



## TOWNSHIP OF NORTH HURON

## REPORT

Item No.

**REPORT TO:** Reeve Vincent and Members of Council  
**PREPARED BY:** Richard Al, Clerk / Manager of IT  
**DATE:** 05/03/2018  
**SUBJECT:** Restricted Acts of Council (Lame Duck Periods)  
**ATTACHMENTS:** Draft Delegation of Authority for Restricted Acts of Council By-law

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### **RECOMMENDATION:**

THAT the Council of the Township of North Huron hereby receives the Restricted Acts of Council (commonly known as the 'Lame Duck Periods') report of the Clerk/Manager of IT for information purposes;

AND FURTHER, that the Clerk is directed to prepare the necessary by-law for the March 19<sup>th</sup>, 2018 Council Meeting, delegating authority to the Chief Administrative Officer from July 27, 2018 (Nomination Day) to December 3<sup>rd</sup>, 2018;

AND FURTHER, that the by-law shall come into force only in the event and if it is determined by the Municipal Clerk with certainty that less than 75% of the current members of Council will be returning to sit on the new Council after Nomination Day of the 2018 Municipal Elections.

### **EXECUTIVE SUMMARY**

On April 4<sup>th</sup>, 2016 the Ontario Minister of Municipal Affairs and Housing introduced Bill 181, the *Municipal Elections Modernization Act, 2016* (MEMA). The MEMA received Royal Assent on June 9, 2016. Bill 181 and the associated changes introduce significant updates to the *Municipal Election Act, 1996*.

One such change is that of the Nomination Period for the 2018 Municipal Election. The Nomination Day (deadline) is now July 27, 2018, rather than the former September deadline of previous elections. This amendment means that Council could be in a 'Lame Duck' position longer than previous elections.

In addition, Bill 68, *Modernizing Ontario's Municipal Legislation Act* implements a change to the term of office of Council. This amendment provides a new start date for a new term of Council from December 1 following the regular election, to a new date of November 15. This amendment was implemented to shorten the potential 'Lame Duck' period between when the existing Council is still sitting and the new Council takes office. For the 2018 Municipal Election the amendment includes a transitional rule under Section 1.1 of the Act which retains the start date of December 1 for the 2018 Council term and transitions to a November 15 start date for the 2022 Municipal Election.

Considering this information, there is potential for a longer 'Lame Duck' period than during previous elections and as such a by-law delegating certain powers to the Chief Administrative Officer pursuant to Section 275 of the *Municipal Act, 2001* is recommended.

## **DISCUSSION**

The determination of whether a Municipal Council is in a restricted position pursuant to Section 275 of the *Municipal Act, 2001*, also known as a 'Lame Duck' Council occurs twice during the Municipal Election process.

- 1) Between July 27, 2018 to October 22, 2018 – the determination shall be based on the 2018 Candidates election nominations that have been certified by the Municipal Clerk on July 27, 2018. If less than three quarters (75%) of the existing Council Members are not running for Municipal Council, the restrictions set out in the *Municipal Act, 2001*, will apply.
- 2) Between October 22, 2018 to November 30, 2018 – the election results are declared by the Municipal Clerk shortly after the Municipal Election. If the elections result in less than three quarters (75%) of the incumbent Council Members returning to Council, the restrictions set out in the *Municipal Act, 2001*, will apply.

The following is a brief summary of the provisions as provided pursuant to Section 275 of the *Municipal Act, 2001*, Restricted Acts Provision.

### **Restrictions**

If a Council is in 'Lame Duck' position, the Council shall not take on the following actions:

- (a) The appointment or removal from office of any officer of the municipality;
- (b) The hiring or dismissal of any employee of the municipality;
- (c) The disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; and \*
- (d) Making any expenditures or incurring any other liability which exceeds \$50,000. \*

\* Exceptions to clauses (c) and (d) above do not apply if the disposition or liability was included in the most recent budget adopted by the Council before Nomination Day of the 2018 Municipal Election.

**Land Matters:** Pursuant to Section 275 (3) (c) a municipality can close a real estate transaction during the 'Lame Duck' period only if the Council passed a by-law approving the execution of the agreement of purchase and sale in advance of the 'Lame Duck' period.

**Expenditures:** A contract can be awarded by a 'Lame Duck' Council which is in excess of \$50,000 provided the amount was included in the approved 2018 Budget. However, a 'Lame Duck' Council is not be able to award a contract, if the amount of the tender or bid exceeds the amount included in the approved budget.

**Emergencies:** Pursuant to Section 275 (4.1) which states "Nothing in this section prevents a municipality taking any action in the event of an emergency".

**Delegation of Authority:** Section 275 (6) provides that the authority of a municipality can be delegated to a person or body prior to Nomination Day for the election of the new Council.

Determination of Restricted Act of Council (Lame Duck position): In order to determine if Council is in a 'Lame Duck' position, the Municipal Clerk will follow Section 275 of the *Municipal Act, 2001* and advise Council at the first Meeting in August 2018 after Nomination Day as to whether or not Council is now in a 'Lame Duck' position.

After Election Day, on October 22, 2018, if necessary, the Municipal Clerk will report on the Township of North Huron results to determine if Council is in a 'Lame Duck' position.

The Township of North Huron consists of a 7-member Council. When we apply the 75% calculation the result is 5.25 which is rounded up to 6 members.

At the Inaugural Council Meeting in December 2018 the by-law delegating authority to the Chief Administrative Officer pursuant to Section 275 of the *Municipal Act, 2001* in regards to Restricted Acts will expire as a newly elected Council will be sworn in for the Township of North Huron.

#### **FINANCIAL IMPACT**

The potential exists for financial / budget implications should projects valued at \$50,000 or more exceed their amount approved in the 2018 Budget (e.g. bids or tenders come in higher than the amount approved in the 2018 Budget).

#### **FUTURE CONSIDERATIONS**

Should Council choose to proceed with passing a Delegation of Authority By-law for the 'Lame Duck' period, the Chief Administrative Officer will report to Council on any actions taken under the restrictions listed in Section 275 (3) and noted above, between Nomination Day and the commencement of the new Council term.

#### **RELATIONSHIP TO STRATEGIC PLAN**

Goal No. 4 – Our administration is fiscally responsible and strives for operational excellence.



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Richard Al, Clerk/Manager of IT



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Dwayne Evans, CAO