

City of Mississauga

Corporate Report



<p>Date: December 14, 2020</p> <p>To: Chair and Members of Heritage Advisory Committee</p> <p>From: Shari Lichterman, CPA, CMA, Commissioner of Community Services</p>	<p>Originator's files:</p> <hr/> <p>Meeting date: January 12, 2021</p>
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Subject

Ontario Heritage Act Proposed Amending Regulations and Implications to City of Mississauga

Recommendation

1. That the report titled "Ontario Heritage Act Proposed Amending Regulations and Implications to City of Mississauga" and dated December 14, 2020 from the Commissioner of Community Services be approved.
2. That the Heritage Advisory Committee receive this report for information and endorse the positions set forth in this report.

Report Highlights

- In May, 2019, The Province of Ontario introduced new legislation, Bill 108, *The More Homes More Choices Act*, with the goal of increasing the supply of new ownership and rental housing in Ontario.
- The legislation amended 13 other pieces of existing legislation, including the *Ontario Heritage Act*.
- Amendments to the *Ontario Heritage Act* were issued through a series of regulations which were open for comment in September, 2020 and will come into force January 1, 2021.
- Overall, the proposed regulations provide a clearer process for the heritage processes while providing greater integration with the overall planning process and making change occur more easily on heritage properties.

Background

The *More Homes More Choices Act* was created with the goal of increasing the supply of new ownership and rental housing in Ontario. The City of Mississauga responded to the omnibus legislation in May, 2019 and all subsequent amendments to legislation thereafter (Council Resolution 0116-2019).

The legislation transforms Ontario's land use planning system and includes changes to 13 Acts (including the *Heritage Act*, *Planning Act*, *Development Charges Act*, *Local Planning Appeal Tribunal Act* and other legislation), some new or updated regulations and changes to provincial planning policies.

In September 2020, the Ministry of Heritage, Tourism Sport and Cultural Industries released the proposed amending regulations to the *Ontario Heritage Act* for comment. These regulations would amend the *Act* to come into line with the *More Homes More Choices Act*. These regulations will come into force on January 1, 2021.

Comments

The deadline for submission of comment on the proposed regulations was November 5th, 2020. Staff prepared the following comments and provided them to the Heritage Advisory Committee for review prior to the submission date. Due to the strict timelines issued by the Province on all legislative changes made under the *More Homes More Choices Act*, Council Resolution 0116-2019 empowered City Staff to review and provide comment on all amended legislation as required.

As well as providing comment to the proposed regulations, Staff also took the opportunity to reiterate the City's position that the Land Planning Appeals Tribunal (LPAT) should ensure heritage expertise in its members, as all appeals under the *Ontario Heritage Act*, including designations, alterations and all considerations under Part IV and V of the *Act*, are now directly appealable to LPAT, as opposed to the Conservation Review Board.

Overall, the proposed regulations provide structure and clarify some procedures so that the heritage process is more streamlined between municipalities. Timelines are now standard for all actions (ex. designations, alterations, and approving applications) under the *Act* and there are clearer standards and procedures for most processes. There is greater flexibility built into the heritage system which allows for change to occur more easily on heritage properties. It is clear that there was an attempt to balance the conservation of heritage with the potential for re-development and to generally make the heritage process fit more efficiently into the overall planning process.

The proposed amendment to the *Ontario Heritage Act* contains nine proposed regulations:

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.

Each regulation is discussed and submitted comments provided by Staff are noted as follows:

1. *Principles to guide municipal decision making. The amendments to the Ontario Heritage Act give authority to prescribe principles that a municipal council shall consider when making decisions under prescribed provisions of Parts IV and V of the Act. The proposed principles relate to the purpose of the Ontario Heritage Act and are intended to help decision-makers better understand what to focus on when making decisions under the Act. The proposed principles are consistent with Ontario's policy framework for cultural heritage conservation.*

The proposed principles provide context for a municipality to follow when making decisions about designated heritage properties, including the minimization of adverse impacts to the cultural heritage value of a property or district. They also require the municipality to consider the views of all interested persons and communities. The new principles will be used in conjunction with Ontario Regulation 9/06, for which no changes have been proposed at this time. Staff note that the use of 'should' rather than 'shall' is inconsistent with the Provincial Policy Statement 2020 when read that a "property that is determined to be of cultural heritage value or interest should be protected and conserved for all generations".

2. *Mandatory content for designation by-laws. The Ontario Heritage Act amendments provide a regulatory authority to prescribe mandatory content for designation by-laws. The goal is to achieve greater consistency across municipalities and to provide improved clarity for property owners through designation by-laws.*

Currently, the City of Mississauga meets all of the proposed prescribed content for designation by-laws. It is noted that the Provincial Land Registry Office currently does not accept images that are not a formal survey. The City asks that the Province clarify if the Land Registry can accommodate this new requirement.

3. *90-day timeline to issue a Notice of Intention to Designate. Amendments to the Ontario Heritage Act establish a new 90-day timeline for issuing a notice of intention to designate (NOID) when the property is subject to prescribed events. It also allows for exceptions to this restriction to be prescribed. The new 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. The ministry has proposed three triggers which would place this restriction on council's ability to issue a NOID. These are applications submitted to the municipality for either an official plan amendment, a zoning by-law amendment or a plan of subdivision. The regulation allows for exceptions to the timeline.*

The City generally supports a legislated timeline however, the 90-day timeline to issue a NOID under these prescribed events is considered quite short. As the proposed regulation contains an option to extend the timeline through mutual agreement it is suggested that the City would request such an extension in most cases, especially when there are inconsistencies in the submitted Heritage Impact Assessment and/or Conservation Plan.

4. *120-day timeline to pass a designation by-law. Amendments to the Ontario Heritage Act establish a new requirement for designation by-laws to be passed within 120 days of issuing a Notice of Intention to Designate (NOID). It also allows for exceptions to be prescribed.*

As with the previous regulation, the 120-day timeline is considered short, and it is understood that the City would opt to extend the timeline through mutual agreement, so as to ensure that a NOID was not re-issued.

5. *60-day timeline to confirm complete applications, alteration or demolition and contents of complete applications. Amendments to the Ontario Heritage Act establish a new timeline of 60 days for the municipality to respond to a property owner about the completeness of their application for alteration of, or demolition or removal affecting, a designated heritage property.*

The City's Heritage By-law (178-18) currently sets the requirements for the contents of all heritage applications and our current business standards are to provide a confirmation of a complete application within ten business days. As such, current City practice exceeds the proposed regulation.

6. *Prescribed steps following council's consent to a demolition or removal under s. 34.3. Amendments to the Ontario Heritage Act provide that municipal council consent is required*

for the demolition or removal of any heritage attributes, in addition to the demolition or removal of a building or structure. This is because removal or demolition of a heritage attribute that is not a building or structure, such as a landscape element that has cultural heritage value, could also impact the cultural heritage value or interest of a property.

The flexibility allowed in these proposed regulations will allow for more administrative flexibility. Non-heritage buildings on heritage properties (a 1980s detached garage on a designated property) could be demolished without having to go through exhaustive changes to designation by-laws and would not trigger the same degree of reporting and issuance of permits for non-heritage attributes on otherwise heritage properties.

7. *Information to be provided to LPAT upon an appeal. With the exception of decisions made under section 34.3 as described above, all final municipal decisions related to designation, amendment and repeal, as well as alteration of a heritage property under the Act will now be appealable to LPAT, in addition to decisions related to demolition and Heritage Conservation Districts, which were already appealable to LPAT. This proposed regulation outlines the required information which must be submitted to LPAT when an appeal is filed with the Tribunal.*

The City, through its Legal Services, already provides the required information for all LPAT cases. Staff will continue to coordinate with Legal Services to ensure that the required information is prepared in accordance with the proscribed regulation.

8. *Housekeeping amendments. Amendments to the Act included regulatory authority to address a few housekeeping matters through regulation.*

The proposed amendment provides a clearer procedure for amending existing designation by-laws. Previously, amending an existing by-law required a process similar to creating a new designation by-law. The new procedures outlined within this proposed amendment are considered an improvement on the existing process.

9. *Transition. Section 71 of the Ontario Heritage Act establishes a regulation-making authority for transitional matters to facilitate the implementation of the amendments, including to deal with any problems or issues arising as a result of amendments.*

This regulations proposes that the changes come into force January 1, 2021. As the City remains under a State of Emergency related to the ongoing COVID pandemic, it was noted that a later time for regulations to come into force, such as July 1, 2021, would be more appropriate.

Financial Impact

There is no financial impact resulting from the recommendations in this report.

Conclusion

The Province of Ontario is enacting changes to the *Ontario Heritage Act* to bring the heritage process into line with the Planning process and the *More Homes More Choices Act*. The amending regulations will provide a clearer process for heritage properties and integrate heritage into the overall planning process. The amendments come into force on January 1, 2021. Staff provided comment to the Province in advance of the deadline, outlining the City's position on the proposed regulations.



Shari Lichterman, CPA, CMA, Commissioner of Community Services

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