

DATE: May 16, 2022

REPORT NO: C-02-2022

SUBJECT: Restricted Acts of Council (Lame Duck Periods): Period 1) From August 19, 2022 and October 24, 2022 and; Period 2) from October 24th, 2022 to November 14th, 2022)

CONTACT: Joanne Scime, Director of Legislative Services/Clerk

OVERVIEW:

- The objective of this report is to obtain Council approval to delegate specific authority to the CAO during the period of time in which Council has restrictions imposed upon its actions pursuant to Section 275 of the Municipal Act (commonly referred to as Restricted Acts after Nomination Day or after Voting Day, commonly known as the Lame Duck Provision).

RECOMMENDATION:

1. That, Recommendation Report C-02-2022, regarding “Restricted Acts of Council (Lame Duck Periods) Period 1) From August 19, 2022 and October 24, 2022 and; Period 2) from October 24th, 2022 to November 14th, 2022”, dated May 16, 2022, be received; and,
2. That, notwithstanding the provisions of the Township's Tendering and Purchasing Policy and Delegation of Powers and Duties Policy, Council adopt the attached draft By-law which delegates authority to the Chief Administrative Officer (CAO), for a specific time period, as outlined in Section 275 of the Municipal Act.

ALIGNMENT TO STRATEGIC PLAN:

Theme #6

Efficient, Fiscally Responsible Operations

- The Township of West Lincoln is a lean organization that uses sustainable, innovative approaches and partnerships to streamline processes, deliver services and manage infrastructure assets.

BACKGROUND:

The Municipal Act, 2001 establishes the governing authority for municipalities and municipal councils in Ontario.

Under Section 275 of the Municipal Act, a Municipal Council is prohibited from performing certain actions in a municipal election year where it is determined that there will be a material change in its membership during the next term of office. This is commonly referred to as the 'restricted acts clause' (or a 'lame duck' Council).

The restricted acts clause may be triggered depending on the outcome of two key dates in an upcoming municipal election: Period 1) Nomination Day (i.e., the final day to submit nominations for office) and Period 2: Final Voting Day.

If it is apparent that the incoming council will be comprised of less than three quarters (i.e., 75%) of its current membership, the council is required to refrain from certain acts until its next term begins.

As such, the Township of West Lincoln Council could be in a restricted acts situation during one or both of the following timeframes in 2022:

- Period 1) Nomination Day through to the end of the current term of Council (August 19, 2022 – November 14, 2022); or,
- Period 2) Final Voting Day in the 2022 Municipal Election through to the end of the current term of Council (October 24, 2022 – November 14, 2022)

CURRENT SITUATION:

The purpose of this report is to delegate certain powers to the Chief Administrative Officer (CAO) after Nomination Day (August 19, 2022) but before voting day (October 24, 2022), based on the nominations to the new Council that have been certified and any acclamations made to the new Council.

The second period of time would commence after Voting Day (October 24, 2022) which the determination shall be based on the declaration of the results of the election including declarations of election by acclamation to the end of the current term of Council (November 14, 2022).

As the Council for the Township of West Lincoln is comprised of seven (7) members, the restricted acts clause would apply if fewer than six (6) incumbent Members of Council were to return for the 2022-2026 term. If this occurs, Council would be precluded from making any decisions on the following matters until the end of the current term (November 14, 2022) as provided in Section 275(3) of the Municipal Act, 2001, S.O. 2001, c. 25.

The following are the provisions as provided pursuant to Section 275(3) of the Municipal Act, 2001 which the Council shall not take any action described during the two periods noted above:

- the appointment or removal from office of any officer of the municipality;
- the hiring or dismissal of any employee of the municipality;
- the disposition or purchase of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of disposal; and
- making any expenditures or incurring any other liability which exceeds \$50,000;

The restrictions on the actions identified in Section 275(3) (c) and (d) do not apply if the disposition or liability was included in the most recent budget adopted by Council before Nomination Day. The Act also provides for a municipality to take any action in the event of an emergency.

Council maintains the authority to delegate these certain powers to a person or body if the delegation is made prior to Nomination Day (August 19, 2022). Delegating this authority is typically provided to ensure the efficient management of the municipality.

Staff would like to continue applying the Delegation of Authority during the Restricted Acts to ensure that the Township can still act with efficiency during a potential Lame Duck period.

As an accountability measure, the Chief Administrative Officer and/or the Township's Director of Legislative Services/Clerk will write a report to the new Council in late 2022 indicating each use of the delegated authority by senior staff during the lame duck period.

Additionally, the Clerk (Returning Officer) will advise Council following Nomination Day and/or Final Voting Day in the 2022 Municipal Election if it is determined that the restricted acts clause of the Municipal Act has been engaged.

A copy of the draft by-law has been attached as Schedule "A" to this report, which will be presented at the May 24, 2022 Council Meeting.

FINANCIAL IMPLICATIONS:

The delegation itself has no effect on finances. The financial implications of all transactions undertaken via the delegated authority would be considered by the CAO in consultation with the Director of Finance/Treasurer.

INTER-DEPARTMENTAL COMMENTS:

This report was reviewed by the Treasurer/Director of Finance and the CAO.

CONCLUSION:

To protect the Municipal Corporation from being unable to conduct normal business and to ensure all needs are met, staff recommend Council pass a delegation of authority by-law to delegate powers to staff during a lame duck period. It is important to note, the by-law would only be effective during a lame duck period.

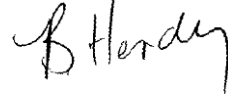
Should Council for the Township of West Lincoln not be deemed lame duck, the by-law will not be implemented. Passing such a by-law is considered best practice.

Prepared & Submitted by:



Joanne Scime
Director of Legislative Services/Clerk

Approved by:



Bev Hendry
CAO