

SUBJECT: Amendment to By-law 2023-20 (A By-Law to Establish Procedures for Processing Permit Applications under the *Ontario Heritage Act*) and By-law 2002-276, as amended.

PREPARED BY: Regan Hutcheson, Manager, Heritage Planning, ext 2080

REVIEWED BY: Stephen Lue, Senior Development Manager, ext. 2520

RECOMMENDATION:

- 1) THAT the report dated September 26, 2023, titled, “Amendment to By-law 2023-20 (A By-Law to Establish Procedures for Processing Permit Applications under the *Ontario Heritage Act*) and By-law 2002-276, as amended”, be received;
- 2) That the proposed by-law amendment to By-law 2023-20 attached to this report as Appendix “A”, be adopted;
- 3) That By-law 2002-276, as amended by By-law 2023-21, 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 an amendment to the procedures for processing Heritage Permit Applications to address the relocation of a heritage building and retention of such as resource in a new development/plan of subdivision. 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 “Site Plan Agreement”) with the City and post a financial security to ensure compliance with the completed work and the approved plans. The Site Plan Agreement was also considered to be the Heritage Permit requirement as per the Act.

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 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 of the Act authorizes Council to make decisions in respect to the consent of alterations to individually designated heritage property that may affect the property's heritage attributes. Section 34 of the Act authorizes Council to provide consent to demolition or removal of such buildings or structures. Section 42 of the Act authorizes Council to grant 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.

Council approved by-laws in December 2022 outlining procedures for the enhanced processing of Heritage Permits and associated fees.

Although the City can no longer use a Site Plan Agreement involving development of less than 10 residential dwellings, it can still use the issuance of Heritage Permit, complete with terms and conditions attached to any approval, and a financial security requirement to secure a similar result. Note, the Heritage Permits are not registered on title so would not bind future owners. By-law 2023-20 provides comprehensive guidance on Heritage Permit procedures and processing. Application fees for Heritage Permit applications were also introduced in the City's Fee By-law (2002-276, as amended by By-law 2023-21). 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:**An amended procedural by-law will further clarify and establish procedures for the use of Heritage Permits for relocated heritage buildings and those resources to be retained in new development**

Since the site plan approval process is not available in certain situations due to updates in the legislation, staff are recommending changes to By-Law 2023-20 to allow the Heritage Permit application process to be used to ensure retention and/or restoration of heritage resources.

Staff recommend that By-Law 2023-20 be amended to clarify that the Heritage Permit application process be used to retain heritage buildings within new development areas. In addition, staff recommend that the By-Law 2023-20 be amended to allow Heritage Permits to be issued for heritage buildings that are intended to be relocated. The existing

Heritage Permit application process only permits Heritage Permits to be issued for designated heritage properties. An exception to this will need to be created for Heritage Permits for heritage buildings being relocated. In this scenario, the designation will only occur after the heritage building has been relocated from its original location to its new location. Examples include where an applicant has made arrangements to move a heritage building relocated to a new lot at the Markham Heritage Estates subdivision.

To address these situations, staff recommend that Council approve the amendment to By-law 2023-20 (see Appendix “A”). The following is a summary of the proposed amendments.

Part V - Major Heritage Permit Applications and Process, Clause 10	Introduces two additional circumstances where a Heritage Permit can be utilized subject to certain administrative procedures outlined in new attachments to the by-law (Schedules ‘D’ and ‘E’) • Relocation of a Heritage Building including additions, alterations, accessory buildings, site layout and landscaping on a designated heritage property as per Schedule ‘D’, • Retention of a Heritage Building including additions, alterations, accessory buildings, site layout and landscaping on a designated heritage property as part of a new development or on a new lot or block within a plan of subdivision as per Schedule ‘E’
Part XIII – Heritage Permits and Land Use Planning Applications, Clause 39	An administrative revision due to revised Planning Act legislation and City procedures involving site plan control approval and no longer using a site plan agreement. The original clause indicated that the Heritage Permit requirements would be included in the Site Plan Agreement in certain circumstances. This has now been revised to remove the reference to a Site Plan Agreement.
Schedule ‘D’	Schedule ‘D’ is added to By-law 2023-20 to provide process requirements for a Heritage Building to be relocated in order to use a Major Heritage Permit Application. Where the City has approved a building relocation, Council may enact a “conditional” Designation By-Law describing both the original location of the Heritage Building and the new location where it will be moved (to be noted in the by-law recitals). The Designation By-law will not be in effect and registered on title until such time that the Heritage Building is relocated to the lot being acquired and will not be registered on the original site. This will allow the Heritage Permit application process to be used.
Schedule ‘E’	Schedule ‘E’ is added to By-law 2023-20 to provide process requirements for a Heritage Building to be incorporated into a plan of subdivision or as part of an approved development scenario. So

	as not to register the required Designation Bylaw against the entire development property, the applicant will be required to provide an R-Plan to describe the proposed heritage property that can be used to register the Designation By-law on its specific location. This will then allow a Heritage Permit application process to be used.
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An amendment to the City's Fee By-law further clarifies fees associated with different types of Heritage Applications

The previous amendment to By-law 2002-276 (the City's Fee By-law) introduced heritage permit application fees for projects that were formerly associated with Site Plan Approval applications in heritage conservation districts (i.e. new residential construction, additions to buildings, accessory buildings, parking areas) and for alterations and additions affecting individually designated properties. The amendment proposed in this report does not modify the identified fees but provides guidance in the fee schedule to help clarify how fees are to be calculated on multi-unit developments in heritage districts – the application fee will be calculated per building and not per unit. In addition, the revised fee schedule identifies an application fee for a heritage building being relocated to a new lot (i.e. Markham Heritage Estates subdivision) or such building being retained in a plan of subdivision on a new lot or within a new development scenario. It is recommended that By-law 2023-21 (the bylaw adopted by Council to introduce heritage permit fees in December 2022) be repealed and that a new fee schedule be approved (see Appendix 'B').

FINANCIAL CONSIDERATIONS

A revised fee schedule for Heritage Permit applications to be included in By-law 2002-276, as amended, is proposed.

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:

The report was reviewed by Legal Department. The identified changes were presented to the Heritage Markham Committee on September 13, 2023.

RECOMMENDED BY:

Giulio Cescato, M.C.I.P., R.P.P.
Director of Planning and Urban Design

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

ATTACHMENTS:

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- Appendix 'A' Proposed By-law Amendment - A By-law to Amend Procedures for Processing Permit Applications under the *Ontario Heritage Act*
- Appendix 'B' Proposed Amendment to the Fee By-law 2002-276