Council-directed Review of Heritage Designation and Heritage Permit Processes

Hamilton Municipal Heritage Committee
December 18, 2014
Purpose of Presentation:

- To provide an overview on Council’s direction and process for undertaking the two Reviews
- To outline Planning Division Staff key work program, key tasks and milestones
- To identify key questions for preliminary consultation with HMHC
- To provide background and context on the existing processes
Council Direction to Planning Division staff to undertake review of existing processes and report to Council end of 2nd Quarter of 2015

Current Heritage Permit Process for Alteration under the Ontario Heritage Act

- Recommendations for amendments to the heritage permit process and/or the delegated authority to consent to heritage permits, as deemed appropriate.

Current Council-approved Heritage Designation Process

- Recommendations for amendment to the designation process, as deemed appropriate.
Review of the Current Heritage Permit Process

Council direction – Appendix A: Scope of the review includes:

- **Background** regarding By-law No. 05-364, as amended by 07-322, delegating the power to consent to heritage permits to the Director of Planning;

- An **assessment** of the current delegated authority to consent to heritage permits, including the identification of any issues with the current process or any opportunities for improvement;

- A **summary** and **comparison** of municipal practices across Ontario including a review against other delegated approval by-laws;

- **Consultation** with the Hamilton Municipal Heritage Committee and engagement of relevant stakeholders; and,

- **Recommendations** for amendments to the heritage permit process and/or the delegated authority to consent to heritage permits, as deemed appropriate.
Review of the Current Heritage Designation Process

Council direction – Appendix A: Scope of the review includes:

- **Background** on the Council-approved process for addressing requests to designate properties under Part IV of the Ontario Heritage Act;

- An **overview** of recent Council direction to designate properties as high priorities outside of the typical designation process and staff work program;

- An **assessment** and evaluation of the current designation process, including the identification of any issues with the current process or any opportunities for improvement;

- A **summary** and **comparison** of municipal practices across Ontario;

- **Consultation** with the Hamilton Municipal Heritage Committee and engagement of relevant stakeholders; and,

- **Recommendations** for amendment to the designation process, as deemed appropriate.
### Work Program - Key Tasks and Milestones

<table>
<thead>
<tr>
<th>Planning Division Staff Key Tasks</th>
<th>Timeline</th>
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<tr>
<td>Research and comparison of other municipal practices across Ontario</td>
<td>Q4 2014 and Q1 2015</td>
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<tr>
<td>Consultation with HMHC and relevant stakeholders on issues and opportunities with existing processes</td>
<td>Q4 2014 and Q1 2015</td>
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<td>SWOT analysis of existing processes including:</td>
<td>Q1 and Q2 2015</td>
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<td>• An assessment of the current delegated authority to consent to heritage permits</td>
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<tr>
<td>• An assessment and evaluation of the current designation process,</td>
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<td>Review and synthesis of issues and opportunities identified to determine any areas for change/improvement</td>
<td>Q2 2015</td>
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<tr>
<td>Consultation with HMHC and relevant stakeholders</td>
<td>Q2 2015</td>
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<tr>
<td>Formulate recommendations for any changes/improvement and review with HMHC</td>
<td>Q2 2015</td>
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<td>Prepare staff report to Council *</td>
<td>Q3 2015</td>
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*Council direction to report back at the end of Q2 2015*
Preliminary Input from the HMHC and Subcommittees

A short questionnaire will be emailed to members of HMHC, HPRS and CMHDAC seeking input on the following questions:

1. What do you consider to be the main objective(s) for each review?
2. What questions would you like the reviews to consider?
3. Who are the relevant stakeholders that staff should engage?
4. With respect to existing processes, what issues would you like to see addressed?
5. What improvement ideas would you recommend be considered?
6. Which other Ontario municipalities with processes in place would you like to know more about?
7. Others comments and considerations?
8. How should the HMHC be updated throughout this process?
Preliminary Input from the HMHC and Subcommittees

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6. Which other Ontario municipalities with processes in place would you like to know more about?

7. Others comments and considerations?

8. How should the HMHC be updated throughout this process?
Overview of Existing Heritage Conservation Program

• Heritage Conservation in Ontario
• Designation under Part IV of the Act (individual properties)
• Designation under Part V of the Act (HCDs)
• Managing Change to Protected Heritage Properties
• Delegated approval authority under the Act
• The role of municipal heritage committees
Heritage Conservation in Ontario

• Municipalities are tasked with ensuring that significant cultural heritage resources are conserved (Planning Act, Provincial Policy Statement)

• The Ontario Heritage Act (the Act) is the main tool available to municipalities to accomplish this goal

• The Act allows for the protection of heritage properties through:
  – designation of significant cultural heritage resources by by-law, either as individual properties (Part IV) or Heritage Conservation Districts (Part V); and/or
  – through the negotiation of heritage conservation easement agreements

• The Act also enables municipalities to manage physical changes to protected heritage properties through the Heritage Permit process

• Finally, the Act aids in promoting sound conservation and restoration practices by enabling municipalities to provide grant and loan programs for these works
Designation of Property under the Act

Heritage designation:

- Recognizes the importance of the property to the community
- Protects the property’s heritage value
- Encourages conservation and stewardship
- Promotes knowledge and understanding of local history and development
Designation under Part IV of the Act

1. Designation by Municipal Bylaw (Section 29 of the Ontario Heritage Act)

- Designation proposed
  - Council consults with MHC
    - Council Decision: Proceed with designation? NO Property not designated
      - YES
        - Notice of Intention to Designate:
          1. Served on property owner
          2. Served on OHT
          3. Published in newspaper
        - Objection: no within 30 days? NO
          - Objection referred to CRB for hearing
            - CRB hearing and report
            - Council considers CRB Report
          - Council Decision: Designate property? YES
            - Designating bylaw passed & registered on title
              - Notice of Designation:
                1. Served on property owner
                2. Served on OHT
                3. Published in newspaper
              - Property listed on municipal and provincial registers
                - Property listed on Canadian Register
              - Notice of Withdrawal of Intention to Designate:
                1. Served on property owner
                2. Served on OHT
                3. Published in newspaper
              - Property not designated
Council-Approved Heritage Designation Process (Part IV)

• Framework developed in 2008 to address heritage designation requests and staff’s work program for designation (PED08211)

• Formal adoption of criteria for evaluating the cultural heritage value or interest of property for designation under Part IV of the Act (in line with Regulation 9/06)

• Allows for the prioritization of designations based on a number of factors, including:
  – Risk to the property with respect to demolition/removal
  – Funding eligibility
  – Heritage value associated with the property
  – Current level of property maintenance
  – Ownership (e.g., City-owned)
  – Work program/staff resources
Council-Approved Heritage Designation Process (Part IV)

General process is as follows:

- Designation request received
- Preliminary screening and report
- Priority assigned by Council
- Cultural Heritage Assessment report
- HMHC recommendation to Council
- Council decision
- Notice of intent to designate
- Opportunity to object to the Conservation Review Board
- By-law passed and registered on title
Council-Approved Heritage Designation Process (Part IV)

DESIGNATION PROCESS

- Designation initiated
- Staff report and preliminary screening
  - High Place on Current Year Work Plan
  - Medium Place on Work Plan in 2-3 Years
  - Low Place on Work Plan in 4-5 Years
- Property placed in register after consultation with MHC
- Full cultural heritage assessment prepared
- Appearances reviewed by Inventory and Research Subcommittee of the Municipal Heritage Committee
- MHC considers staff assessment
- MHC provides advice to EDPC via Staff report and recommendation
- Staff report, cultural heritage assessment, staff reports, and decisions of cultural heritage values forwarded to EDPC for consideration
- Council makes a decision on the proposed designation
- Proposed designation approved
- Notice of intent to designate served and advertised
- Proposed designation referred to Conservation Review Board (CRB)
- CRB hearing and report
- Council considers CRB report and recommendations
- Notice of withdrawal
- Designation by-law passed and registered on title

Council Approved on October 29, 2008
Designation of Heritage Conservation Districts (Part V)

- Hamilton currently has seven Heritage Conservation Districts
  - Beach Boulevard (Hamilton)
  - Cross-Melville (Dundas)
  - Durand-Markland (Hamilton)
  - MacNab-Charles (Hamilton)
  - Mill Street (Flamborough)
  - St. Clair Avenue (Hamilton)
  - St. Clair Boulevard (Hamilton)

- Since their designation, the Act has been amended and the framework for district designation, including the requirement for the formal adaptation of district plans

- Hamilton does not have a formal process for addressing requests to designate heritage conservation districts
Managing Change to Protected Heritage Properties

- Physical changes to designated properties are managed through the **Heritage Permit** process
- Ensure proposed changes do not adversely impact the identified heritage value and attributes
- Typically, Heritage Permits are required when there is any potential impact to the identified heritage value and attributes
- Possible effects/impacts:
  - **Displacement**: changes resulting in damage, loss or removal of identified heritage attributes/values
  - **Disruption**: actions resulting in detrimental changes to the setting or character of the designated property

**General Rule:**

*alterations to heritage properties should repair rather than replace original features and should not permanently damage heritage materials or construction measures.*
Heritage Permit Process for Alteration of Property (Part IV)

6. Alteration of Property
   (Section 33 of the Ontario Heritage Act)

- Property owner application to Council/Delegate
- Notice of Receipt
  1. Served on property owner
- Council/Delegate consults with MHC
- Council/Delegate considers
- Decision
declaring
Consent or
Refusal
- Consent to alteration
* Property can be altered in accordance with any terms and conditions
* Property cannot be altered
- Notice of Decision to Decline
  1. Served on property owner
  2. Published in newspaper
- Property owner objection within 30 days?
  * Property owner objection to terms and conditions within 30 days?
  * Decision referred to OHR for hearing
  * Notice of hearing published in newspaper
- Council/Delegate considers
- OHR Report
- Property owner objection within 30 days?
- Decision referred to OHR for hearing
- Notice of hearing published in newspaper
- OHR hearing and report
- Council/Delegate considers
- OHR Report
- Decision to Consent
- Consent to alteration
- Notice of Decision to Consent
  1. Served on property owner
  2. Published in newspaper
- Property can be altered in accordance with any terms and conditions
- Property cannot be altered
Heritage Permit Process for Demolition or Removal of Structure (Part IV)

7. Demolition or Removal of Structure

(Section 34, 34.1 & 34.3 of the Ontario Heritage Act)

- Property owner application to Council
- Council consults with MHC
  - Council Decision within 60 days: Consent to application?
    - NO
      - Notice of Decision to Refuse: 1. Served on property owner 2. Served on OHT 3. Published in newspaper
      - Property owner appeal within 30 days?
        - YES
          - OMB Hearing
        - NO
          - Structure cannot be demolished/removed
          - OMB Decision: Dismiss appeal?
            - NO
              - OMB orders municipality to consent to application and specifies any terms and conditions
            - YES
              - Structure can be demolished/removed in accordance with any terms and conditions
              - Repeal or amendment of bylaw
    - YES
      - Notice of Decision to Consent including any terms and conditions
        - Property owner appeal of terms and conditions within 30 days?
          - NO
            - OMB Hearing
          - YES
            - OMB Decision: Dismiss appeal?
              - NO
                - OMB orders municipality to consent to application and specifies any terms and conditions
              - YES
                - Structure can be demolished/removed in accordance with any terms and conditions
                - Repeal or amendment of bylaw

* Failure of council to notify the owner within 30 days shall be deemed consent.
Delegated Approval Authority under the Act

- Council must either consent, consent with conditions or refuse a heritage permit application within 90 days of notice of receipt.

- The Act provides for the power to consent to a heritage permit application to be delegated by by-law to an employee or official of a municipality (MHC must be consulted prior to delegation)

- Delegated approval authority does not extend to:
  - Consent of the demolition or removal of a structure under Part IV or Part V
  - Consent of the erection of a new structure under Part V
  - Refusal of an application under Part IV or Part V

Note: No definition of “demolition” provided in the Act

The Act defines the following:

“alter” means to change in any manner and includes to restore, renovate, repair or disturb and “alteration” has a corresponding meaning; (“transformer”, “transformation”)
Current **Heritage Permit Process**

- Council-approved framework developed in 2005 in consultation with HMHC
- On average, 70 heritage permits are processed annually*
- Staff originally recommended delegated approval authority to consent to all heritage permit applications to alter property (PED05096)
- Advantages of delegated authority outlined in report:
  - Reduction in approval time
  - Reduction in staff time spent in report preparation
- Following consultation with HMHC, recommendation revised as follows:
  - Delegation authority does not apply, nor is it extended, to any decision that is not in accordance with the recommendation of:
    - the Hamilton Municipal Heritage Committee;
    - the Heritage Permit Review Subcommittee; or,
    - any of the Conservation District Advisory Committees.

*Average based on the last five years (2009-2013); 90% were processed through delegated approval
The Role of the Hamilton Municipal Heritage Committee

**Mandate of the HMHC** (established by By-law no. 06-338):

- To advise and assist City staff and Council on all matters relating to the designation of property, the review of heritage permit applications and other cultural heritage conservation measures under Parts IV and V of the Ontario Heritage Act, R.S.O. 1990, c. 0.1 8, as amended;

- To advise and assist City staff and Council in the preparation, evaluation and maintenance of a list of properties and areas worthy of conservation;

- To advise and assist City staff and Council on any other matters relating to the conservation of listed properties or areas of cultural heritage value or interest;

- To advise City Staff and Council on programs and activities to increase public awareness and knowledge of heritage conservation issues; and,

- To prepare, by the 31st day of January each year, an annual report of the previous year’s activities.
The Role of the Heritage Permit Review Subcommittee

The Heritage Permit Review Subcommittee serves to:

• Advise the Hamilton Municipal Heritage Committee, Cultural Heritage Planning staff, and the Director of Planning on the consideration of Heritage Permit applications to alter designated heritage properties under Part IV of the Ontario Heritage Act; and,

• Advise the Hamilton Municipal Heritage Committee, Cultural Heritage Planning staff, and the Director of Planning on the consideration of Heritage Permit applications to alter properties within a Heritage Conservation District designated under Part V of the Ontario Heritage Act.
The Role of the Cross-Melville Heritage District Advisory Committee

The Cross-Melville Heritage District Advisory Committee mandate:

- To act as a sounding board for residents within the Cross-Melville Heritage Conservation District to preview and comment on the acceptability of changes proposed within the District, including Heritage Permit applications under Section 42 of the Ontario Heritage Act, through the Hamilton Municipal Heritage Permit Review Sub-committee.
Thank you.

Staff will be sending out the questionnaire shortly via e-mail. There will also be an opportunity for one-on-one interviews between staff and the committee members.

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