

**Date:** 2020-10-02

**Subject:** **City of Brampton's Comments Regarding the Proposed Regulation under the Ontario Heritage Act (Bill 108)**

**Contact:** **Cassandra Jasinski, MA, CAHP, Heritage Planner,  
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**Report Number:** Planning, Building and Economic Development-2020-223

**Recommendations:**

1. That the report from Cassandra Jasinski, Heritage Planner, Policy Planning, dated October 20, 2020, to the Brampton Heritage Board meeting of October 20, 2020, **City of Brampton's Comments Regarding the Proposed Regulation under the Ontario Heritage Act (Bill 108)**, be received;
2. That the Brampton Heritage Board endorse the comments and concerns of staff, outlined in the report and in the Appendix, and the recommendations below.
3. That the proposed comments in response to the relevant Environmental Registry of Ontario (ERO) notice regarding *Proposed Regulation under the Ontario Heritage Act (Bill 108)*, included as an appendix to this report, be submitted as the City of Brampton's formal response;
4. That the Mayor write to the Premier of Ontario and the Ministry of Heritage, Sport, Tourism and Culture Industries before the commenting period of 45-days expires on November 5, 2020 to highlight the City's concern with the timing of the consultation period and the coming into and effect of the proposed amendments, given the ongoing COVID-19 Pandemic.
5. That the Mayor and/or designate be authorized to make a written and/or a verbal submission on the Proposed Regulation, when it is referred, to the appropriate Legislative Committee for review;
6. That a copy of this report and any associated Council resolution be submitted to the Province, through the Environmental Registry of Ontario, the Ministry of

Heritage, Sport, Tourism and Culture Industries, Brampton Members of Provincial Parliament, and to the Region of Peel and the Association of Municipalities of Ontario.

**Overview:**

- **On May 2, 2019, the Province of Ontario introduced Bill 108, More Homes, More Choice Act, 2019 (Bill 108), and subsequently public consultation was initiated on various Schedules of the Bill through the Environmental Registry of Ontario, with the comment period ending June 1, 2019.**
- **Schedule 11 of Bill 108 included significant change to the *Ontario Heritage Act* (the “OHA”).**
- **The City of Brampton submitted formal comments to the Province as part of this process.**
- **Bill 108 was given Royal Assent on June 6, 2019, however the amendments to the OHA are not yet in force and effect, as new regulations are required to support these amendments.**
- **On September 21, 2020, the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) posted the *Proposed Regulation under the Ontario Heritage Act (Bill 108)* (the “Proposed Regulation”) for comment on the Environmental Registry of Ontario for a period of 45 days, ending November 5, 2020.**
- **There was little consultation with municipalities regarding the content of the regulations and the guidance documents to be prepared by the Province have not yet been circulated for comment.**
- **While portions of the Proposed Regulation are agreeable, overall, it is clear that the amendments to the Act will result in significant administrative changes and additional resources will be required in order to ensure that proper processes and timelines are adhered to.**
- **The Province plans for the Proposed Regulation to come into force and effect on January 1, 2021, which provides little transition time for property owners and municipalities, especially during the ongoing COVID-19 Pandemic.**
- **In order to allow property owners and municipalities the ability to continue to focus their efforts on managing the COVID-19 Pandemic, the Proposed Regulation should not come into force and effect until after the conclusion of the COVID-19 Pandemic and once municipalities have been consulted on the Guidance Documents and they have been finalized.**

**Background:**

On June 6, 2019, Bill 108 received Royal Assent, including Schedule 11 with proposed amendments to the OHA. Many of the details of these amendments were left to regulations.

At the time of consultation for Bill 108, City staff noted that despite the lack of details, it was clear that: the amendments will have a significant impact on the process of 'listing' and designating properties, administration of heritage permits, and result in a reduction in the authority of municipalities over heritage matters. The City's response to the Bill 108 and other recent documents can be found here: <https://www.brampton.ca/EN/City-Hall/Relations/Pages/Latest.aspx>. Comments related to the Bill 108 amendments to the OHA specifically are included as Appendix A.

### **Current Situation:**

On September 21, 2020, the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) posted the *Proposed Regulation under the Ontario Heritage Act (Bill 108)* (the "Proposed Regulation") for comment on the Environmental Registry of Ontario. The following matters are proposed to be prescribed in the regulation:

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.

While much of the Proposed Regulation is in some manner agreeable with Heritage staff, subject to specific recommendations itemized in Appendix B, the timing of the consultation on the Proposed Regulation is of greatest concern. More general comments on the Proposed Regulations are provided below.

## *Principles*

The Proposed Regulation introduces the principles that Council shall consider when exercising its decision-making authority under the OHA. As recommended during the Bill 108 consultation, the principles 'shall be considered' but do not bind Council.

The principles separate the concepts of protection and conservation. Heritage staff understand this to mean that protection includes designation and listing, whereas conservation encompasses the actions undertaken on a property to preserve, restore, or rehabilitate a cultural heritage resource, as understood by the *Standards and Guidelines for the Conservation of Historic Places in Canada*.

In the PPS, protection is included in the definition of "conserved". Clarification on the difference between the two terms is required in order to assist Council with its consideration and understanding of the principles.

## *Mandatory Content for Designation By-Laws*

The mandatory content for identifying a property in a designation by-law is generally supportable, with minor revisions recommended by the City of Brampton Heritage staff, and much of this content is already included in Brampton's recent designation by-laws. It is Heritage staff's understanding that while a Registered Survey can be included in a designation by-law registered on title, images such as aerial photographs, scale drawings, etc. cannot be included in designation by-laws registered on title. These items are typically included, instead, in the designation report for the property.

## *Prescribed Events for Notice of Intention to Designate and Exceptions for 120 Day Timeline for Passing Designation By-Laws*

Heritage staff maintain, as previously commented, that timelines should not be imposed for issuing a Notice of Intention to Designate, as the identification of resources and the evaluation of their significance is ongoing. That being said, the Ministry has included a number of exceptions which facilitate collaboration with municipal council and property owners and acknowledge events which may impact the consideration of the proposed principles.

The prescribed events when a 90 day period is imposed for the serving of a Notice of Intention to Demolish include applications under the *Planning Act* for Official Plan Amendments, Zoning By-law Amendments, and Draft Plans of Subdivision, all application types which require Public Notice. Applications, such as Site Plan applications that do not have a public consultation process were not included.

The lifting of restrictions on when a Notice of Intention to Designate can be served following the disposition of the prescribed event under the OHA ensures that heritage properties are protected against speculative development or if development fails to occur.

### *Minimum Requirements for Heritage Permit Applications*

The City of Brampton already includes application requirements for heritage permits in the Heritage Permit Kit, and these requirements generally align with those included in the Proposed Regulation. Heritage staff welcome the move to consistency across municipalities, and the clarification that this will provide both property owners and staff in consideration of these applications. The regulation is also respectful of material required by municipal by-law, resolution or official plan to accompany an application.

### *Steps for Demolition/Removal*

The steps prescribed for demolition/removal of a building or attribute on a designated property are generally supportable and respond to a number of potential situations. The Proposed Regulation stipulates that if demolition/removal would result in a change to a designation by-law, the amendment of the designation by-law is to occur after the demolition/removal. This detail in the Proposed Regulation ensures that should work impacting a property's cultural heritage value not proceed, and the building/structure/attribute remain in place, the designation by-law is not amended prematurely. The Proposed Regulation also provide provisions for the relocation of a building or structure, which appears to be regarded as removal, and facilitates designation of the property which will receive the relocated building/structure.

### *LPAT Information*

During the Bill 108 consultation, the City of Brampton recommended that in the event that: following the change of the appellate body, from the Conservation Review Board (the "CRB") to the Local Planning Appeal Tribunal (the "LPAT"), that the complement of LPAT include experienced professionals qualified to make judgements regarding heritage conservation, and that such professionals be assigned to hear any and all appeals regarding cultural heritage resources. No clarification has been provided through the Proposed Regulation or anticipated Guidance Documents on the recommendation above.

The Proposed Regulation stipulates the information to be provided, should an appeal be made under the OHA. The information required for a Record of Decision is extensive and the level of administration required to ensure that the information is properly and efficiently prepared and collected, should there be an appeal to LPAT will result in increased administrative work for municipalities.

### *Housekeeping Amendments for Repeal of Designation By-law*

The Proposed Regulation clarifies the time periods and situations when an owner can re-apply for the repeal of a designation by-law. The time period for all situations identified is 12 months from a particular milestone, as specified in the Proposed Regulation. The situations would vary, depending if the application to repeal a designation by-law is appealed and if the appeal has been heard. The timeline of 12 months is consistent with the City's previous recommendation to the Province that this 12 month period be maintained.

### *Transitions*

The transition provisions are agreeable in that applications which commenced prior to these amendments coming into force will continue to be processed under the OHA as it read prior to the amendments. Designation by-laws must be passed within 365 days of the amendments coming into force and effect for all properties which are in the process of designation. This timeline is agreeable in most situations, however, it may have implications for some properties which are at risk.

### *Additional Detail 1: Emergency Management and Civil Protection Act Alignment*

Considerations of the Emergency Management and Civil Protection Act which are included in the amendments and regulations put forward for comment, should be applied to the entirety of the OHA, specifically to ensure that property owners can continue with important repair work during times of Emergency, as declared in the Emergency Management and Civil Protection Act. Specifically, the OHA could ensure that municipal heritage advisory committees can provide advice on applications via a different form of communication than a formal meeting, such as email or virtual voting, so that consultation with the Board can continue if formal committee meetings cannot be held.

### *Additional Detail 2: Consultation*

Heritage staff remain of the opinion that the amendments to the OHA should not come into force and effect until municipalities and other stakeholders have been meaningfully consulted regarding all related regulations, these regulations have been finalized following consultation, and the province has prepared guidance documents, including guidance documents regarding the application of the existing Regulation 9/06. Regulation 9/06 sets out the criteria for evaluating the cultural heritage value of a property. Better guidance is required regarding how to apply these criteria to a diverse range of cultural heritage resources.

There was minimal consultation which occurred early in 2020 and no consultation during the months of March to September when the Proposed Regulation was posted on the Environmental Registry of Ontario. The lack of consultation, especially with municipalities tasked with transitioning to these changes and communicating with property owners, is not in keeping with the recommendation of the City of Brampton that there be meaningful consultation.

#### *Additional Detail 3: Timing*

The Proposed Regulation, its content as well as consultation, will impact the future of heritage conservation in Ontario. The release of the Proposed Regulation for comment, during a global pandemic when property owners and municipalities are understandably focused on supporting their families and communities, is untimely. Heritage property owners and municipal staff are currently concentrating on the management of and economic recovery from the pandemic. Transition to an amended OHA at this time will introduce more confusion for property owners and municipalities during this already difficult and unprecedented point in our history.

The OHA amendments and the related Proposed Regulation should not come into force and effect until the pandemic is concluded in order that property owners and municipalities can properly prepare for and focus their attention on the regulations and their implications.

#### *Additional Detail 4: Guidance Documents*

The Ministry was meant to prepare Guidance Documents to assist property owners and municipalities in navigating the OHA amendments. These Guidance Documents have not been released and so the ability of property owners to understand the OHA amendments may be limited.

The Proposed Regulation and the OHA amendments as a whole should not come into force and effect until such time as these Guidance Documents have been finalized and all interested persons and communities are in a position to understand the impact of the Proposed Regulation and the OHA amendments as a whole.

#### *Administration*

Currently, the City of Brampton has four Heritage staff, two heritage planners and two assistant heritage planners, who administer all heritage applications, provide Heritage comments on all development applications, work on City initiated and inter-governmental projects, manage the Brampton's *Municipal Register of Cultural Heritage Resources*, and

answer all inquiries related to heritage matters. There are currently no administrative staff assisting with the task of preparing and issuing notices under the OHA.

It has been confirmed that the changes to the OHA will require extensive administrative reform and review, and additional resources in order to ensure that the transition to the amended version of the Act is carried out efficiently and that all of the new timelines imposed on various heritage matters are adhered to. As Heritage staff are already working beyond the capacity of their resources on the range of projects listed above, additional administrative support and systems will be required to facilitate a transition to the new processes required by the amended OHA. The extent of the additional support required will be determined once Heritage staff have had time to explore each new process of the OHA in detail with Clerks. A detailed estimate of the time required for each new process could not be determined at this time due to the limited response window for comments.

### **Corporate Implications:**

#### Financial Implications:

The Proposed Regulation confirms that the administrative requirements associated with the OHA will become more burdensome for municipalities. Additional resources will be required to manage the transition to the new processes under the OHA, to process applications, and to ensure that all timelines are adhered to. Additionally, the shift from the CRB to LPAT for all OHA appeals, and the time-consuming process of preparing for and attending LPAT hearings will have staffing implications.

#### Other Implications:

The changes to the OHA will require extensive administrative reform and review, and additional resources in order to ensure that the transition to the amended version of the OHA is carried out efficiently and that all of the new timelines imposed on various heritage matters are adhered to.

### **Term of Council Priorities:**

This report meets the Term of Council Priorities by contributing to a Well-Run City by continuing to build the City's government relations, advocacy capacity and impact.

### **Conclusion:**

While much of the Proposed Regulation is in some manner agreeable to Heritage staff, subject to specific recommendations itemized in Appendix B, the administrative requirements and the timing of the consultation on the Proposed Regulation are of greatest concern. The OHA amendments and the Proposed Regulation will introduce new administrative processes related to all heritage applications. The transition to and

management of those processes will require the focus of Heritage staff and additional administrative resources to ensure that the City's interests are protected.

At this time, Property owners and municipalities need to continue to focus their efforts on managing the COVID-19 Pandemic. During the Pandemic, property owners and municipalities have not been meaningfully consulted on the Proposed Regulation and no Guidance Documents have been provided to assist them in fully understanding all the implications of the proposed OHA Amendments. In order to provide a period for transition and preparation, the Proposed Regulation should not come into force and effect until after the conclusion of the COVID-19 Pandemic, once property owners and municipalities have been meaningfully consulted and once the Guidance Documents have been released.

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**Attachments:**

Appendix A – City of Brampton Comments on Schedule 11 of Bill 108 (Ontario Heritage Act Amendments)

Appendix B – City of Brampton Comments on Proposed Regulation under the Ontario Heritage Act