed": at paras. 38-42.

[30] Notably, the application judge tied the cultural heritage attributes specified in the Town's designation by-law to the constructed or engineered features of Glen Abbey, when he observed, at para. 44:

It is evident that it is the structural aspects of Glen Abbey – the routing, shape and slope of the fairways and greens, the elevated mounds and berms for audience viewing, the creation of sand traps and other hazards, the underground irrigation and drainage engineering, the routing and installation of cart paths, etc. – that make it a championship course and, from the Town's point of view, a cultural heritage landscape in the first place. It is the architecture of the Golf Course,

and not just some superficial, non-structural gardening or grooming of the landscape, that has made this Golf Course what it is.

C. POSITIONS OF THE PARTIES ON APPEAL

[31] The heart of the parties' respective positions on this appeal may be briefly stated.

[32] The Town argues that the application judge failed to properly apply the principles of statutory interpretation in concluding that Glen Abbey was a "structure" within the meaning of s. 34 of the *OHA*. In particular, it argues that the application judge failed to have sufficient regard to s. 33 of the *OHA*, and thus failed to interpret the term "structure" in s. 34 in context. It says that if the application judge had more closely considered s. 33 of the *OHA*, he would have concluded that Clublink's application was properly characterized as an application to "alter" the "property designated under s. 29" (within the meaning of s. 33), not an application to "demolish or remove" a "building or structure" on the designated property (within the meaning of s. 34).

[33] The Town also argues that the application judge erred in his textual analysis of s. 34 by rejecting the "ordinary meaning" of the term "structure" as being irrelevant to his analysis, and by relying on non-*OHA* jurisprudence to conclude that a golf course is a "structure". In the end, the Town advances a narrow approach to the interpretation of s. 34, focussing on the "ordinary

meaning” of the word “structure” and arguing the term cannot include a golf course.

[34] Clublink, on the other hand, argues that the application judge had sufficient regard to the scheme of the *OHA* and engaged in a contextual analysis of s. 34. To this end, it emphasizes that the “ordinary meaning” of a particular statutory term is only the starting point of the interpretive exercise; it is also necessary to consider the broader context in which the statutory language is employed. It also emphasizes that the uncontroverted evidence before the application judge was that Glen Abbey was “heavily engineered” and the product of significant construction. It argues that it was open to the application judge – relying on decisions as to the meaning of the term “structure” by judges and tribunals in other contexts – to conclude that a golf course is a “structure” because it is a “thing constructed”.

D. ANALYSIS

[35] As I have stated, the issue on this appeal is whether Clublink’s application to demolish the Glen Abbey golf course is properly governed by s. 33 or s. 34 of the *OHA*. This turns, in large measure, on whether a golf course can be a “structure” within the meaning of s. 34. As this is an issue of statutory interpretation, I agree with my colleague that the applicable standard of review is correctness because an issue of statutory interpretation is a question of law:

Canada National Railway Co. v. Canada (Attorney General), 2014 SCC 40, [2014] 2 S.C.R. 135, at para. 33.

[36] For the following reasons, however, I conclude that the application judge correctly found that Glen Abbey is properly regarded as a “structure” within the meaning of s. 34(1) of the *OHA*, such that Clublink properly framed its application under s. 34.

The Modern Approach to Statutory Interpretation

[37] I begin with the overarching principles of statutory interpretation applicable to this appeal. The governing approach to statutory interpretation in Canada is the so called “modern principle” of statutory interpretation. The modern principle, first formulated by Elmer Driedger and adopted as the prevailing approach to statutory interpretation by the Supreme Court of Canada in *Rizzo*, is as follows:

[T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

[38] The core teaching of the “modern principle” is that statutory language must always be interpreted purposively and in context. In other words, “statutory interpretation cannot be founded on the wording of legislation alone”: *Rizzo*, at para. 21. As summarized by Ruth Sullivan in *Statutory Interpretation*, 3rd ed. (Toronto: Irwin Law, 2016), at p. 46:

The key point of the principle is ... that statutory interpretation cannot be founded on the wording of the legislation alone. The words of the text must be read and analyzed in light of a purposive analysis, a scheme analysis, the larger context in which the legislation was written and operates, and the intention of the legislature, which includes implied intention and the presumptions of legislative intent. In the course of resolving an interpretation problem, an interpreter must also consider the relevance of a wide range of rules, principles and maxims.

[39] The Supreme Court's decision in *Rizzo* is illustrative in this regard. In that case, the issue was whether an employer petitioned into bankruptcy was required to pay employees termination pay and severance pay under ss. 40 and 40a of the *Employment Standards Act*, R.S.O. 1980, c. 137, respectively. The Court of Appeal held that the plain meaning of those provisions indicated that termination pay and severance pay were payable only when the employer terminates the employment. In a bankruptcy, an employee's employment is terminated not by the employer, but by the operation of law. As such, no termination or severance pay was required: *Rizzo*, at paras. 18-19.

[40] Iacobucci J., writing for a unanimous Supreme Court, reached a different conclusion. He accepted that "at first blush" the conclusion that an employee is terminated by an employer upon bankruptcy "did not fit comfortably" with the plain meaning of the impugned statutory provisions, but found that the Court of Appeal's analysis was "incomplete": *Rizzo*, at para. 20. Rather, it was necessary to look to the purpose of the impugned provisions, the purpose of the Act, the

scheme of the Act, its legislative history and the consequences of each plausible interpretation. After engaging in that analysis, Iacobucci J. concluded that termination and severance pay were payable upon an employer's bankruptcy.

[41] As *Rizzo* indicates, the modern principle embodies a contextual approach to statutory interpretation. It instructs that a purely textual approach – focussing only on the literal or plain meaning of a statutory provision – may fail to adequately capture the legislature's intended meaning. This point is made in *Bell ExpressVu v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at paras. 26-27, another leading Supreme Court case on statutory interpretation:

Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings....

The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell" (1938), 16 *Can. Bar Rev.* 1, at p. 6, "words, like people, take their colour from their surroundings".

[42] Similarly, in his text *Interpretation of Legislation in Canada*, 4th ed. (Toronto: Carswell, 2011) at p. 46, Pierre-André Côté describes the modern principle as embodying "the rise of contextual interpretation" with a corresponding shift away from textual literalism and plain meaning:

Statutory interpretation requires the interpreter to weigh a series of factors before establishing the true, or at

least best, meaning. The range of factors to be considered has been elastic, and has known historical expansion and compression. Currently, the list of mandatory or recommended factors is extensive.

This extension is an outgrowth of the rise of contextual interpretation, an approach increasingly favored by both doctrine and the case law. It is now recognized that it is impossible to determine the meaning of words in the absence of context. Today, it is fair to say that the Plain Meaning Rule, which restricts the interpreter to a consideration of the literal meaning of a clear text, has fallen into disrepute.

The urtext of broader approach to interpretive authority is ... the modern principle of statutory interpretation....

It would be unreasonable to suppose that Driedger's principle expresses, in and of itself, every dimension of the Canadian interpretive practice. It is nonetheless true that it has materially contributed to the overthrow of the Plain Meaning Rule and the promotion of a contextual approach to interpretation that draws on a wide range of factors and is, in particular, open to the consideration of the objectives of the provisions and statues under examination.

[43] It is important to appreciate the role that the “ordinary meaning” of statutory text plays in this interpretative framework. In this regard, “ordinary meaning” refers to “the reader’s first impression meaning, the understanding that spontaneously comes to mind when words are read in their immediate context” and “the natural meaning which appears when the provision is simply read through”: *Pharmascience Inc. v. Binet*, 2006 SCC 48, [2006] 2 S.C.R. 513, at para. 30; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895, at para. 43. So understood, “ordinary meaning” refers to the reader’s understanding of the statutory text when read in its immediate context:

Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis Canada, 2014), at para. 3.9.

[44] The “ordinary meaning” is presumed to be the meaning intended by the legislature: *McLean*, at para. 43; *Belwood Lake Cottagers Association Inc. v. Ontario (Environment and Climate Change)*, 2019 ONCA 70, 431 D.L.R. (4th) 318, at para. 40, citing *Sullivan on the Construction of Statutes*, at para. 3.6. But “ordinary meaning” is not determinative; it is only one aspect of the modern approach. This is because “[w]ords that appear clear and unambiguous may in fact prove to be ambiguous once placed in their context. The possibility of the context revealing a latent ambiguity ... is a logical result of the modern approach to statutory interpretation”: *McLean*, at para. 43, citing *Montreal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at para. 10. Thus, even when a statutory provision appears to have a settled meaning on first reading, the court is “obliged to look at other indicators of legislative meaning as part of their work of interpretation”: *McLean*, at para. 43.

[45] A textual approach focussing on the “ordinary meaning” of a particular statutory term or phrase will also be less helpful when the impugned term or phrase admits of more than one possible understanding in common usage. The “ordinary meaning” of a particular statutory term may itself be contested. This reality was recognized in *Binet*, at para. 32, where LeBel J. said:

Nevertheless, it has to be admitted that textual interpretation has its limits. Before this Court, the parties submitted numerous definitions of the French word “on” taken from dictionaries, grammar books and other encyclopedic sources, and countless examples drawn from statutes in which the legislature used similar or different wordings to indicate the inclusion of all persons or of a specific group of individuals. That is why this Court now considers it important, even when a provision seems clear and conclusive, to nevertheless review the overall context of the provision. [Citations omitted.]

For this reason, the modern principle instructs that the words of a statute must be read in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

The Purpose and Object of the OHA

[46] There is no dispute as to the overarching purpose of the *OHA* – namely, to provide for the conservation, protection and preservation of the heritage of Ontario: *St. Peter’s Evangelical Lutheran Church v. Ottawa*, [1982] 2 S.C.R. 616, at pp. 623-624; *Toronto College Street Centre Ltd. v. Toronto (City)* (1986), 56 O.R. (2d) 522 (C.A.), at p. 531, leave to appeal refused, 61 O.R. (2d) 669 (S.C.C.). To this end, the *OHA* confers broad powers upon municipalities to designate properties as being of cultural heritage value or interest, thereby interfering with private property rights.

[47] I agree with my colleague that the application judge incorrectly characterized the purpose of the *OHA* as having a “dual ... purpose ... to accomplish heritage conservation in a way that does not run counter to the

property owner's rights" (at para. 31) because, as a substantive matter, the *OHA* does affect the property ownership rights. However, the Legislature has also recognized that the preservation of Ontario's heritage "should be accomplished at the cost of the community at large, not at the cost of the individual property owner, and certainly not in total disregard of the property owner's rights": *St. Peter's*, at pp. 623-624; *Toronto College*, at pp. 531-532.

[48] To this end, the *OHA* counterbalances the broad powers provided to municipalities to designate a property as being of cultural heritage value or interest with procedural protections for property owners when seeking to make changes to a designated property: *St. Peter's*, at p. 626; *Toronto College*, at p. 532.

The Legislative History of the OHA

[49] The legislative history of the *OHA* provides important context for the statutory distinction between ss. 33 and 34, and also identifies the legislative intent underpinning the different procedures and rights of appeal under both provisions.

[50] The *OHA* was first enacted in 1974 as *The Ontario Heritage Act, 1974*, S.O. 1974, c. 122 (the "1974 Legislation"). The 1974 Legislation established the basic structure of the *OHA* and many of its features have been carried through to the current version of the *OHA*.

[51] The early iterations of the *OHA* disclose a “building-centric” approach to heritage. In this regard, the 1974 Legislation conferred upon a municipality the power to designate a property as being of “historic or architectural value or interest” (emphasis added).⁴ Hansard statements during debate on the 1974 legislation similarly indicate that the Legislature primarily contemplated that a designation would be made in respect of an historic or architecturally valuable building. Nevertheless, as in the current *OHA*, the 1974 Legislation defined “property” in Part IV to mean “real property and includes all buildings or structures thereon”: s. 26(b).

[52] The important point for the purpose of the present appeal is that the 1974 Legislation was the genesis of the statutory distinction between the procedural route to “alter” a designated property (s. 33) and the procedural route to “remove or demolish” any “building or structure” (s. 34). As will become evident from the following discussion, this distinction reflects a particular balancing of private property rights and heritage conservation.

[53] Under s. 33 of the 1974 Legislation, the property owner was required to apply to municipal council to make any “alteration” to the designated property where “the alteration is likely to affect the reason for the designation”. As in the current *OHA*, “alter” and “alteration” were defined broadly to mean to “change in

⁴ The nomenclature of “historic or architectural value or interest” was amended in 2002 to refer a property of “cultural heritage value or interest”: see *Government Efficiency Act*, S.O. 2002, c. 18, s. 2(8).

any manner and includes to restore, renovate, repair or disturb”. The 1974 Legislation provided that if the municipality refused the application, the property owner had a non-binding right of appeal to the Conservation Review Board. This persists in the *OHA* to date.

[54] Under s. 34 of the 1974 Legislation, the property owner was required to apply to municipal council to “demolish or remove” a “building or structure” on a designated property. However, unlike the current version of the *OHA*, the municipality did not have the power to ultimately prevent the demolition of the “building” or “structure”. At most, the municipality could delay the demolition or removal of the building or structure for a total of nine months. This was intended to give the municipality sufficient time to decide whether to expropriate the property, triggering an obligation to compensate the property owner.

[55] Consistent with the building-centric approach to heritage, the 1974 Legislation provided that upon demolition of the building or structure the by-law designating the property would be repealed: 1974 Legislation, s. 34(5). This reflected the assumption that s. 34 would be engaged in circumstances where the property owner sought to make changes that would wholly remove the aspects of the property that gave rise to the heritage designation in the first place. This also explains the absence of any language in s. 34 that required the property owner to apply to demolish a building or structure only when that demolition engaged the reasons for the designation, similar to that in s. 33; a

demolition or removal was assumed to always engage the reasons for the designation.

[56] Thus, the 1974 Legislation – and the genesis of the statutory distinction between s. 33 and s. 34 applications – reflects a particular balancing of private property rights and heritage conservation. The property owner remained ultimately entitled to demolish the building or structure and put the property to his/her desired use (subject only to the municipality’s power of expropriation). At the same time, the municipality could exercise greater control over proposed alterations to a designated property where the alteration would engage the reason for the designation. The central distinction between the two provisions at that point was that an application to demolish or remove a structure under s. 34 was assumed to effectively eliminate the basis for the designation. The paradigmatic example is the historic house whose owner was seeking the municipality’s approval to remove or demolish.

[57] In 2005, significant amendments were introduced to the *OHA* through the *Ontario Heritage Amendment Act, 2005*, S.O. 2005, c. 6 (the “2005 Amendments”). In particular, the 2005 Amendments provided the municipality the power to refuse outright – and not merely delay – an application to demolish a building or structure on a designated property under s. 34.

[58] To counterbalance this expanded municipal power, the 2005 Amendments provided the owner with a binding right of appeal to the Ontario Municipal Board

(now the LPAT). The introduction of these expanded procedural protections indicates that, consistent with the 1974 Legislation, the Legislature viewed the power of a municipality to refuse outright an application for demolition or removal of a structure as a more profound interference with private property rights. As with previous iterations of the *OHA*, once the municipality had approved the owner's application – or the OMB had directed the municipality to approve the application – the municipality was obligated to repeal the by-law designating the property as being of cultural or historic value or interest.

[59] Hansard statements made during debate on the 2005 Amendments repeatedly described the goal of the amendments as being to provide municipalities with increased power to control, and not merely delay, the demolition of heritage properties. The owner's right to a binding appeal to the OMB was a critical corollary of this increased municipal power. For example, during the first reading of the bill that introduced the 2005 Amendments, the Hon. M. Meilleur (Minister of Culture and Francophone Affairs) described the impetus behind the changes in the following terms:

Some key amendments to the *Ontario Heritage Act* we are introducing today include new municipal powers to prevent demolition of heritage buildings. This most important change will give municipalities tools to prevent rather than delay the demolition of heritage properties. This amendment will also ensure that increased demolition controls will be balanced with the landowner's right to binding appeal.

[60] To summarize the foregoing discussion, a number of key points emanate from the legislative history of the *OHA*, generally, and ss. 33 and 34, in particular:

- The structure of the *OHA* – and s. 33 and s. 34 – is derived from an early “building-centric” paradigm of heritage properties. As my colleague acknowledges, to the extent that the case law is instructive, heritage issues have focused primarily on heritage buildings. There is no difficulty applying s. 33 and s. 34 – and delineating the boundaries of the two provisions – to a property designated under the *OHA* because of the cultural heritage attributes of a building on the property.
- The interpretive difficulty in this appeal arises largely because municipal heritage planning has, at least in practice, evolved beyond a focus on cultural heritage buildings in a manner not fully reflected in the *OHA*. For example, the Town purported to designate Glen Abbey as a “cultural heritage landscape”. But the term “cultural heritage landscape” is not found in the *OHA*; it is derived from the Provincial Planning Policy Statement, the Town’s by-laws and other planning instruments.
- The assumption underpinning the 1974 Legislation – and the initial division between ss. 33 and 34 – was that s. 34 would be engaged in circumstances where the proposed changes to the designated property would wholly remove the reason for the designation under s. 29 of the *OHA*.

- The added procedural protections for property owners in s. 34 were premised on the understanding that the refusal of an application to permit the owner to demolish a building or structure (rather than to merely make an alteration) was a more profound interference with private property rights.

The Scheme of the *OHA* and ss. 33 and 34

[61] With that legislative history in mind, I turn now to the scheme of the current *OHA*. As I have emphasized, the words of a statute must be interpreted in context – and with regard to related statutory provisions. This is particularly true when a statute, as here, provides a distinction between two different procedural routes dealing with similar applications. As a result, I agree with my colleague that ss. 33 and 34 must be considered together: the scope of s. 34 can only be determined with reference to s. 33, and vice-versa. In this regard, a number of observations can be made with respect to ss. 33 and 34.

[62] To begin with, neither s. 33 nor s. 34 interfere with the municipality's right to designate, protect or acquire the property in question. As noted above, a municipality's "right in this respect is indefeasible as long as it complies with the legislative directions as to its procedure": *St. Peter's*, at p. 626. Both provisions further the overarching purpose of the *OHA* – namely, to conserve, protect, and preserve Ontario's heritage – because the ultimate decision as to whether to approve an alteration or demolition is made by the municipality or the LPAT (an

independent administrative body). The property owner is not free to deal with his or her property as he or she chooses.

[63] Second, both ss. 33 and 34 are intended to provide procedural protections to property owners that seek to make changes to a designated property: see *St. Peter's*, at p. 627; *Toronto College*, at pp. 531-32. From the perspective of the property owner, s. 34 provides considerably greater procedural protections because the property owner has the right to appeal the municipality's refusal to approve the demolition or removal to an independent tribunal that has the power to bind the municipality.

[64] Third, the text of ss. 33 and 34 indicates that s. 34 was intended to apply to a *subset* of proposed "alterations" to a designated property, where the property owner seeks to demolish or remove a building or structure on the designated property. "Alter" and "alteration" are defined broadly to mean "to change in any manner and includes to restore, renovate, repair or disturb" (emphasis added). While "demolition" or "removal" are not defined in the *OHA*, the statutory definition of "alteration" is sufficiently broad to embrace a "demolition." In others, the "demolition" or "removal" of a structure is a "change" to the designated property.

[65] Finally, the fact that a successful application by a property owner under s. 34 leads to the automatic repeal of the designation by-law under s. 29 of the *OHA* – a feature of each successive iteration of the *OHA* from the 1974

Legislation to present – indicates that the Legislature assumed that the demolition or removal of the building or structure in question would wholly remove the cultural heritage attributes associated with the designated property.

[66] To summarize, the scheme of the *OHA* indicates that s. 34 was intended to provide greater procedural protections to property owners with respect to a subset of “alterations” involving a “demolition or removal” of a “building or structure” that would wholly remove the cultural heritage attributes associated with the property. This is consistent with the legislative history of the *OHA*, discussed above. As a result, I respectfully disagree with my colleague that the different appeal routes as between ss. 33 and 34 are irrelevant to the interpretive issue raised by this case. The different procedural protections as between ss. 33 and 34 are an important part of the scheme of the *OHA* and reflect a particular balancing of private property interests and the public interest in conserving property of cultural heritage value or interest.

[67] In light of the purpose of both ss. 33 and 34, and their relationship to the overall objective of the *OHA* of protecting properties of cultural heritage value, it is not necessary, and would be inappropriate, to interpret s. 33 broadly and s. 34 restrictively. While my colleague cites *Toronto College* for the proposition that s. 33 of the *OHA* is to be interpreted broadly, the issue in that case was whether a proposed “alteration” was “likely to affect the reason for the designation” under s. 33. In light of the purpose of the *OHA*, it makes sense to interpret that language

broadly so as to trigger the requirement for municipal approval of a proposed alteration. The same cannot be said when it is accepted that an application for municipal approval is required, and the interpretive issue is whether the property owner must proceed under ss. 33 or 34. Put somewhat differently, it does not undermine the purpose of the *OHA* to read s. 34 – and the circumstances in which a property owner will be afforded appreciably greater procedural protections – broadly.

The Text of s. 34

[68] With this contextual backdrop in mind, I turn now to the text of s. 34. As I have noted, central to this appeal is the meaning of the term “structure” within that provision. Since the term “structure” is not defined in the *OHA*, it is necessary to consider the term in the immediate context of s. 34, and with regard to the broader scheme and purpose of the *OHA*.

[69] My colleague concludes that a golf course is not a “structure” within the meaning of s. 34 of the *OHA*, relying primarily on the “ordinary meaning” of that term. Indicative of his approach is the statement, at para. 114 of his reasons, that “no ordinary person would visit any golf course and be heard to comment ‘My, isn’t this a beautiful structure’.”

[70] I reach a different conclusion, for a number of reasons.

[71] First, as I have discussed, the “ordinary meaning” of a statutory term is only the starting point for the statutory interpretative exercise: *Belwood*, at paras.

40-42; *McLean*, at paras. 42-44. A statutory term that appears to have a clear meaning may be ambiguous once placed in its proper context: *McLean*, at para. 43, citing *Montreal (City)*, at para. 10. As I have suggested above, the legislative context for the use of the term “structure” in s. 34 is the initial “building-centric” conception of cultural heritage and assumption that the demolition of a “building” or “structure” on the designated property would wholly remove the property’s cultural heritage value or attributes.

[72] Second, while I accept that a golf course may not be intuitively understood to be a “structure”, the term “structure” is itself a mutable concept. In this vein, a structure has been variously defined as a “thing constructed”. For example, In *Algonquin Power (Long Sault) Partnership v. Chubb Insurance Co. of Canada* (2003), 50 C.C.L.I. (3d) 107 (Ont. S.C.), the court itemized the following definitions of “structure”:

- “Any construction, production or piece of work artificially built up or composed of parts purposely joined together”: *Black’s Law Dictionary*, 7th ed., (St. Paul, MN: West Publishing Co., 1999) sub verbo “structure”.
- “[A]nything which is constructed ... it involves the notion of something which is put together consisting of a number of different things ... constructed as to make one whole, which is then called a structure”: *R. v. Bedard* (1976), 31 C.C.C. (2d) 559 (Ont. C.A.), aff’d [1978] 1 S.C.R. 1096.

- “That which is built or constructed, a building or edifice of any kind; a fabric or framework of material parts put together. It is something which is constructed, and involves the notion of something which is put together, consisting of a number of different things that are so put together or built together, constructed as to make on whole which is then called a structure”: *Whitchurch-Stouffville (Town) Chief Building Official v. 893472 Ontario Ltd.* (1994), 23 M.P.L.R. (2d) 307 (Ont. Div. Ct.).

[73] Similarly, in *Cardiff Rating Authority and Cardiff Assessment Committee v. Guest Keen Baldwin’s Iron and Steel Co. Ltd.*, [1949] 1 K.B. 385 (C.A.), at p. 396 (a case relied upon by my colleague), Denning L.J. defined “structure” in the following terms:

A structure is something which is constructed, but not everything which is constructed is a structure. A ship, for instance, is constructed, but it is not a structure. A structure is something of substantial size which is built up from component parts and intended to remain permanently on a permanent foundation; but it is still a structure even though some of its parts may be movable, as, for instance, about a pivot. [Emphasis added.]

[74] Notably, the Town has itself defined the term “structure” in its zoning by-law in similarly expansive terms: a “structure” is “anything that is erected, built or constructed of parts joined together”.

[75] The somewhat amorphous definitions of the term “structure” offered in the case law underscores the importance of interpreting the term in context: *Binet*, at

para. 32. Nonetheless, Glen Abbey accords with this understanding of a “structure” as being a “thing constructed”. The uncontroverted evidence filed on the application – and accepted by the application judge – is that a golf course is the product of significant construction and engineering. It is built up of component parts and intended to remain permanently on its foundation.

[76] Third, and more significantly, the use of the term “structure” elsewhere in the *OHA* indicates that the Legislature intended to provide the term a broad meaning, and intended the term to capture constructed entities comprised primarily, if not entirely, of land. Part VI of the *OHA* (dealing with the conservation of resources of archaeological value) defines “property”, for the purposes of that part, as “real property, but does not include buildings or structures other than ruins, burial mounds, petroglyphs or earthworks” (emphasis added): *OHA*, s. 47. The fact that the Legislature felt it necessary to qualify the meaning of “structure” in Part VI to exclude those structures other than those enumerated in s. 47, indicates that elsewhere in the *OHA* (including Part IV, which deals with the conservation of property of cultural heritage value or interest) it intended the term “structure” to capture earthworks and other constructed landscape features. This also indicates that the Legislature did not use the term “structure” in Part IV in association with the term “building” in s. 34 to capture only “building-like” structures.

[77] Fourth, I am not satisfied that the language supports the meaning of the word “on” which is adopted by my colleague in dissent. Neither the term a “building or structure on the property” in s. 34(1), nor the definition of “property” in s. 26 as “real property and [including] all buildings and structures thereon” (emphasis added), modifies the meaning of the term “structure” to refer only to “structures” that are physically located above, and separate from, the ground.

[78] The term “property” in s. 34(1) refers to the property designated under s. 29 of the *OHA*. Here, the designated property is defined with reference to the real property description in the Ontario Land Titles system, as set out in Schedule A to the designation by-law. Glen Abbey – the golf course – is not co-extensive with the designated property. The legal description of the “property” subject to the designation includes real property surrounding the real property on which the golf course is situated, including the Greeneagle Property. Thus, the term “on” in s. 34 appears to be used to identify buildings or structures contained within a particular description of real property. This is also consistent with how one speaks in identifying features of real property. For example, one could refer to a river, creek, pond or other feature consisting primarily if not entirely of earth or other natural features as being located on a particular description of real property. For example, “she has a swimming pond on the property”.

[79] My colleague relies on the language of a “structure or building on the property” (in s. 33) and “real property and includes all buildings thereon” (in s. 26)

in concluding that it would stretch the term “structure” past its “breaking point” to suggest a golf course is a “structure” because the components of a golf course “consist fundamentally of earth”. As I have stated, I am not satisfied that the language “on” or “thereon” modifies the term “structure” to refer only to items that are wholly distinct from land. There is nothing in the language of the *OHA* that dictates that result. To the contrary, to the extent that the Legislature turned its mind to the issue, it chose to define the term “structure” in Part VI of the *OHA* in a manner that indicates it employed the term “structure” elsewhere in the *OHA*, including in Part IV, to encompass earthworks and other entities consisting fundamentally of earth.

[80] Moreover, the fact is that the proposed demolition/redevelopment of Glen Abbey would entirely obliterate the qualities founding the heritage designation. Schedule B to the by-law designating Glen Abbey and the surrounding property as being of cultural value or interest describes the property’s “cultural heritage value or interest” as follows:

- Design/Physical Value – Glen Abbey is the “first course in the world to significantly enhance the spectator experience by combining stadium design with a hub-and-spoke layout”;
- Historic/Associative Value – Glen Abbey is “one of the most significant works by one of golf’s most significant figures”; and
- Contextual Value – Glen Abbey is “a landmark with the Town” and has helped to “define the character of the Town”.

Both instruments further defined Glen Abbey's "heritage attributes" as including, among other things:

- The historic use and ongoing ability of the property to be used for championship, tournament and recreational golf;
- The historic use and ongoing ability to host championship and other major golf tournaments, such as the Canadian Open; and
- The close and ongoing association of the course design with Jack Nicklaus/Nicklaus Design.

[81] There can be no doubt that Clublink's plans for Glen Abbey and the surrounding property, if realized, would wholly remove the cultural heritage attributes identified by the Town. This is precisely the type of situation the Legislature, from the introduction of the 1974 Legislation through to the 2005 Amendments, contemplated would be captured by s. 34 – namely, that the proposed demolition or removal of a building or structure would engage the very reason for the property's designation, with a successful application necessitating the repeal of the designation by-law: see *OHA*, s. 34.3. The fact that Clublink's re-development plans would eliminate the cultural heritage attributes associated with the designated property favors interpreting the term "structure" broadly to capture Glen Abbey, in order to give effect to the legislative intent underpinning s. 34.

[82] I pause here to respond to some of the arguments raised by my colleague in response to this last point. First, he suggests, at para. 130, that it is more

appropriate to construe Clublink's application as falling within s. 33 of the *OHA* because Glen Abbey's cultural heritage value is bound up in the land itself, which would remain (at least in part) if Clublink was allowed to demolish the golf course. With respect, this ignores the Town's own characterization of the property's cultural heritage attributes, which defines the cultural value of the property with primary reference to the features of the golf course, including the "historic use and ongoing ability of the property to be used for championship, tournament, and recreational golf". The Town does not assert that there is cultural or heritage value in the turf itself. If Glen Abbey is demolished, the cultural heritage attributes asserted by the Town will be wholly eliminated.

[83] My colleague also suggests, at para. 131 of his reasons, that it is appropriate to circumscribe the scope of s. 34 because a successful application under that provision will result in the repeal of the designation by-law, even if the property owner has not directly challenged the heritage designation. I cannot agree. The Legislature has chosen to provide a property owner multiple avenues by which it may seek to deal with property subject to a designation. The fact that a property owner has chosen to proceed in a certain manner cannot alter the proper interpretation of the statutory provisions at issue. I would also note that, on the facts of this case, Clublink had applied to redevelop Glen Abbey and the surrounding property into a commercial and residential development before the Town passed the designation by-law. It made practical sense for Clublink – in

light of its developed plans for the property and the Town's stated opposition to those plans – to forgo an initial challenge to the designation itself – and proceed to apply under s. 34 of the *OHA*.

[84] Finally, tacit in my colleague's reasons is the assumption that it furthers the purpose of the *OHA* to broadly construe the circumstances in which the municipality will have the final say over the proposed change to the designated property. In other words, s. 33 (giving the municipality the final say) should be construed broadly, while s. 34 (giving the LPAT the final say) should be construed narrowly, particularly because a successful application will result in the repeal of the designation by-law.

[85] Again, I cannot agree. While it is consistent with the purpose of the *OHA* to construe broadly the municipality's power to designate a property as being of cultural heritage value or interest, ss. 33 and 34 are concerned with providing corresponding procedural protections to property owners that seek to make changes to their property. Both ss. 33 and 34 are consistent with the overarching goal of the *OHA* – to conserve, protect, and preserve Ontario's heritage – because the ultimate decision as to whether to approve an alteration or demolition is made by a public body. Both provisions fetter the property owner's ability to deal with their property as they would otherwise choose to do. There can be no assumption that the LPAT will act in a manner inconsistent with the

purpose of the *OHA*, and the balancing of the public interest and private property rights that it envisions.

[86] Subsequent to the hearing of this appeal, the *More Homes, More Choice Act*, S.O. 2019, c. 9, received royal assent. Schedule 11 of the Act, once it is proclaimed into force, will amend ss. 33 and 34 of the *OHA*. We invited counsel to make written submissions on the impact, if any, of these amendments to their appeal. The parties submitted that the amendments did not impact the present appeal. Accordingly, I have not considered the amendments in my analysis.

Conclusion

[87] As a result, I conclude that Glen Abbey is a “structure” on a designated property within the meaning of s. 34(1). Clublink properly framed its application to demolish and/or remove Glenn Abbey under s. 34.

[88] This conclusion flows from the text of s. 34, the context of the *OHA*, and the purpose of the *OHA*, generally, and ss. 33 and 34, specifically, viewed in light of the statute’s legislative history. Section 34 applies because Glen Abbey is the product of significant construction and engineering, comprised or built up of constituent parts, and intended to remain permanently on the property. This interpretation accords with the recognition that the term “structure”, when used in the *OHA*, embraces earthworks. It is also consistent with the legislative intention underpinning both the *OHA*, generally, and s. 34, specifically, to conclude that Glen Abbey is a “structure” within the meaning of s. 34 because Clublink’s plans,

if realized, would wholly remove the cultural heritage attributes identified in respect of the designated property.

E. DISPOSITION

[89] For the foregoing reasons, I would dismiss the appeal, subject to one caveat. At the hearing of the appeal, the parties agreed that the application judge erred in ordering the Town to process Clublink's s. 34 application. Clublink's request for *mandamus* had been withdrawn on consent. As a result, I would set aside that aspect of the application judge's order, but otherwise dismiss the appeal.

[90] Clublink is entitled to its costs of the appeal, fixed in the agreed upon amount of \$35,000, plus disbursements and HST.

"A. Harvison Young J.A."
"I agree Doherty J.A."

Nordheimer J.A. (dissenting):

Analysis

[91] I have reviewed the reasons of my colleague. I do not agree with her analysis or the conclusion that she reaches. In my view, if Clublink wishes to obtain permission to proceed as it plans, then it must seek the permission of the Town to do so under s. 33 of the *OHA*.

[92] Before starting my analysis, I should say something about the standard of review. At its core, this appeal raises the issue of the proper interpretation to be given to the *OHA* in general and, more specifically, to the word “structure” as it is used in s. 34. The proper interpretation of a statute is generally considered to raise a question of law regarding which the standard of review is correctness: *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135, at para. 33. In my view, that is the standard of review that applies to this appeal.

[93] I begin my analysis by reproducing the two sections of the *OHA* that are at the heart of this dispute. Section 33(1) reads:

No owner of property designated under section 29 shall alter the property or permit the alteration of the property if the alteration is likely to affect the property’s heritage attributes, as set out in the description of the property’s heritage attributes that was required to be served and registered under subsection 29 (6) or (14), as the case may be, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the alteration.

[94] Section 34(1) reads:

No owner of property designated under section 29 shall demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal.

[95] Each of these sections has an appeal process but the appeal processes differ between the two sections. Under s. 33, if the municipal council refuses an owner's application, the owner of the property may seek an appeal to the Conservation Review Board. The Conservation Review Board is then directed to hold a hearing and produce a report in which it is to recommend whether the application should or should not be approved. The view of the Conservation Review Board is not binding on the municipal council.

[96] In contrast, if the municipal council refuses an owner's application under s. 34, the owner of the property can seek an appeal to the Local Planning Appeal Tribunal (formerly the Ontario Municipal Board) under s. 34.1. The Local Planning Appeal Tribunal must hold a hearing after which it can dismiss the appeal, or it can order the municipal council to grant the application. The municipal council is bound by the decision of the Local Planning Appeal Tribunal. If the municipal council approves the application, or is directed by the Local Planning Appeal Tribunal to approve the application, the municipal council must repeal the s. 29 designation by-law: *OHA*, s. 34.3.

[97] The application judge placed considerable reliance on the different routes of appeal in terms of his conclusion as to whether s. 34 applied to Clublink and its plans for Glen Abbey. I believe that the application judge overemphasized this issue in his interpretive analysis.⁵ It is not clear to me how the appeal routes inform the proper definition of the word “structure” in s. 34 or the decision on whether s. 33 or s. 34 applies to Clublink’s plans. I see no justification for giving s. 34 a broad interpretation and s. 33 a narrow one just because of a difference in the appeal routes. The rules of statutory interpretation do not depend on such a distinction. Rather, those rules apply to both sections equally. Further, and as I shall explain, to the extent that the proper interpretation of the *OHA* has been previously considered, existing authorities make it clear that s. 33 is to be given a broad and purposive interpretation. That approach would also be consistent with the purpose of the *OHA*.

[98] The other overarching concern that I have with the application judge’s reasons is that, notwithstanding the conflict between the parties over which of the two sections should apply, the application judge never engaged in any consideration or interpretation of s. 33. Rather, the application judge’s entire analysis is based solely on s. 34. He does not give any consideration as to how s. 34 and s. 33 are to work together in the overall scheme of the *OHA*.

⁵ Contrary to the assertion of my colleague at para. 4 of her reasons, I do not say that the different routes of appeal do not assist in resolving the issue. Rather, I say that the application judge placed too much emphasis on that aspect in his analysis.

[99] Contrary to my colleague's suggestion, I do recognize that the Supreme Court of Canada has been clear that the interpretation of any section in a statute is to be undertaken "harmoniously with the scheme of the Act": *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 S.C.R. 27, at para. 21. As Ruth Sullivan explains in *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis, 2014) at §13.12:

When analyzing the scheme of an Act, the court tries to discover how the provisions or parts of the Act work together to give effect to a plausible and coherent plan. It then considers how the provision to be interpreted can be understood in terms of that plan.

My concern is that the application judge did not follow that approach.

[100] The purpose of the *OHA* was discussed by the Supreme Court of Canada in *St Peter's Evangelical Lutheran Church (Ottawa) v. Ottawa (City)*, [1982] 2 S.C.R. 616. In that case, McIntyre J., at p. 625, adopted the purpose as expressed by MacKinnon A.C.J.O. in this court, from which the appeal had been taken:

It is to preserve and conserve for the citizens of this country *inter alia*, properties of historical and architectural importance. The Act is a remedial one and should be given a fair and liberal interpretation to achieve those public purposes which I have recited.

[101] This purpose of the *OHA* was reiterated by this court in *Toronto College Street Centre Ltd v. City of Toronto et al.* (1986), 56 O.R. (2d) 522 (C.A.), leave to appeal dismissed 61 O.R. (2d) 669 (S.C.C.), where Cory J.A. said, at p. 531:

The aim of the *Ontario Heritage Act* is to conserve, protect and preserve the heritage of Ontario.

[102] This court then went on to consider the purpose of s. 33 itself. On that point, Cory J.A. said, at p. 534:

A reading of the *Ontario Heritage Act* as a whole makes it clear that s. 33 must be given a wide and liberal interpretation. To do otherwise would frustrate the very purpose and intent of the Act.

[103] While there is no corresponding judicial determination of the scope to be given to s. 34, I accept that there is no compelling reason to give that section any less interpretative muscle given the overall purpose of the statute. Suffice it to say that it is well-established that, in considering the *OHA*, its provisions are to be interpreted broadly in order to accomplish the acknowledged purpose of the statute. Both sections must therefore be interpreted with the ultimate goal of the statute in mind. The differences in the appeal routes do not help in any principled approach to the interpretive analysis.

[104] I now turn to my analysis regarding the proper interpretation of the two sections. As I shall explain, that analysis is complicated by the reality that it is not immediately apparent why the distinction is statutorily drawn between ss. 33 and 34. Nevertheless, the proper starting point in interpreting any text is that the ordinary meaning understood by the reader is assumed to be the meaning intended by the writer. On that point, I again quote from Ruth Sullivan, *Sullivan on the Construction of Statutes*, at §3.9:

Most often, however, ordinary meaning refers to the reader's first impression meaning, the understanding that spontaneously comes to mind when words are read in their immediate context.

[105] On this interpretative exercise, I agree with the initial view of the application judge that having reference as to how a particular word, such as “structure”, has been interpreted when used in other statutes or contexts is not particularly helpful. Other statutes will have purposes and schemes that are very different from the purpose and scheme of the *OHA*. For example, determining how the term “structure” may have been interpreted for the purposes of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), or, more specifically, how that statute might treat expenses associated with operating a golf course, does not provide any assistance as to the proper interpretation of that word for heritage purposes.

[106] I would also note, on this point, that at least one of the cases on which the application judge placed reliance – namely, *Calgary Golf & Country Club v. Calgary (City)*, 2006 ABQB 312, 408 A.R. 292 – expressly avoided making any determination of the meaning of the word “structures”. The judge, on appeal in that case, decided that the resolution of that issue was not necessary for the purpose of deciding the issue that was before him: *Calgary Golf*, at para. 34.

[107] In my view, the meaning that would come spontaneously to the mind of an ordinary person, reading the provision, would not be that a golf course is a “structure”. In reaching that conclusion, I am mindful of the fact, as I believe any

person would be, that the creation of a golf course involves considerable construction. Significant quantities of earth may need to be moved and fashioned into mounds and other features of the course, including greens and tees. Earth has to be removed to create ponds and bunkers. Irrigation systems have to be routed throughout the course. Trees may have to be added, or moved, or removed. Electrical cables have to be installed for different purposes including, as is the case with Glen Abbey, cables for technological purposes, including large display screens.

[108] The fact that there is considerable engineering and construction expertise involved in creating a golf course does not lead inexorably to the ultimate creation being properly defined as a structure, however. As Denning L.J. aptly said in *Cardiff Rating Authority and Cardiff Assessment Committee v. Guest Keen Baldwin's Iron and Steel Co., Ltd.*, [1949] 1 K.B. 385 (C.A.) at p. 396:

A structure is something which is constructed, but not everything which is constructed is a structure.

[109] I am equally mindful of the fact that many golf courses will incorporate, or be fashioned around, naturally occurring features. Indeed, Glen Abbey itself draws heavily on the naturally occurring features of Sixteen Mile Creek to create the impact of the valley holes.

[110] None of these realities changes what a person sees when they visit a golf course and that is land. Land that stretches out in every direction, albeit often in a

very sculpted way. Land that is covered with grass, trees, bushes and the like, of varying heights and types. And, of course, a collection of tees, greens, bunkers and, sometimes, ponds.

[111] The nature of the construction involved in a golf course is explained in the affidavit of Thomas McBroom that was filed on behalf of Clublink. I understand that there was a dispute between the parties as to the admissibility and use that could be made of this evidence. The Town submitted that Mr. McBroom's evidence was improper opinion evidence that should be given no weight. Clublink's position was that the evidence was factual and related to how golf courses are constructed. Notwithstanding this dispute, and the written submissions made respecting the evidence, it does not appear that the application judge ever addressed the evidentiary issue.

[112] I do not see that much turns on this disagreement. There cannot be any serious dispute that the creation of a golf course, especially a championship golf course, involves many different forms of construction. I tend to agree with Clublink that Mr. McBroom's affidavit simply provides factual information that might be of assistance to a court in understanding the steps involved in constructing a golf course. His evidence has relevance for that very limited purpose.

[113] In terms of my analysis, I would note two things arising from Mr. McBroom's affidavit. One is his statement that golf course design is "a speciality

within the landscape architecture umbrella”. The other is his general observation that golf courses involve “the manipulation of land”. While both are small points, neither of these observations fit comfortably with the notion that a golf course is a structure.

[114] Of more importance, however, is the reality that no ordinary person would visit any golf course and be heard to comment “My, isn’t this a beautiful structure”. Rather, the comments would be directed to the landscape that is displayed before them and its aesthetic value. Indeed, Mr. McBroom remarks on the importance of aesthetics in the creation of a golf course, noting that bunkers and ponds, among other things, may be placed just for that purpose.

[115] I am not unmindful of the reason why Clublink has the need to try and qualify Glen Abbey as a structure. It does so in order to have resort to a different appeal process – one that binds the Town. As I earlier said, however, the practical economic interest that drives Clublink to want to invoke that appeal process cannot properly inform the meaning to be given to the word “structure” in the context of the *OHA*. I would say that that is especially so since the *OHA* is not generally concerned with economic interests. Rather, it is concerned with the preservation of the cultural and historical heritage aspects of the province.

[116] On this point, it appears to me that the application judge fundamentally misconstrued the purpose of the *OHA*. In his reasons, at para. 31, the application judge said:

The dual aspect of the heritage policy was reiterated by the Court of Appeal in *Toronto College Centre Street Ltd. v Toronto (City)* (1986), 56 OR (2d) 522, at para 38. Cory JA, for a unanimous Court, stressed that the *OHA* is to be interpreted purposively, and that the purpose is to accomplish heritage conservation in a way that does not run counter to the property owner's rights.

[117] With respect, that is not a proper reading of what Cory J.A. said in *Toronto College Centre Street*. At no point did this court, or for that matter any other court, interpret the *OHA* as requiring that heritage conservation had to be undertaken in a way “that does not run counter to the property owner’s rights”. Indeed, it will be self-evident that a heritage designation will, by definition, interfere and limit a property owner’s rights because it will restrict the use to which a property owner can put its property. This very point was made by McIntyre J. in *St Peter's Evangelical Lutheran Church (Ottawa)* when he said, at p. 626:

To protect the heritage of Ontario the municipalities were given power to designate property of their choice and to suspend thereby many of the rights of private ownership.

[118] The application judge’s erroneous interpretation of the purpose of the *OHA* undermines his analysis and conclusion.

[119] Returning then to the interpretation of the word “structure”, after referencing case law dealing with the term “structure” in other contexts, the application judge said, at para. 42:

If a landfill and a drag strip are "structures" because of their engineered features, and if a golf course is a "structure" for income tax depreciation purposes and for municipal tax assessment purposes, then a golf course can certainly be a structure for cultural heritage purposes.

[120] I do not quarrel with the proposition that a golf course “can” be a structure for cultural heritage purposes. But that is not the question. The Legislature might have chosen to define “structure” in the *OHA* such that golf courses and the like were brought within its grasp, but it did not do so. Thus, the question for this court is whether a golf course is a structure under the *OHA*, starting with the ordinary meaning of that term, and with the scheme of the statute firmly in mind.

[121] I am reinforced in my conclusion that Glen Abbey is not properly characterized as a structure for the purposes of the *OHA* by a number of factors, beyond the reality of a reasonable person’s first impression meaning. First is the fact that there is a definition of the word “property” in Part IV of the *OHA*. Part IV includes ss. 33 and 34. “Property” is defined in s. 26 as “real property and includes all buildings and structures thereon”. It follows, from this definition, that a structure is something that is located on real property. Similarly, s. 34(1) refers to the demolition of a “building or structure on the [designated] property” (emphasis added). The designation by-law identifies the “real property” described as Schedule A to the by-law as the property subject to the s. 29 designation. In my opinion, it stretches the definition of “structure” past its breaking point to suggest that tees, greens, fairways and rough, constitute items that are located “on” real

property. Each of these items consist fundamentally of earth. They are part of the earth. Indeed, they depend on the earth to survive. There is no logical or sensible way of making a demarcation between where any fairway ends and the land (i.e. the real property) begins. They are one and the same.

[122] Second is the fact that there is a definition of “alter” in the *OHA*. It is defined in s. 1 as meaning “to change in any manner and includes to restore, renovate, repair or disturb and ‘alteration’ has a corresponding meaning”. What Clublink proposes to do with Glen Abbey is essentially to bulldoze the property, to fill in the ponds and bunkers, and flatten the various berms and other vantage points so that the property becomes suitable for use as residences, or buildings, or malls and the like. In my opinion, that intention, if realized, would much more reasonably be characterized as constituting a change in the property, particularly a change “in any manner”, than it would a “demolition” or “removal” which are the terms used in s. 34.

[123] It is at this point that I return to consider the relationship between ss. 33 and 34. I earlier said that it is not immediately clear why the Legislature determined that it was necessary to have both sections. Nevertheless, I note that these two sections have been in the *OHA* since the introduction of the original statute in 1974. At that time, however, a municipality could not prevent the ultimate demolition of a building or structure. The municipality could, at most, delay that action for a sufficient period, apparently to allow the municipality

enough time to expropriate the building or structure and thus preserve it – a notably expensive and time-consuming process.

[124] In any event, in 2005, significant amendments were made to the *OHA*, particularly to s. 34. Those amendments now allowed a municipality to actually prevent the demolition or removal of a building or structure. In turn, though, any decision by the municipality to do so was subject to a binding appeal to the Local Planning Appeal Tribunal.

[125] It appears that the purpose behind these amendments was two-fold. One was to allow a municipality to prevent the demolition or removal of a building or structure that was deemed to be of cultural heritage value or interest without having to engage in the costly process of expropriating the building or structure. The other was to provide a measure of protection to the owner of the building or structure, who would now have a binding and independent appeal route from any such decision by a municipality.

[126] It would seem that this new structure was developed with the focus being on the paradigmatic model of heritage issues being directed towards buildings. My colleague appears to accept that was the focus. Indeed, to the degree that the case law provides any insight, it appears that heritage issues have generally fixated on buildings and other related structures. It is only more recently that other elements of our environment, such as landscapes, have come to be seen as having cultural heritage value or interest and thus warranting overriding public

protection. This view would also be consistent with the early building-centric application of the *OHA*, which focused on “cultural and architectural value” (emphasis added).

[127] However, and contrary to my colleague’s conclusion, none of this background, or theory regarding the interrelationship between these two sections, requires that the *OHA*, or any of its provisions, be given an unnatural or strained interpretation. It may well be that the Legislature viewed buildings and structures as being the most common form of private property that would attract cultural heritage value or interest and involve the greatest intrusion on the rights of private property owners. Thus, the Legislature decided to provide a different, and perhaps more stringent, procedure for protecting them than it decided was necessary for other items of cultural heritage value or interest. None of this should be allowed to distort the interpretative process, however. There is no need, or principle, that requires a statutory interpretation to be arrived at in order to shoe-horn a given factual situation into one section or the other. That is particularly so when the ultimate objective of those efforts is to promote private interests over public ones, which is itself contrary to the overriding purpose of the *OHA* in seeking to preserve property of cultural or heritage value or interest for the benefit of the public at large. Indeed, it is not clear to me why my colleague wishes to adopt what I characterize as a strained interpretation of the word “structure” simply to give a private party a leg-up over the public interest.

[128] Third is the effect of what Clublink plans to do with Glen Abbey. Clublink plans to eliminate the very facets of Glen Abbey that gives Glen Abbey its cultural heritage value. Those attributes are detailed in Schedule B to the by-law passed by the Town that designated Glen Abbey and surrounding property to be of cultural heritage value or interest under s. 29 of the *OHA*. Section 33 expressly captures situations where a property owner proposes to alter or change its property and the alteration “is likely to affect the property’s heritage attributes”. There is no similar requirement in s. 34. Consequently, s. 33 has a more direct and immediate connection to the effect of Clublink’s plans than does s. 34. I do not see how that reality provides any support for my colleague’s conclusion as she purports to have it do at para. 81.

[129] Further, given that the overarching purpose of the *OHA* is to protect Ontario’s heritage, it makes sense that the municipality is to have the “final say” on an alteration that will affect the property’s cultural heritage value. By contrast, since s. 34 applies to any building or structure on the designated property – irrespective of whether that structure contributes to the property’s cultural heritage value – it makes sense to provide the property owner greater procedural protections. These latter protections will guard against the risk that a municipality might interfere with private property rights in a manner that does not actually further the preservation of Ontario’s heritage.

[130] There is another reason to draw this distinction. If a building or structure has cultural heritage value or interest, and it is demolished, then nothing remains to remind anyone of that prior cultural heritage value or interest. It is simply gone. However, a property that has cultural heritage value or interest bound up in the land itself remains, even if the aspects of it that gave it cultural heritage value or interest are changed. The property remains. It cannot be eliminated. And the property owner retains the value inherent in that land.

[131] Fourth is the ultimate consequence of Clublink's plans. One can assume that the Town will refuse permission, under s. 34, for Clublink to do that which it wishes to do. For the Town to do otherwise would be entirely inconsistent with its position as to the cultural heritage value of Glen Abbey. If that occurs and Clublink appeals, the Local Planning Appeal Tribunal can reverse the Town's decision and order the Town to "consent to the demolition or removal of a building or structure". If that order is made with respect to Glen Abbey, then the Town is required, under s. 34.3, to "pass a by-law to repeal a by-law or the part thereof designating a property under section 29". In other words, through this process, Clublink obtains a repeal of the designating by-law without any direct challenge to the designating by-law.

[132] I repeat that, for the purposes of this appeal, Clublink did not make any formal objection to the passing of the designating by-law nor raise any direct challenge to it. I note that, even if Clublink had done so, any appeal would be to

the Conservation Review Board and would be non-binding on the municipality. Given the ultimate result that may flow from the procedure under s. 34 for heritage purposes, that is the complete reversal of the heritage designation, there is even more need to ensure that the section only applies to those situations that clearly fall within its scope. My colleague says that it made “practical sense” for Clublink to forgo a direct challenge to the designation through its attempt to shelter its goals through its s. 34 application. With respect, it makes practical sense for Clublink to do so only if Clublink is permitted, as my colleague would allow it, to do indirectly what it chose not to do directly. And in the process to invoke an entirely different appeal route – a factor that my colleague otherwise relies on to support her conclusion.

[133] Fifth, to the degree that meanings given to the word “structure” outside the *OHA* have any relevance to this interpretative exercise, a golf course does not fit comfortably with the common understanding of the word. For example, *The Concise Oxford English Dictionary*, 12th ed. (New York: Oxford University Press, 2011), at p. 1431, defines “structure” as “a building or other object constructed from several parts”.

[134] It also follows, on this point, that the use of the word “structure” in association with the word “building” in s. 34 suggests a similarity of intended meaning for the two terms. It suggests that structure was intended to capture

other man-made objects not encompassed within the term “building” such as, for example, a bridge.

[135] I earlier eschewed placing undue reliance on interpretations of the word “structure” reached by other courts in other cases dealing with other statutes. I will permit myself one reference, however, only to show that I am not alone in my interpretation of the word “structure” as it relates to golf courses. In interpreting the same word when used in an insurance policy in *J.M.D.S. Services Inc. v. Prudential Assurance Co. of England Property & Casualty (Canada)*, [1998] 1 W.W.R. 451 (Man. Q.B.), Darichuk J. said, at para. 7:

Absent such an assigned meaning, within the context of the insurance policy, this word should receive its ordinary, popular meaning of being an edifice or building of some kind, built or constructed on, above or below the surface of the land – not the golf course itself or the trees, shrubs, flowers or plants growing thereon.⁶

[136] Before leaving this point, I will say that I am aware that s. 47 of the *OHA* defines “property” as “real property, but does not include buildings or structures other than ruins, burial mounds, petroglyphs and earthworks”. This definition could be said, albeit very obliquely, to suggest that structures include land, e.g., burial mounds and earthworks. Indeed, my colleague places considerable reliance on the use of the word “earthworks” in defence of her conclusion.

⁶ See also *Hampton Golf Club Ltd. v. Minister of National Revenue*, [1986] 2 C.T.C. 403 (Fed. Ct.), at para. 29.

[137] I make two observations in response to that reliance. One is that this definition appears in Part VI of the *OHA*, not in Part IV where ss. 33 and 34 are found. Part VI deals with conservation of resources of archaeological value, an entirely different concern than Part IV addresses. The other is that the inclusion of this definition in Part VI demonstrates that the Legislature was capable of defining structure expressly, and in a specific way, when it wished to do so for a particular purpose. It clearly did not feel it necessary to do so for the purpose of Part IV but rather chose to leave the word to its ordinary meaning within the context of that Part of the statute. One cannot, in my view, use the separate definition of property in Part VI to alter the definition of property in Part IV when it is clear that the Legislature adopted separate and distinct definitions for separate and distinct purposes.

[138] Sixth, and finally, to uphold the application judge's decision and order would not further the purpose and goals of the *OHA*. If a golf course is a "structure" for the purpose of s. 34 of the *OHA* because it is "constructed" there is no immediately apparent limit to what types of objects, items, landscapes, or features could be qualified as "structures". It would seriously circumscribe the application of s. 33 in favour of a correspondingly expansive, and largely unfettered, right in the owners of heritage properties under s. 34, from a practical point of view, to deal with their property without reference to the effect on the property's heritage attributes. It would leave s. 33 with a very limited meaning.

Indeed, from a practical point of view, it would leave s. 33 with very little real-world application and thus be contrary to the “wide and liberal interpretation” urged by Cory J.A. in *Toronto College Street Centre*.

[139] In the end result, the very nature of Glen Abbey does not permit it to be properly characterized as a structure within the meaning of s. 34. Any contrary conclusion does not accord with common sense. Rather, approached sensibly, Glen Abbey is a component of a designated property that Clublink seeks to “alter” in a profound way that is “likely to affect the property’s heritage attributes”. That intention falls squarely within the terms of s. 33. Accordingly, if Clublink wishes to obtain permission to proceed as it plans, then it must seek the permission of the Town to do so under s. 33 of the *OHA*.

Conclusion

[140] I would allow the appeal and set aside the order below, with costs of the appeal to the Town fixed in the agreed amount of \$35,000, plus disbursements and HST. The parties have advised us that they have agreed on the appropriate disposition of the costs of the original application.

Released: October 23, 2019
“DD”

“I.V.B. Nordheimer J.A.”

Appendix A
Key Statutory Provisions

Ontario Heritage Act, R.S.O. 1990, c. O. 18

Definitions

1 In this Act,

“alter” means to change in any manner and includes to restore, renovate, repair or disturb and “alteration” has a corresponding meaning; (“transformer”, “transformation”)

“building permit” means a building permit issued under section 8 of the Building Code Act, 1992; (“permis de construire”)

“donation” includes any gift, testamentary disposition, deed or trust or other form of contribution; (“don”)

“heritage attributes” means, in relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest; (“attributs patrimoniaux”)

“inspect” includes to survey, photograph, measure and record; (“inspecter”)

“licence” means a licence issued under this Act; (“licence”)

“Minister” means the member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant Governor in Council; (“ministre”)

“municipality” means a local municipality and includes a band under the Indian Act (Canada) that is permitted to control, manage and expend its revenue money under section 69 of that Act; (“municipalité”)

“owner” means the person registered on title in the proper land registry office as owner; (“propriétaire”)

“permit” means a permit issued under this Act; (“permis”)

“person” includes a municipality; (“personne”)

“regulations” means the regulations made under this Act; (“règlements”)

“Review Board” means the Conservation Review Board; (“Commission de révision”)

“Tribunal” means the Local Planning Appeal Tribunal; (“Tribunal”)

“Trust” means the Ontario Heritage Trust continued under section 5. (“Fiducie”) R.S.O. 1990, c. O.18, s. 1; 1993, c. 27, Sched.; 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. F, s. 2 (1, 2); 2005, c. 6, s. 2; 2017, c. 23, Sched. 5, s. 61.

...

PART IV CONSERVATION OF PROPERTY OF CULTURAL HERITAGE VALUE OR INTEREST

Definition

26 (1) In this Part,

“property” means real property and includes all buildings and structures thereon. 2005, c. 6, s. 14.

Same

(2) In sections 27 to 34.4,

“designated property” means property designated by a municipality under section 29. 2005, c. 6, s. 14.

...

Designation by municipal by-law

29 (1) The council of a municipality may, by by-law, designate a property within the municipality to be of cultural heritage value or interest if,

(a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed by regulation, the property meets the prescribed criteria; and

(b) the designation is made in accordance with the process set out in this section. 2005, c. 6, s. 17 (1).

Notice required

(1.1) Subject to subsection (2), if the council of a municipality intends to designate a property within the municipality to be of cultural heritage value or interest, it shall cause notice of intention to designate the property to be given by the clerk of the municipality in accordance with subsection (3). 2005, c. 6, s. 17 (1).

Consultation

(2) Where the council of a municipality has appointed a municipal heritage committee, the council shall, before giving notice of its intention to designate a property under subsection (1), consult with its municipal heritage committee. R.S.O. 1990, c. O.18, s. 29 (2); 2002, c. 18, Sched. F, s. 2 (9).

Notice of intention

(3) Notice of intention to designate under subsection (1) shall be,

(a) served on the owner of the property and on the Trust; and

(b) published in a newspaper having general circulation in the municipality. R.S.O. 1990, c. O.18, s. 29 (3); 2005, c. 6, s. 1.

Contents of notice

(4) Notice of intention to designate property that is served on the owner of property and on the Trust under clause (3) (a) shall contain,

(a) an adequate description of the property so that it may be readily ascertained;

(b) a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property; and

(c) a statement that notice of objection to the designation may be served on the clerk within 30 days after the date of publication of the notice of intention in a newspaper of general circulation in the municipality under clause (3) (b). 2005, c. 6, s. 17 (2).

Same

(4.1) Notice of intention to designate property that is published in a newspaper of general circulation in a municipality under clause (3) (b) shall contain,

- (a) an adequate description of the property so that it may be readily ascertained;
- (b) a statement explaining the cultural heritage value or interest of the property;
- (c) a statement that further information respecting the proposed designation is available from the municipality; and
- (d) a statement that notice of objection to the designation may be served on the clerk within 30 days after the date of publication of the notice of intention in a newspaper of general circulation in the municipality under clause (3) (b). 2005, c. 6, s. 17 (2).

Objection

(5) A person who objects to a proposed designation shall, within thirty days after the date of publication of the notice of intention, serve on the clerk of the municipality a notice of objection setting out the reason for the objection and all relevant facts. R.S.O. 1990, c. O.18, s. 29 (5); 1996, c. 4, s. 55 (2); 2009, c. 33, Sched. 11, s. 6 (4).

If no notice of objection

(6) If no notice of objection is served within the 30-day period under subsection (5), the council,

(a) shall,

(i) pass a by-law designating the property,

(ii) cause a copy of the by-law, together with a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property,

(A) to be served on the owner of the property and on the Trust, and

(B) to be registered against the property affected in the proper land registry office, and

(iii) publish notice of the by-law in a newspaper having general circulation in the municipality; or

(b) shall withdraw the notice of intention to designate the property by causing a notice of withdrawal,

(i) to be served on the owner of the property and on the Trust, and

(ii) to be published in a newspaper having general circulation in the municipality. 2002, c. 18, Sched. F, s. 2 (11); 2005, c. 6, ss. 1, 17 (3).

Referral to Review Board

(7) Where a notice of objection has been served under subsection (5), the council shall, upon expiration of the thirty-day period under subsection (4), refer the matter to the Review Board for a hearing and report. R.S.O. 1990, c. O.18, s. 29 (7).

Hearing

(8) Pursuant to a reference by the council under subsection (7), the Review Board, as soon as is practicable, shall hold a hearing open to the public to determine whether the property in question should be designated, and the council, the owner, any person who has filed an objection under subsection (5) and such other persons as the Review Board may specify, are parties to the hearing. R.S.O. 1990, c. O.18, s. 29 (8).

Place of hearing

(9) A hearing under subsection (8) shall be held at such place in the municipality as the Review Board may determine, and notice of such hearing shall be published in a newspaper having general circulation in the municipality at least ten days prior to the date of such hearing. R.S.O. 1990, c. O.18, s. 29 (9).

Review Board may combine hearings

(10) The Review Board may combine two or more related hearings and conduct them in all respects and for all purposes as one hearing. R.S.O. 1990, c. O.18, s. 29 (10).

Report

(12) Within thirty days after the conclusion of a hearing under subsection (8), the Review Board shall make a report to the council setting out its findings of fact, its recommendations as to whether or not the property should be designated under this Part and any information or knowledge used by it in reaching its recommendations, and the Review Board shall send a copy of its report to the other parties to the hearing. R.S.O. 1990, c. O.18, s. 29 (12).

Failure to report

(13) Where the Review Board fails to make a report within the time limited by subsection (12), such failure does not invalidate the procedure. R.S.O. 1990, c. O.18, s. 29 (13).

Decision of council

(14) After considering the report under subsection (12), the council, without a further hearing,

(a) shall,

(i) pass a by-law designating the property,

(ii) cause a copy of the by-law, together with a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property,

(A) to be served on the owner of the property and on the Trust, and

(B) to be registered against the property affected in the proper land registry office, and

(iii) publish notice of the by-law in a newspaper having general circulation in the municipality; or

(b) shall withdraw the notice of intention to designate the property by causing a notice of withdrawal,

(i) to be served on the owner of the property and on the Trust, and

(ii) to be published in a newspaper having general circulation in the municipality. 2002, c. 18, Sched. F, s. 2 (12); 2005, c. 6, ss. 1, 17 (5).

Decision final

(14.1) The decision of the council under subsection (14) is final. 2002, c. 18, Sched. F, s. 2 (12).

Withdrawal of objection

(15) A person who has served a notice of objection under subsection (5) may withdraw the objection at any time before the conclusion of a hearing into the matter by serving a notice of withdrawal on the clerk of the municipality and on the Review Board. 2009, c. 33, Sched. 11, s. 6 (5).

...

Alteration of property

33 (1) No owner of property designated under section 29 shall alter the property or permit the alteration of the property if the alteration is likely to affect the property's heritage attributes, as set out in the description of the property's heritage attributes that was required to be served and registered under subsection 29 (6) or (14), as the case may be, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the alteration. 2002, c. 18, Sched. F, s. 2 (16); 2005, c. 6, s. 21 (1).

Transition

(1.1) If property is designated under this Part as property of historic or architectural value or interest, either before the day section 29 of this Act is amended by section 2 of Schedule F to the Government Efficiency Act, 2002 or under subsection 29 (16) of this Act after that day,

(a) subsection (1) of this section does not apply to the property;

(b) despite its amendment by subsection 2 (16) of Schedule F to the Government Efficiency Act, 2002, subsection (1) of this section, as it read immediately before the day subsection 2 (16) of Schedule F to the Government Efficiency Act, 2002 came into force, continues to apply to the property. 2002, c. 18, Sched. F, s. 2 (16).

Application

(2) An application under subsection (1) shall be accompanied by a detailed plan and shall set out such information as the council may require. R.S.O. 1990, c. O.18, s. 33 (2).

Notice of receipt

(3) The council, upon receipt of an application under subsection (1) together with such information as it may require under subsection (2), shall cause a notice of receipt to be served on the applicant. R.S.O. 1990, c. O.18, s. 33 (3).

Decision of council

(4) Within 90 days after the notice of receipt is served on the applicant under subsection (3), the council, after consultation with its municipal heritage committee, if one is established,

(a) shall,

- (i) consent to the application,
- (ii) consent to the application on terms and conditions, or
- (iii) refuse the application; and

(b) shall give notice of its decision to the owner of the property and to the Trust. 2002, c. 18, Sched. F, s. 2 (17); 2005, c. 6, s. 1.

Extension of time

(5) The applicant and the council may agree to extend the time under subsection (4) and, where the council fails to notify the applicant of its decision within ninety days after the notice of receipt is served on the applicant or within such extended time as may be agreed upon, the council shall be deemed to have consented to the application. R.S.O. 1990, c. O.18, s. 33 (5).

Application for hearing

(6) Where the council consents to an application upon certain terms and conditions or refuses the application, the owner may, within thirty days after receipt of the notice under subsection (4), apply to the council for a hearing before the Review Board. R.S.O. 1990, c. O.18, s. 33 (6).

Referral to Review Board

(7) The council shall, upon receipt of a notice under subsection (6), refer the matter to the Review Board for a hearing and report, and shall publish a notice of the hearing in a newspaper having general circulation in the municipality, at least ten days prior to the date of such hearing. R.S.O. 1990, c. O.18, s. 33 (7).

Hearing

(8) The Review Board shall as soon as is practicable hold a hearing open to the public to review the application, and the council and the owner and such other persons as the Review Board may specify are parties to the hearing. R.S.O. 1990, c. O.18, s. 33 (8).

Place for hearing

(9) A hearing under subsection (8) shall be held at such place in the municipality as the Review Board may determine. R.S.O. 1990, c. O.18, s. 33 (9).

(10) Repealed: 2005, c. 6, s. 21 (2).

Report

(11) Within thirty days after the conclusion of a hearing under subsection (8), the Review Board shall make a report to the council setting out its findings of fact, its recommendations as to whether or not the application should be approved, and any information or knowledge used by it in reaching its recommendations, and shall send a copy of its report to the other parties to the hearing. R.S.O. 1990, c. O.18, s. 33 (11).

Failure to report

(12) Where the Review Board fails to make a report within the time limited by subsection (11), the failure does not invalidate the procedure. R.S.O. 1990, c. O.18, s. 33 (12).

Decision of council

(13) After considering the report under subsection (11), the council without a further hearing shall confirm or revise its decision under subsection (4) with such modifications as the council considers proper and shall cause notice of its decision to be served on the owner and the Trust and to the other parties to the hearing, and its decision is final. R.S.O. 1990, c. O.18, s. 33 (13); 2005, c. 6, s. 1.

Withdrawal of application

(14) The owner may withdraw an application made under subsection (6) at any time before the conclusion of a hearing into the matter by serving a notice of withdrawal on the clerk of the municipality and on the Review Board and, upon receipt of the notice of withdrawal, the Review Board shall not hold a hearing into the matter or, if a hearing into the matter is in progress, shall discontinue the hearing and the council shall act in accordance with subsection (4) as if no application had been made under subsection (6). 1996, c. 4, s. 58.

Delegation of council's consent

(15) The power to consent to alterations to property under this section may be delegated by by-law by the council of a municipality to an employee or official of the municipality if the council has established a municipal heritage committee and has consulted with the committee prior to delegating the power. 2005, c. 6, s. 21 (3).

Scope of delegation

(16) A by-law that delegates the council's power to consent to alterations to a municipal employee or official may delegate the power with respect to all alterations or with respect to such classes of alterations as are described in the by-law. 2005, c. 6, s. 21 (3).

Demolition or removal of structure

34 (1) No owner of property designated under section 29 shall demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal. 2002, c. 18, Sched. F, s. 2 (18); 2005, c. 6, s. 22 (1).

Application

(1.1) An application made under subsection (1) shall be accompanied by any plans and set out any information the council may require. 2009, c. 33, Sched. 11, s. 6 (9).

Notice of receipt

(1.2) The council, on receipt of an application under subsection (1) together with any information it may require under subsection (1.1), shall serve a notice of receipt on the applicant. 2009, c. 33, Sched. 11, s. 6 (9)

Decision of council

(2) Within 90 days after the notice of receipt is served on the applicant under subsection (1.2) or within such longer period as is agreed upon by the owner and the council, the council, after consultation with its municipal heritage committee, if one is established,

(a) may,

(i) consent to the application,

(i.1) consent to the application, subject to such terms and conditions as may be specified by the council, or

(ii) refuse the application;

(b) shall give notice of its decision to the owner and to the Trust; and

(c) shall publish its decision in a newspaper having general circulation in the municipality. 2002, c. 18, Sched. F, s. 2 (18); 2005, c. 6, ss. 1, 22 (2); 2009, c. 33, Sched. 11, s. 6 (10).

(3) Repealed: 2005, c. 6, s. 22 (3).

Deemed consent

(4) If the council fails to notify the owner under clause (2) (b) within the time period mentioned in subsection (2), the council shall be deemed to have consented to the application. 2002, c. 18, Sched. F, s. 2 (18).

...

Appeal to Tribunal

34.1 (1) If the council of a municipality consents to an application subject to terms and conditions under subclause 34 (2) (a) (i.1) or refuses an application under subclause 34 (2) (a) (ii), the owner of the property that was the subject of the application may appeal the council's decision to the Tribunal within 30 days of the day the owner received notice of the council's decision. 2017, c. 23, Sched. 5, s. 64.

Notice of appeal

(2) An owner of property who wishes to appeal the decision of the council of a municipality shall, within 30 days of the day the owner received notice of the council's decision, give notice of appeal to the Tribunal and to the clerk of the municipality. 2017, c. 23, Sched. 5, s. 64.

Content of notice

(3) A notice of appeal shall set out the reasons for the objection to the decision of the council of the municipality and be accompanied by the fee charged under the Local Planning Appeal Tribunal Act, 2017. 2017, c. 23, Sched. 5, s. 64.

Hearing

(4) Upon receiving notice of an appeal, the Tribunal shall set a time and place for hearing the appeal and give notice of the hearing to the owner of the property and to such other persons or bodies as the Tribunal may determine. 2017, c. 23, Sched. 5, s. 64.

Notice of hearing

(5) The Tribunal shall give notice of a hearing in such manner as the Tribunal determines necessary. 2017, c. 23, Sched. 5, s. 64.

Powers of Tribunal

(6) After holding a hearing, the Tribunal may order,

(a) that the appeal be dismissed; or

(b) that the municipality consent to the demolition or removal of a building or structure without terms and conditions or with such terms and conditions as the Tribunal may specify in the order. 2017, c. 23, Sched. 5, s. 64.

Decision final

(7) The decision of the Tribunal is final. 2017, c. 23, Sched. 5, s. 64.

...

Repeal of by-law designating property

34.3 (1) The council of a municipality shall pass a by-law to repeal a by-law or the part thereof designating a property under section 29 if the owner of the property has applied in writing to the council for consent to the demolition or removal of a building or structure on the property and,

(a) the council consents to the application under subclause 34 (2) (a) (i) or (i.1) or is deemed to have consented to the application under subsection 34 (4); or

(b) the Tribunal has ordered that the municipality give its consent under clause 34.1 (6) (b). 2005, c. 6, s. 24; 2017, c. 23, Sched. 5, s. 62.

Duties upon passing a repealing by-law

(2) When the council passes a repealing by-law under this section, the council shall cause,

(a) a copy of the repealing by-law to be served on the owner of the property and on the Trust;

(b) notice of the repealing by-law to be published in a newspaper having general circulation in the municipality;

(c) reference to the property to be deleted from the Register referred to in subsection 27 (1); and

(d) a copy of the repealing by-law to be registered against the property affected in the proper land registry office. 2002, c. 18, Sched. F, s. 2 (18); 2005, c. 6, s. 1.

...

PART VI CONSERVATION OF RESOURCES OF ARCHAEOLOGICAL VALUE

Definitions,

47 In this Part,

“designated property” means property that is designated by the Minister under this Part; (“bien désigné”)

“property” means real property, but does not include buildings or structures other than ruins, burial mounds, petroglyphs and earthworks. (“bien”) R.S.O. 1990, c. O.18, s. 47.