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November 5, 2020

Lorraine Dooley
Ministry of Heritage, Sport, Tourism
and Culture Industries - Culture Policy Unit
401 Bay Street
Suite 1800
Toronto, ON
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Canada

RE: Proposed Regulation under the Ontario Heritage Act (Bill 108) 019-1348

Dear Ms. Dooley,

On behalf of the City of Toronto Planning Division I would like to thank you for the opportunity to comment on the proposed regulation. While we are generally supportive of much of the proposal we have the following comments and recommendations that we ask you to consider before the regulation is finalized.

Section 1, Prescribed Principles

While we acknowledge that the principles are helpful, as drafted, it is unclear how the principles are to be considered and applied. We are seeking guidance from the Ministry on the consideration of such principles by City Council. In particular, we also see guidance on what determines “demonstrating openness and tranparency” and “considering views of all interested persons and communities” as the process for considering any applications under the OHA or designating a property under the OHA as prescribed by legislation.

Given the explicit link between the *Planning Act* applications which are required to be consistent with the Provincial Policy Statement and A Place to Grow: Growth Plan for the Greater Golden Horseshoe, language in these principles should align with the requirements under s. 3 of the *Planning Act*, which use the word “shall”. In that regard we would propose the following revisions:

> **Recommendation re 1(3)**:
>
> 1. Property that is determined to be of cultural heritage value or interest **shall** ~~should~~ be protected and conserved for all generations.

2. Decisions affecting the cultural heritage value or interest of a property or heritage conservation district **shall** ~~should~~,

i. minimize adverse impacts to the cultural heritage value or interest of the property or district,

ii. be based on research, appropriate studies and documentary evidence, and

iii. demonstrate openness and transparency by considering the views of all interested persons and communities.

3. Conservation of properties of cultural heritage value or interest **shall** ~~should~~ be achieved through identification, protection and wise management, including adaptive reuse where appropriate.

We are generally supportive of the definition of “adaptive reuse”, subject to a further refinement (as shown below):

- **Recommendation**: “adaptive reuse” means the alteration of a property of cultural heritage value or interest to fit new uses or circumstances while retaining the **cultural heritage value or interest** ~~heritage attributes~~ of the property.

For example, these principles are to apply to demolition of a heritage attribute and based on the regulations, a determination is required that a property continues to have cultural heritage value or interest, but for the demolition or removal of the heritage attribute, either no amendment to the designation by-law is required or an amendment to the by-law is required. In these circumstances, the property would presumbly be adaptively reused, but because the definition refers to retention of the heritage attributes, Principle 3 is not applicable and/or not met, based on the definition of adpative reuse.

Section 2(1) Prescribed Event

We generally support the identified application types, being privately initiated Official Plan Amendments, Zoning By-law Amendments and Draft Plan of Subdivision. We continue to have concerns with the time identified for when the prescribed event should commence. The recommendation below will allow for consistent provisions and timelines between the OHA and the Planning Act to support efficiencies and streamlining of decision making. This will also allow for further discussion with applicants on the cultural heritage value of the property, in particular as it affects the redevelopment of the property, as encouraged by the Ontario Heritage Toolkit.

- **Recommendation**: the time for the prescribed event commence on the date of when an applicant may appeal the identified applications for Zoning By-law Amendment, Official Plan Amendment and Draft Plan of Subdivision to the Local Planning Appeal Tribunal.

As drafted in the regulations, the prescribed event appears to retroactively impact applications that pre-date the intended enactment of the regulations. We believe this may cause confusion and disputes on the intended application of section 2(1).

- **Recommendation**: include a transtion provision in section 20(1), which provides that section 2(1) of this regulation does not apply to applications made under the Planning Act on or before the date of enactment of this regulation.

Section 3(1) Prescribed Exceptions to Prescribed Event

We are generally supportive of the prescribed exceptions. We request clarification on the use of the words "resolution" and in other provisions, reference is made to the municipality passing a resolution. The prescribed exceptions, as drafted, set out criteria to be met, resulting in an "if…then" scenario, which are more in the nature of adminstrative actions arising out of statute.

- **Recommendation**: delete the words "pass a resolution" from various prescribed exceptions and simply indicate that the "municipality may determine".

It is not clear when the municipality makes the decisions under section 3(1) that they are not subject to appeal. To minimize disputes and provide clarity a new subsection 3(6) should be included to state that such determinations are not subject to appeal. Similar language is found under s. 34(17) of *Planning Act* under subsection 34(17).

- **Recommendation re new 3(6)**: 3(6) where a municipality has made a determination under section 3, such determination is final and not subject to review in any tribunal or court.

Section 3(1).4 is unclear as to whether a municipality needs to demonstrate any reason for not having consulted its heritage committee within the 90 day period set out in s. 29(1.2) of the *Ontario Heritage Act*. We are seeking further guidance from the Ministry as to whether municipalities are required to provide further reasons as to why it was unable to consult with its heritage committee and for requesting a further 180 days.

Section 4(1) Prescribed Circumstances, s. 29(8) para 1

We are generally supportive of the prescribed circumstances. For the reasons we stated regarding Section 3(1), the same comments would apply to Section 4(1). For clarity, the recommendations are below:

- **Recommendation**: delete the words "pass a resolution" from various prescribed circumstances and simply indicate that the "municipality may determine".

New section 4(4) addressing the comment about regarding determations made under section 4 and such determinations not being subject to appeal.

- **Recommendation re new 4(4)**: 4(4) where a municipality has made a determination under section 4, such determination is final and not subject to review in any tribunal or court.

Section 5(1) Designation by municipal by-law, requirements

We are generally supportive of the identified requirements for designation by-laws, subject to clarifications and recommended revisions below.

- **Recommendation re 5(1)1 iii**: a general description of where the property is located within the municipality, for example, **where applicable,** the name of the neighbourhood in which the property is located and the nearest ~~**major**~~ intersection to the property.

In correspondence with the Director of Titles, Land Registry Office, the City has experienced difficulty in the past in attaching certain details to certain by-laws and in some circumstances the Land Registry Office requests less details be included to allow the by-law and/or agreements to be registered. To provide flexibility in ensuring that muncipalities attempt to include as much information as possible, but balance the difficulties with the Land Registry Office we propose that the by-law *may* contain such elements.

- **Recommendation re 5(1)2**: the by-law **may** ~~must~~ contain a site plan, scale drawing, aerial photograph or other image that identifies each area of the property that identifies each area of the property that has cultural heritage value or interest.

Regarding section 5(1) paragraphs 3 and 4, contain some overlap regarding the requirements and may result in duplicative information within a designation by-law. We are seeking clarification that these matters be interchangeably addressed. Generally a statement of cultural heritage value or interest contains identification of the criteria and discussion of the attributes, relative to that criteria. As currently drafted, that explanation would be provided twice within the same by-law. Further, it is more appropriate that the description of heritage attributes be “concise”, rather than “brief”, as a property may have several heritage attributes that are described in a concise manner, but may be argued are not “brief”. To address this matter, we recommend the following revisions for clarity:

> **Recommendation re 5(1)3**: The statement explaining the cultural heritage value or interest of the property must identify which of the criteria set out in subsection 1 (2) of Ontario Regulation 9/06 (Criteria for Determining Cultural Heritage Value or Interest) made under the Act are met and **must explain how each heritage attribute contributes to the cultural heritage value or interest of the property**. ~~**must explain how each criterion is met.**~~
>
> **Recommendation re 5(1)4**: The description of the heritage attributes of the property **should be concise** ~~must be brief~~. [*moved to s. 5(1)3* - ~~and must explain how each heritage attribute contributes to the cultural heritage value or interest of the property~~.]

We are supportive of Paragraph 5(1)5.

We believe that Section 5(2) is more appropriately located under Section 6, with reference to subsection 5(1) and it should reference section 30.1(1) of the Act as identified in the Schedule to the Regulations. The language in 5(1) already identifies that these requirements apply for the purposes of 29(8) of the Act. If there is a different intent for

subsection 5(2), we would request clarification be provided, otherwise our recommended revision is below:

- **Recommendation re 5(2)**: be renumbered to 6(2) and revised as follows: For clarity, the requirements set out in subsection **5**(1) apply for the purposes of subsection **30.1 (1)** ~~29 (8)~~ of the Act, as set out in the Schedule

Section 8, Prescribed information and material

We are generally supportive of the minimum prescribed information and requirements. We request the following clarifications:

- **Section re 8(1)3**: seems to be a legal description and municipal address of the property. We would suggest the following revision as certain information may or may not be relevant to each municipality

- **Recommendation re 8(1)3**: a description of the property that is the subject of the application, including**, where applicable,** information as the concession and lot numbers, reference plan and part numbers, and street names and numbers.

We would request a new subsection 8(7) be included that permits a municipality to waive the minimum application requirements in the regulation, provided such criteria to waive such requirements is set out in a municipal by-law, resolution or official plan in accordance with subsection (2). There are circumstances where such alteration applications are minor in nature, but do require approval under the Ontario Heritage Act. Imposing these minimum requirements may disincentive adapative reuse of such properties where in the opinion of the municipality it is not necessary to permit such alterations.

- **Recommendation re new 8(7)**: Despite subsection (1), a municipality may permit an application be made under subsection 33(2) and 34(2) of the Act without providing certain materials under subsection (1) where in the opinion of the municipality such information or material is not required and the municipality has provided such criteria to waive requirements in subsection (1) in such circumstances by way of municipal by-law, resolution or official plan in accordance with subsection (2).

Section 9, Consent to application under s. 34 of the Act

We do not support this Section as drafted. It is unclear as to application and process. Also, it states this is when Council consents to an application to demolish, but section 9 prescribes steps under 34.3(1), without specific reference to 34.3(1)(a), as s. 34.3(1)(b) is specific to the Tribunal. There should not be a reason for why City Council would have to reaffirm the decision of the Tribunal when the matter has been appealed. This creates further confusion in the process.

Further, where City Council has already undergone the process for consenting to demolition application under 34.3(1)(a) of the Act, it is unclear how this section would then permit City Council to pass an amended or new designation by-law on that same property where such a building or structure is removed. That scenario only makes sense where a heritage attribute is removed. Council should only be making one decision on the demolition of the property. If City Council consents to the demolition of a heritage attribute, based on the application

information provided in accordance with section 8, there should be sufficient information to demonstrate a conclusion on cultural heritage value and council should be able to make a singular decision as an outcome of approving such a demolition.

Recommendation re Section 9(1)1 should be revised as follows:

> 1. ~~After~~ **Where** the demolition or removal of a ~~building, structure or~~ heritage attribute**(s)** on the property **is permitted by the council of a municipality under subsection 34.3(1)(a) of the Act, it shall** ~~is complete, the council of the municipality shall, in consultation with the municipal heritage committee established under section 28 of the Act, if one has been established,~~ make one of the following determinations:
>
> > i. The property continues to have cultural heritage value or interest and, despite the demolition or removal **of the heritage attribute(s)**, the statement explaining the cultural heritage value or interest of the property and the description of the heritage attributes of the property are accurate and do not need to be amended.
> >
> > ii. The property continues to have cultural heritage value or interest but, as a result of the demolition or removal **of the heritage attribute(s)**, the statement explaining the cultural heritage value or interest of the property or the description of the heritage attributes of the property is no longer accurate and needs to be amended.
> >
> > iii. The property no longer has cultural heritage value or interest as a result of the demolition or removal **of the heritage attribute(s)**.

Where a building or structure is authorized for demolition, and there are no buildings, structures, including landscape features, remaining on the property subject of that demolition, that contain cultural heritage value or interest, it appears inconsistent with the *Ontario Heritage Act* to continue to presume cultural heritage value or interest is retained on the property. Where there are mulitple structures on the same property subject of the same designation by-law, the demolition and/or removal of one building/structure, may or may not have the same impact. We believe that is what is intended to be addressed and our revisions reflect those matters below.

Recommendation for new subsection to address demolition of buildings and/or structures, including landscape features, where more than one building or structure is on the property subject of the designation by-law:

> #. ~~After~~ **Where** the demolition or removal of a building **or** structure ~~or heritage attribute~~ on the property **is permitted by the council of a municipality under subsection 34.3(1)(a) of the Act, it shall** ~~is complete, the council of the municipality shall, in consultation with the municipal heritage committee established under section 28 of the Act, if one has been established,~~ make one of the following determinations**, if the property contains one or more remaining buildings or structures**:
>
> > ~~i. The property continues to have cultural heritage value or interest and, despite the demolition or removal, the statement explaining the cultural~~

~~heritage value or interest of the property and the description of the heritage attributes of the property are accurate and do not need to be amended.~~

i. ~~ii.~~ The property continues to have cultural heritage value or interest but, as a result of the demolition or removal **of the building and/or structure, including landscape features**, the statement explaining the cultural heritage value or interest of the property or the description of the heritage attributes of the property is no longer accurate and needs to be amended.

ii. ~~iii.~~ The property no longer has cultural heritage value or interest as a result of the demolition or removal **of the building and/or structure, including landscape features**.

To address the changes above and to better streamline approvals, where appropriate and permitted, section 9(1)4 should also be revised as follows:

- **Recommendation re 9(1)4**: If the council makes the determination described in subparagraph 1 iii **or where the demolition or removal of a building or structure on the property is permitted by the council of a municipality under subsection 34.3(1)(a) of the Act and no other building or structure, including landscape features subject of the by-law made under section 29 remains**,

Regarding the remaining processes under section 9, if the by-law is required to be amended, it establishes a further process for amending the designation by-law on the property, but would create a further appeal process, when all of outcomes from section 9 are a result of council consenting to the demolition, where a potential appeal may have already been made. Alternatively, we recommend that there should be an explicit statement that where Council has amended the designation by-law under Section 9, such amended by-law is not subject to appeal to the Tribunal.

- **Recommendation re 9(2)**: A by-law passed under this section comes into force on the day the by-law is passed **and is not subject to appeal to the Tribunal**.

The inclusion of Section 9(1)5 and 9(1)6 regarding moving buildings or structures on a property to another property is not clear how that relates to a demolition application under section 34 of the Act. If the building or structure is intended to be retained, i.e. not demolished, but instead is being proposed to be relocated, where permissible and appropriate in the circumstances, that would be a combination of a repeal under section 31/32 affected property and a new designation by-law under section 29 of the Act on the new property. If the Ministry wishes to provide that clarity under legislation related to moving a building or structure, the City would like the opportunity to review such changes but would generally be supportive of direction that aligns with the use of section 31/32 and section 29 of the Act. In that circumstance, application materials under section 32 should be required to facilitate such building and/or structure relocation to a different property to support repeal and designation of a new property or portion of a property with such buildings and/or structures.

- **Recommendation**: We would recommend these sections 9(1)5 and 9(1)6 be **deleted**.

- **Recommendation**: review further legislative and regulatory changes around moving buildings and/or structures on the same property or a different property, with consultation with municipalities.

Section 9(4) is not clear. The statement says that section 29, 30.1 and 31 do not apply, but then section 30.1 and 31 apply when you amend or repeal. We are requesting clarification on when section 29, 30.1 and 31 do not apply as section 30.1 and 31 only deal with amendment and repeal, so it is unclear when they apply and do not apply.

Record of Decisions (Sections 10 to 19)

We are generally supportive of the identified requirements and will ensure that application materials for each identified section provide for compliance to complete a record, where a record of decision is required. We would request that the language be revised to indicate that the record sent to the Tribunal is "**within 15 days after the last day for filing a notice of appeal**" which ensures that only one record is provided to the Tribunal, not multiple, where persons file appeals/objections on different dates as permitted.

We are requesting clarification on the Ministry's expectation for the Record requiring the following which appears throughout Section 9 to 19 of the Regulations:

> 5. A statement by an employee of the municipality as to how the decision of council considered the principles set out in subsection 1 (3) when the council exercised its decision-making authority.

We presume it is sufficient to make reference to a report that would contain such information in Item 4 forming the record of decision, however it is not clear if an independent statement is required beyond the report. Clarification would be appreciated.

Further, the regulations require the Clerk to identify the date a document is served on the City. This information may not be apparent or known. Instead the date of when it is received by or filed with the City can be confirmed by the City Clerk as part of the record. Our suggested revisions to address this matter are below:

- **Recommendation re s 10(3)1:** The original or a certified copy of every notice of objection **filed** ~~served~~ on the clerk of the municipality under subsection 29 (5) of the Act, and the date on which each notice **is filed** ~~was served~~.

- **Recommendation re s 11(4)1:** The original or a certified copy of every notice of objection **filed** ~~served~~ on the clerk of the municipality under subsection 29 (5) of the Act and the date on which it was **filed** ~~served~~.

- **Recommendation re s. 12(3)1**: The original or a certified copy of every notice of objection **filed** ~~served~~ on the clerk of the municipality under subsection 31 (5) of the Act and the date on which it was **filed** ~~served~~.

- **Recommendation re s. 13, paragraph 4:** The original or a certified copy of every notice of objection **filed** ~~served~~ on the clerk of the municipality under subsection 32 (4) of the Act and the date it was **filed** ~~served~~.

This would be consistent with section 11(7)1 included in the regulation:

> The original or a certified copy of every notice of objection **filed** with the clerk of the municipality under subsection 30.1 (6) of the Act and the date on which it was **filed**.

This will ensure there is no discrepancy in determining the date a document is received by, or filed with, the municipality given that the City has no control over the method of service used by an objector or owner under section 67(1) of the OHA.

Section 20, Transition Rules

We are generally supportive of the transition provisions as they appropriately ensure there is a clear line of application between on-going matters and new matters under the Ontario Heritage Act. As mentioned earlier, a new transition provision should also be included to make it clear that Section 2(1) of the regulation does not apply to applications made under the *Planning Act* which pre-date the enactment date of the regulation.

- **Recommendation re new 20(9):** subsection 2(1) of this regulation does not apply with respect to any application made under the *Planning Act* before the day this regulation comes into force.

Other matters to be addressed

Request 1: enactment date of the regulation on or after July 1, 2021.

- This provides the City an opportunity to socialize the new process and requirements with the development community prior to the regulations coming into force. This also permits the City sufficient time to prepare to receive such applications in an organized and timely manner and allow for a balanced focus on implementing these regulations while continuing to address matters arising from COVID-19.

Request 2: Fee regulation under the *Ontario Heritage Act*

- As you are aware, due to the new requirement to process these applications under the Ontario Heritage Act it does create additional service levels beyond current levels and will require the City to review fees on a cost recovery basis.

- Section 70(1)(c) authorizes the ability to make regulations for affixing fees or charges under the Act. We would encourage the Province enact a regulation for fees or charges under the Ontario Heritage Act.

- Alternatively, the City would rely on the *City of Toronto Act* dealing with fees.

Should there be any questions on this submission, please contact Mary MacDonald, Senior Manager, Heritage Planning, Urban Design at (416) 338-1079 or Mary.MacDonald@toronto.ca. Heritage planning staff would be pleased to meet with you to discuss the comments.

Yours sincerely,

Gregg Lintern MCIP, RPP
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City Planning