



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

| | |
|---------------------------|---|
| TO: | Chair and Members Hamilton Municipal Heritage Committee |
| COMMITTEE DATE: | June 25, 2021 |
| SUBJECT/REPORT NO: | <i>Bill 108, More Homes, More Choice Act, 2019</i> , Ontario Regulation 385/21 made under the <i>Ontario Heritage Act</i> and the Draft Ontario Heritage Tool Kit (PED19125(c)) (City Wide) |
| WARD(S) AFFECTED: | City Wide |
| PREPARED BY: | Jennifer Roth (905) 546-2424 Ext. 2058 |
| SUBMITTED BY: | Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department |
| SIGNATURE: | |

RECOMMENDATION

- (a) That Council adopt the submissions and recommendations as provided in Report PED19125(c) regarding the Regulation under the *Ontario Heritage Act*, as amended by *Bill 108, More Homes, More Choice Act, 2019* that is scheduled to be Proclaimed July 1, 2021 and the associated Draft Ontario Heritage Tool Kit;
- (b) That the Director of Planning and Chief Planner be authorized and directed to confirm the submissions made to the Province attached as Appendix "D" to Report PED19125(c); and,
- (c) That the Director of Planning and Chief Planner, be authorized and directed to negotiate and consent to agreements to extend or eliminate the 90-day timeline to issue a notice of intention to designate when a Prescribed Event occurs, to ensure the comprehensive review of *Planning Act* applications as well as cultural heritage resources.

EXECUTIVE SUMMARY

Report PED19125(b) went to Hamilton Municipal Heritage Committee on October 30, 2020 and to Planning Committee on November 3, 2021 which provided an overview of the proposed Regulation to implement changes to the *Ontario Heritage Act* resulting from *Bill 108, More Homes, More Choice Act, 2019*. As part of Report PED19125(b), a letter submission was prepared and submitted to the Ministry with questions of clarification, supportive comments and concerns. Direct responses to each municipality from the Ministry have not been provided to this letter but the ERO Posting Decision was posted on July 9, 2021 and is included as Appendix “E” to this Report.

The Ministry of Heritage, Sport, Tourism and Culture Industries issued *Ontario Regulation 385/21*, attached as Appendix “A” to Report PED19125(c), and released ERO Posting 019-2770 – Updates to the Ontario Heritage Tool Kit for public comment on June 1, 2021. This Report identifies some of the key changes to the Regulation from the previously reviewed draft Regulation outlined in Report PED19125(b).

Staff will be forwarding a letter to the Province, attached as Appendix “B” to Report PED19125(c), outlining staff’s comments on the ERO posting in advance of the commenting deadline, being June 30, 2021. This Report, including any changes or additions proposed by Council will be forwarded to the Province as additional comments on the ERO posting after it has closed.

Alternatives for Consideration – See Page 11

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The *Ontario Heritage Act*, as amended by Bill 108, and *Ontario Regulation 385/21* 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.

Staff note that there are currently 238 properties with Part IV designation by-laws that pre-date 2005 and the implementation of *Ontario Regulation 9/06 - Ontario Criteria for Determining Cultural Heritage Value or Interest*. Properties that are subject to a heritage permit that have a pre-2005 designation by-law will need to be amended to meet the heritage evaluation criteria of *Ontario Regulation 9/06* as a result of *Ontario Heritage Act*, as

- amended by Bill 108, and *Ontario Regulation 385/21*. The associated costs for updating these by-laws has not been considered in the capital budget.
- Staffing: Staff resource implications remain unknown at this time, and ongoing monitoring will continue to ensure that the new *Ontario Heritage Act* timelines are met, and heritage resources are protected and conserved.
- Legal: Additional Legal resources will be required to:
- provide support interpreting and implementing changes;
 - provide support for amendments to Delegated Authority By-law No. 05-364;
 - assist with preparation of reports, by-laws, resolutions and agreements to comply with new requirements;
 - assist with changes to the process of placing properties on the heritage register; and,
 - represent the City at the Ontario Land Tribunal (OLT) as staff anticipate higher number of OLT appeals now that final decision-making power on designations rests with OLT.

HISTORICAL BACKGROUND

Report PED19125(b) went to Hamilton Municipal Heritage Committee on October 30, 2020 and to Planning Committee on November 3, 2021 which provided an overview of the proposed Regulation to implement changes to the *Ontario Heritage Act* resulting from *Bill 108, More Homes, More Choice Act, 2019*. As part of Report PED19125(b), a letter submission was prepared and submitted to the Ministry with questions of clarification, supportive comments and concerns. Responses from the Ministry have not been provided to this letter.

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 019-1348.

SUBJECT: *Bill 108, More Homes, More Choice Act, 2019, Ontario Regulation 385/21 made under the Ontario Heritage Act and the Draft Ontario Heritage Tool Kit (PED19125(c)) (City Wide) - Page 4 of 12*

- June 1, 2021: Ministry of Heritage, Sport, Tourism and Culture Industries issued *Ontario Regulation 385/21* and released ERO Posting 019-2770 – Updates to the Ontario Heritage Tool Kit for public comment.
- June 9, 2021: ERO Posting 019-1348 Decision posted explaining the changes between the Draft Regulation and *Ontario Regulation 385/21* and how the comments submitted impacted the changes. The decision is attached as Appendix “E” to Report PED19125(c).
- June 30, 2021: Commenting deadline for ERO Posting 019-2770 – Updates to the Ontario Heritage Tool Kit.
- July 1, 2021: *Ontario Heritage Act* and *Ontario Regulation 385/21* will be Proclaimed.

RELEVANT CONSULTATION

This Report has been prepared by Planning Division staff with input from Legal staff and Tourism and Culture staff.

Legal

Legal staff reiterate the comments provided in PED19125(b). Legal staff also identified the Sections in the *Ontario Heritage Act* that are not being Proclaimed on July 1, 2021, including:

- Section 1(2) - definition of ‘alter’ as it relates to Sections 33, 34.5 and 69;
- Subsection 41(2.3) – Change to language related to demolition and removal as it relates to properties that are designated under both Section 29 (Individual designation) and Section 41 (Heritage Conservation District);
- Section 42(1) 2. – 4., Section 42(2.1) and Section 42(4.1) – Change to language related to demolition and removal of heritage attributes for properties located within a Heritage Conservation District (HCD) which would require all attributes to be described in the HCD Plan and associated impacts on heritage permits; and,
- Section 69(3) – Change to the offences and restoration costs as it relates to demolition within an HCD (not Proclaimed because changes to Section 42 are not being proclaimed).

The Sections that are not being proclaimed and their associated impacts are discussed in more detail in the Analysis and Rationale for Recommendation section below.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Ontario Heritage Act and the New Regulation

On June 1, 2021 the Ministry of Heritage, Sport, Tourism and Culture Industries provided an email communication notifying municipalities that changes to the *Ontario Heritage Act* and associated implementation regulation being, *Ontario Regulation 385/21*, resulting from *Bill 108, More Homes, More Choice Act, 2019* were coming into effect on July 1, 2021. ERO Posting 019-1348 Decision posted on June 9, 2021 explains the changes between the Draft Regulation and *Ontario Regulation 385/21* and how the comments submitted through the previous ERO Posting in 2020 impacted the changes. The Decision is attached as Appendix “E” to Report PED19125(c).

Changes to the *Ontario Heritage Act* that are not Proclaimed

There are a number of changes to the *Ontario Heritage Act* that are not being proclaimed into effect on July 1, 2021 but remain in the *Ontario Heritage Act*. Staff will be seeking clarification from the Province on the plan regarding these items and if there will be future proclamation dates. The changes that are not being proclaimed include:

- Section 1(2) - definition of ‘alter’ as it relates to Sections 33, 34.5 and 69;
- Subsection 41(2.3) – Change to language related to demolition and removal as it relates to properties that are designated under both Section 29 (Individual designation) and Section 41 (Heritage Conservation District);
- Section 42(1) 2. – 4., Section 42(2.1) and Section 42(4.1) – Change to language related to demolition and removal of heritage attributes for properties located within a Heritage Conservation District (HCD) which would require all attributes to be described in the HCD Plan and associated impacts on heritage permits; and,
- Section 69(3) – Change to the offences and restoration costs as it relates to demolition within an HCD (not Proclaimed because changes to Section 42 are not being proclaimed).

Staff previously noted in Report PED19125(b) that the proposed definition of “alter”, as it relates to certain provisions, would have impacts on workflows because it specifically does not include “to demolish” or “to remove” any heritage attribute. The new definition of “alter” reduces the number of heritage permits that can be delegated to staff if it is

proclaimed, because more alterations will be considered a demolition which requires Council approval. Staff previously requested clarification from the Province regarding this matter. If the definition of “alter” is proclaimed the number of non-delegated reports going to Council will increase. ERO Posting 019-1348 Decision stated that the Ministry would not be proclaiming the change at this time but did not provide any specific details regarding when it may be proclaimed. Staff will be seeking further clarification from the Province regarding when this will be proclaimed.

Staff note that the proposed changes to Section 42 would have impacts on staff’s ability to process heritage permits within existing HCDs in the City of Hamilton. Given the requirement to have attributes identified specifically within the HCD Plans to ensure that heritage attributes are protected from demolition or removal would require all the HCD Plans that exist within the City to be updated. Staff will be seeking clarification from the Province regarding when this will be proclaimed.

Ontario Regulation 385/21

Some provisions of *Ontario Regulation 385/21* have been revised from the draft Regulation provided by the Ministry in September 2020. Changes from the previously circulated draft Regulation include:

- Removal of the Prescribed Principles;
- Removal of the requirement for an employee to describe how Council considered the Prescribed Principles in making its decision to designate;
- Designation By-laws will now only require the inclusion of one of the following: written description, scale drawing or site plan, instead of all three; and,
- Changes in the prescribed exceptions to the 90 day timeline established in Section 29 (1.2) of the *Ontario Heritage Act*, being:
 - the removal of the exception for new and relevant information restarting the 90 day timeline;
 - the addition of a provision that states when two or more prescribed events occur, only one 90 day timeline applies; and,
 - the addition of a provision that states that once the prescribed event is disposed of (i.e. Council provides a decision on an Official Plan Amendment and the appeal period is over), then the 90 day timeline does not apply, and designation could proceed if there is a building, structure or attributes that remain and meet the designation requirements.

The changes to the provisions noted above address several concerns identified by staff in Report PED19125(b) as it relates to:

- Council's decision-making power with regards to the Prescribed Principles;
- Lack of clarity on what constituted an Employee Statement; and,
- Concerns with the Land Registry's Office ability to register a by-law with a site plan (digital file size).

Other modifications to the Regulation also include subsection reference updates, grammatical changes, and revising the title of the Local Planning Appeal Tribunal (LPAT), now the Ontario Land Tribunal (OLT). The above noted modifications have not fully addressed staff's concern or comments outlined in Report PED19125(b) and provided to the Ministry as it relates to the ability to provide a comprehensive review of heritage matters in conjunction with *Planning Act* applications.

Sections 26.0.1 and 39.1.2 of the *Ontario Heritage Act* are being proclaimed on July 1, 2021, and they contain reference to 'Prescribed Principles' which are not in *Ontario Regulation 385/21*. Staff will be seeking clarification from the Province regarding the status of the Prescribed Principles and if there will be future consultation on new Principles should a future proclamation date be established.

ERO Posting 019-1348 Decision provided clarity as it relates to properties that have been subject to a prescribed event which would trigger the 90 day timeline to issue a NOID, that are subject to a subsequent application. The new application would trigger a new 90 day timeline for issuing a NOID, and the restriction would end once the subsequent application has been disposed of under the *Planning Act*.

Staff note that one of the exceptions to extend the 90 day timeline was removed, being the submission of new and relevant information, which would restart the 90 day timeline. ERO Posting 019-1348 Decision stated that some of the submissions were concerned that the exceptions were too flexible and allow municipalities too much latitude.

Staff remain concerned that the 90 day timeline to issue a notice of intention to designate is not sufficient. Staff recommend that Council seek opportunities to utilize the prescribed exceptions, specifically the exception to enter into an agreement with the applicant triggering a prescribed event. The Recommendations of this Report include Council authorization and direct the Director of Planning and Chief Planner to enter into agreements to extend or eliminate the 90 day timeline to ensure a comprehensive review of cultural heritage resources and *Planning Act* applications occurs.

Amending Designation By-laws

Staff note that there are 238 properties with Part IV designation by-laws in the City of Hamilton that came into effect prior to when *Ontario Regulation 9/06 06 – Criteria for Determining Cultural Heritage Value* came into effect in 2006. There is concern that one

or more of the pre-2006 designation By-laws may lack the detail established in *Ontario Regulation 9/06* which may impact approvals of heritage permits which may not maintain the intended conservation goals of designation.

Further the Regulation establishes a requirement that in situations where Council agrees or is deemed to have agreed to a heritage permit for a demolition or removal of a heritage attribute, the associated designation By-law needs to be amended. When By-laws need to be amended after a heritage permit has been processed, it should be amended to meet the current standards established in *Ontario Regulation 9/06 – Criteria for Determining Cultural Heritage Value*, which will require additional staff resources and budget.

Consideration should be given to commencing work on prioritizing and updating the 238 Part IV designation by-laws to ensure proactive conservation work can continue based on staff resources and budget.

Transitional Provisions

The Transitional Provisions have been revised as it relates to notices of intention to designate for those properties that have not had designating By-laws passed and any applications to demolish or alter that were made before July 1, 2021. The Transitional Provision states that the notices and applications will continue under the old *Act*. Further, designating By-laws that are outstanding on July 1, 2021 must be passed before July 1, 2022 or the notice will be deemed to be withdrawn unless an extension is agreed to with the property owner. Generally, staff are satisfied with the changes that have been made to the Transitional Provisions.

Ontario Heritage Tool Kit and Supportive Materials

Guidance material to assist with the transition to the new legislative and regulatory processes were provided in an updated draft version of the Ontario Heritage Tool Kit (the Tool Kit), attached as Appendix “B” to Report PED19125(c). The updates to the Tool Kit are intended to assist users in understanding the recent changes to the *Ontario Heritage Act* and associated *Ontario Regulation 385/21*. The draft Tool Kit consists of five guides which are available for comment until June 30, 2021.

A brief summary of the five guides are outlined below:

1. Designating Heritage Properties: a guide for municipal designation of individual properties under the *Ontario Heritage Act*. The Guide includes flow charts that outline processes step-by-step.

2. Heritage Property Evaluation: a guide for listing, researching and evaluating cultural heritage property in Ontario communities.
3. Heritage Conservation Districts: a guide for designating districts, containing multiple properties, under the *Ontario Heritage Act* to conserve local character and heritage interest.
4. Your Community, Your Heritage, Your Committee: a guide for establishing and sustaining an effective Municipal Heritage Committee that provides advice to Council.
5. Heritage Places of Worship: a guide for keeping heritage places of worship viable in the community while conserving their cultural heritage value or interest.

Staff have prepared comments on the draft Guides that will be submitted to the ERO Posting ahead of the June 30, 2021 deadline which are included in Appendix “D” to Report PED19125(c). Final versions of the Tool Kit will be published on the Ministry’s webpage in the fall of 2021.

The Ministry prepared flowcharts, attached as Appendix “C” to Report PED19125(c) to supplement the changes to the *Ontario Heritage Act*, *Ontario Regulation 385/21* and the Tool Kit. The flowcharts provide guidance on the following work flows:

1. Adding a non-designated property to the Municipal Register of Heritage Properties (*Ontario Heritage Act* Section 27(3)(6));
2. Considering an objection to the inclusion on the Municipal Register (*Ontario Heritage Act* Section 27(7)(8));
3. Designation by Municipal By-law (*Ontario Heritage Act* Section 29);
4. Amendment of Designating By-law (*Ontario Heritage Act* Section 30.1(1));
5. Amendment of Designating By-law with applicable Exception (*Ontario Heritage Act* Section 30.1(2)(16));
6. Council Initiated Repeal of Designating By-law (*Ontario Heritage Act* Section 31);
7. Owner Initiated Repeal of Designating By-law (*Ontario Heritage Act* Section 32);
8. Alteration of a Property (*Ontario Heritage Act* Section 33);
9. Demolition or Removal of a Heritage Building, Structure or Attribute (*Ontario Heritage Act* Section 34, 34.1 and 34.3); and,
10. Designation Process for a Heritage Conservation District Designation (*Ontario Heritage Act* Section 40, 40.1, 41 and 41.1).

While these flowcharts are helpful for understanding the workflows that staff will have to implement internally, it also demonstrates an impact on Council’s decision to protect a property using the *Ontario Heritage Act*, specifically as it relates to appeals to the OLT. Previously, Council retained final decision-making authority when there were appeals related to designations to the Conservation Review Board, which no longer exists. As a result of this change, Council must ensure that all notices of intent to designate include

defensible evidence including all the new requirements that must be included in a designation By-law as required by *Ontario Regulation 385/21*. The ability of staff to ensure that a comprehensive analysis of heritage resources occur if they are associated with a “Prescribed Event” is constrained by the new 90-day timeframe to issue a notice of intention to designate. This challenge was initially described in Report PED19125(b) and remains. Staff recommend utilizing the exceptions to eliminate or extend the 90-day timeframe. The Recommendations of this Report recommended that Council authorize and direct the Director of Planning and Chief Planner to enter into agreements to extend or eliminate the 90 day timeline to ensure a comprehensive review of cultural heritage resources and *Planning Act* applications occurs.

The flowcharts illustrating the process for alterations to a property or demolition or removal of a heritage building, structure or attribute identifies the new requirement to issue a notice of complete or incomplete application within 60 days of receipt. If a notice of complete or incomplete application is not issued, then consent will be deemed to have been given 90 days after the end of the 60-day period. Council will then have to follow the prescribed steps in Section 7 of *Ontario Regulation 385/21* and determine if there is heritage value that remains and if the associated designating By-law needs to be amended. As stated above, amended designation by-laws should be amended to the current standard established by *Ontario Regulation 9/06 – Criteria for Determining Cultural Heritage Value*, which will require additional staff resources and budget.

Staff have prepared additional comments on the flowcharts that are included in Appendix “D” to Report PED19125(c).

Next Steps

Staff have prepared comments to be submitted to the Ministry regarding the Tool Kit and the Regulation. The comments are attached as Appendix “D” for endorsement by Council after they have been submitted due to the ERO Posting closing on June 30, 2021.

Staff are preparing items to assist with the implementation of the amended *Ontario Heritage Act* and the new Regulation to ensure that the City will be able to address all the requirements starting July 1, 2021. These items included revisions to application forms, a new heritage permit application, notice of (in)complete templates and a mutual agreement template.

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

ALTERNATIVES FOR CONSIDERATION

- (a) Council can choose to not endorse the comments and instead provide alternative comments; or,
- (b) Council can choose to not endorse the staff comments and provide no comments.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

Economic Prosperity and Growth

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

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

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” – *Ontario Regulation 385/21*

Appendix “B” – Draft Ontario Heritage Tool Kit

SUBJECT: *Bill 108, More Homes, More Choice Act, 2019*, Ontario Regulation 385/21 made under the *Ontario Heritage Act* and the Draft Ontario Heritage Tool Kit (PED19125(c)) (City Wide) - Page 12 of 12

Appendix “C” – Ministry Flow Charts

Appendix “D” – Letter to the Province on the Regulations and the draft Ontario Heritage Act Tool Kit

Appendix “E” – ERO-019-1348 Decision