

The Corporation of the City of Kawartha Lakes
Kawartha Lakes Municipal Heritage Committee Report

Report Number KLMHC2020-25

Meeting Date: October 8, 2020

Title: Proposed Ontario Heritage Act Regulations

Description: Review of the proposed new regulations for the Ontario Heritage Act

Ward Number: All

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

Recommendation(s):

That Report KLMHC2020-25, **Proposed Ontario Heritage Act Regulations**, be received for information.

Background:

The More Homes, More Choice Act, 2019 made changes to a number of pieces of planning related legislation, including the Ontario Heritage Act. The bill received royal assent on June 6, 2019.

Several of the amendments required additional details to be prescribed through regulations. These regulations change and clarify the processes for identifying, designating and managing proposed changes to properties of cultural heritage value. These regulations have the potential to significantly impact the way that municipalities approach the conservation of historic properties and their associated internal processes.

The proposed regulations and the amendments to the Ontario Heritage Act will come into effect on January 1, 2021. It is important that prior to these new regulations coming to force that the Municipal Heritage Committee familiarize itself with the proposed changes and provide comment through the Environmental Registry as appropriate. The commenting period for the proposed regulations ends on November 5, 2020. Should the Committee have specific concerns regarding the proposed regulations, it may comment on the Environmental Registry before the deadline. Individual members of the Committee may also provide comment.

This report addresses the proposed legislative changes.

Rationale:

To bring the OHA amendments into force, there are regulations proposed addressing nine areas of heritage planning policy and process. They are summarized below.

1. Principles to guide municipal decision making
The regulations identify new principles to guide municipal decision making. They are:
 - a. Property that is determined to be of cultural heritage value or interest should be protected and conserved for all generations
 - b. 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 considered the views of all interested persons and communities

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

The Committee should remain cognizant of these principles as it makes decisions to ensure that any decisions are justifiable based on the prescribed principles.

2. Mandatory content for designation by-laws

There are proposed mandatory content regulations for designation by-laws. The intention is to make sure that by-laws are consistent across the province and that they contain sufficient information to guide the preservation of a property. The mandatory content is as follows:

- a. Identification of the property by:
 - i. The municipal address of the property, if it exists,
 - ii. The legal description of the property, including the PIN that relates to the property
 - 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
- b. A site plan, scale drawing, aerial photograph, or other image that identifies each area of the property that has cultural heritage value or interest
- c. A statement explaining the cultural heritage value or interest of the property must identify which of the criteria set out in Ontario Regulation 9/06 are met and explain how the criteria are met
- d. The description of heritage attributes must be brief and must explain how each heritage attribute contributes to the cultural heritage value or interest of the property
- e. The by-law may list features of the property that are not heritage attributes

This will require changes to how designation by-laws are written in Kawartha Lakes.

3. 90-day timeline to issue a Notice of Intention to Designate

The amendments to the OHA identify a new 90-day timeline for issuing a notice of intention to designate after a prescribed event has occurred. The proposed regulations identify the prescribed events as three types of applications made under the Planning Act: an official plan amendment, a zoning by-law amendment, and/or a plan of subdivision. After the 90-day period has elapsed, the municipality will no longer be able to issue a notice of intention to designate a property of cultural heritage value which is subject to the Planning Act application.

There are a number of exceptions where the 90-day timeframe could be extended or does not apply. These are:

- a. A mutual agreement between the municipality and the applicant
- b. Administrative restrictions, such as a declared state of emergency or the inability of Council to consult with its municipal heritage committee
- c. New or relevant information which could have a potential impact on the cultural heritage value of a property which is revealed and required further investigation
- d. The restriction expires when the application is disposed of under the Planning Act

The proposed regulations also require provide the notification requirements for any of these scenarios.

In order to respond to this requirement and ensure that non-designated properties subject to Planning Act application are designated as necessary, the City and the Committee will need to closely monitor incoming Planning Act applications and move quickly should a designation be warranted. This change to the Act underlines the importance of listing and inventorying heritage resources.

4. 120-day timeline to pass a designation by-law
The OHA amendments establish a new requirement that a municipality must designate a property within 120 days of issuing the Notice of Intention to Designate. It also allows for exceptions to be proposed through regulation. The proposed exceptions are:
 - a. Mutual agreement between the property owner and the municipality
 - b. Administrative restrictions, such as a declared state of emergency
 - c. New and relevant information which could have a potential impact on the cultural heritage value of a property which is revealed and required further investigation

These exceptions would allow Council an additional 180 days to pass the by-law.

Most designation by-laws in Kawartha Lakes are passed within 120 days of issuing a notice of intention to designate.

5. 60-day timeline to confirm complete applications
The OHA amendments establish a new timeline of 60 days to deem an application for alteration, demolition or removal of a heritage property. It

also sets out that minimum requirements for a complete application may be prescribed by regulation. The minimum requirements are:

- a. Name, address, telephone number and (if applicable) email address of the applicant
- b. The name of the municipality from which consent is being requested
- c. A description of the property such as lot and concession numbers, reference plan and part numbers, and street names and numbers
- d. Photographs which depict the existing buildings, structure and heritage attributes that are affected by the application
- e. A site plan or sketch that illustrates the proposed alteration, demolition or removal
- f. Drawings and written specifications of the proposed alteration, demolition or removal
- g. The reasons for the alteration, demolition or removal and the potential impact on the heritage attributes of the property
- h. All technical cultural heritage studies that are relevant to the proposed alteration, demolition or removal
- i. An affidavit or sworn declaration by the applicant certifying that the information required under this section and provided by the applicant is accurate.

Municipalities may add additional requirements through a by-law, council resolution, or official plan policy.

While the minimum requirements outlined by the province are generally what is required when submitted a heritage application in Kawartha Lakes, the municipality should establish its own requirements which align with the provincial regulation and add additional clarity to them. Staff are currently preparing a policy for presentation to Council on this topic. The policy will be presented to the Municipal Heritage Committee for review and comment prior to proceeding to Council.

6. Prescribed steps following council's consent to a demolition or removal under s. 34.3

The amendments to the OHA provide that council consent is required for the removal of any heritage attributes, not just the full demolition or removal of a structure.

Previously, councils were required to repeal the designation by-law when a demolition occurred. The regulation provides municipalities with the ability to determine the impact of the proposed demolition and amend or repeal the by-law as necessary. The regulation identifies the appropriate administrative action as required.

The proposed regulation will need to be followed if and when the City receives an application of this nature.

7. Information to be provided to LPAT upon appeal
Under the new amendments, all decisions are now appealable to the Local Planning Appeals Tribunal (LPAT) as opposed to the Conservation Review Board which previously reviewed objections to designations and alterations to individually designated properties. The LPAT decisions are binding. There are different requirements depending on the type of application and appeal.

Staff will be responsible for ensuring that the appropriate records are kept and referred to the LPAT should they be required. The new regulation underlies the need for good recording keeping and transparency in decision making.

8. Housekeeping amendments
There are a number of housekeeping amendments addressed through regulations. The proposed regulation sets out a modified, simplified process for amending a designation by-law passed under section 29 of the Act and makes it clear that there is no 90-day restriction on issuing a notice of proposed amendment to the passing of the amending by-law. It also outlines restrictions on a property owner's ability to reapply for a repeal of designation by-law where the application was unsuccessful.
9. Transition
The regulations provide for transition rules to clarify matters that are already in process at the time the regulations come into force. There is likely to be limited impact on Kawartha Lakes.

Other Alternatives Considered:

There are no recommended alternatives.

Financial/Operation Impacts:

There are no financial or operational impacts resulting from the recommendations of this report.

Consultations:

Ministry of Heritage, Sport, Tourism and Culture Industries

Attachments:

Appendix A – Proposed Ontario Heritage Act Regulations



OHA Regs
Stakeholder Presentat

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