



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Hamilton Municipal Heritage Committee
COMMITTEE DATE:	October 30, 2020
SUBJECT/REPORT NO:	<i>Bill 108, More Homes, More Choice Act, 2019 - Ontario Regulations and Ontario Heritage Act (PED19125(b)) (City Wide)</i>
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Jennifer Roth (905) 546-2424 Ext. 2058
SUBMITTED BY:	Steve Robichaud Director of Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That Council adopt the submissions and recommendations as provided in Report PED19125b regarding the proposed Regulation under the *Ontario Heritage Act*, as amended by *Bill 108, More Homes, More Choice Act, 2019*;
- (b) That the Director of Planning and Chief Planner be authorized and directed to confirm the submissions made to the Province attached as Appendix “B” to Report PED19125(b); and,
- (c) That in advance of the Proclamation of the amendments to the *Ontario Heritage Act* and associated regulations, the Director of Planning and Chief Planner be authorized to make any changes to internal guidelines and application forms as may be required to implement the changes to the *Ontario Heritage Act*.

EXECUTIVE SUMMARY

On May 2, 2019, *Bill 108, More Homes, More Choice Act, 2019*, was introduced at the Ontario Legislature and subsequently received Royal Assent on June 6, 2019. The Bill amended 13 different statutes, including the *Ontario Heritage Act*. On September 21, 2020 the Province released draft Regulation under the *Ontario Heritage Act* for public comment.

The draft Regulation, attached as Appendix “A” to Report PED19125(b), provides additional detail on how the changes to the *Ontario Heritage Act* resulting from Bill 108 are to be implemented. The anticipated proclamation date for the changes to the *Ontario Heritage Act* and the associated Regulation is January 1, 2021. Further information is expected to be released from the Province in the form of an updated Ontario Heritage Tool Kit to provide guidance materials on implementation of the changes to the *Ontario Heritage Act*. No firm date has been provided on the expected release of the updated Tool-Kit.

The deadline for comments on the draft Regulations is November 5, 2020. As such and given the timing, comments will be submitted to the Province in advance of Council’s consideration of this matter. The comments submitted by staff are included as Appendix “B” to Report PED19125(b). If the recommendations of this Report are approved by Council, the Director of Planning and Chief Planner will notify the Province that the submissions have been adopted by City Council and any modifications will also be noted.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The *Ontario Heritage Act* as amended by Bill 108 and the Proposed Regulations will have financial implications on the City in terms of staff resources, and possibly fees for processing matters under the *Ontario Heritage Act*. However the degree and magnitude are unknown at this time.

It should be noted that while the City does not currently charge fees for applications under the *Ontario Heritage Act*, Staff will review internal processes and the potential need to apply application fees to future heritage applications to ensure cost recovery. The result of this review will be presented to Committee and Council for consideration.

Staffing: Staffing resource implications remain unknown at this time, however it is anticipated that additional staff resources will be needed to meet the requirements of the new *Ontario Heritage Act* and the prescribed Regulations.

Legal: While it is not currently anticipated that additional legal staff will be required, additional legal resources will be required to:

- provide support interpreting and implementing these changes;

- provide support for amendments to Delegated Authority By-law No. 05-364;
- provide support in the creation of a new by-law, resolution, or Official Plan Amendments;
- assist in structuring by-laws, reports, and resolutions to comply with new requirements;
- assist with changes needed to the current process for placing properties on the heritage register; and,
- represent the City at the LPAT as staff anticipate higher number of LPAT appeals now that final decision-making power on designations rests with the LPAT.

HISTORICAL BACKGROUND

Report LS19020/PED19125 which introduced the legislative changes contained in Bill 108 and which was approved by Council on June 12, 2019, indicated that staff would report back on the details of the Bill should it be enacted. As a result of the Bill receiving Royal Assent, the anticipated Proclamation date of January 1, 2021 for the Schedule 11 changes impacting the *Ontario Heritage Act*, and the release of the proposed Regulation by the Province, this report has been prepared to provide further information on the proposed Regulation.

The following are key dates related to Bill 108, *More Homes, More Choice Act, 2019*;

May 2, 2019: Bill 108, *More Homes, More Choice Act, 2019*, was introduced at the Ontario Legislature.

June 6, 2019: Royal Assent given to Bill 108.

September 21, 2020: ERO Posting 019-1348 - Proposed Regulation under the *Ontario Heritage Act* (Bill 108) released for public comment.

November 5, 2020: Commenting deadline for the ERO posting.

Staff will be forwarding a letter to the Province, attached as Appendix “B” to Report PED19125b, outlining staff’s comments on the ERO posting in advance of the commenting deadline. This staff report, including any changes or additions proposed by Council will be forwarded to the Province as additional comments on the ERO posting.

RELEVANT CONSULTATION

This report has been prepared by Planning Division staff with input from Legal staff and Tourism and Culture staff. Internal staff comments have been incorporated into the recommendations of this report and included in the letter to be sent to the Province, attached as Appendix “B” to Report PED19125(b).

Legal

The new *Ontario Heritage Act* will require ongoing support from Legal staff respecting the interpretation and implementation of it and the associated Regulation. Legal staff anticipate an increase in requests for legal advice following the proclamation of the new *Ontario Heritage Act* and the new Regulation coming into effect.

Assistance may be required from Legal staff on new forms (such as notice of complete or incomplete application) and on structure of Council resolutions, reports, and designating by-laws in compliance with the new requirements of the *Ontario Heritage Act*.

Legal staff will provide support to Planning staff in amending the Delegated Authority By-law No. 05-364, as amended by Bylaw No. 07-322, to ensure compliance with the new *Ontario Heritage Act* as it relates what constitutes a demolition or alteration and as a result, may impact what Council can delegate to staff. Staff are currently seeking clarification from the Province regarding what constitutes an alteration. A by-law, resolution, or even Official Plan Amendments may also be needed to clarify what documents and information is required to accompany heritage applications.

The proposed Regulation provides several exceptions to timelines set out in the new *Ontario Heritage Act* that may require assistance from Legal staff. Legal staff may also provide assistance in determining whether Council's ability to provide extensions can be delegated to staff and drafting any required by-law with respect to such delegation.

When the new *Ontario Heritage Act* comes into effect on January 1, 2020, there will be a formal objection process for property owners whose property has been placed on the Heritage Register. The City will need to examine its current process for placing properties on the register and make changes to comply with the new requirements. Legal staff may be required to assist in creating and implementing this new process.

Staff anticipate that there will be an increase in appeals to the LPAT as the final decision-making authority has shifted from Council to the LPAT. Legal staff will be required to assist with these LPAT appeals which may have a significant resource impact.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

As stated in Report LS19020/PED19125, staff were not supportive of the proposed changes to the *Ontario Heritage Act* because of concerns that the regulatory changes will have on the City's ability to effectively manage heritage resources, potential impacts to internal resources and the ability to meet the proposed timelines. Despite these concerns being expressed to the Province, Bill 108 received Royal Assent on June 6, 2019, and the enacted regulation remained largely unchanged as it related to the *Ontario Heritage Act*. Much of the proposed Regulation implements changes that have

already received royal assent and will be part of the new *Ontario Heritage Act*. In the comments provided to the Province, staff are seeking clarification on several aspects of the proposed Regulation.

The proposed Regulation released on September 21, 2020 for review has been organized by the Province into nine themes:

- 1) Principles that a municipal council shall consider when making decisions under specific parts of the OHA;
- 2) Mandatory content for designation by-laws;
- 3) Events which would trigger the new 90 day timeline for issuing a NOID and exceptions to when the timeline would apply;
- 4) Exceptions to the new 120 day timeline to pass a designation by-law after a NOID has been issued;
- 5) Minimum requirements for complete applications for alteration or demolition of heritage properties;
- 6) Steps that must be taken when council has consented to the demolition or removal of a building or structure, or a heritage attribute;
- 7) Information and material to be provided to LPAT when there is an appeal of a municipal decision to help ensure that it has all relevant information necessary to make an appropriate decision;
- 8) Housekeeping amendments related to amending a designation by-law and an owner's reapplication for the repeal of a designation by-law; and,
- 9) Transition provisions.

Staff are supportive of several of the themes in the proposed Regulation but remain concerned with the 90 day timeline to issue a NOID after a prescribed event when combined with an Official Plan Amendment, Zoning By-law Amendment or Plan of Subdivision. A detailed analysis of the proposed regulation, including implications and recommendations made to the Province, is included as Appendix "C" to Report PED19125(b). An overview of the nine themes and potential implications is provided below.

Theme 1 – Prescribed Principles

The first theme discusses the new 'prescribed principles' which staff are supportive of as the proposed principles are intended to help decision-makers. Staff note that the City's current Official Plan already requires the retention of properties with cultural heritage value or interest as well as requires extensive research and evidence to support the conservation of heritage resources. The current process which includes consultation with the Hamilton Municipal Heritage Committee, and decisions by Planning Committee and Council, demonstrates openness and transparency.

Staff are seeking clarification on aligning the language between the prescribed principles and the Provincial Policy Statement 2020 (PPS). Staff believe using 'shall' in

the prescribed principles instead of 'should' provides appropriate strength and will be consistent with the PPS.

Theme 2 – Mandatory Contents of Designation By-laws

Staff are in support of the mandatory content for designation by-laws and note that staff's current practices generally follow the requirements. Staff will need to complete a review of internal processes to ensure all requirements are included in application forms, policies, and guidelines. A review of the Cultural Heritage Evaluation Criteria found in Policy B.3.4.2.9 of the Urban Hamilton Official Plan and Rural Hamilton Official Plan to ensure that Hamilton's requirements are aligned with the requirements of the new *Ontario Heritage Act* will be required and will be undertaken as part of the required Official Plan Review.

Theme 3 – Notice of Intention to Designate 90 Day Timeline and Exceptions

Provisions of the new *Ontario Heritage Act* will establish a new 90 day timeline for issuing a NOID when the property is subject to prescribed events.

Within the proposed Regulation prescribed events have been defined as applications submitted to and deemed complete by the municipality for an Official Plan Amendment, Zoning By-law Amendment or a Plan of Subdivision. The new 90 day timeline is intended to encourage discussions about potential designations with development proponents at an early stage to avoid designation decisions being made late in the land use planning process.

Staff's opinion is that the 90 days is not adequate to support the Ministry's 'Prescribed Principle' in 1(3)2.ii of the Regulations that requires that decisions affecting the cultural heritage value/interest be based on research, appropriate studies and documentary evidence. As well, staff review time, consultation with Policy and Design Working Group and the preparation of a staff report takes longer than 90 days.

Staff acknowledge that the Province has provided several opportunities to extend the 90 day timeframe by an additional 90 days, creating an 180 day timeframe, which include mutual agreement between applicant and the City, administrative extension in periods of declared emergency and the receipt of new and relevant information. Staff also note that there is the opportunity to have the timeframe removed through mutual agreement. Staff are supportive of the opportunities to extend the timeframe, however several items of clarification have been asked of the Province including which exceptions can be delegated to staff to ensure timely processing and reduction of administrative burdens. The identification and review of the implications of the development proposed is dependant of the quality of the information submitted with the application.

A three week period is given to review materials as part of a *Planning Act* application, which include the review of CHIAs. If there are questions or edits to the CHIA, then additional review is necessary. Further, CHIAs are reviewed by the Policy and Design

Working Group who meets monthly. Typically between one and three reviews occurs, resulting in a minimum of one to three months required for a CHIA review. Therefore, coupled that with the review of the *Planning Act* application, consultation with the community and application and the internal report writing cycle, the 90 or 180 day timeline is not sufficient for a comprehensive review to be completed.

As such, it will be necessary to review the current application submission requirements to ensure that heritage resources are identified early in the process and that the implications of the proposed on the heritage resources is fully documented.

Staff also note that designations that are not subject to a development application will continue to follow the current practice. Staff are concerned that this shortened timeframe may have impacts on the designation workplan as resources will be redirected to process designations associated with development applications.

Theme 4 – Designation By-law 120 Day Timeline and Exceptions

Provisions of the new *Ontario Heritage Act* establish a new requirement for designation by-laws to be passed within 120 days of issuing a NOID. The proposed Regulation also allows for exceptions to this timeframe including mutual agreement between applicant and the City, periods of declared emergency and receipt of new and relevant information submitted. Staff are supportive of this timeframe and the proposed exceptions as the City's current process typically has designation by-laws passed right after the 30 day appeal period for the NOID is complete. Staff have requested the Province to clarify what happens to the 120 day timeline in situations where there is an appeal to a NOID.

Theme 5 – Notice of Complete Applications for Alteration or Demolition Applications

Provisions of the new *Ontario Heritage Act* establish a new timeline of 60 days for a municipality to inform a property owner of the completeness of their application for alteration to or demolition of a designated heritage property. Minimum requirements for complete applications are established in the proposed Regulation. The purpose of these minimum standards is to ensure transparency so that property owners are aware of what information is required when making an application and provides consistency across the province. Municipalities can establish additional requirements to the ones set out in the Regulation. Where municipalities choose to add additional requirements, the Regulation requires them to use one of the following official instruments: municipal by-law, council resolution or official plan policy.

Staff are supportive of the minimum requirements; however, it has been noted that these minimum requirements only apply to Part IV, or individually designated properties and staff have advised the Province that these requirements should also apply to Part V that are designated as part of a Heritage Conservation District to provide for the ongoing protection of those properties as well.

Internal processes and application forms will need to be updated to ensure that these new requirements are included. Specifically, staff note that coordination with the Building Division who receives these permits will be needed. Staff note that there may be a greater scope and time spent on each application which may need to be addressed through the addition of a processing fee for cost recovery, especially in those situations where it is proposed to demolish the designated building/structure.

Theme 6 - Council consent requirement for the demolition or removal of a building or structure, or a heritage attribute

Provisions of the new *Ontario Heritage Act* will require municipal council consent for the demolition or removal of any heritage attributes, in addition to the demolition or removal of a building or structure. Staff are seeking clarification from the Province on the difference between alterations that impact a heritage attribute and a demolition. For example, is the removal of a designated feature such as a window or façade, a demolition or alteration? This distinction may have an impact on what can be delegated to staff versus what will require Council approval as this may result in the need for additional staff resources.

Provisions of the proposed Regulations also provide a process for amending designation by-laws as alterations or demolitions occur. This draft Regulation establishes that any amendments to designation by-laws resulting from an alteration or demolition are not appealable, which is supported by staff.

The proposed Regulation provides that, where council has agreed to the removal of a building or structure from a designated property to be relocated to a new property, council may follow an abbreviated process for designating the receiving property. Staff are supportive of this proposed Regulation given that the subsequent designation by-law made under this proposed Regulation would not be appealable to LPAT.

Updates to internal processes and additional staff resources will need to be considered to address the Regulation.

Theme 7 - Information and material to be provided to Local Planning Appeal Tribunal

The proposed Regulation outlines which materials and information must be forwarded for every LPAT appeal process in the Act by the clerk within 15 calendar days of the date the municipality receives an appeal. Staff are generally supportive of the type of materials and the timeframe in which the material must be submitted; however, staff are seeking additional clarification from the Province on what constitutes the required 'employee statement'.

Collaboration with Legal and Clerks staff when updating internal processes will be required.

Theme 8 - Housekeeping amendments related to amending a designation by-law and an owner's reapplication for the repeal of a designation by-law

The proposed Regulation sets out a modified process for situations where a municipality wishes to make substantial amendments to an existing designation by-law. The proposed Regulation makes it clear that there is no 90 day restriction on issuing a notice of proposed amendment to a by-law and provides that council has 365 days from issuing the notice of proposed amendment to pass the final amending by-law and that this timeframe can only be extended through mutual agreement. Staff are supportive of the modified process and will need to ensure that internal processes reflect this scenario.

The proposed regulation also outlines restrictions on a property owner's ability to reapply to have a designation by-law repealed where the application was previously unsuccessful, unless council consents otherwise. The 365 day restriction on an owner's reapplication maintains what had been included in the current *Ontario Heritage Act*. Staff have advised the Province that a longer timeframe would be beneficial to avoid having to annually address an owner's application for a designation repeal.

Theme 9 - Transition provisions

The proposed transition rules provide clarity on matters that are already in progress at the time the amendments come into force. The draft Regulation states that all processes that commenced on a date prior to proclamation would follow the process and requirements set out in the Act as it read the day before proclamation, which is currently anticipated to be January 1, 2021.

Where council has outstanding notices of intention to designate but has not yet withdrawn the notice or passed the by-law at the time of proclamation, the municipality will have 365 days from proclamation to pass the by-law, otherwise the notice will be deemed withdrawn. Where a NOID has been referred to the Conservation Review Board, the 365 days would be paused until the Board either issues its report or until the objection has been withdrawn, whichever occurs earlier.

Staff note that the City of Hamilton has four outstanding NOIDs which could be dealt with within the 365 transition period but may require additional City resources to complete. Should these four outstanding NOIDs not have a designation by-law passed with 365 days of Proclamation, a new NOID will need to be issued which will be subject to the new processes established under the new *Ontario Heritage Act*. Staff have requested a regulation from the Province in situations where the issued NOID does not follow the current OHA designation standard, but the municipality would like to pass a designation by-law that is in keeping with that standard without having to re-issue a NOID.

Staff are concerned with the short timeframe to prepare for the implementation of the changes to the *Ontario Heritage Act* and request that the changes to the *Ontario Heritage Act* not come into force until July 1, 2021 instead of the anticipated date of January 1, 2021 to give staff appropriate time to review and update internal processes.

Procedural Next Steps

The public consultation for the proposed Regulation will remain open until November 5, 2020 with an anticipated proclamation date of January 1, 2021.

A future report discussing implementation measures and staff resources, will be prepared by Planning staff for Council's consideration after the Proclamation date.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – Draft Regulations

Appendix "B" – Letter submitted to the Province with Comments

Appendix "C" – Impact Evaluation of Draft Regulations