



Report to: Development Services Committee

Meeting Date: May 13, 2019

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<b>SUBJECT:</b>	Recommendation Report - Markham's Register of Property of Cultural Heritage Value or Interest, Consideration of Revised Notification Procedures for a Listed Property
<b>PREPARED BY:</b>	Regan Hutcheson, Manager, Heritage Planning, ext. 2080
<b>REVIEWED BY:</b>	Ron Blake, Senior Development Manager, ext. 2600

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### **RECOMMENDATION:**

1. That the report entitled "Recommendation Report, Markham's Register of Property of Cultural Heritage Value or Interest, Consideration of Revised Notification Procedures for a Listed Property", dated May 13, 2019, be received;
2. Where a new property is added to the Markham Register of Property of Cultural Heritage Value or Interest by Council in the future, the property owner be notified in writing, and that such notification will include an educational package explaining the purpose and implications of being on the Register as a listed property.
3. And that Staff be authorized and directed to do all things necessary to give effect to this resolution.

### **PURPOSE:**

To give consideration to introducing a notification process when a property is added to the Markham Register of Property of Cultural Heritage Value or Interest (the "Register").

### **BACKGROUND:**

#### **Staff were asked to comment on notification matters related to the Register**

In November 2018, staff was requested to report back on whether a property owner should be informed prior to their property being listed by Council on the Markham Register.

#### **Ontario Heritage Act requires municipalities to have a register**

Section 27 of the *Ontario Heritage Act* (the "Act") indicates that a municipality shall keep a register of property situated in the municipality that is of cultural heritage value or interest. The register must contain all Part IV (individual designations) and may also include property that has not been designated, but that the Council believes may have cultural heritage value or interest. The Council must consult with its municipal heritage committee before including a property on the register or removing the reference to such a property from the register.

The Act also requires the municipality to keep a register of all heritage conservation districts designated under Part V and ensure that the register contains a map or description of the area of each such heritage conservation district.

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**Markham has an maintained an Inventory or Heritage Register since the 1970s**

Identifying properties of cultural heritage value is an essential part of a municipal heritage planning and conservation program, and Markham has been inventorying heritage properties since the late 1970s. Prior to 2008, the municipality had an “*Inventory of Heritage Buildings*” which had been reviewed by the Heritage Markham Committee and adopted by Council resolution in 1991 and 1993.

On January 22, 2008, Markham Council transferred the existing *Inventory* into a new *Markham Register of Property of Cultural Heritage Value or Interest* to comply with the requirements of the Act. The Register includes:

- “listed properties” exhibiting potential cultural heritage value or interest (non-designated properties);
- individually designated properties (under Part IV of the Act);
- properties located in a heritage conservation district (designated under Part V of the Act).

A comprehensive register of cultural heritage properties, including both designated and listed properties has many benefits to a municipality, including:

- Recognizes all properties of cultural heritage value in the municipality;
- Enhances knowledge and an understanding of the community’s cultural heritage
- Provides a document that can be consulted by staff and Council when reviewing development proposals or permit applications;
- Offers easily accessible information about cultural heritage properties for land use planners, property owners, developers, the tourism industry, educators and the general public; and
- Provides demolition protection for properties.

Requests to list a property on a municipal register may come from anyone, including the general public, property owners, municipal heritage committees, staff, resident associations or historical societies. The municipal heritage committee reviews requests and Council decides whether to place on the Register.

**Listed properties on the Register**

All additions to and removals of property from a Register must be approved by Council after consultation with the municipal heritage committee (i.e. Heritage Markham Committee). The Act only requires a description of the listed property “that is sufficient to readily ascertain the property”.

The owner of a listed property must provide the municipality with at least 60 days notice in writing of their intention to demolish the structure(s) on the property. This only applies if the property is already on the Register prior to the submission of a demolition permit application (under the *Building Code Act, 1992*). The Act also allows a council to require additional information to be submitted along with the notice of intention to demolish.

Beyond the requirements described above, the Act does not include any specific requirements related to listed properties, including any requirement for notification to owners before or after a property is added to the Register. Further, the primary purpose of adding listed properties to the Register is to provide temporary protection of heritage resources against demolition.

**Markham Official Plan has policies related to the Register**

The Markham Official Plan also has policies indicating that the City will maintain a Register which is accessible to the public, and that the Heritage Markham Committee will review any development application submitted affecting properties on the Register, including listed properties. The Official Plan also recognizes that there may be properties of cultural heritage interest that are not yet identified or designated, or included in the Register, but may still be worthy of conservation and inclusion on the Register.

To ensure consistency and fairness in the identification and evaluation of resources for inclusion in the Register, the Official Plan directs the City to utilize the criteria for determining cultural heritage value or interest established by provincial regulation under the Act. See Appendix “A” for Official Plan policies related to the Register.

**A rationale is provided as to why a property is being included in the Register**

Although detailed research and evaluation is not required to list a property, it is recommended by the Ministry of Culture that a brief rationale be provided as to why the resource may be important to the community. In Markham, our rationale for inclusion is based on two sources: a) the criteria set out in the Act under Ontario Regulation 9/06 (Criteria for Determining Cultural Heritage Value or Interest), and b) the criteria adopted by Heritage Markham for selecting properties for inclusion on the Register (see Appendices “B” and “C”).

**OPTIONS/ DISCUSSION:****Markham has an easily accessible Register**

Markham maintains a Register that is easily accessible to the public. Since 2008, the Register has been available on the Markham website, is fully searchable using many different criteria, and is updated in real time. Users can easily generate a summary of all listed properties in the municipality or can search by individual property address to determine the status of a property (listed or designated).

**Listing on the Register does not automatically trigger designation**

It is important to note that when a property is listed, it does not necessarily mean that it will be subsequently designated. In Markham, designation generally happens within one of three scenarios:

- 1) a property owner gives notice of intention to demolish the listed building and evaluation results in a recommendation to designate;
- 2) a listed property is included within a planning application and subsequent evaluation results in appropriate conservation measures and designation within the planning approval process; and

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- 3) a property owner wishes to take advantage of one of the City's heritage financial incentive programs, and requests evaluation and designation.

Designation in Markham has been for the most part reactive to situations where the listed resource is being impacted in some manner. For many years, staff has not actively sought out properties to designate.

### **Notification requirements for designating a property versus listing a property.**

#### Properties being considered for designation

Markham notifies owners of properties that are being recommended to Council for individual designation in a number of ways. Prior to going to Council, the matter is often discussed with the owner as part of a development application. Once a staff report is prepared recommending designation, the owner is again notified and directed to a copy of the report on the Development Services Committee agenda with the opportunity to attend and provide their views to Council.

If Council wishes to proceed to designate a property, the Act requires that a "notice of intention to designate" is served on the owner of the property, the Ontario Heritage Trust and is published in a local newspaper. The owner (or anyone else) is provided with 30 days in which to oppose the proposed designation, which would then be referred to the Conservation Review Board.

#### Properties being considered for listing in the Register

Markham does not notify owners when their property is being considered for, or placed on, the Register by Council as a listed property. Past Councils never felt the need to inform owners that they were being added to either the former Inventory or the current Register. There are three main reasons for this:

- 1) Red Flag - For listed properties, the Register functions as a "red flag" system so that the City is notified if alterations or demolition are proposed. At that point, staff can work with the owner to try and minimize any negative impact on the heritage resource, and if necessary, decide if the property warrants additional heritage protection (such as designation);
- 2) Consent is not required. The purpose of a register is to include all properties in a municipality believed to be of cultural heritage value or interest, and requiring the consent of owners before being placed on the register would be contrary to this objective.
- 3) Demolition Protection - If an owner is notified of the potential listing prior to Council officially placing the property on the Register, the owner may choose to immediately submit an application for a demolition permit under the *Building Code Act*. The *Ontario Heritage Act* demolition protection provision of 60 day notice would no longer apply. Under the *Building Code Act*, the City would have to process the demolition permit application within 10 business days. Any attempt to

designate the property including the necessary research, consultation with the municipal heritage committee and reporting to Council would be near impossible.

### **Other municipalities use a variety of approaches regarding notice**

Municipalities address the issue of notice as part of listing a property differently across the province. Some such as Barrie, Peterborough and Kitchener have chosen to notify the owner prior to taking the request for listing to Council. Others such as Oakville and Windsor notify owners after the listing is approved. Mississauga, Brampton and Ottawa are similar to Markham and do not consult with property owners.

Heritage staff has received feedback from staff in municipalities who do notify owners either before or after official listing. They have indicated that a number of owners do request removal from listing which has had an impact on staff resources. This includes appeal requests to be heard by Committees or Council which can occupy a fair amount of agenda time and usually with no change to the status of the property being listed. Staff is also aware of owners/developers in other municipalities who have requested demolition once advance notice of pending placement on the Register is given.

### **The City may wish to provide notification for future listed properties**

Three options for notification are presented below:

<b>Option</b>	<b>Comments</b>	<b>Staff Comment</b>
<b>1. No Notification</b>	<ul style="list-style-type: none"> <li>• reflects current process</li> <li>• owner usually only becomes aware of the listing if demolition or major alteration is proposed</li> <li>• a decision on demolition can be delayed for 60 days to allow the City to assess the heritage value of the property, and if necessary Council can consider designation.</li> <li>• owner can become aware if staff is contacted as to the heritage status of the property (i.e. if the property is for sale)</li> </ul>	<b>Supportive of maintaining</b>
<b>2. Notification prior to Heritage Markham and Council Consideration</b>	<ul style="list-style-type: none"> <li>• owner would be notified by staff that the property is being considered for listing and provided information</li> <li>• owner may attend Heritage Markham meeting and Development Services Committee/Council if in opposition</li> <li>• owner may choose to immediately submit a demolition application which would mean the demolition permit would not be</li> </ul>	<b>Not supportive of this process as it puts the heritage resource at risk</b>

	<b>delayed 60 days and instead would have to be processed within 10 business days.</b>	
<b>3. Notification after Council has approved the listing on the Heritage Register</b>	<ul style="list-style-type: none"> <li>• <b>adding the property to the Heritage Register would be reviewed by Heritage Markham and a staff report prepared for Development Services Committee/ Council.</b></li> <li>• <b>owner would only be notified by staff if Council approves the addition of the property to the Heritage Register</b></li> <li>• <b>Education information regarding the purpose and use of the Heritage Register would be provided to the owner and the reason why the property merited inclusion on the Register.</b></li> </ul>	<b>Supportive of Change to process</b>

**If notification is desired, staff recommends Option #3**

Even though the *Ontario Heritage Act* does not require any notification to owners when properties are listed on the Register, should Council wish to change the City's current procedure staff recommends that going forward, the owner should be notified after Council has added the property to the Register. Staff would recommend also providing the owner with an educational package explaining the purpose and implications of being on the Register as a listed property. The benefit of this approach is that it prevents an owner from seeking an immediate demolition permit (as the 60 day notice would now apply) and the owner would be aware of the listing and have information as to how it affects the property.

**FINANCIAL CONSIDERATIONS**

Minimal mailing costs and staff time associated with providing notice of Council's decision.

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

The protection of cultural heritage resources aligns with the Growth Management priority to achieve a quality community by ensuring the City of Markham's cultural heritage resources remain part of the fabric of the City, strengthening the sense of community.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

Building Standards Department, Legal Services Department

**RECOMMENDED BY:**

Biju Karumanchery, M.C.I.P., R.P.P.  
Director of Planning & Urban Design

Arvin Prasad, MPA, M.C.I.P., R.P.P.  
Commissioner of Development Services

**ATTACHMENTS:**

Appendix "A"	Markham Official Plan – Policies Related to the Register
Appendix "B"	Ontario Regulation 09/16,
Appendix "C"	Heritage Markham Criteria for Selecting Properties of Cultural Heritage Value

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## Appendix “A”

### Markham Official Plan- Policies Related to the Register

It is the policy of Council:

- 4.5.1.1 **To promote** *conservation* of Markham’s *cultural heritage resources* by:
- a) identifying *cultural heritage resources* and maintaining a *Register of Property of Cultural Heritage Value or Interest*
  - c) adopting and implementing policies and programs for the protection of these resources including:
    - ii. reviewing any application for development approval, building permit or demolition permit that directly affects a *cultural heritage resource* itself and *adjacent lands* to ensure new development, site alteration and additions are contextually appropriate and maintain the integrity of any *cultural heritage resources*;
- 4.5.1.3 **To consult** with and obtain the recommendation of Markham’s municipal heritage committee, Heritage Markham, on matters related to the conservation of Markham’s *cultural heritage resources* outlined in Section 4.5.1.1 of this Plan.
- 4.5.2.2 **To maintain** a *Register of Property of Cultural Heritage Value or Interest* which is accessible to the public and identifies properties to be conserved and maintained consistent with standards and guidelines adopted by Council. It is recognized. It is recognized that there may be properties of cultural heritage interest that are not yet identified or designated, or included in the Register but may still be worthy of *conservation* and inclusion in the Register.
- 4.5.2.4 **To ensure** consistency in the identification and evaluation of *cultural heritage resources* for inclusion in the *Register of Property of Cultural Heritage Value or Interest* and/or for individual property designation, by utilizing the criteria for determining cultural heritage value or interest established by provincial regulation under the Ontario Heritage Act and criteria included in Markham’s Heritage Resources Evaluation System.
- 4.5.3.8 **To circulate** any application for *development approval*, building permit or demolition permit which affects a property on the Register of Property of Cultural Heritage Value or Interest to Markham’s municipal heritage committee, Heritage Markham, for review, unless the review has been delegated to municipal heritage staff.



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**Appendix “B”  
Ontario Regulation 9/06****Ministry of Culture’s Designation Criteria**

The Government of Ontario on January 25, 2006 passed a regulation (O.Reg. 9/06) which prescribes criteria for determining a property’s cultural heritage value or interest for the purpose of designation. Municipal councils are permitted to designate a property to be of cultural heritage value or interest if the property meets one or more of the prescribed criteria.

<b>Criteria</b>
1. The property has design value or physical value because it:
○ Is a rare, unique, representative or early example of a style, type expression, material or construction method.
○ Displays a high degree of craftsmanship or artistic merit.
○ Demonstrates a high degree of technical or scientific achievement.
2. The property has historical value or associative value because it:
○ Has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community.
○ Yields, or has the potential to yield, information that contributes to an understanding of a community or culture.
○ Demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
3. The property has contextual value because it:
○ Is important in defining, maintaining or supporting the character of an area.
○ Is physically, functionally, visually or historically linked to its surroundings.
○ Is a landmark.

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**Appendix “C”**  
**Heritage Markham Criteria**  
**for Selecting Properties of Cultural Heritage Value**

**MARKHAM REGISTER OF PROPERTY OF CULTURAL HERITAGE VALUE  
OR INTEREST  
(formerly the HERITAGE MARKHAM BUILDING INVENTORY)  
CRITERIA FOR SELECTING PROPERTIES OF HISTORICAL  
OR ARCHITECTURAL VALUE IN MARKHAM**

**1. Historical Value**

A property or the building or other structure which stands on it, has historical value when one or more of the following criteria are satisfied:

- a) It dates from an early age in the development of the City's communities.
- b) It is an outstanding, representative, early, only or rare example of the work of an architect, builder, landscape architect, interior designer, sculptor, engineer or other environmental designer.
- c) It is associated with (an) owner/occupant(s) who had importance locally or had influence in a broader geographical area.
- d) It served as the place of an event or movement important locally or to a broader geographical area.
- e) It is associated with, and effectively illustrates, the City's social, cultural, political or economic history. Included in this criterion would be: 1) meeting places such as town halls, railway stations, schools and places of worship; and 2) farmsteads.
- f) It affords or protects a significant natural view associated with local history.
- g) It meets such other criteria as may be determined from time to time.

**2. Architectural Value**

A property, or the building or other structure which stands on it, has architectural value when one or more of the following criteria is satisfied:

- a) It represents an outstanding, typical, early, only or rare method of construction.
- b) It is an outstanding, typical, early, only or rare example of an architectural style, period or type of building or structure.
- c) It exhibits an outstanding, aesthetic exterior design.
- d) It functions as a landmark, terminates a view or contributes in design to a streetscape or plan.
- e) it provides the open space needed to allow for visual appreciation of a building, a structure or a group of buildings or other structures, that is deemed to have historical or architectural value by any of the above criteria.
- f) It offers an outstanding, typical, early, only or rare form of interior design.
- g) It meets such other criteria as may be determined from time to time.

**NOTES**

The above architectural criteria will be judged against the building's or the structure's surviving integrity. Integrity means a composite quality derived from original materials,

original workmanship, original location and intangible elements of feeling and association.

Buildings include houses, barns, driving sheds, churches, meeting houses, town halls, schools, railway stations, hotels, stores, post offices and industrial buildings. Other structures include fences, bridges and village pumps.

A property selected for inclusion in the Markham Register of Property of Cultural Heritage Value or Interest (formerly the "Heritage Markham Building Inventory") is considered to have architectural or historical value in relation to:

- a) all buildings and structures in the City, or
- b) the historical community in which it is located (e.g. rural, Victoria Square, the Thornhill area), or
- c) all buildings in a heritage conservation district or heritage conservation district study area, or
- d) such other context as may be defined from time to time.

The perception of members of the City's various communities has influence in the determination of historical and architectural value.

Heritage Markham     June 25, 1986

Revised as needed since 1986 to update terminology (eg. Town to City)