
SUBJECT: RECOMMENDATION REPORT, Comments on Bill 139, *Less Red Tape, More Common Sense Act*, 2023 – Proposed Amendment to the *Ontario Heritage Act* and Regulation

PREPARED BY: Regan Hutcheson, MCIP RPP, Manager, Heritage Planning, ext. 2080

REVIEWED BY: Stephen Lue, MCIP RPP, Senior Development Manager, ext. 2520

RECOMMENDATION:

- 1) THAT the Staff report, dated November 27, 2023, titled, "Recommendation Report, Comments on Bill 139, *Less Red Tape, More Common Sense Act*, 2023 – Proposed Amendment to the *Ontario Heritage Act* and Regulation", be received;
- 2) THAT the City of Markham does not support the proposed changes to Section 33 of the *Ontario Heritage Act* concerning individually designated properties occupied by buildings used for religious practices;
- 3) THAT this report be forwarded to the Minister of Citizenship and Multiculturalism as the City of Markham's comments on Bill 139 (Schedule 14);
- 4) AND THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

This report provides comments on the Province of Ontario's proposed amendment to the *Ontario Heritage Act* ("OHA") and Ontario Regulation ("O.Reg.") 385/21 through Bill 139, *Less Red Tape, More Common Sense Act*, 2023 ("Bill 139")

BACKGROUND:

The Provincial Government proposes a further amendment to the Ontario Heritage Act as it pertains to buildings used for religious practices

Section 33 of the OHA requires property owners to seek municipal consent when making alterations to individually designated heritage properties if the alteration is likely to affect the property's heritage attributes. Council can then consent, consent with terms or conditions, or refuse the application. Appeal of a council decision is to the Ontario Land Tribunal.

The Provincial Government (the "Province") announced their intent to provide more certainty to religious organizations and Indigenous communities and Indigenous organizations who need to make modifications to buildings for purposes of their religious practices. The Province proposes to amend Section 33 of the OHA to ensure alterations to a property designated under Part IV are consented to without terms and conditions when the following requirements are met:

- The building, or part thereof, to be altered is primarily used for religious practices;
- The heritage attributes to be altered are connected to religious practices;
- The alteration of the heritage attributes is required for religious practices;
- Any additional conditions prescribed by regulation; and
- The applicant provides council with an affidavit or sworn declaration that the application meets the conditions in the OHA or prescribed in regulation.

Schedule 14 of Bill 139 addresses alterations to buildings used for religious practices (see Attachment A).

The religious organization must be a registered charity

The Province proposes that the following additional conditions be prescribed by regulation:

- The alteration is not permitted to be an addition to the building; and
- The alteration must be for the benefit of an Indigenous community, an Indigenous organization or a religious organization that is not an Indigenous organization where the religious organization is a registered charity under the laws of Ontario or Canada (applies to owners or tenants).

Council would be required to consent to these type of alterations

If an applicant indicates the alterations are “for religious practices” and provides an affidavit to that effect, a municipal council would not be able to deny the proposed change or require modification through terms or conditions. Upon receiving a complete application for alterations that conform to the new provisions, municipalities would have 30 days to issue a notice of consent. Where the timeline is not met, consent would be deemed to be provided. Municipalities would not have the ability to require any additional information from the applicant, and no consultation would be required with the municipal heritage committee (i.e. Heritage Markham).

According to the Province, “*the objective of the proposed changes is to provide certainty and shorter timelines for religious organizations, Indigenous communities and Indigenous organizations to move forward with proposed alterations required for religious practices.*”

Heritage Markham Committee does not support Bill 139

On November 8, 2023, the Heritage Markham Committee indicated that it does not support the proposed amendment to the *Ontario Heritage Act* and Regulation 385/21 included in Bill 139, *Less Red Tape, More Common Sense Act*, 2023 as it could result in detrimental impacts to significant character defining heritage attributes on individually designated buildings used for religious practices.

The period to provide comments on Bill 139 to the Province ends on December 3, 2023

If the statutory amendments are passed and the regulatory amendments are made, the Province intends on bringing the amendments into force on January 1, 2024.

OPTIONS/ DISCUSSION:

The proposed amendment to the Ontario Heritage Act is vague and open to abuse

The term “religious practices” is not proposed to be defined. Council cannot challenge the applicant as to how the proposed alteration(s) to a building or heritage attribute(s) are associated with religious practices. According to the legislation, council shall rely exclusively on the affidavit or sworn declaration provide by the applicant to demonstrate that the application meets the conditions under paragraphs 1 to 4 of subsection (18). This could open the process to potential abuse. An applicant may no longer wish to maintain certain heritage attributes and indicate they need to be removed as they impact or affect their religious practices.

Significant heritage attributes may be altered or removed

Staff express concern about the implications of the proposed amendment as it could affect a municipality’s ability to protect exterior (or interior, if identified) heritage attributes or the entire

building itself. This could involve the removal of heritage attributes if an applicant indicates they need to be removed for religious practices. Such attributes could include stained glass windows, a religious spire, or decorative features that may no longer apply to the religious institution occupying the building. This could also involve the introduction or placement of exterior signage or paint colours that negatively affect heritage attributes.

The legislation is contrary to the overall objective of heritage conservation, which is to conserve heritage attributes that embody the cultural heritage value of a building, notwithstanding its current use.

In the past, Markham worked cooperatively with places of worship to find solutions to heritage related issues

The proposed amendment does not require an applicant to demonstrate that they have considered alternative approaches to address the impact on any heritage attributes. Under the existing legislation, staff and Council can work with applicants to achieve an outcome that is mutually beneficial to all parties. Under the proposed legislation, Council is required to consent within an unrealistic timeframe of 30 days based only upon the assertion by an applicant that the heritage attributes affect their religious practices. This proposed approach also removes local elected officials and municipal heritage committees from the decision-making process as to what features and buildings are important to retain from a community heritage perspective.

Heritage Staff do not support the proposed amendment (Bill 139)

The major concerns associated with the legislation are summarized below:

- the legislation is vague and open to abuse. It could be used by an owner (or applicant) who wishes to avoid maintenance and retention of certain features.
- the term ‘religious practices’ is not defined;
- the 30-day timeframe to bring a matter before Council is insufficient given time needed for review and report preparation;
- there is no requirement for an applicant to demonstrate that they have considered alternative approaches to address the impact on existing heritage attributes;
- the proposed legislation removes decision-making concerning the protection of community heritage resources from local elected officials; and
- the legislation is contrary to the overall objective of heritage conservation, which is to conserve heritage attributes that embody the cultural heritage value of the building, notwithstanding the building’s use.

Staff recommend that Council not support the proposed changes to Section 33 of the OHA and that this be communicated to the Minister of Citizenship and Multiculturalism as the City of Markham’s comments on Bill 139 (Schedule 14) before the December 3, 2023, deadline for submission of comments.

FINANCIAL CONSIDERATIONS

Not Applicable

HUMAN RESOURCES CONSIDERATIONS

Not Applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

The protection and preservation of cultural heritage resources is part of the City's Growth Management strategy.

BUSINESS UNITS CONSULTED AND AFFECTED:

Heritage Markham, Council's advisory committee on heritage matter was consulted.

RECOMMENDED BY:

Giulio Cescato, RPP, MCIP
Director of Planning and Urban Design

Arvin Prasad, MPA, RPP, MCIP
Commissioner of Development Services

APPENDIX:

Appendix "A": Schedule 14, *Ontario Heritage Act* Amendment

APPENDIX “A”: Schedule 14, *Ontario Heritage Act* Amendment**SCHEDULE 14 - ONTARIO HERITAGE ACT**

1 Section 33 of the <i>Ontario Heritage Act</i> is amended by adding the following subsections:

Alteration of building used for religious practices

(18) The council shall consent to an application to alter or permit the alteration of a building, or part thereof, on property under subsection (1), without terms or conditions, where the following conditions are met:

1. The building, or part thereof, to be altered is primarily used for religious practices.
2. The heritage attributes are connected to religious practices.
3. The alteration of the heritage attributes is required for religious practices.
4. Any prescribed conditions.
5. The applicant provides the council with an affidavit or sworn declaration that the application meets the conditions set out in paragraphs 1 to 4.
6. The applicant provides the council with any information and material prescribed under subsection (2).

Indigenous religious or spiritual practices

(19) For the purposes of subsection (18), religious practices include Indigenous religious or spiritual practices.

Notice re incomplete application

(20) The council shall, in accordance with the prescribed time period, notify the applicant if the affidavit or sworn declaration required under paragraph 5 of subsection (18) is not complete or if any information and material required under paragraph 6 of subsection (18) is not provided.

Same

(21) For greater certainty, the council shall provide additional notice in accordance with subsection (20) if the applicant resubmits an affidavit or sworn declaration that remains incomplete or if any information and material required is still not provided.

Notice re consent

(22) Upon receiving the complete affidavit or sworn declaration required under paragraph 5 of subsection (18) and all information and material required under paragraph 6 of subsection (18), the council shall, in accordance with the prescribed time period, serve notice of its consent to the application under subsection (18) on the applicant and the Trust.

Deemed consent, incomplete application

(23) If the council receives an affidavit or sworn declaration required under paragraph 5 of subsection (18) that is incomplete or if any information and material required under paragraph 6 of subsection (18) is not provided by the applicant, and the council fails to provide the applicant with notice of an incomplete application in accordance with subsection (20) or (21), as the case may be, the council shall be deemed to have consented to the application.

Deemed consent, complete application

(24) If the council receives the complete affidavit or sworn declaration required under paragraph 5 of subsection (18) and all of the information and material required under paragraph 6 of subsection (18) but does not provide notice of consent to the applicant in accordance with the time period prescribed under subsection (22), the council shall be deemed to have consented to the application.

Reliance on affidavit or sworn declaration

(25) For greater certainty, the council shall rely exclusively on the affidavit or sworn declaration under paragraph 5 of subsection (18) to demonstrate that the application meets the conditions under paragraphs 1 to 4 of subsection (18).

Non-application, subss. (3) to (14)

(26) Subsections (3) to (14) do not apply to an application to alter under subsection (18).

2 Subsection 70 (1) of the Act is amended by adding the following clause:

(j.1) defining terms for the purposes of subsections 33 (18) and (19);

3 Section 71 of the Act is amended by adding the following clauses:

(e) facilitate the implementation of amendments to this Act made by Schedule 14 to the *Less Red Tape, More Common Sense Act, 2023*;

(f) deal with any problems or issues arising as a result of the enactment of a provision of this Act by Schedule 14 to the *Less Red Tape, More Common Sense Act, 2023*.

Commencement

4 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.