



Committee of the Whole Report

Report Number:	ED2022-001
Meeting Date:	January 11, 2022
Title:	Amendment of the Heritage Delegated Authority By-law
Description:	Proposed amendment to By-law 2019-154 (Delegate Authority Heritage) to delegate authority for the approval of timeline extensions and waivers to staff and for the negotiation of heritage easement agreements
Author and Title:	Emily Turner, Economic Development Officer – Heritage Planning

Recommendations:

That Report ED2022-001, **Amendment of the Heritage Delegated Authority By-law**, be received;

That By-law 2019-154 be amended as outlined in Appendix A of this report;

That the necessary amending by-law be brought forward to Council for adoption; and

That this recommendation be brought forward to Council for consideration at the next Regular Council Meeting.

(Acting) Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

Amendments to the Ontario Heritage Act passed as part of the More Homes, More Choice Act (2019) came into effect on July 1, 2021. These amendments made some significant changes to processes related to heritage properties regulated under the Act and introduced a new regulation, Ontario Regulation 385/21, which provides additional direction on a range of items within the Act. One of the major changes was the addition of certain timelines with regard to the designation of property under Section 29 of the Act. These are:

- A 90-day time limit to designate a property if the property is subject to an application for an official plan amendment, zoning by-law amendment or a plan of subdivision approval under the Planning Act
- A 120-day time limit for passing a designation by-law after a notice of intention to designate has been issued.

The amendments were intended to ensure that municipalities were efficient in their heritage planning programs. Specifically, with regard to the 90-day limit related to Planning Act applications, the intention of this amendment was to ensure that municipalities did not raise heritage matters with regard to an application at a late stage in the approval process. However, Ontario Regulation 385/21 does recognize that there are situations where it is appropriate for these timelines to be extended or suspended and allows for Council and the applicant to mutually agree to an extension. Similarly, the Act also contains other time limits for approvals with regard to applications to alter or demolish a heritage property or to repeal an individual designation by-law at the owner's request. There are a variety of situations where the extension or waiver of timelines might be appropriate, particularly in order to align processes under the Planning Act and the Ontario Heritage Act to make review and approval more streamlined for both the City and the applicant.

At present, any waiver of timelines must be agreed upon between Council and the applicant which require obtaining a recommendation from the Municipal Heritage Committee and then presenting a report to Council. This process is cumbersome and inefficient for both the City and the applicant. In order to make this process more efficient, staff are proposing that changes be made to By-law 2019-154, which delegates authority to staff to approve certain types of applications made under Sections 33 and 42 of the Ontario Heritage Act. The proposed changes to the by-law would insert a new section into the by-law to both allow the Director of Development

Services, or designate, to negotiate timeline extensions with applicants making applications under both the Planning Act, where they relate to historic properties, and Ontario Heritage Act.

Staff are also suggesting that an additional section be added into the by-law to allow the Director to execute and make amendments to Heritage Easement Agreements which are enabled under Section 37 of the Ontario Heritage Act and may be required as a condition of approval for certain Planning Act applications, as per Council Policy CP2021-040. Heritage easement agreements may also be required as a condition of certain City-administered funding program, specifically tax rebates or relief for heritage properties enabled by Section 365.2 of the Municipal Act.

The Municipal Heritage Committee reviewed the proposed amendments at its meeting of December 2, 2021 and passed the following resolution:

KLMHC2021-132

Moved By S. McCormack

Seconded By W. Bateman

That Report KLMHC2021-51, **Amendment of Heritage Delegated Authority By-law – Extension of Timelines and Execution of Heritage Easement Agreements**, be received;

That the proposed amendment to By-law 2019-154 be endorsed; and

That this recommendation be forwarded to Council for approval.

Carried

This report responds to that direction.

Rationale:

The proposed amendments to By-law 2019-154 are intended to address three specific items under the Ontario Heritage Act, which are outlined below. In general, the intention of the amendments is to better align the City's Heritage and Planning applications processes by allowing for flexibility within the heritage approval process to better correspond with related Planning Act applications. It is anticipated that these changes will assist staff with providing better and more streamlined customer service when addressing Planning Act applications that involve a property with cultural heritage

value. Specifically, the delegation of authority would allow various matters to be negotiated between the City and the applicant without a report having to be presented to both the Municipal Heritage Committee and Council and would significantly shorten the timelines for reaching certain types of agreements.

Staff feel that the heritage delegated authority by-law is the most appropriate place to address these matters as they align with the intention of the by-law to provide better and more streamlined service delivery with regard to planning applications made relating to historic properties. The proposed amendments still require the applicant to agree to any proposed timeline extensions, as required by the Ontario Heritage Act, and the City may not unilaterally extend or suspend the timelines established by the Act. Similarly, the execution of heritage easement agreements requires mutual agreement between the City and the applicant. As with other heritage matters delegated to staff through By-law 2019-154, Council may retain authority if it sees fit.

At present, the delegation of authority proposed in the by-law amendments have also been enacted by the City of Toronto through their Municipal Code. The City of Toronto adopted these changes in October 2020 in advance of the proclamation of the amendments to the Ontario Heritage Act in July 2021. In conversations with City of Kawartha Lakes staff, Toronto's heritage planning staff have reported that the ability of staff to agree to the extension of timelines and negotiate and execute heritage easement agreements has been effective in addressing the changes made to the Act and has been appreciated by applicants who have been receptive to both the extension of the timelines and the ability to negotiate those directly with staff, as opposed to having to go to Council to have those extensions granted. These changes have been of particular importance with regard to complex Planning Act applications. This delegation of authority has been effective in increasing service efficiency and the streamlining of planning and heritage services. Kawartha Lakes staff are proposing to mirror the policies put in place by the City of Toronto to achieve the same, positive results where the planning and heritage processes interact with one another.

The delegation of authority proposed in this report is to address administrative matters, as opposed to the approvals of permits or Planning Act applications. Delegation of authority with regard to heritage matters is enabled by the Ontario Heritage Act. The delegation of authority for administrative matters more generally is enabled by the Municipal Act.

A copy of the consolidated version of By-law 2019-154 with the proposed amendments highlighted is attached as Appendix A.

Prescribed Events and Circumstances

Ontario Regulation 385/21 stipulates that the 90-day limitation on designating a property after a prescribed event or circumstance may be extended if the Council of the municipality and the applicant are in mutual agreement. There are no limits as to how long the timeline may be extended. Similarly, the Regulation also provides the requirement that a designating by-law be passed within 120 days of the issuance of a notice of intention to designate may be extended or waived with mutual agreement between Council and the applicant. The proposed amendments to the delegated authority by-law would allow the extension of these timelines in writing by the Director of Development Services, or designate, when there is mutual agreement with the applicant.

The intention of the ability to extend this timeframe is to allow for Planning Act applications which may include the designation of a property to proceed in tandem with the processes under Section 29 of the Ontario Heritage Act to designate an individual property. For example, it would allow Council to receive a recommendation from the Planning Advisory Committee regarding an Official Plan Amendment at the same meeting as a recommendation from the Municipal Heritage Committee to designate the subject property. Similarly, an extended timeline allows for negotiation and discussion regarding the protection of heritage attributes with the applicant to align with the development being proposed on the site. While the designation of property as part of the approval of a Planning Act application is not a common process, it is something the City can consider in order to ensure that heritage assets are protected while promoting good investment and development. The process alignment also makes further sense given that Provincial Policy now places more emphasis on cultural heritage preservation through the land use planning process.

As the Planning Act and Ontario Heritage Act processes are addressed through separate pieces of legislation, committees, and timeframes, the ability to provide flexibility within the Ontario Heritage Act processes allows for a more streamlined and predictable process for applicants and for the City to actively involve applicants in the process of protecting heritage assets in a productive and collaborative way. Delegating this authority to staff to negotiate an extension or waiver of a timeline is intended to provide more efficient service to applicants.

Application Timelines

Timelines for the approval or denial of heritage permit applications for the alteration or demolition of property are established by Sections 32, 33, 34, and 42 of the Act and are set at 90 days from the issuance of a notice of complete application. However, the timelines have the potential to be extended through mutual agreement between the owner and the City. The proposed amendments to the delegated authority by-law would allow the extension of these timelines in writing by the Director of Development Services, or designate, when there is mutual agreement with the applicant.

The majority of applications received by the City under the Ontario Heritage Act are alteration applications for properties designated under Part V of the Act as part of a heritage conservation district and generally are processed within 2 to 5 business days. It is the intention of staff to provide quick and efficient service delivery for heritage permit applications. An extension of timelines for approval is not necessary for the vast majority of applications and would not be contemplated for routine matters. However, there may be situations where the ability to extend an approval timeline would be of importance to both the City and the applicant.

Staff are anticipating that the ability to extend these timelines would be used primarily when a heritage permit application is received in conjunction with a Planning Act application and the application is more complex than the routine permit applications received on a regular basis. In certain situations, it may be appropriate to extend the timeline for the approval in order to align the Ontario Heritage Act and Planning Act timelines and processes to make the approvals more streamlined for the various staff, the public, agencies, and committees involved with these types of application. Similarly, this will also assist in streamlining the process for applicants in order to receive approvals together and, should revisions need to be made, allow for the revisions and approvals processes to proceed in tandem. Staff anticipate that this provision would be particularly applicable in the site plan approval process and when a full or partial demolition of a heritage property is proposed as part of a development application. Delegating this authority to staff to negotiate an extension or waiver of a timeline is intended to provide more efficient service to applicants.

Heritage Easement Agreements

Section 37 of the Act allows for municipalities to enter into Heritage Easement Agreements with property owners to ensure the continued preservation of properties of cultural heritage value. In order to implement an easement agreement, Council must pass a by-law providing for entering into the easement and consult with the municipal heritage committee prior to doing so. Council must then enter into the agreement with the property owner.

The Council-adopted policy CP2021-040, the Heritage Applications Policy, provides that the City may enter into a Heritage Easement Agreement with an owner when an application is made regarding an historic property under the Planning Act. Applications to which this provision applies include plans of subdivision, site plan approval, and other major development applications at the City's discretion. Easements may also be required when a heritage building is relocated, either within the same property or to a different property. Similarly, the policy stipulates that an easement be entered into for all properties participating in a heritage property tax relief program, as is required by Section 365.2 of the Municipal Act.

The proposed new section of the by-law addressing heritage easement agreements would delegate the authority to negotiate and execute an agreement to the Director of Development Services. It would also allow the Director to execute amendments to these agreements, as required. A by-law and consultation with the Municipal Heritage Committee would still be required, as stipulated by the Ontario Heritage Act, but the ability of the Director to execute these agreements would expedite and streamline the process to implement them, particularly when they are tied to active Planning Act applications.

At present, the City does not have a heritage property tax relief program although it was recommended that one be established in the 2018 Strategic Community Improvement Plan. This program has not been implemented as part of the CIP at the present time and would require additional steps by Council, including the passage of an enabling by-law. Should the City decide to implement such a program in future, the negotiation and execution of these agreements would also be delegated to the Director.

Provincial Policy Conformity

The proposed amendments to By-law 2019-154 are intended to assist the City with the conservation of cultural heritage within the municipality and are supported by the policies contained in the Provincial Policy Statement (2020), the Growth Plan for the Greater Golden Horseshoe (2019) and the City of Kawartha Lakes Official Plan (2012) which direct the City to conserve its cultural heritage assets as part of the land use planning process.

The proposed amendments also directly support the implementation of Council Policy CP2021-040 which provides direction regarding the processing of heritage applications, with specific guidance for those with related Planning Act applications.

Other Alternatives Considered:

Council could choose not to adopt the recommended amendments to the by-law. This would mean that any requests to waive or extend timelines under the Ontario Heritage Act and the execution and amendment of heritage easement agreements would require both review by the Municipal Heritage Committee and approval from Council.

As the amendments are intended to increase efficiency and provide better service delivery, this is not a recommended alternative.

Alignment to Strategic Priorities

The amendments to By-law 2019-154 proposed in this report align with the strategic priority of Good Government by increasing the efficiency and effectiveness of service delivery for Planning Act applications which have a heritage component. The amendments are intended specifically to increase efficiency in the administration of the development process as it relates to heritage properties.

More generally, the proposed amendments align with the strategic priority of An Exceptional Quality of Life by supporting and promoting arts, culture and heritage. Robust and thorough heritage policies assist in the conservation of heritage properties throughout the municipality in a transparent and open manner.

Financial/Operation Impacts:

There are no financial or operational impacts as a result of the recommendations of this report.

Consultations:

Municipal Heritage Committee
(Acting) Director, Development Services
Manager, Economic Development
City of Toronto, Heritage Planning staff
Heritage Planners Network

Attachments:

Appendix A – Proposed Amendments to By-law 2019-154



Heritage Delegate
Authority 2022 amend

(Acting) Department Head email: rholy@kawarthalakes.ca

(Acting) Department Head: Richard Holy, (Acting) Director of Development Services