



Report to: Development Services Committee

Meeting Date: December 12, 2022

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<b>SUBJECT:</b>	Revised Procedures for Processing Heritage Permit Applications under the <i>Ontario Heritage Act</i>
<b>PREPARED BY:</b>	Regan Hutcheson, Manager, Heritage Planning ext. 2080
<b>REVIEWED BY:</b>	Stephen Lue, Senior Manager, Development, ext. 2520

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**RECOMMENDATION:**

- 1) THAT the report dated December 12, 2022, titled, “Revised Procedures for Processing Heritage Permit Applications under the *Ontario Heritage Act*”, be received;
- 2) That the proposed by-law titled, “A By-Law to Establish Procedures For Processing Permit Applications under the *Ontario Heritage Act*” attached to this report as Appendix “A”, be adopted;
- 3) That By-law 2002-276, as amended, being a by-law to impose fees or charges for services or activities provided or done by the City, be further amended to reflect the Heritage Permit application fees as noted in Appendix “B” attached to this report’;
- 4) And that Staff be authorized and directed to do all things necessary to give effect to this resolution.

**PURPOSE:**

This report recommends that Council adopt revised procedures for processing Heritage Permit Applications to address low-rise residential development and demolition in heritage conservation districts and for alterations, and demolition of individually designated properties. Further, applications fees for the above application types are included in a proposed amendment to the City’s Fee By-law.

**BACKGROUND:**

**As of November 28, 2022, the More Homes Built Faster Act, 2022 (Bill 23) eliminated the opportunity to use Site Plan Control approval and the associated fees for properties containing 10 or less residential units anywhere in the municipality**  
Under the *Ontario Heritage Act* (the “Act”), alterations to an individually designated heritage property and to properties located within a Heritage Conservation District require the City’s approval. Prior to the approval of Bill 23 by the Province on November 28, 2022, the City used Site Plan Control Approval under the *Planning Act* to process residential development applications in these situations. An owner was required to enter into a Residential Heritage Site Plan Agreement (the “Agreement”) with the City and post a financial security to ensure compliance with the completed work and the approved plans.

**Heritage Permit applications provide the opportunity to develop a replacement review and approval process for residential heritage designated properties**  
Previously, a Heritage Permit was considered a part of a Site Plan Agreement for development that included an addition to an individually designated property or new

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development and additions in a heritage conservation district. Heritage staff determined that to protect these designated properties and ensure appropriate development, the Heritage Permit provisions of the Act can be utilized.

Sections 33 and 34 of the Act authorizes Council to make decisions in respect to the consent of alterations to individually designated heritage property and to a demolition or removal of buildings or structures on a property. Section 42 of the Act authorizes Council to make decisions for the granting of permits for the alteration of a property, and for the erection, demolition or removal of any building or structure on property within a heritage conservation district. Council can choose to consent to the application with or without terms and conditions or refuse the application. Council can also delegate its power to consent to alterations to a municipal employee or official, which Markham Council has already delegated this authority to the Manager of Heritage Planning.

Although the City can no longer use a Site Plan Agreement and have it registered on title, it can use a Heritage Permit, complete with terms and conditions attached to any approval, and a financial security requirement to secure generally the same result.

This required change to Markham's review and approval process for these types of applications specific to residential properties with 10 or less units also provides an opportunity to address recent new process requirements introduced in the Act, including:

- Identifying the type of information and material that the municipality will need to receive by an applicant prior to considering the application and any information or material that has been prescribed by the province through Regulation (which has now been prescribed for Part IV alteration and demolition applications)
- Upon receiving all the information and material required, serving a notice on an applicant that the application is complete and the review period will begin

Although the application fees previously obtained through the Site Plan Approval process are no longer available, application fees for Heritage Permit applications can be introduced in the City's Fee By-law (2002-276, as amended). Section 391 of the *Municipal Act*, 2001 permits a municipality to pass a by-law for imposing fees or charges for services or activities provided by or done on its behalf.

## **OPTIONS/ DISCUSSION:**

### **A new by-law will further clarify and establish procedures for processing and administering Heritage Permit applications under the Act**

To address the recent changes brought about by the approval of Bill 23, Heritage staff have prepared a comprehensive procedural by-law for the administration of Heritage Permit applications (Appendix "A"). Heritage staff consulted with heritage staff from other municipalities and reviewed materials provided by the Cities of Ottawa, Hamilton, Oakville and Kingston in the preparation of this by-law. The by-law provides direction on the following subject matters:

<b>Definitions</b>	Offers a clear explanation of defined terms used in the by-law
<b>No Application Required</b>	Identifies the type of work or alteration where a Heritage Permit application is not required
<b>Minor Heritage Permit Application and Process</b>	Used for small <i>alteration</i> projects such as those that generally comply with approved or accepted heritage policies and guidelines, and provides examples and explains the minimum application submission requirements (further defined in Schedule “A” and the review process (primarily staff))
<b>Major Heritage Permit Application and Process</b>	<p>Required for more substantial <i>alteration</i> projects that do not include the type of projects identified under Minor, and may include new residential units in heritage districts and alterations, additions and accessory building on designated heritage properties</p> <p>Explains the minimum application submission requirement (further defined in Schedule “B” and the review process which may include the Heritage Markham Committee)</p> <p>Council must consider any refusal recommendation</p>
<b>Current Delegation for the Approval of Permits</b>	<p>Confirms that Council has previously delegated its power to grant permits for alteration of property to the Manager, Heritage Planning (the “Manager”) (By-law 2007-67), but not to refuse an alteration or a demolition permit</p> <p>Heritage Markham is provided a summary of delegated decisions</p>
<b>Additional Delegation and Related Process</b>	<p>Provides further delegation to the Manager to request, receive, review and accept or reject plans, information, reports and any other documentation required to make a decision, when an application is made under the Act to alter, erect, demolish</p> <p>Establishes any policies, guidelines, practices or procedures necessary to enact the Permits in accordance with the terms of this by-law, and prescribe any forms necessary</p>
<b>Requirements Related to Heritage Permit Approvals</b>	<p>Provides further direction on standards conditions related to the review and approval of any Permit including: allowing a site visit, requiring approval before starting work, displaying the Heritage Permit Card on site, allowing an inspection of work and abiding by any terms and conditions imposed by the Permit</p> <p>Provides a one-year timeframe to complete the Permit work with the opportunity for a one-year extension</p>
<b>Emergency Situations</b>	Allows the Manager, Heritage Planning to approve alterations with or without a Permit in certain emergency situations.

<b>Application Fees</b>	Identifies that application fees are required and are included in the City's Fee By-law (2002-276, as amended) with no application or administrative fees for Minor Applications
<b>Financial Security</b>	Requires a financial security for Major Heritage Permits to ensure compliance with approved plans outlined in the Permit. Explains how to obtain the release of the security upon completion of the work or abandonment of the project
<b>Demolition or Removal</b>	Explains the minimum submission requirements (further defined in Schedule C'') for a Heritage Permit application requesting demolition and the review process (Heritage Markham review is necessary and Council considers all demolition applications).
<b>Heritage Permits and Land Use Planning Applications</b>	Confirms Heritage Markham review role in planning applications. Explains that the site plan approval process combined with the Heritage Permit will continue to be used for applications concerning new construction, additions or alterations on residential designated heritage property involving more than 10 dwelling units and non-residential designated heritage property
<b>Council Retains Ultimate Authority</b>	Clarifies that at any time, Council may, after notifying the Manager, exercise any authority that is delegated to the Manager
<b>Appeals of Heritage Permits</b>	Provides that notice of any appeal to the Ontario Land Tribunal will be on the Council agenda as correspondence
<b>Other Approvals</b>	Clarifies that notwithstanding any Heritage Permit approval, an owner must still obtain any other necessary permits or approvals from the City or other authorities
<b>Offense and Restoration Provisions</b>	Explains the provisions related to offences under the Act and actions that can be undertaken
<b>Administration and Effective Date</b>	Notes the Manager administers the by-law and is effective upon adoption by Council

### **Requests for Demolition will now require a Heritage Permit application**

The current practice requires an owner to notify the municipality in writing of any plans to demolish or remove a building or structure on a designated heritage property. There is no application form or submission requirements. The new by-law will require the submission of a Heritage Permit application for demolition, with prescribed materials and information, the applicable application fee, and the provision of a formal notice of complete application from the City. Council will continue to render decisions on demolition after consulting with its municipal heritage committee.

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**The City's Fee By-law identifies the new fees associated with different types of Heritage Applications**

Application fees similar to the former fees associated with Site Plan Approval are identified for projects in heritage conservation districts (new dwelling units, additions, accessory buildings, parking areas) and for alterations or additions to buildings on individually designated properties. The Fee By-law also includes new fees for demolition of the primary building or structure and accessory buildings, and vary depending of the properties cultural heritage value or status identified in a heritage conservation district plan.

**Approval of this new approach will require a number of further actions**

Following approval, Heritage Permit application forms will be modified to reflect Minor and Major applications including the inclusion of minimum submission requirements, formalizing the internal submission and circulation process for these applications, and revising the City's website to reflect the new approach and processes. Heritage Markham Committee will be apprised of the changes.

**FINANCIAL CONSIDERATIONS**

New fees for Heritage Permit applications are to be included in By-law 2002-276, as amended.

**HUMAN RESOURCES CONSIDERATIONS**

Not Applicable.

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

The proposed process changes have been evaluated in the context of the City's strategic priorities, including Growth Management and Municipal Services.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

Reviewed with Legal Services staff. The proposed new process is to be presented to the Heritage Markham Committee on December 14, 2022.

**RECOMMENDED BY:****RECOMMENDED BY:**

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Darryl Lyons, M.C.I.P., R.P.P.

Acting Director of Planning and Urban Design

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Arvin Prasad, M.C.I.P., R.P.P.

Commissioner of Development Services

**ATTACHMENTS:**

Appendix 'A' Proposed By-law - A By-Law to Establish Procedures For Processing Permit Applications under the *Ontario Heritage Act*

Appendix 'B' Proposed Amendment to the Fee By-law 2002-276