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ACO Submission on proposed new OHA regulation

The Ministry of Heritage, Sport, Tourism and Culture Industries has proposed a new regulation under the *Ontario Heritage Act*. The regulation implements changes to the OHA made last year as part of Bill 108, *The More Homes, More Choices Act, 2019*.

The government is proposing that both the changes to the OHA, which have been passed but not yet proclaimed, and the proposed regulation come into force on January 1, 2021.

ACO welcomes the opportunity to provide comments on the draft regulation.

Our comments look at each category of change in the order they appear in the “Proposal details” section of the Environmental Registry posting.

1. Principles to guide municipal decision-making

- Bill 108 requires that the council of a municipality consider prescribed principles when exercising a decision-making power under prescribed sections of the OHA.
- The proposed three principles would have to be considered when councils make decisions on: the designation of individual properties, the de-designation of individual properties, the amendment of a designation by-law; the designation of heritage conservation districts, the adoption of a heritage conservation district plan; the alteration or demolition/removal of individually designated property and structures, and the alteration or demolition/removal of property in HCDs as well as new construction in HCDs.
- These principles are:
 1. Property that is determined to be of cultural heritage value or interest should be protected and conserved for all generations.
 2. Decisions affecting the cultural heritage value or interest of a property or heritage conservation district should, i. minimize adverse impacts to the cultural heritage value

or interest of the property or district, ii. be based on research, appropriate studies and documentary evidence, and iii. demonstrate openness and transparency by considering the views of all interested persons and communities.

3. Conservation of properties of cultural heritage value or interest should be achieved through identification, protection and wise management, including adaptive reuse where appropriate.

- The principles would not apply to decisions to list heritage properties.

Comments

- The proposed principles appear innocuous and are things that most municipalities consider anyway.
- While one could suggest others besides these three — a principle about the importance of evaluation, for example — a small number of principles is preferable as municipalities will have to consider (and be seen to consider) each of them, adding another layer to the decision-making process.
- **Changes recommended: none, but Tool Kit guidance on how to demonstrate consideration of the principles will be important.**

2. Mandatory content for designation bylaws

- Currently designation bylaws must include (a) a statement explaining the cultural heritage value or interest of the property, and (b) a description of the heritage attributes of the property.
- Bill 108 provides that designation bylaws continue to include these two things but must also comply “with such requirements in relation to the statement and the description as may be prescribed and with such other requirements as may be prescribed.”
- The regulation sets out these additional requirements:

1. The by-law must identify the property by,
i. the municipal address of the property, if it exists,
ii. the legal description of the property, including the property identifier number that relates to the property, and
iii. a general description of where the property is located within the municipality, for example, the name of the neighbourhood in which the property is located and the nearest major intersection to the property.

2. The by-law must contain a site plan, scale drawing, aerial photograph or other image that identifies each area of the property that has cultural heritage value or interest.

3. The statement explaining the cultural heritage value or interest of the property must identify which of the criteria set out in subsection 1(2) of Ontario Regulation 9/06 (Criteria for Determining Cultural Heritage Value or Interest) made under the Act are met and must explain how each criterion is met.

4. The description of the heritage attributes of the property must be brief and must explain how each heritage attribute contributes to the cultural heritage value or interest of the property.

5. The by-law may list any physical features of the property that are not heritage attributes.

(emphasis added)

Comments

- These additional requirements for designation bylaws expand on the requirements currently in the OHA.
- Most of these new “requirements” would have been better as recommended best practices in Ministry advisory material like the Ontario Heritage Tool Kit, which will now have to address them in any case; however, they are not unreasonable and over time should lead to designation bylaws that are more consistent in quality and format.
- The “must explain” requirements in #3 and #4 (underlined above) open the door to lengthy and cumbersome cultural heritage value statements and attributes descriptions that are at odds with the other requirements, which can be addressed succinctly. These types of explanation would already be found in designation background reports. If these explanations are to be required in the by-law, there should be direction to keep them short and concise. Note that #4 already requires that attributes descriptions be brief.
- **Changes recommended: The regulation should direct that statements of cultural heritage value and descriptions of heritage attributes be brief and concise, with the Tool Kit providing further guidance on appropriate length.**

3. 90 day timeline to issue a notice of intention to designate

- Bill 108 amended the OHA to set a new 90-day limit for issuing a notice of intention to designate (NOID) when a “prescribed event” occur in relation to the property, but allows for prescribed exceptions to this restriction.
- The regulation lists three prescribed events that would trigger the 90-day limit:
 1. an application under the Planning Act for an official plan amendment
 2. an application under the Planning Act for a zoning bylaw amendment
 3. an application under the Planning Act for a plan of subdivision
- The prescribed exceptions to the 90-day limit are of four kinds:
 1. Mutual agreement — where the municipality and the applicant agree to extend the 90-day limit, or agree that the limit not apply
 2. Administrative limitations — where the council cannot fulfill its statutory duties for issuing a NOID within the 90-day timeframe because (a) an emergency has been declared in the municipality, or (b) the council has not consulted with its municipal heritage committee (where there is one) regarding designation within the 90-day period; in the latter situation council would be able to extend the timeframe by a resolution passed within 15 days of the end of the 90-day

period to give a total of 180 days before the NOID restriction kicks in.

3. New and relevant information — where new information or materials comes to light that is relevant to either the potential cultural heritage value of the property or the potential effect of the application on the cultural heritage value of the property; in this situation, to buy time for further investigation and analysis, council would be able to extend the timeframe by resolution to give another 180 days from the date of the resolution.

4. Expiration of the restriction on issuing an NOID — where the Planning Act application that triggered the 90-day limit has been disposed of, the limit would no longer apply.

Comments

- The three prescribed events are reasonable.
- The exceptions also appear reasonable and appropriate, if somewhat complicated.
- The exceptions in 2(b) and 3 (allowing additional time for consultation with the municipal heritage committee and the analysis of new information) by their nature are more discretionary and may invite disagreement over whether the exception legitimately applies.
- **Changes recommended: none, but Tool Kit guidance will also be important here.**

4. 120 day timeline to pass a designation bylaw

- Bill 108 amended the OHA to impose a new requirement that designation by-laws be passed within 120 days of issuing a NOID; otherwise the NOID is deemed to be withdrawn.
- The 120-day timeframe is subject to exceptions where a “prescribed circumstance” exists.
- The regulation lists three types of circumstances:
 1. Mutual agreement — where the municipality and the applicant agree to a different period of time, presumably longer than 120 days
 2. Emergency declaration — where an emergency has been declared in the municipality the 120-day limit starts to run only after the emergency has ended
 3. New and relevant information — where new information or materials come to light that “affects or may affect” any of the matters that must be addressed in the designation bylaw (i.e. the statement of cultural heritage value, the description of heritage attributes, etc. as detailed in 2. above); in this situation, to buy time for further investigation and analysis, council by resolution would be able to extend the timeframe to give another 180 days from the date of the resolution.

Comments

- These three circumstances seem reasonable and appropriate.
- As in 3. above, use of the “new information” exemption may attract special scrutiny and potential disagreement over the legitimacy of the exception.

- **Changes recommended: none, but Tool Kit guidance again important.**

5. **60 day timeline to confirm complete applications for alteration or demolition and contents of complete applications**

- Bill 108 amended the OHA to impose a new requirement that a municipality respond to an applicant for alteration or demolition/removal (indicating that the application was either complete or not complete) within 60 days of the commencement of the application.
- The regulation clarifies that an application commences and the 60 days start running on the day the application was served on the council.
- The regulation also sets out a list of mandatory information and material that must accompany an application, such as drawings and specifications of the proposed alteration or demolition/removal, the reasons for it, and the potential impacts on heritage attributes.
- In addition to these requirements, the OHA allows municipalities to require any other information or material the council considers it may need.

Comments

- The commencement date for applications and the list of required information and material appears reasonable and is consistent with requirements for applications under the Planning Act.
- **Changes recommended: none, with a repeated plea for Tool Kit guidance.**

6. **Prescribed steps following council's consent to a demolition or removal**

- Where municipal council has consented to the demolition or removal of buildings or structures on a designated property the OHA previously required that the designation bylaw be repealed in whole or in part.
- Bill 108 amended the Act to require council's consent for the demolition or removal of heritage attributes, i.e. in addition to buildings and structures. It also directs council to take certain prescribed steps following the completion of the demolition/removal.
- The proposed regulation sets out the required steps:
 1. the council, in consultation with the Municipal Heritage Committee (MHC), determines the property
 - (a) continues to have cultural heritage value and the statement of cultural heritage value and the description of heritage attributes remain accurate;
 - (b) continues to have cultural heritage value but the statement or the description is no longer accurate and needs to be amended; or
 - (c) no longer has cultural heritage value.
 2. if (a), the municipality simply notifies the Ontario Heritage Trust.
if (b), the council passes an amending bylaw to update the statement and/or description, and the municipality notifies the owner, the Trust, and the public (via newspaper notice).

if (c), the council repeals the bylaw and the municipality notifies the owner, the Trust, and the public (via newspaper notice) and deletes the property from the municipal register.

- If as a result of a removal a building or structure is moved to a new property, the council, in consultation with the MHC, is required to determine if the property meets the criteria for designation and, if it does, the property may be designated under the Act (and the designation is not subject to appeal to the Local Planning Appeal Tribunal).

Comments

- While somewhat complex, these new rules should help ensure that designation bylaws are kept relatively up-to-date in terms of the consequences of approved demolitions/removals.
- Provision for an abbreviated process for designation of the receiving property in the rare case where a building is moved makes good sense.
- **Changes recommended: none, with repeated plea for Tool Kit guidance.**

7. Other matters

- The proposed regulation also addresses a number of administrative and house-keeping matters, including:
 - a list of materials and information constituting a “record of decision” that must be forwarded to the Local Planning Appeal Tribunal by the municipality for each type of decision appealed to the LPAT
 - clearly setting out the process for amending designation bylaws in a Schedule to the regulation
 - moving of the one-year restriction on an owner’s ability to reapply for de-designation from the Act to the regulation
 - transition rules for matters already in progress at the time the Bill 108 amendments and the regulation come into force (expected January 1/21)

Comments:

- The transition rules and other administrative changes make sense.
- **Changes recommended: none**

Updates to the Toolkit

- According to ADM Kevin Finnerty’s email of September 21: “Updates to the existing Ontario Heritage Tool Kit, which will support implementation of the amendments and proposed regulation, are forthcoming. Drafts of the revised guides will be made available for public comment later this fall.”

Comments:

- ACO's comments on the proposed regulation above underscore how important good Tool Kit guidance will be to the functioning of revised OHA processes.
- ACO looks forward to the opportunity to review the draft Tool Kit guides. We will be especially interested to see the updated "Heritage in the Land Use Planning Process" guide.
- **To ensure that Tool Kit guidance has been made available for reasonable public comment and can be ready at the time the Bill 108 changes and regulation come into force, the Province should consider a further extension of the proclamation date to July 1, 2021.**

November 2, 2020