Municipal Cultural Resource Management: A Re-Sharpened Heritage Planning Toolkit

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ABSTRACT

Revisions to the Ontario Heritage Act (OHA) through the Omnibus Bill (2003) and the amended OHA (2005), in addition to the 2005 update of the Provincial Policy Statement (PPS), have resulted in notable changes to the ways cultural heritage in general, and archaeology in particular, may be administered at the Municipal level of government. The implications of these changes are now becoming evident as they are implemented through Municipal by-laws, policy, and protocol. This presentation comprises a discussion of these effects from the perspective of the amalgamated City of Hamilton as it formulates its new official plan, archaeological management plan, and Municipal Heritage Committee mandate, as well as dealing with day-to-day administration of development plans review in the municipal context.

RÉSUMÉ

Les révisions apportées à la Loi sur le patrimoine de l'Ontario lors de l'adoption du projet de loi omnibus (2003), les modifications votées en 2005 à cette loi et la mise à jour cette même année de la Déclaration de principes provinciale de l'Ontario ont entraîné des changements notables dans la façon dont le patrimoine culturel en général et l'archéologie en particulier sont administrés à l'échelon municipal. Les répercussions de ces changements deviennent évidents à mesure qu'ils sont mis en œuvre par une série d'arrêtés municipaux, de politiques et de protocoles. La présente communication évalue ces transformations du point de vue de la nouvelle ville fusionnée de Hamilton, qui a formulé un nouveau plan officiel, un plan de gestion archéologique et un nouveau mandat pour le comité du patrimoine municipal. Par ailleurs, elle abordera la question de l'administration quotidienne des schémas d'aménagement dans un contexte municipal.

Introduction

The focus of this discussion paper is on the municipal administration of cultural heritage resources (CHRs) in Ontario, and the effects of recent legislative changes on this relationship, from the perspective of a cultural heritage planner for the City of Hamilton, as well as a licensed archaeologist. CHRs encompass the "ABCs" of heritage planning, namely: archaeology; built heritage, and cultural heritage landscapes. The role of municipalities in managing these resources varies with the degree to which the provincial downloading (endemic from the late-1980s onwards) and municipal uptake has taken place. Hamilton was early in the assumption of some of these responsibilities, entering into a Memorandum of Understanding (MoU) with the province in 1986 to play a larger role in the management of archaeology, which many municipalities have yet to achieve, but some others have gone beyond.

The situation of the City of Hamilton effective in late 2005 is that of a relatively recently (January 2001) amalgamated municipality encompassing six former lower-tier governments: Ancaster, Dundas, Flamborough/Waterdown, Glanbrook, Stoney Creek, and the original City of Hamilton, in addition to the upper-tier regional authority of Hamilton-Wentworth. The integration of these former authorities is not yet complete, although it is well under way. From the heritage side, all cultural heritage inventories

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have been unified, as have funding programs. Official Plan content specific to heritage is close to completion and adoption, slated for 2006.

The pre-amalgamation City of Hamilton was the only government in the former Region of Hamilton-Wentworth (population 330,000 in an area of 35km^2) with heritage planners on staff (three), while the remaining administrations used planning staff for which the management of cultural heritage was a small part of their overall responsibilities. Two heritage planners now manage these resources for the amalgamated City. They administer an area of approximately 117 km^2 with a rapidly growing population (now 600,000). The city is expanding outwards into greenfield areas, while also becoming more intensively developed through infill, increases in development density, and brownfield recovery and re-use. The need to streamline operations while ensuring conservation of CHRs is evident.

Heritage staff manage CHRs through the planning and environmental assessment process, from individual cases through to developing policy and protocol for the City overall. They also participate in a regional *ad hoc* 'Greater Toronto Area' cultural heritage planners group to review changes in the field, and to provide feedback to the Province on proposed legislation and regulation.

The following section is a summary of the scope and consequences of cultural heritage planning for Ontario municipalities in general, and Hamilton's specific approach to this task. The second section of this paper is a discussion of the implications, from the municipal perspective, of recent changes to the *Ontario Heritage Act*.

Municipal Cultural Heritage Planning

Municipalities are mandated by the Province to perform roles implementing Provincial interests in the use of land. These roles include land-use planning activities ranging from the local to regional scale, involving the development of private and public land. Cultural heritage can be included in the scope of these interests, encompassing the ABCs, administered by specialized or general planners within municipal governments. There are implications of the latter situation, the management of CHRs by non-specialists.

The role for planners undertaking the municipal management of CHRs is that of technocrat, not advocate. Through the development, implementation and enforcement of good policy and programs, however, the desired outcome is due diligence and a binding process for the evaluation and conservation of CHRs.

Hamilton has a large set of cultural heritage resources within its inventory, including archaeological sites, built heritage and cultural heritage landscapes. There are currently a total of *circa*. 1,000 registered archaeological sites within the City, with an unknown number remaining in the Ministry of Culture pipe (*i.e.* sites that have been identified and assigned Borden numbers, but not are yet in the Ontario Archaeological Sites Database or associated GIS system. This may be as a result of not yet being submitted by the archaeologists, or being in the data-entry back-log at the Ministry). As a result of the

data-sharing agreement between the Ministry and City, Hamilton has these data in digital format current to January 2005 for use in archaeologiical resource management. While underwater archaeology is not usually the purview of municipalities *per se*, by way of a prior agreement Hamilton is also responsible for the management of the *Hamilton* and the *Scourge*, two War of 1812 fighting ships under the American flag sunk off St. Catharines.

With respect to built heritage, Hamilton has designated 225 properties under Part IV of the *Ontario Heritage Act*, with 10 additional properties in progress. There are 363 properties designated under Part V of the *Act*, distributed within seven Heritage Conservation Districts throughout the City, while three proposed districts are in various stages of the process. Hamilton City Council has listed approximately 6,700 properties in its inventory of buildings of architectural and/or historical interest. Listing is generally a nominal category that does not confer a legal status, but the development review of properties within the downtown secondary plan can trigger the requirement of a heritage impact assessment to conserve built heritage resources.

Hamilton also has an inventory of 125 cemeteries, two of which are designated under Part IV of the *Ontario Heritage Act*, with another designated under Part V. In addition, there are 38 cultural heritage landscapes listed in the City's inventory.

All of these inventories have been published, and are also available online under the 'resources' heading at www.hamilton.ca/heritageplanning. Because a major task of cultural heritage planning is the identification of the resources present, the unification of these inventories from the datasets of the original cities, towns and townships that are now part of the amalgamated city is critical to their management.

Planning Instruments

Typically, cultural heritage planning falls under the jurisdiction of the City in two main ways: the *Planning Act*, and associated *Provincial Policy Statement* (*PPS*), and the *Environmental Assessment Act* (*EAA*). The recent *Places to Grow* Provincial policy, in addition to the *Greenbelt Act*, have the effect of focussing future development within more tightly defined and enforced urban boundaries, and place an emphasis on infill and brownfield development. Municipalities can play a key role in the implementation and enforcement of the *Ontario Heritage Act* (*OHA*). As well, and the *Building Code Act*, *Cemeteries Act*, and *Municipalities Act* all have a part to play in the management of cultural heritage resources under this tier of governance. This section discusses the *Planning Act* and *EAA*, while the *OHA* is discussed later.

Private Development Planning

CHR management by municipalities is traditionally development driven, and as a result is often perceived as being reactive. The *Planning Act* and *PPS* deal with the development of private land for residential and commercial development through the regulation of land-use. The instruments used are standardized by the *Planning Act* and include Official Plans (OPs) and Official Plan Amendments (OPAs) or Secondary Plans, subdivision of

land (including smaller scale consents to sever), condominium corporations, zoning, variances, and site plans.

The most proactive means by which municipalities address the management of CHRs in the *Planning Act* is through OP and OPA/Secondary Plan policies. These are high-level (for municipalities) policy documents that can define municipal objectives for the management of significant resources through guidelines and requirements, and outline the means by which they are to be managed. Details on how they are to be implemented are usually stipulated in attached schedules, to ensure that the full amendment process is not necessary for housekeeping updates. These can be critical planning tools to ensure that CHRs are managed appropriately through other planning instruments.

Planning applications dealing with the division of land at a large (subdivision) or small (consent to sever) scale can offer the simplest means by which to address CHR concerns. Conditions to address specific resources, including CHRs, can be required for the approval of the application for any of the ABCs. As these instruments are typically required prior to any further applications, such as zoning, site plan or building permits (although they can also be submitted concurrently), these are the optimal insertion points for addressing many CHR management concerns, and are usually applied here.

Conditions can also be attached to variance applications, although this is done less frequently. This class of development application seeks property-specific exemptions to zoning. Because it may permit impact to identified or potential CHRs, applications are reviewed to identify such cases, and conditions attached accordingly.

Zoning by-laws are used to regulate specific categories of land-use (broadly residential, commercial, institutional and industrial) and development requirements within these categories of land-use (such as the definitions of set-backs for buildings from property lines). In the case of identified CHRs, details on their management can be specified in zoning by-law text (*e.g.* an existing heritage structure or known archaeological site shall be conserved). Conditions for approval cannot be applied to zoning text, and so a zoning cannot be approved on condition that an archaeological assessment be conducted. Instead, recommendations can be made that either the zoning application is premature until such time as the assessment is carried out, or a “hold”-zoning can be applied, to be removed on satisfaction of the archaeological (or other) requirements.

Site plan control applications are a contentious issue. The *Planning Act* delimits specific conditions that can be applied to these applications, which do not include any CHR interests. The Ministry of Culture interpretation is that this is a list of examples, rather than one to the exclusion of any other conditions. However, lack of Ontario Municipal Board (the OMB is the adjudicating body for planning decision appeals) precedent for this interpretation means that municipal planners are reticent to apply this interpretation (despite their willingness to apply other not-included conditions such as noise-control studies). Further, the choice not to consider CHRs on site plan control applications in particular contravenes Section 2.(d) of the *Planning Act* which states:

> The Minister, the council of a municipality, a local board, a planning board and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as…
> (d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest…

It is unlikely that this issue will be resolved until an OMB hearing sets precedent, or the *Act* itself is revised. As discussed below, in the specific case of properties designated under the *OHA*, easements or covenants may be used to address this shortfall.

The *Provincial Policy Statement* (PPS) is an instrument that is used to guide implementation of the *Planning Act*. Subject to a five-year review cycle, enactment of the most recent iteration took effect in the early spring of 2005. At the broad level, a significant change here is in an adjunct section of the *Planning Act* which is now directed to "be consistent with" PPS policy, rather than the original "having regard for" *PPS* policy. This stronger language lends greater weight to recommendations made by the *PPS* regarding the *Planning Act*.

More specific changes were made in addressing CHRs through the *PPS*. Cultural Heritage Landscapes are specifically addressed in the heritage section (2.6.1), while archaeology is more rigorously addressed in Section 2.6.2. In addition, properties adjacent to designated resources, or other resources of heritage value, are now to be considered for their effect on CHRs.

> **2.6.1** *Significant built heritage resources* and *significant cultural heritage landscapes* shall be *conserved*.
>
> **2.6.2** *Development* and *site alteration* shall only be permitted on lands containing *archaeological resources* or *areas of archaeological potential* if the *significant archaeological resources* have been conserved by removal and documentation, or by preservation on site. Where *significant archaeological resources* must be preserved on site, only *development* and *site alteration* which maintain the heritage integrity of the site may be permitted.
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> **2.6.3** *Development* and *site alteration* may be permitted on *adjacent lands* to *protected heritage property* where the proposed *development* and site alteration has been evaluated and it has been demonstrated that the *heritage attributes* of the *protected heritage property* will be *conserved*.

The significance of these alterations cannot be underestimated, although the implications and effect of the changes will only be established over time and through interpretation, application and enforcement. In general, though, there is stronger language supporting the *PPS*'s role in guiding the *Planning Act*, and stronger language (and definitions) within the PPS for more effective and far-reaching policy on CHRs. Owing to the nature of the *PPS* as policy and not legislation, the ability to effect change more readily is advantageous in this situation as it does not entail change to the *Planning Act*, but this makes it more subject to the politics of the day, and therefore can be more readily reversed.

Environmental Assessment Planning

CHR management is also carried out under the *Environmental Assessment Act* (*EAA*), or as environmental assessment components of other relevant legislation (such as the *Aggregate Resources Act*). On the whole, *EAA* projects encompass infrastructure or resource extraction propoals, whether publicly or privately driven, including roads, bridges, highways, utility corridors (like pipelines and electrical grids), water and wastewater systems, landfill sites, quarries and parks, to name a few.

While municipalities will be consulted to determine whether they have any interest in any other Class EAs, they primarily administer Municipal Class EAs, or those Municipal Class EAs which have been 'bumped-up' to individual EA status (such as the Red Hill Valley Project in Hamilton). Essentially, while administered under a different legislative framework, the overall process of ensuring that CHRs are properly addressed under Municipal Class *EAA* projects is similar to those falling under the *Planning Act* rubric. As a result, this discussion does not go into detail with the process. However, there are some noteworthy differences.

Organizationally, Municipal Class EAs often fall under the responsibility of the engineering component of a municipality, as distinct from private development planning (as is the case in Hamilton). This separation can cause some difficulties in maintaining consistency of CHR management within the organization between different groups and individuals. In addition, with government-driven projects, 'due-diligence' is the watchword, where decision-making staff are directed to follow CRM protocol in accordance with legislative requirements. For various reasons, this may not always be the case, but such oversights are uncommon.

In addition, while municipal CHR controls apply property-wide in the case of private development applications under the *Planning Act*, the CHR management scope for municipal Class EA driven projects apply to the areas or objects of impact, rather than the full property. This includes, however, all areas of impact, such as staging, storage and transit areas, rather than simply the footprint of the actual installation. This can also cause some confusion with respect to adherence to the Municipal Class EA requirements.

Less formal or *ad hoc* CHR management takes place with smaller scale municipal projects, which do not fall under the Municipal Class EA owing to their limited extent or budget. These principally address projects that are occurring in the immediate proximity of known CHRs, such as historic or designated properties or parks. While the overall process for these smaller projects is less formally defined than *Planning Act* and *EAA* projects, they still fall under the jurisdiction of the O*ntario Heritage Act*, ensuring their proper management and process as specific CHRs.

City of Hamilton CHR Management Initiatives

The above CHR management tools are driven by the province, with little input from municipalities with respect to the policy and protocol of the legislation. Municipal

initiatives, however, allow the development of policy and protocol for the management of these resources that are more closely matched to the regional context. There are several means by which such adaptations can be adopted, including the development of resource-specific plans, modification of official plans and secondary plans, the development of additional protocol to address specific needs not clearly defined by upper levels of government, and financial programs to aide in the conservation of CHRs.

The following section is an overview of some of the approaches taken by the City of Hamilton to achieve some of these localized strategic approaches. While some processes and standards are still defined by the province, others are open to customizing. When municipal governments identify local priorities, and develop policy, protocol and standards to address the concerns, CHRs are being better protected. Evidence that these matters are being dealt with consistently, according to well-defined plans and programs, lends substantial weight to municipal arguments in cases presented at the Ontario Municipal Board and the Conservation Review Board, in addition to other decision-making boards and committees.

Archaeology Management Plan

Hamilton's Archaeology Management Plan (AMP - referred to by other municipalities as archaeological master plans) is in progress, scheduled for completion at the end of 2006. Its role is to clarify and streamline the management of archaeological resources through the development process and other activities that impact the resource. While it comprises the usual archaeological potential modelling of other AMPs, the focus is on providing a readable and usable document for non-specialist planners, developers, stakeholders, and citizens.

Because of this, the main text of the document is a succinct review of the plan, focussing on how it can be used by the non-specialist, those most likely to be using the AMP. The details on the synthesis of an array of historic, prehistoric and modern data for physiography and human settlement patterns will be in the appendices, for those wishing to analyse the dataset and methodology.

Planners, in the municipal context, want a simple yes/no answer as to whether a subject property has archaeological potential. If it does, they want to know what to do about it. The City of Hamilton AMP provides this, with specific details on how to deal with this potential in the rural and urban contexts, distinguishing between Native and Euro-Canadian archaeological resources for particular potential and methodological treatments. It also tracks properties of no further archaeological concern to the Province and City, to ensure that no duplication of efforts is required in subsequent development plans.

It is noted here that City standards for the removal of municipal archaeological concerns may, in some cases, be more stringent than those of the Province. This will be undertaken in order to address archaeological resources identified as being of particular importance to the City of Hamilton.

Official Plan Update (Archaeology, Built Heritage, Cultural Heritage Landscapes)

Municipal Official Plans provide broad policy to guide resource management. In Hamilton, this was initiated with a rewrite of the City's Official Plan policy text for archaeology, replacing the documentation of the former municipalities with a unified, City-wide policy document. While the archaeology text is now complete, the drafting of OP text for the remaining CHRs is taking place, and all three will be in place for 2006. The archaeology portion of the new OP text was co-ordinated with the AMP, in order to ensure a seamless transition with the subsequent adoption of the AMP.

Secondary Plans

As more detailed neighbourhood-scale planning documents, secondary plans can be used to identify specific resources of interest, areas of resource potential, and the means by which these CHRs are to be managed. This allows the general policies expressed in official plans to be directed by specific and localized protocol for those identified and potential CHRs within neighbourhoods. Secondary plans can then be used to specify specific instruments to address remaining CHR concerns, such as zoning text and approval conditions.

Designation and Inventory Criteria for ABC

As detailed below, legislative changes in the *OHA* permit the definition of designation criteria for CHRs. The City of Hamilton took this opportunity to draw up three sets of criteria for both the designation and listing of archaeological, built heritage, and cultural heritage landscape resources. Having a detailed and rationalized set of criteria provides a systematic means by which to evaluate resources and provide arguments for or against designation, or inclusion in inventories of heritage resources.

Emergency protocol

Staff developed this emergency protocol in response to structural failure of the Tivoli Theatre, which posed an immediate threat to public health and safety. The response to this situation was directed by non-heritage staff, and resulted in the partial demolition of this designated property. The response protocol applies to heritage properties under immediate threat of structural failure, fire, flood, and other catastrophic events. It is primarily for use with properties designated under Parts IV or V of the *OHA*, with the option of using it for listed properties.

Application of the protocol proceeds from the issuance of an order to comply by a municipality's Chief Building Official, and is typically triggered by threat to public health and safety. When the Chief Clerk of the municipality is notified, this bypasses the need for a heritage permit process (*OHA Section 59.5-b*). Because of this exemption from the heritage permit requirement, the protocol serves as a means by which heritage specialists can be incorporated within the team managing the emergency situation, to ensure that CHR interests are represented in the decision-making process.

Financial Assistance Programs

Because CHR properties, especially built heritage, can be more expensive to maintain and restore, the City of Hamilton offers two funding programs to assist property owners in the appropriate upkeep of properties designated under Parts IV and V of the *OHA*. The Commercial Heritage Improvement and Restoration Program (CHIRP) provides up to $20,000 in matching funds for the restoration and maintenance of identified heritage features, or to ensure the overall structural integrity, of designated commercial or industrial properties. The Community Heritage Trust Fund (CHTF) provides up to $50,000 in interest-free loans for the same scope of work on designated residential properties. The provincial property tax rebate has not been implemented in Hamilton, owing to budgetary constraints, while it is in use by other municipalities. At least one Hamilton property is currently applying for national Historic Places Initiative funding, although this is not perceived as a program being driven by the municipal level of government.

This summary of the City of Hamilton's perspective and approach to the management of CHRs, provides a glimpse of the process and programs available in Hamilton. It also outlines the overall provincial legislative context for CHR management in municipalities. What follows is a discussion of recent revisions to the *OHA*, and some of the implications of these to the continuing management of CHRs by municipalities.

Legislative Updates

The *Ontario Heritage Act*, first enacted in 1975, deals in Part II with the Ontario Heritage Trust (until recently the Ontario Heritage Foundation), in Part III with the Conservation Review Board, which deals with property designation issues, and in Part IV with Municipal Heritage Committees (MHCs, formerly Local Architectural Conservation Advisory Committees, or LACACs). The *OHA* empowers municipal councils to appoint MHCs as standing committees, and advise council on heritage decisions and policy, designations, heritage inventories, and other heritage issues. These can be useful committees, although in practice their level of function is a reflection of members' motives, which can include social or career advancement, in addition to the conservation of CHRs.

Part IV of the *OHA* also deals with designations of individual properties and function of heritage permits, while Part V concerns designations of heritage conservation districts, and Part VI manages the regulation of archaeology in the Province. Parts I and VII of the *OHA* are introductory and housekeeping items, for the most part, with some administrative details not addressed in the rest of the legislation. What follows is a discussion of changes to the *OHA* as amended by the *Efficiencies Act* of 2002, and changes expressed by the 'new' *OHA* enacted in 2005.

2002 *Efficiencies Act*

In 2002, an omnibus bill referred to as the *Efficiencies Act* was enacted. In part this appears to have gone under the radar with respect to its impact, at least for the revisions it entailed for the *OHA*. Some of these amendments were minor, and will not be discussed here. What follows is an overview of the more significant changes, and the implications that arose from them.

While relatively minor, the renaming of LACACs to Municipal Heritage Committees (MHCs) is symbolic, removing the titular focus on architecture and shifting it to cultural heritage in general. This reflects an evolution of MHCs, and points towards the broader scope for these committees.

In Part IV, the term 'heritage attributes' was introduced, used along with 'cultural heritage value' to replace the reasons for designation previously used to identify the significant heritage characteristics of designated properties (under Part IV of the *OHA*). The introduction of this concept in turn identified the need for a definition, which was not provided by the Province at the time. The City of Hamilton responded by defining a series of heritage attributes, for the evaluation of designation requests, as discussed below.

Another change in terms was the replacement of "buildings and structures" with "real property, and all buildings thereon" in redefining the scope of Part IV designations. This provided a window for the inclusion of archaeological sites and cultural heritage landscapes, along with buildings and structures, in Part IV and Part V designations. The City of Hamilton used this opportunity to develop sets of designation (and inventory) criteria for archaeological sites and cultural heritage landscapes, in addition to buildings and structures. Consideration of all three CHRs, including archaeological potential, is now incorporated in all designation reports and description of heritage attributes for designated properties, and Heritage Conservation Districts (HCDs).

Another housekeeping measure permits Part V HCDs to include properties designated under Part IV of the *OHA*: previously, either the individual property would be de-designated in order to include it in the HCD, or they became 'holes' within the HCD, neither of which were effective solutions. An additional update is the requirement for City Clerks to maintain a register of Part V HCD properties. Finally, the Conservation Review Board (CRB) was deemed to have jurisdiction over designations, while the OMB was responsible for Heritage Permit appeals.

Archaeological amendments in this update to the *OHA* included tighter definitions, specifying that archaeological work could not be carried out without a licence, in particular stating that site alteration and artifact removal with knowledge was illegal. Fines were increased, and restoration and recovery costs can also be ascribed to offenders.

In summary, the author feels that the 2002 *Efficiencies Bill* was, for the *OHA*, a sleeper. While the amendments were relatively minor in form, the repercussions are significant and far-reaching, and largely beneficial for the cause of CHR conservation and management.

2005 *Ontario Heritage Act*

This long-awaited update to the *OHA* entails some substantive changes and updates. The implications of these vary, as some require details for implementation in regulations that have yet to be defined. In the interim, while there are improvements, some changes will result in problematic situations until clarification is provided by the Ministry.

Part II: The single housekeeping revision of note with the 2005 update to the *OHA* is the change of name for the Ontario Heritage Foundation, which is now the Ontario Heritage Trust.

Part III*:* One new provision applies to properties that have designations or easements under the *Act*, and comprises an institutional exclusion from the heritage permit process. Institutions are described as being owned or occupied by the Crown, or a prescribed public body. While the Crown is clearly defined, 'prescribed public bodies' are not, with the question as to whether this category will encompass all governments, including municipalities, in addition to public schools, universities and colleges, churches, conservation authorities, et cetera.

There is as yet no intimation as to the intended direction of this provision, and it awaits clarification in regulations. The implications of this are substantial, evident by the potential scope of bodies that may be included in the definition of institution, and that many of these are caretakers and owners of a large number of designated or "easmented" properties. Further, there is no inferred due-diligence or process defined in place of the heritage permit procedure, which is well established. The legislation states that the Ministry 'may' prepare guidelines and standards for the identification of institutions, and their practice of CHR management in place of heritage permits. Lacking such direction, the field is rife with speculation on the implications of this portion of the *Act*, including the role, if any, of municipalities in any of this process or decision-making.

Part IV: Part IV of the *OHA* contains some of the more substantial 2005 amendments made. There are a number of changes, effects and unanswered questions arising here, including the registry of heritage properties, heritage permit process, demolition denials for heritage properties, municipal standards for heritage properties, and new ministerial powers over designations and municipal decisions. While Part IV primarily deals with individually designated properties, it also lays out some of the background permitting process for Part V heritage conservation district (HCD) designations.

Part IV – Registers: The new *Act* directs that the Clerk of a municipality shall keep a register of heritage value/interest is one of these. The registry is to comprise detailed contents on the property including a legal description, information on the owner, and the

cultural values or interests in the property. Properties do not have to be designated to be on register (as the *Act* specifies elsewhere that the Clerk is to maintain registers of properties designated under Parts IV and V). Inclusion or removal from the register is to be done in consultation with MHC.

It is not known whether this is required or enabling, nor whether this is intended to be a simple formalizing of inventories that municipalities previously kept. The goal is uncertain, as inclusion in this register does not appear to confer a status to properties. This register is not mentioned in the PPS, which continues to refer to listed properties. It is not known whether this will be expanded upon in future regulations, nor whether this would include any process, criteria or parameters for such a registry. The effect on municipalities that do not maintain such a register is likewise unknown.

As a result four or five different potentially different status situations exist for properties: being on the new Register of designated properties, being on the new Register but not designated, being on the original Municipal inventory of properties ('listed'), being a de-designated property (presumably retaining some interest if not demolished), or not being on any inventory, but with the realization of an interest being triggered by a development review process. With the additional registry of properties designated under Part V as introduced in the 2002 *Efficiencies Bill*, this suggests three different Registries defined by the *Act*: Part IV designations, Part V designations, and undesignated but Registered. Clarification through Regulations is needed.

Some housekeeping provides for other simplifications. Newspaper notices for designations can now be abbreviated, and public notice is now required for de-designations of properties. The process for amending existing designation by-laws has been simplified, and this may eliminate the need for a notice of intention to designate for such changes.

Part IV – Heritage Permits: Heritage permits play a large part in controlling the addition to, and alteration and demolition of, properties designated under Parts IV and V of the *OHA*. The terms under which heritage permits operate are also defined in Part IV of the *Act*, and a significant change to this process was brought into effect with the 2005 update. To provide some background, under the original *OHA*, Part IV designations originally defined the 'reasons for designation' of the property being designated. With the amendments to the *Act* in 2002, criteria for designation were introduced, and in 2005 the original 'reasons for designation' essentially redefined as the 'heritage attributes' of a property of 'cultural heritage value'. Any alteration, addition or demolition occurring on a designated property that affects any of the identified 'reasons for designation', now 'heritage attributes', requires a heritage permit.

Until the 2005 revisions, all heritage permit applications required approval or denial by the council of the municipality, as advised by the Municipal Heritage Committee. Owing to the bureaucratic process this entails, as it proceeds through the MHC through council's other subcommittees, it can take from 60 to 90 days for a council decision to be rendered after a complete application has been received, and notice of receipt has been served on

the applicant. In fact, 90 days is the maximum time permitted by the *Act* for the decision to be made, after which the council is presumed to have consented to the application, unless an extension has been agreed upon by the council and applicant. This is in most cases an inordinately long period of time, compared to that required for a building permit approval (5-10 days), and has resulted in frustrated owners of designated properties.

Under these 2005 revisions, alterations can now be delegated to staff, significantly reducing the turn-around for these heritage permit approvals, while additions (including new buildings) and demolitions still require council approval. On the recommendation of Hamilton's MHC in the fall of 2005, this delegation of authority was granted to Planning and Economic Development's Director of Planning and Real Estate in December, 2005.

In the final revision of the *OHA* as it pertains to heritage permits, the Conservation Review Board now has more input to Ontario Municipal Board decisions over heritage permit applications. When an appeal is issued against a decision made on a heritage permit application, this goes to the OMB: with the 2005 *OHA* revisions, a CRB member is delegated to the OMB to advise on this decision.

Part IV – Demolitions: Demolitions have long been a vulnerable point with heritage properties. Far from protecting them, while the original *OHA* permitted councils to delay demolition permit decisions for an additional 180 days in the case of designated buildings, at the end of this time councils were obliged to approve the application, unless an alternate solution had been negotiated. With the revised *OHA*, councils may now consent, consent with conditions, or refuse such applications: a major advance, though still subject to the foibles of local politics.

Part IV – Standards: In addition, municipalities may now develop a heritage building standards and maintenance by-law, over and above building code requirements. The effect of this is uncertain with respect to enforcement, which is presumed to be complaint-based, rather than through regular inspections. There is no guidance on the standards themselves. This may also result in an equivalent to the common building code scenario for designated buildings: a designated building does not meet the code, and so rather than bring it up to code, the property owner simply demolishes it. Time will tell whether this practice is slowed or accelerated.

Part IV – Ministerial Authority: Further Provincial powers have been defined, as well. The Minister of Culture may now (in consultation with the Ontario Heritage Trust) designate properties, issue stop-orders to alterations and demoltions, and over-rule decisions made by a municipality. There are no guidelines or standards established for such actions, however, which should be defined in regulations.

Part V: Heritage Conservation Districts (HCDs) are dealt with in this portion of the *OHA*. An HCD encompasses two or more properties of cultural heritage value, and permits regulation of these in a fashion similar to properties designated Part IV of the *Act*. Part V now conforms with Part IV with respect to regulations for demolitions, and the new building standards and maintenance provisions.

Alterations to the *OHA* for HCDs include the addition of a one-year time limit for a proposed district area study. Regulations imposed on declaration by council of a district area study essentially put in place a 'notice of intention to designate', with the proposed guidelines in effect as constraints on additions, alterations and demolitions. If the study is not successful (that is, leading to the Part V designation of the district), any reconsideration of the area as an HCD must be deferred for three years.

The one-year deadline is untenable if the declaration of the district study is the start of all research: while it is comparable in nature to a site plan control by-law, where a one-year extension can be granted, this is not the case with these HCD studies. It will be more functional if the beginning of the study marks the conclusion of background research and draft district guidelines, essentially making it a trial year for the district, leading to successful approval and adoption of the guidelines by the Council – approval by the OMB is no longer necessary. By comparison, McMaster University's heritage core of five buildings was subject to a notice of intention to designate in 1998 under Part IV of the *OHA*. While the designation is still under appeal to the CRB, it has been in effect designated since then, with respect to constraints on alterations, additions and demolitions.

While plans and guidelines for property features and structures were in the past optional for HCDs, they are now required. It is not known what the implications are for existing HCDs that do not now conform to this requirement, and there is no guidance in the new *OHA* regarding revision of by-laws, process, and protest.

Interestingly, a sub-section has been added stating that when there is a conflict between an HCD plan and a municipal by-law that affects the district, the HCD supersedes the by-law to this degree, while the by-law otherwise remains in effect. This will be a legal question that can only be decided through the OMB, or a court of law. In addition, the 2005 *OHA* now stipulates that by-laws are to be registered on title for all properties within an HCD, which can be an onerous task for municipalities to apply retroactively.

The new *OHA* also permits minor work to proceed without a heritage permit, in order to prevent ownership of a property in an HCD to be burdened by over-regulation of maintenance (see www.purplepillars.com), but no guidelines are provided for distinguishing between minor and major work. Municipalities must either define criteria for this distinction, or the Ministry should establish this in regulations.

Part VI: The 2005 OHA revisions to the regulation of archaeology may be wide reaching, but provide little detail for their implementation, and so time will tell the net effect of these changes. While the changes to underwater archaeology and introduction of inspectors are described below, an addition to this section is the intent to establish a licence report register. This register shall be made available to any person for viewing at a location to be specified, while details on site location may be excluded. This may provide some relief to the problem of grey literature for archaeology reports, depending on the level of access provided to the actual reports, rather than simply a catalogue of them.

Part VI – Underwater: One of the least complex changes enables province to prescribe underwater archaeological sites, providing them with greater legislative, if not actual, protection. While this is unlikely to be relevant to most municipalities, in Hamilton's case this is significant. As a result of events since their location, Hamilton is responsible for overseeing both the Hamilton and Scourge, two vessels under the flag of the United States that sank during the War of 1812.

Part VI - Inspection: For terrestrial archaeology, the province is now able to name inspectors for the purpose of inspecting archaeological work carried out under an archaeological licence issued by the province. The scope of these inspections includes fieldwork being carried out on sites and property, or where work has been conducted within the past year, as well as offices, laboratories, storage facilities, records, artifacts and data associated with this archaeological work.

The identification and capacities of inspectors has far-reaching implications overall. However, because the legislation does not identify the standards or qualifications for inspectors, who the inspectors will be, or the criteria used to trigger such inspections. These will require definition in regulations, which are not in place, and until such a time, their role remains speculative. It provides some reassurance that in the future there may be some means by which to enforce the standards and guidelines for fieldwork and reporting which are currently being tested in draft form. The relevance of this change to municipalities is limited since, as described above, archaeology is primarily the purview of the province. In cases where municipal staff is qualified, however, it is interesting to speculate on whether inspectors will be exclusively from the province, or can also be drawn from municipalities, or even private firms.

Summary

The implications of the 2005 *OHA* revisions are not fully known, owing in part to future details that remain to be worked out. Regardless, there are numerous repercussions that have been identified for the future of cultural heritage planning in Ontario in general, and municipalities in particular. This summary reviews some of these effects that may be more significant.

As is evident from the discussion above, there are a variety of impacts to the means by which municipal governments can manage the CHRs within their administrative domain. The recently revised *Ontario Heritage Act* empowers municipalities in a variety of ways, from allowing them to refuse demolition applications for designated properties, develop heritage property standards, and streamline the heritage permit process. It must also be noted here that, while planners may develop the text for policy and protocol, it is ultimately the councils of the municipalities that adopt it, and in many cases councils are the weak link between intent and implementation.

The new legislation also adds some structure and standardization to the Part V designation process. It does introduce some confusion, however, over the various

property registers, lack of clarity over property standards, conflict between by-laws and HCD plans, and lack of ministerial guidance on definitions and procedures in general.

This can prove problematic, as was the case subsequent to the 2002 amendments to the *OHA*. Where guidance, definitions, standards and criteria for heritage attributes were absent, municipalities proceeded to develop their own in order to proceed. While these initiatives were constructive, they were not overly co-ordinated, resulting in divergence and lack of consistency between municipalities. In turn, with the province presenting proposed criteria three years later, the municipally developed criteria are not identical, and will require reworking if the province's criteria are given the force of regulation.

In the vacuum of guidance from the Province, when the 2005 *OHA* legislation is already in place, it is predictable that municipalities will again initiate work to fill in the blanks. This will result in similar inconsistencies, and the later need to bring municipally developed policy back into line with that of the province, once it emerges. The province is urged to bring forward these regulations, guidelines and standards as soon as possible in order to maintain consistency across the province. The new legislation points strongly towards a culture of conservation for cultural heritage, but requires the detail-work necessary for its delivery and implementation.