

The Corporation of the City of Kawartha Lakes
Kawartha Lakes Municipal Heritage Committee Report
Report Number KLMHC2020-06

Meeting Date: February 6, 2020

Title: Ontario Heritage Act Update

Description: Update on provincial changes to the Ontario Heritage Act and its associated regulations

Ward Number: All

Author and Title: Emily Turner, Economic Development Officer – Heritage Planning

Recommendation(s):

That Report KLMHC2020-06, **Ontario Heritage Act Updates**, be received for information; and

That the presentation by the Economic Development Officer – Heritage Planning be received for information.

Background:

In May 2019, Ontario's provincial government released its "More Homes, More Choice: Ontario's Housing Supply Action Plan" which included a range of initiatives to address housing supply in the province. A central part of the plan was reviewing and revising a number of pieces of planning related legislation. In June 2019, Bill 108, also known as the More Homes, More Choices Act, received royal assent. This bill made a range of amendments to thirteen pieces of provincial legislation, including the Ontario Heritage Act. The amendments made to the Act were significant and introduced changes to some of the processes undertaken by a municipality when managing its heritage assets. These changes have the potential to impact heritage conservation in Ontario.

This report provides an overview of the changes made to the Ontario Heritage Act which the Municipal Heritage Committee should be aware of as they undertake their work. The Economic Development Officer – Heritage Planning will also make a presentation on the changes.

Rationale:

Bill 108 made a significant number of changes to the Ontario Heritage Act. Some of the changes are technical and housekeeping changes and others will have an impact on the operations of the municipality with regard to heritage preservation. The primary changes to the Act are summarized below under appropriate headings.

Listing Properties

Section 27 of the Act allows the municipality to add properties to their Heritage Register which have not been designated by the municipality believes to have cultural heritage value. Currently, the municipality is not required to notify owners when their property has been listed by Council and there is no objection process. The amendments require that a municipality notify an owner when their property is placed on the Heritage Register. They also allow for an objection process whereby the owner of a property may serve an objection on the clerk of the municipality. The objection is heard by Council which makes a decision as to whether the property will continue to be on the Register.

These changes create added complexity to the process of listing. Kawartha Lakes currently notifies the owners of properties prior to Council listing them on the Register, as it is a best practice, and this will continue to ensure transparency and open communication. The municipality will now be required to notify owners again after the property has been listed by Council and to inform owners about the objection process. A Standard Operating Procedure for handling the

objection process will need to be put in place internally and will be undertaken by staff.

Designating Properties

Section 29 of the Act allows the municipality to pass by-laws to designate properties individually as being of cultural heritage value or interest.

The primary changes the amendments introduce are timeframes for designating a property. The first change is that a municipality has 90 days to issue a notice of intention to designate if a “prescribed event” has occurred with respect to the property. The amendments do not identify what a prescribed event is with relation to designation, but it has been confirmed that these will be planning applications. This will require staff and the municipal heritage committee to be aware of any heritage resources that might be worthy of designation and respond quickly should a planning application come forward.

Similarly, a municipality now must pass a designation by-law within 120 days of publishing the notice of intention to designate for a property. If a by-law is not passed within 120 days, the notice of intention will lapse. In general, most by-laws in Kawartha Lakes are passed within 120 days of the notice being issued.

There are now also requirements for the contents of a designation by-law. The by-law must now include a statement of significance, a description of the heritage attributes and must comply with any prescribed regulations. These regulations have not yet been published. Currently, designation by-laws passed by the City already contain the required statement and description of attributes. Staff will ensure that any new by-laws comply with the regulations when they are published and come into effect.

Applications for Alterations

Section 33 of the Act restricts alterations to a designated property unless the Council of a municipality, or a delegated authority, consents to it in writing. This provision of the Act has not changed but there are new time lines with regard to notification. The municipality now has 60 days to confirm whether or not an application for alteration is complete.

There will now also be prescribed minimum submission requirements for complete applications which will be set out by the province in regulation. The municipality may also ask for additional information. When these minimum requirements are published, staff will ensure that these are consistent with current practice and modify the requirements for submission as appropriate. It will also be useful for the municipality to formalize its own requirements to align with provincial regulation and to ensure that any additional information the municipality might require is formally identified.

Demolition

Sections 34 and 42 of the Act establish that a designated property may not be

demolished or removed without consent from Council. In current legislation, this has been interpreted to mean work that requires a demolition permit under the Ontario Building Code. The Act has been amended to stipulate that demolition now includes the removal of heritage attributes as identified in the designation by-law.

While the Act allows a Council to delegate authority to consent to alterations to staff, it does not provide for delegation with regards to requests for demolition. This has the potential to complicate applications that involve the removal of a heritage attribute. The Ministry of Heritage, Sport, Tourism and Culture Industries has indicated that it will be clarifying this change and the practical implications for processing alteration applications to ensure that there is not an increased burden on Councils and applicants. Staff will provide updates to the Committee when these are made available by the Ministry.

Appeals

The Conservation Review Board (CRB) will no longer serve as the appeals body for heritage designation, the repeal of heritage designation by-laws, and alterations to individually heritage designated properties. These will now be reviewed by the Local Planning Appeals Tribunal (LPAT).

There are also changes in the appeals process for individually designated properties with regard to Council review. Currently, if an owner objects to a proposed designation, they may appeal directly to the CRB. Under the amendments, an owner may appeal as previously but, prior to the appeal proceeding to the LPAT which will now review appeals, Council must review the proposed designation within 90 days and choose either to pass a by-law to designate the property or to withdraw the notice of intention to designate. Then owner then may object to the LPAT.

If an appeal is heard by the LPAT, the decision of the LPAT is final. The LPAT may also choose to amend the by-law or direct Council to do so. This is a significant change from the previous provisions of the Act. Previously, the recommendations of the CRB were not binding and Council had final say over the designation of property and the contents of the designation by-law. The changes allow the LPAT to make decisions about local heritage matters without recourse from a local council.

Appeals to alteration applications for individually designation properties will now also be heard by the LPAT, instead of the CRB. This is consistent with how appeals to alteration applications to properties located in heritage conservation districts are currently dealt with because they are already direct to the LPAT as opposed to the CRB.

By-law Repeals

Section 32 of the Act outlines the process for repealing a designation by-law at the request of an owner. Council must now provide notice of the application in the newspaper, along with information about the significance of the property, and any person may now appeal the repeal of the by-law to Council. This objection period is new. Council will then consider the application for repeal and either repeal the by-law or deny the request, within 90 days. Should Council deny the request, the owner or any other member of the public may appeal that decision to the LPAT, which replaces the CRB as the appeal review body. The LPAT may either dismiss the appeal or consent to the repeal of the by-law. Should Council decide to repeal the by-law, any person may object and this objection is also heard by the LPAT.

There are also changes to Section 31 of the Act which outlines the process for repealing a designation by-law at the initiative of Council. The changes are similar to those made to Section 32 and also include the provision for any person to object to the proposed repeal to the LPAT.

Timeline for Amendments

At the moment, the amendments are not in force, even though the bill has received royal assent. This is, in part, because the provincial government also wanted to develop and put into effect a number of regulations informing the new provisions of the Act. These regulations are currently in development by the Ministry of Heritage, Sport, Tourism and Culture Industries and should be published for public comment in spring 2020. It is likely that the amendments to the Act and the new regulations will come into force in summer 2020. Staff will provide an update to committee when a concrete timeline has been published by the Ministry, as well as when the new proposed regulations are released to the public.

The changes to the Act have the potential to impact how Kawartha Lakes approaches heritage preservation. Particularly with regard to timelines for processing alteration applications and designations, the municipality will have to be cognizant of timelines prescribed by the amendments. Similarly, the municipality will also have to ensure that its alterations application process conforms to the new regulations.

Other Alternatives Considered:

No alternatives are recommended.

Financial/Operation Impacts:

There are no financial implications as a result of the recommendations of this report.

Consultations:

Ministry of Heritage, Sport, Tourism and Culture Industries

Attachments:

Appendix A – Link to Explanatory Note to Bill 108

<https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-108>

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