Bill 108 Amends the Ontario Heritage Act - Schedule 11

May 15, 2019

On May 2, 2019, the Government of Ontario introduced Bill 108, the *More Homes, More Choice Act, 2019*. Bill 108 proposes changes that the government believes will help bring new housing to market sooner by making sweeping changes to the land use planning regime.

Bill 108 would grant property owners and the public significant new rights to appeal municipal heritage decisions and would force municipal councils to meet strict deadlines when considering new heritage by-laws.

Current Heritage Processes

The general purpose of the *Ontario Heritage Act*(the Act) is to allow municipalities to designate certain properties as being of cultural heritage value or interest and to thereby restrict the alteration and demolition of such properties. Under the current Act, any person can object to Council's intention to designate a certain property. The objection triggers a referral to the Ontario Conservation Review Board (the CRB) for a public hearing. The CRB issues a report of its findings, but the hearing is not an appeal because Council is merely obliged to consider the CRB's report and can thus approve a designation even when the CRB recommends against designation. There is no further right of appeal from Council's decision.

New Right of Appeal under Bill 108

Under Bill 108, if Council receives an objection to a notice of intention to designate, or no objection to the notice, it must pass a by-law within 120 days of giving its notice of intention to designate. Any concerned person is granted a right to appeal a designation by-law to the Local Planning Appeal Tribunal (the LPAT). The CRB would no longer play a role in the process. If Council misses its deadlines, its notice of intention to designate would be deemed withdrawn, although Council could then repeat the process. There is no appeal of a non-decision.

If a by-law is appealed, Bill 108 would allow the LPAT to amend or repeal the by-law. In addition, under the proposed changes to the LPAT Act, the appeal of a designating by-law would be a new hearing on the merits, instead of a review of Council's decision. Bill

108 would thus effect a significant shift in power over heritage matters from municipal councils to owners and other interested parties, and ultimately to the LPAT.

When designating a property under the Act, Bill 108 would also require that municipalities: (a) include in their by-laws a statement explaining the cultural heritage value of the property; (b) give owners notice of their rights of appeal; and (c) publish a newspaper notice of the by-law and the public's right to appeal the by-law.

Bill 108 would create similar new processes and rights of appeal for owners and municipalities that seek to amend or repeal a previously-enacted heritage by-law.

Potential Regulations to Prohibit Designation After Prescribed Events

Bill 108 includes a provision that would prohibit municipalities from giving a notice of proposed heritage designation more than 90 days after the occurrence of a "prescribed event." These events will be identified in future regulations, but we anticipate that the government will identify applications for planning approvals or building permits as the key events, because under section 30 of the current Act a municipality's notice of intention to designate a property has the effect of rendering void any issued building permits. Bill 108 would not amend that specific provision; the prescribed event provision in Bill 108 could mean that owners will be protected from last-minute changes in a property's heritage status.

New Rules for Applications to Alter a Heritage Property

For applications to alter a designated heritage property, Bill 108 would effect a similar transfer of power away from municipalities and towards property owners and the LPAT. Under section 33 of the current Act, if Council rejects an application to alter a heritage property or approves an application with conditions, the owner can request a review of that decision by the CRB, but again, Council is not obliged to follow the CRB's recommendations. Bill 108 would change that procedure by removing the CRB's role and allowing owners to appeal Council's decision to the LPAT. Municipalities would also be obliged to inform applicants when their applications are complete, and to render decisions within 90 days of receiving a completed application.

New Right to Object to a Heritage Listing

Under both the current statute and Bill 108, Section 27 of the Act provides that municipalities, instead of formally designating heritage properties via by-law, may list properties on a heritage register without passing a by-law. Listing such properties without a by-law has the effect of preventing demolition unless the owner gives Council at least 60 days' notice, which would allow Council time to issue a notice of designation and thus prohibit demolition (subject to future "prescribed events" regulations).

Under the current Act, municipalities are not obliged to give owners notice that their property has been listed, but Bill 108 would require that municipalities give the owners such notice and would allow owners to object to the listing. Council would then be obliged to consider the owner's objection, but the owner would have no right of appeal if Council decides to list the property over the owner's objections. The notice requirement and the Council hearing requirement could nonetheless cause municipalities to be more

cautious when listing properties on their heritage registers, without initiating a formal by-law process.

Heritage Principles under Future Regulations

Bill 108 also indicates that the provincial government will likely bring forward new heritage regulations after it amends the current Act, including statements of heritage principles that must be considered by municipalities. BLG will monitor developments on that front.

By

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