

Proposed Heritage Act Regulations

Planning Services Division

Report Date: October 19, 2020

Background

The Government of Ontario introduced Bill 108, the More Homes, More Choices Act, 2019, along with a Companion Guide on May 2, 2019 (References 1 and 2). Per the companion guide, the act outlined the “government’s plan to tackle Ontario’s housing crises and encourages our partners to do their part by starting now, to build more housing that meets the needs of people in every part of Ontario. [...] More Homes, More Choice is about unlocking the development of all kinds of housing. From ownership to rental housing, whether built by private developers or non-profits, [the government’s] action plan will help give people more choice and help bring costs down.”

Bill 108 amended 13 statutes. Reports on these changes were brought to Planning Committee in June, 2019, and January, 2020 (References 3 and 4). This report focuses on the changes to the Ontario Heritage Act and the associated regulations which were released on September 21, 2020. The Province is asking for public comment by November 5, 2020.

Ontario Heritage Act Changes

The Bill 108 amendments to the Ontario Heritage Act included the following:

- Requiring a Council to consider prescribed principles regarding its decision-making powers under the Heritage Act
- Establishing new notice requirements for listing and designating new heritage property, and introducing new notice of objection provisions for property owners
- Enabling the Minister to prescribe information requirements regarding applications to alter designated property
- Enabling property owners to appeal Ontario Heritage Act decisions of Council to the Local Planning Appeals Tribunal

These changes to the Act were to come into effect upon a date to be named by proclamation of the Lieutenant Governor in Council. This date is now proposed to be January 1, 2021. The details regarding these legislative changes were to be described in associated regulations, including the principles, timelines, and information requirements.

Proposed Regulations

These associated regulations were released for a 45-day public comment period on September 21, 2020 (See Reference 5). Per the Province, “The OHA amendments and the associated regulation will help to align municipal decisions in the heritage conservation process with Planning Act processes, improve municipal processes for identifying, designating and managing proposed changes to heritage properties, and improve clarity for property owners and development proponents.”

The following matters are proposed to be prescribed in regulation:

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 notice of intention to designate and exceptions to when the timeline would apply.
4. Exceptions to the new 120-day timeline to pass a designation by-law after a notice of intention to designate 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 Local Planning Appeal Tribunal (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.
9. Transition provisions

More detail on the above changes is provided in the next section.

Standardized Information Requirements

The regulations clarify what is required for designation by-laws, what constitutes a complete application for demolition or alteration purposes, what information needs to be forwarded to LPAT when there is an appeal of a municipal decision. These changes help with the transparency of the heritage designation process.

Triggers

The changes also provide more certainty to the development process. For example, the Act and regulations introduce a series of new timelines associated with the designation process. Specifically, the Province is proposing three triggers which would encourage discussions about potential designations with development proponents at an early stage in the land use planning process.

When Council gives notice of a complete application for an Official Plan amendment, a zoning by-law amendment, or a plan of subdivision, it would have 90 days to issue a Notice of Intention to Designate (NOID). In other words, once the 90-day period is over, Council could no longer issue a NOID related to the property. There are exceptions to this rule, including mutual agreement, administrative restrictions, and finding new and relevant information that could have an impact on the designation. It should be noted that a new 90-day period would come into effect should a new application of the above-noted types are received by the municipality (e.g. City receives a new zoning by-law amendment application for the same lands at a later date).

It is within this 90-day period that the City would have to direct staff to commission a Cultural Heritage Evaluation report and consult with its Municipal Heritage Advisory Panel, and return to Council with its findings.

There is a new requirement for by-laws to be passed within 120 days of issuing a NOID. To illustrate: should the City receive a rezoning application, and once the notice of complete application is issued, the City would have 90 days to issue a NOID. Once the NOID is issued, the City would have 120 days to pass a designating by-law. Similar exceptions to those described above would apply.

New Definition of “Alteration” and New steps following Council’s consent to a demolition or removal

The Act has been amended to clarify that demolition or removal includes the demolition or removal of heritage attributes, in addition to the demolition or removal of a building or structure. The definition of ‘alter’ was amended to clarify that taking away any heritage attribute is to be treated as a demolition or removal and not an alteration. This is because removal or demolition of a heritage attribute that is not a building or structure, such as a heritage landscape element that has cultural heritage value, could also impact the cultural heritage value or interest of a property.

Prior to the amendments, where council approved a demolition or removal of a designated property, the Act required council to repeal the designation by-law. However, in cases where only certain heritage attributes have been removed or demolished, or where the demolition or removal was of a structure or building that did not have cultural heritage value or interest, the property might still retain cultural heritage value or interest. In these cases, repeal of the by-law would not be appropriate.

The proposed regulation provides municipalities with improved flexibility by requiring Council to first determine the impact, if any, of the demolition or removal on the cultural heritage value or interest of the property and the corresponding description of heritage attributes. Based on the determination council makes, it is required to take the appropriate administrative action, which ranges from issuing a notice that no changes to the by-law are required, to amending the by-law as appropriate, to repealing the by-law. Council’s determination and the required administrative actions that follow are not appealable to LPAT.

The proposed regulation also 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. The proposed regulation provides a series of administrative steps to support the designation by-law. Council's determination that the new property has cultural heritage value or interest and the subsequent designation by-law made under this proposed regulation would not be appealable to LPAT.

Transition

As noted above, the Province is proposing that the amendments to the Act and the new regulations come into force and effect on January 1, 2021. The regulations provide for transitional matters to facilitate the implementation of the amendments.

In general, all processes that 'commenced' on a date prior to proclamation (i.e. before January 1, 2021) would follow the process and requirements set out in the Act as it read the day before proclamation. In the City of Greater Sudbury's case, the dates of notices of intent to designate (NOID) would be the determining factor. Should the City issue a NOID prior to January 1, the current rules would apply; after January 1, the new proposed rules would apply.

Should the City publish a notice of intention to designate prior to January 1, 2021, and has not yet withdrawn the notice or passed the by-law at the time of proclamation, the City would have 365 days from proclamation to pass the by-law (i.e. January 1, 2022), otherwise the notice would be deemed withdrawn. Where a notice of intention to designate 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 Comment

Staff generally support the changes to the Act and regulations that bring clarity to the process. However, the new timelines and triggers may pose implementation challenges, specifically as it relates to determining whether to issue a NOID or not as part of the development review process. Additionally, the City does not have dedicated Heritage funding to use in the procurement of the professional cultural heritage evaluation reports required to designate a property.

From a timing perspective receiving Council direction to proceed with a NOID, procuring a Cultural Heritage Evaluation Report and returning with findings and recommendations would likely take longer than 90 days under the current reporting and meeting frameworks.

Summary

The changes to the Ontario Heritage Act brought in by Bill 108 are proposed to come into effect on January 1, 2021. The Province published implementing regulations on September 21st along with a request for public comment by November 5, 2020. Staff generally support the regulations that provide clarity to the process. However, some of the new changes regarding triggers and timelines may pose implementation challenges.

References

1. Bill 108, An Act to amend various statutes with respect to housing, other development and various other matters
https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2019/2019-06/b108ra_e.pdf
2. More Homes, More Choice: Ontario's Housing Supply Action Plan
<https://www.ontario.ca/page/more-homes-more-choice-ontarios-housing-supply-action-plan>
3. "Bill 108 Update", report presented at June 10, 2019 Planning Committee Meeting
<https://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=1316&itemid=16966&lang=en>
4. "Provincial Planning Reform: Bill 108 Implementation", report presented at January 6, 2020 Planning Committee Meeting
<https://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=1440&itemid=17740&lang=en>
5. Proposed Regulation under the Ontario Heritage Act (Bill 108)
<https://ero.ontario.ca/notice/019-1348>