

Staff Report 2020-0400

Meeting Date: November 17, 2020

Subject: Proposed Comments to Bill 108 and Proposed Regulation Pursuant to the Ontario Heritage Act

Submitted By: Sally Drummond, Heritage Resource Office, Policy, Heritage and Design Services, Planning

RECOMMENDATION

That the resolutions from the Town of Amherstburg and the Town of Grimsby attached as Schedule A to Staff Report 2020-0400 regarding amendments to the *Ontario Heritage Act* under Bill 108 and the associated draft regulations, be supported; and

That the Proposed Comments outlined in Staff Report 2020-0400 be supported and submitted to the Province through the Environmental Registry as the Town's comments regarding amendments to the *Ontario Heritage Act* pursuant to Bill 108 along with a copy of Staff Report 2020-0400.

REPORT HIGHLIGHTS

- On May 2, 2019 the Province released a Housing Supply Action Plan as well as A Place to Grow: Growth Plan for the Greater Golden Horseshoe ("2019 Growth Plan"), which came into effect on May 16, 2019;
- Bill 108 – the proposed More Homes, More Choice Act – was also released on May 2, 2019. It proposed to amend thirteen provincial statutes, including the *Ontario Heritage Act* (OHA);
- The draft regulation for the OHA was not released until September 21, 2020 for comment through the Environmental Registry. The deadline for comments to the Province was November 5, 2020, prior to which staff advised in writing to the Province that formal comments from the Town of Caledon would be submitted pending consultation with Council;
- The revised Ontario Heritage Tool Kit has not yet been released for comment, but is expected later this fall;
- Under Schedule 11 of Bill 108, the proposed changes to the OHA will have a considerable impact on municipal staff and Heritage Caledon processes and Council authority, particularly Council's final determination on heritage matters relating to individual property designation under Part IV of the OHA.

DISCUSSION

Purpose

The purpose of this report is to:

- provide supporting information with respect to the Heritage Caledon motion of October 5, 2020, requesting that Council support the Town of Amherstburg's Council Resolution recommending amendments to Schedule 11 of Bill 108 to retain authority for hearing certain appeals by the Conservation Review Board and to return the authority for final decisions to municipal council;
- provide comments on the draft regulation released September 21, 2020 in support of Schedule 11 of Bill 108; and,
- provide support to the Town of Grimsby's recommendations, dated October 19, 2020 and circulated to the Town of Caledon, regarding the same draft regulation under the Ontario Heritage Act.

Background

In November 2018, the Province introduced a consultation document: "Increasing Housing Supply in Ontario." On May 2, 2019, the Minister of Municipal Affairs and Housing introduced "More Homes, More Choice: Ontario's Housing Supply Action Plan" and the supporting Bill 108 – the proposed *More Homes, More Choice Act*, which received Royal Assent on June 6, 2019. The Province stated that the objective of these initiatives is to ensure more housing choices/supply and address housing affordability. The OHA is one of 13 provincial statutes impacted by Bill 108.

The Province stated the purpose of the amendments to the OHA is to improve consistency, transparency and efficiency of decisions by:

- Enhancing provincial direction on the purpose and use of the OHA to provide greater clarity to municipalities about how to interpret and apply the Act;
- Providing clearer rules and improved tools for municipalities that facilitate more timely and transparent processes for OHA decision-making;
- Creating a consistent appeal process for OHA decisions by having all appeals on municipal OHA decisions on alteration, demolition and designation referred to the Local Planning Appeals Tribunal (LPAT).

At the time Bill 108 was introduced in 2019, new regulations pertaining to the proposed changes to the OHA were unknown but were to be released after consultation. The proposed regulation was finally released for public comment on September 21, 2020. Comments on the proposed regulation were due to the Environmental Registry by November 5, 2020. In advance of this date, staff advised the Province that comments from the Town of Caledon would be submitted pending further consultation with Council. The changes to the OHA are expected to be proclaimed on January 1, 2021.

Draft updates to the existing Ontario Heritage Tool Kit, which will support implementation of the OHA amendments and proposed regulation, are expected to be made available for

public comment later this fall. Staff will share this information with Heritage Caledon and Council as it becomes available.

Bill 108 and Key Changes to the OHA

Under Bill 108, one of the most significant changes to the OHA is the removal of municipal authority over individual property designation and management. All final municipal decisions related to the designation, amendment and repeal, and alteration of an individual heritage property under section Part IV of the OHA that were previously appealable to the Conservation Review Board (CRB) are now appealable to the Local Planning Appeal Tribunal (LPAT). These are in addition to appeals to remove/demolish structures on designated properties, which have always been dealt with by LPAT (formerly the OMB). Of particular concern is that LPAT members are not experts in heritage matters, unlike members of the Conservation Review Board. LPAT has the power to amend Council's decision or to order Council to repeal its decision, including by-laws designating properties. Further, LPAT's decisions are binding, unlike the Conservation Review Board's non-binding recommendations.

Other significant procedural changes to the OHA include the introduction of:

- Listing: the right of owners to appeal to Council of their property's listing on the Heritage Register;
- Objections: a two-step appeal process of designations by property owners: first to Council on its notice of intention to designate and then to LPAT following designation;
- Prescriptive terminology: the introduction of new terminology that must be addressed in various processes under the OHA;
- Prescriptive timelines: the introduction of significantly tightened timelines that must be addressed in various processes under the OHA to expedite the heritage approvals process and make it more consistent with Planning Act timelines.

Outcome of Changes to the OHA

Passage of Bill 108 means that, under the OHA, heritage conservation will become more prescriptive for municipalities.

Some of the changes will provide greater clarity for municipalities, property owners and development proponents, which is largely beneficial to understanding the processes and intents of the Act.

Adhering to the new prescribed timelines will be critical to ensure municipal actions taken meet the legal requirements of the OHA. However, the Town's ability to meet the new timelines will pose significant challenges to staff resources and Heritage Caledon.

By moving all appeals regarding designation of properties from the Conservation Review Board to LPAT, municipal council will lose its final authority to determine and manage what properties are of local cultural heritage value and interest.

Staff prefer the retention of the Conservation Review Board (CRB) as it has expertise in heritage conservation. However, amendments to the OHA would be required to have final say on local heritage assets returned to municipalities.

The impetus for the amendments to the OHA come from Bill 108, The More Homes, More Choices Act, the objective of which is to increase housing supply. As the purpose of the OHA is to protect and conserve heritage resources, staff remain concerned that the Province's housing objective not come at the expense of the Town of Caledon's irreplaceable cultural heritage resources.

Proposed Regulation under the OHA (Bill 108)

On September 21, 2020, a new draft regulation under the OHA (Bill 108) associated with amendments made through the *More Homes, More Choices Act, 2019*, was posted by the Province on the Environmental Registry. The stated intent of the proposed regulation is to provide improved provincial direction on how to use the amended OHA, clearer rules and tools for municipal decision making, support consistency in the appeals processes, and help to align municipal decisions in heritage conservation with Planning Act processes.

The Environmental Registry posting included a summary of the following matters proposed to be prescribed by the regulation:

1. Principles of heritage conservation 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 Notices of Intention to Designate and exceptions to when these timelines would apply.
4. Minimum requirements for complete applications.
5. Exceptions to the new 120 day timeline to pass a designation by-law after a Notice of Intention to Designate has been issued.
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.
9. Transition provisions.

Overview of Implications for Internal Processes

Overall, staff is of the opinion that the proposed regulations provide clarity to the new timelines for various OHA processes.

While staff is generally supportive of the changes, they pose significant challenges for staff as internal processes and interdepartmental coordination will need to be extensively updated and/or adjusted to ensure compliance with the proposed regulations and reduced timelines.

These requirements will place an immediate administrative burden on staff resources to ensure that the Town will be prepared to implement the regulatory changes upon the anticipated proclamation of Bill 108 on January 1, 2020.

Similarly, the limited transition time of 365 days to bring existing heritage by-laws into compliance with the amended OHA requirements regarding description of heritage attributes, among other matters, will demand increased staff and financial resources, and thus impact the Town's broader heritage workplan.

Of necessity, restricted timelines will tend to focus heritage staff time on development applications involving heritage resources, thereby also negatively impacting the Town's broader heritage workplan.

Proposed Town Comments to Bill 108 Pursuant to the *Ontario Heritage Act*

Staff provide the following comments on the proposed regulations:

- Staff note that many of the prescribed principles to be used by council when making decisions under various part of the OHA use the word 'should' rather than 'shall'. Not only does the use of 'should' weaken heritage conservation efforts, but it is contradictory to the language of the Provincial Policy Statement 2020, which uses 'shall'. Given that the OHA amendments were intended to help align the Planning and Heritage acts, staff request that the language of the principles be revised to ensure consistency with that of the PPS.
- Staff request clarification regarding the second prescribed principle, which requires that all views be considered when designating a property. While valuing a transparent and robust consultation process, staff are concerned with how to balance all views in light of the potential conflict between this principle and the intent and need to conserve the heritage value of a property.
- With regard to the mandatory content for designation by-laws, staff request further clarification regarding the apparently contradictory requirements that the description of heritage attributes be brief and yet must also explain how each heritage attribute contributes to the cultural heritage value or interest of the property.
- Further to the above, staff asks the Ministry to confirm that the Land Registry Office can and/or will accept documents for registration containing digital

images prior to making them mandatory, since substantial file sizes may pose registration difficulties.

- Staff are very concerned that the 90 day timeline for issuing a notice of intention to designate under prescribed planning events is too short a period to allow for the review and potential request for revisions to a Peer Review, or Heritage Impact Assessment, and/or preparation and approval process for a designation report through municipal heritage committee, Planning & Development Committee and Council. Staff requests the Ministry to consider extending the timeline or expanding the very limited exception categories to cover such scenarios.
- With regard to the Ministry's proposed exception to the 90 day timeline under the category of New and Relevant Information, staff seek clarification on two aspects:
 - is a *revised* HIA considered to be new and relevant information?
 - how many times can the 90 day timeline be extended in response to new and relevant information being submitted?
- Staff is equally concerned that the 120 day timeline to pass a designation by-law after a notice of intention to designate has been issued is too short. Although the regulations do provide exceptions to the timeline, the process of requesting exceptions and monitoring timelines for agreed-upon extensions will only increase the administrative burden of staff. Anticipating a need to develop an internal process to facilitate extensions appears to defeat the proposed efficiency of the restricted timeline. Staff request that the 120 day timeline be extended.
- Staff request that minimum requirements for complete applications for alteration or demolition of heritage properties be extended to properties within heritage conservation districts.
- In light of the revised definition of demolition now including the "removal of any heritage attribute", and demolition requiring council approval, staff ask that consideration be given to allowing council delegation of approval authority to staff for some demolition approvals to relieve the substantial administrative burden imposed by the new definition. Significant staff time would be taken up in preparing reports to council for minor demolition approvals.
- Staff request clarification regarding the content of the employee statement that is now required as part of the information and material to be provided to LPAT when there is an appeal of a municipal decision. New internal processes must be developed to ensure that this new requirement regarding how council's decisions consider the prescribed principles is met.
- Given the above-noted concerns with some of the new timelines, the administrative/staffing concerns in ensuring compliance moving forward, and the existing constraints experienced by staff due to the COVID emergency, staff request that the proclamation date of Bill 108 be deferred.

FINANCIAL IMPLICATIONS

There are no immediate financial implications associated with this staff report.

COUNCIL WORK PLAN

Not Applicable

Subject matter is not relevant to the Council Workplan.

ATTACHMENTS

Schedule A: Resolutions from the Township of Amherstburg and the Town of Grimsby regarding proposed Changes to Bill 108