



Subject:	Proposed Regulation under the Ontario Heritage Act (Bill 108)
To:	Committee of the Whole – Planning & Economic Development
From:	Planning and Development Department

Report Number:	PD-29-20
Wards Affected:	All
Date to Committee:	Monday, November 9, 2020
Date to Council:	Monday, November 16, 2020

Recommendations:

Council endorse Report PD-29-20 regarding the proposed Regulation under the *Ontario Heritage Act* (Bill 108); and

Council direct staff to submit report PD-29-20 to the Province as the Town of Lincoln’s comments to the Environmental Registry of Ontario.

Purpose:

The purpose of this report is to provide background information to Committee and Council regarding a proposed Regulation under the *Ontario Heritage Act (OHA)*. Ontario’s Housing Supply Action Plan, the *More Homes, More Choice Act, 2019* made amendments to several pieces of legislation, including the *Ontario Heritage Act*. This report highlights the proposed amendments to the *Ontario Heritage Act* and its effects on the Town.

Background:

In Nov. 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*. The Province stated that the objective of these initiatives is to ensure more housing choices/supply and address housing affordability. The *Ontario Heritage Act* was one of 13 provincial statutes impacted by Bill 108.

The Town of Lincoln provided comments to the Province following the adoption of staff report PD-66-19 on Sept. 23, 2019. At that time, the proposed regulations for the *OHA* were unknown by the Ministry of Tourism, Culture and Sport, but were to be released later that year. At the time, the changes to the *OHA* were to be proclaimed and in effect for July 1, 2020. Later, this date was changed to Jan. 1, 2021.

The proposed Regulations were released for public comment on Sept. 21, 2020, being delayed by the COVID-19 pandemic. The changes to the *OHA* are still anticipated to be proclaimed on Jan. 1, 2021. Comments on the proposed Regulations are due to the Environmental Registry by Nov. 5, 2020.

A complete copy of the proposed Regulation under the *Ontario Heritage Act* (Bill 108) can be found at this link: https://prod-environmental-registry.s3.amazonaws.com/2020-09/General%20Regulation%20under%20the%20OntarioHeritage%20Act_Consultation.pdf

Report:

Ontario Heritage Act, 1990

The *Ontario Heritage Act* came into force in 1975. Its purpose is to give municipalities and the provincial government powers to preserve the heritage of Ontario. Its primary focus is to protect heritage properties and archaeological sites. The Ontario Heritage Trust is the mandated agency, and the Conservation Review Board is the tribunal that hears objections to municipal and provincial decisions under the Act.

The Environmental Registry posting includes the proposed *Ontario Heritage Act* regulations and a summary of the proposed regulations for the following:

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.

Many of the proposed regulations are procedural and provide clarity on the new processes that were included in Bill 108.

A summary of the regulatory proposal is 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.

Staff are generally supportive of the prescribed principles. The principals provide context for the Town to follow when making decisions regarding designated properties, including considering the views, concerns and opinions of all interested persons. All reports and resolutions will be required to provide evidence that Council considered the prescribed principles which will be a change to internal process. Staff also note that many of the principles use 'should' rather than 'shall.' There is potential weakening of heritage conservation efforts by 'should' especially regarding the principle that "property that is determined to be of cultural heritage value or interest should be protected and conserved for all generations." Staff are of the opinion that the use of the word 'should' contradicts the Provincial Policy Statement 2020. Staff recommend changing the language to ensure consistency between the two provincial policies.

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 including:

- Identifying the property for the purposes of locating it and providing an understanding of its layout and components;
- Establishing minimum requirements for the statement of cultural heritage value or interest; and
- Setting standards for describing heritage attributes.

Staff are generally supportive of the mandatory content for designation by-laws and recognize that there has been an inconsistent practice across the province on the content and will work towards having a standardized format. The most significant changes include:

- The requirement to include a map or image of the area;

- The description of the heritage attributes must be brief and explain how each attribute contributes to the cultural heritage value or interest of the property;
- The By-law may list any features that are not heritage attributes.

These changes will not affect internal process because staff typically retain a Professional Heritage Planner to prepare the Heritage Evaluation and Designating By-law.

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 applicants 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 proposed regulation also provides exceptions to when the 90-day timeline applies.

The Ministry is proposing the following categories of exceptions:

Mutual agreement – Where an extension of, or exemption from, the 90-day restriction on issuing a NOID is mutually agreed to by the municipality and the property owner who made the application under the *Planning Act*.

Administrative restrictions – Where municipal council or heritage committee are limited in their ability to reasonably fulfill the statutory requirements for issuing a NOID within the original 90-day timeframe. This would apply in cases of a declared emergency or where a municipal heritage committee would be unable to provide its recommendations to council. The timeframe would be extended by 90 days.

New and relevant information – Where new and relevant information could have an impact on the potential cultural heritage value or interest of the property is revealed and needs further investigation. Council would be able to extend the timeframe through a council resolution. In the case of new and relevant information council would have 180 days from the date of the council resolution to ensure there is sufficient time for further information gathering and analysis to inform council's decision.

Expiration of restriction – The 90-day restriction on council's ability to issue a NOID would not remain on the property indefinitely and would no longer apply when the application that originally triggered the 90-day timeframe is finally disposed of under the *Planning Act*.

The proposed regulation also provides notification requirements related to the exceptions to the 90-day timeframe restriction.

Staff are concerned that the 90-day timeline to issue a NOID does not provide the Town enough time to retain a Professional Heritage Planner and have them prepare a Heritage Evaluation. Many municipalities do not have Heritage Planners on staff to prepare the evaluations and will find it challenging to meet this timeline.

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 NOID. It also allows for exceptions to be prescribed.

The Ministry is proposing the following categories for exceptions:

Mutual agreement - Where an extension of, or exemption from, the requirement to pass a by-law within 120 days of issuing a NOID is mutually agreed to by the municipality and the property owner.

Administrative restrictions – Where municipal council is limited in its ability to reasonably fulfill the statutory requirements for passing a designation bylaw within the original 120-day timeframe. This would apply in cases of a declared emergency.

New and relevant information – Where new and relevant information that could have an impact on the potential cultural heritage value or interest of the property is revealed and needs further investigation. Council would be able to extend the timeframe through a council resolution to ensure there is enough time for further information gathering and analysis to inform its decision.

Council would have an additional 180 days from the date of the council resolution to pass the by-law.

Exceptions allowing for the extension of the 120-day timeframe for passing a by-law must occur prior to the expiry of the initial 120 days. The proposed regulation includes notification requirements related to the exceptions to the 120-day timeframe.

Similar to #3 above, Staff would prefer longer than a 120-day timeframe. In addition, requesting exemptions through formal agreements or Council resolutions adds to staff workload and can be an administrative burden. The creation of an internal process to extend the 120-day timeline would need to be developed or Council may wish to consider delegating to staff the ability to enter into a mutual agreement to extend the timeframe. These timeline changes make it difficult for staff to be flexible in the designation workplan.

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. It also provides a regulatory authority for the Province to set out minimum requirements for complete applications.

The purpose of these provincial minimum standards is to ensure transparency so that property owners are aware of what information is required when making an application. The details of what is proposed in regulation reflect current municipal best practices. The proposed regulation also enables municipalities to build on the provincial minimum requirements for complete applications as a way of providing additional flexibility to address specific municipal contexts and practices. Where municipalities choose to add additional requirements, the proposed regulation requires them to use one of the following official instruments: municipal by-law, council resolution or official plan policy.

The proposed regulation establishes that the 60-day timeline for determining if the application is complete and has commenced when an application is served on the municipality. It further proposes that applications may now be served through a municipality's electronic system, in addition to email, mail or in person.

Staff note that although the introduction of a timeline to confirm a complete application for heritage issues is new, it is not new for other planning applications and so staff are supportive of the timeline as it provides clarity for the property owner and Town staff. Internal processes will be required to be updated to reflect the minimum requirements for complete applications for alternation or demolition applications. Applications being served electronically is the new normal, especially during the covid pandemic.

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.

Prior to the amendments, where council approved a demolition or removal under s. 34, 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 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.

Staff are pleased to see the stricter definition of demolition that includes the demolition or removal of any heritage attribute. This contributes significantly to the conservation of heritage buildings. Although, Staff are concerned that as a result, more reports may be required, and decisions now delegated to Staff will have to go to Council even where they may be very minor in nature.

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. The decisions of LPAT are binding. Preliminary objections to designation matters will now be made to the municipality before the final decision is made. Prior to the amendments, appeals of designation-related notices or appeals of alteration decisions were made to the Conservation Review Board, whose decisions were not binding.

A regulatory authority was added to ensure that appropriate information and materials related to designations, alteration and demolition decisions are forwarded to the LPAT to inform appeals. 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 municipality's decision.

Staff note that with these changes, Council no longer has the final say on designation decisions and that this authority has been shifted to the Local Planning Appeal Tribunal (LPAT). Staff prefer the retention of the Conservation Review Board (CRB) as the CRB has the expertise in heritage conservation. Staff are generally satisfied with the timeframe and relevant information that is required to be submitted to the LPAT.

8. Housekeeping amendments

Amendments to the Act included regulatory authority to address a few housekeeping matters through regulation. Previously, where a municipality proposed to make substantial amendments to an existing designation by-law it stated that the designation process in section 29 applied with necessary modifications. The proposed regulation clearly sets out the modified process, including revised language that is more appropriate for an amending by-law.

The proposed regulation also 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.

The proposed regulation also outlines restrictions on a property owner's ability to reapply for repeal of a designation by-law where the application was unsuccessful unless council consents otherwise. The one-year restriction on an owner's reapplication maintains what had been included in the Act prior to the amendments.

Staff support this regulation as it will make it easier to update old designation by-laws as required, as well as make amendments to by-laws that require updating to remove listed heritage attributes as per the new regulation. The ability to amend a heritage designation by-law is improved through this regulation because it provides clarity to the 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. The proposed transition rules provide clarity on matters that are already in progress at the time the amendments come into force.

General Transition Rule

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. The proposed regulation sets out the specific triggers for determining if a process had commenced.

Exceptions

Outstanding notices of intention to designate - Where council has published a Notice 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 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.

90-Day restriction on issuing a NOID

The 90-day restriction on council's ability to issue a NOID would only apply where all notices of complete application have been issued by the municipality in relation to a prescribed Planning Act application, on or after proclamation.

Prescribed steps following council's consent to demolition or removal (s. 34.3)

The Ministry is proposing that the prescribed steps would apply following consent to an application by the municipality or by order of the Tribunal, where at the time of proclamation council had not already repealed the by-law under s. 34.3.

Regulatory Impact Assessment

The objective of the proposed regulation is to improve provincial direction on how to use the *Ontario Heritage Act*, provide clearer rules and tools for decision making, and support consistency in the appeals process. Direct compliance costs and administrative burdens associated with the proposed regulations are unknown at this time. New rules and tools set out in the proposed regulations are expected to result in faster development approvals.

Staff are generally satisfied with the proposed transition provisions, although note that the transitions proposed will place increased demand on staff time and resources to prepare for the implementation deadline. A review of the internal processes must be completed prior to implementing the regulations. Therefore, staff recommend that the proclamation deadline be pushed to July 1, 2021 to allow municipalities more time to prepare, especially in consideration of the COVID pandemic.

Financial, Legal, Staff Considerations:

Financial: The proposed regulations will have an undetermined financial impact for the Town.

Staffing: The proposed regulations will increase demand on Staff time and resources.

Legal: The proposed regulations may require Staff to consult with the Town's Solicitor more frequently on heritage matters.

Public Engagement Matters:

Members of the public may review and provide comments on the proposed changes through the posting on the Environmental Registry of Ontario (ERO) website (<https://ero.ontario.ca/>).

Conclusion:

This report provides a summary of the legislative changes to the *Ontario Heritage Act* relating to Bill 108. Overall, staff support many of the proposed regulation changes, as they provide greater clarity and consistency for the new processes created through Bill 108. Staff do have some concerns including, appeals being moved to the LPAT from the CRB, timeframes to accommodate the new regulations, and the new legislated timeframes for heritage matters.

Staff are of the opinion that the Province's objective with Bill 108, being to increase housing supply, should not come at the expense of municipalities' irreplaceable cultural heritage resources, as the purpose of the *Ontario Heritage Act* is to protect and conserve heritage properties across the province. With a balance of the Bill 108 amendments, Lincoln will continue to be a place to grow, a place to prosper and a place to belong.

Respectfully submitted,

Monika Cocchiara
Manager of Planning & Development

Appendices:

None.

Notification:

The Municipal Heritage Committee reviewed the proposed regulation and had no further comments. Staff will provide this report to the Province as part of the Town of Lincoln's comments on the proposed regulation under the *Ontario Heritage Act*, as well as share the report with the Municipal Heritage Committee. Staff will also advise Council and the Municipal Heritage Committee once the changes are proclaimed.

Report Approval:

Report has been reviewed by the Associate Director of Planning and Development. The report has been approved by the Director of Planning and Development and Chief Administrative Officer.