



Report to: Development Services Committee

Meeting Date: October 26, 2020

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**SUBJECT:** Ontario Heritage Act (Bill 108) – Proposed Regulation  
**PREPARED BY:** Regan Hutcheson, Manager, Heritage Planning, ext. 2080

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**RECOMMENDATION:**

- 1) That the report titled “*Ontario Heritage Act (Bill 108) – Proposed Regulation*”, dated October 26, 2020, be received;
- 2) That the report including Appendix ‘A’- Summary Chart of Markham’s Comments/Feedback be submitted to the Province as the City of Markham’s response to the Environmental Registry request for comment;
- 3) That the Province be advised that to proceed with implementation of these changes (proclamation of new legislation and the proposed Regulation) on January 1, 2021, which will require substantive changes to municipal protocols and procedures during a pandemic, imposes an unreasonable burden on stakeholders whose focus should be on responding to this unprecedented health challenge, and therefore proclamation should be postponed to July 1, 2021;
- 4) That this report be forwarded to the October 27, 2020 City Council meeting; and
- 5) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

**PURPOSE:**

To provide comments from the City of Markham on the proposed Regulation in support of recent amendments to the *Ontario Heritage Act*.

**BACKGROUND:**

**Recent changes to the Ontario Heritage Act require additional details to be prescribed through Regulation**

As part of Ontario’s Housing Supply Action Plan, the *More Homes, More Choice Act, 2019 (Bill 108)* made amendments to several pieces of legislation, including the *Ontario Heritage Act (OHA)*. According to the Ministry of Heritage, Sport, Tourism and Culture Industries, the OHA amendments will provide clearer direction and timelines for local decision makers, heritage professionals and development proponents about protecting heritage properties, and create a consistent appeals process, while maintaining local control over heritage decisions. As part of an overall review of Bill 108 in 2019, the City of Markham provided comments identifying a number of concerns regarding the proposed amendments to the *Ontario Heritage Act*. Although approved by the Province, the amendments have yet to come into force through proclamation. Some of the amendments require additional details to be prescribed by the Lieutenant Governor in Council through regulation.

The Provincial government expects the OHA amendments and the associated Regulation will help to align municipal decisions in the heritage conservation process with Planning Act processes, improve municipal processes for identifying, designating and managing proposed changes to heritage properties, and improve clarity for property owners and development proponents.

**A draft Regulation has been released for comment with a deadline of November 5, 2020**

To fulfill the intent of the Housing Supply Action Plan and bring the *OHA* amendments into force, certain matters are proposed to be prescribed in regulation. The proposed date for all amendments to the *OHA* and the proposed Regulation to come into force is January 1, 2021 (delayed from July 1, 2020 due to the COVID 19 pandemic).

The draft Regulation was released on September 21, 2020 on the Province's Environment Registry providing for a 45 day review period ending on November 5<sup>th</sup>. The Provincial government has also announced it will be updating the *Ontario Heritage Tool Kit* (an education guide) to explain the changes to the *OHA* and intends to post drafts of the updated guidance documents for public review and comment later in 2020.

**OPTIONS/ DISCUSSION:**

**The draft Regulation posted on the Environment Registry covers a wide array of heritage topics**

According to the Environmental Registry, the following are the key components to be prescribed in Regulation:

- Principles that a municipal council shall consider when making decisions under specific parts of the *OHA*.
- Mandatory content for designation by-laws.
- Prescribe events such as Official Plan Amendment, Zoning By-law Amendment and Plan of Subdivision applications which would trigger the new 90-day timeline for issuing a Notice of Intention to Designate (NOID) and exceptions to when the timeline would apply.
- Exceptions to the new 120-day timeline to pass a designation by-law after a Notice of Intention to Designate has been issued.
- Minimum requirements for complete applications for alteration or demolition of heritage properties.
- Steps that must be taken when council has consented to the demolition or removal of a building or structure, or a heritage attribute.
- 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.
- Housekeeping amendments related to amending a designation by-law and an owner's re-application for the repeal of a designation by-law.
- Transition provisions.

Appendix 'A' to this report provides a summary chart of the key components of the Regulation, staff comments and feedback for the Ministry of Heritage, Sport, Tourism and Culture Industries.

**The amendments to the *OHA* and the Regulation will impact Markham's administrative and planning processes involving cultural heritage resources**

The changes proposed in the draft regulation and the recent amendment to the *OHA* will have an impact on how Markham processes matters involving a cultural heritage resource. Those changes include new principles that have to be considered by Council, what has to be included in a designation by-law, the notice of intention to designate a property that affects an OPA, ZBA, or Plan of subdivision will have to be addressed within specific timelines (90 days of application submission), the passing of a designation by-law must occur within a set timeline, adherence to provincial complete application requirements for certain heritage applications, and new administrative steps to be undertaken once demolition or removal of either a structure or a specific heritage attribute is approved..

These changes will require increased staff time and resources, and will impact how the City processes certain planning applications. Many of the proposed regulations are procedural and provide clarity on the new processes that were approved in Bill 108.

**Heritage Markham Committee has reviewed the Regulation and supports the staff comments**

On October 14, 2020, Heritage Markham Committee reviewed the initial staff comments related to the draft Regulation and concurred with the noted feedback.

**The staff report and summary chart of comments and feedback should be forwarded to the Provincial government as Markham's response.**

As noted, the deadline for comments on the draft Regulation is November 5<sup>th</sup>. It is recommended that the Development Services Committee report including the summary chart of comments and feedback (Appendix 'A') should be forwarded to the Provincial government as Markham's response.

It is also recommended that Council advise the Province that the decision to proceed with implementation of these changes (proclamation of new legislation and the Regulation) on January 1, 2021 should be extended. These amendments will require substantive changes to municipal protocols and procedures during a pandemic and imposes an unreasonable burden on stakeholders whose focus should be on responding to this unprecedented health challenge. Proclamation should be postponed to July 1, 2021 which would allow additional time to understand the changes and modify administrative and planning processes, and would allow the municipality to review the anticipated release of the new/revised *Ontario Heritage Tool Kit* which is to provide guidance on how to interpret and implement these new changes.

**FINANCIAL CONSIDERATIONS**

Not applicable

**HUMAN RESOURCES CONSIDERATIONS**

Not applicable

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

Not applicable

**BUSINESS UNITS CONSULTED AND AFFECTED:**

Planning and Urban Design (Heritage) and Legal Services; Heritage Markham Committee

**RECOMMENDED BY:**

Biju Karumanchery, M.C.I.P, R.P.P  
Director, Planning & Urban Design  
Services

Arvin Prasad, M.C.I.P, R.P.P  
Commissioner, Development

**ATTACHMENTS:**

Appendix 'A' – Summary Chart of Markham's Comments/Feedback