



Report to: Development Services Committee

Meeting Date: March 20, 2017

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**SUBJECT:** Heritage Markham Committee - Conflicts of Interest  
**PREPARED BY:** Regan Hutcheson, Manager, Heritage Planning  
Kiran Saini, Acting Manager, Access & Privacy  
Laura Gold, Council/Committee Coordinator

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**RECOMMENDATION:**

- 1) That the staff report entitled “Heritage Markham Committee – Conflicts of Interest” dated March 20, 2017, be received; and,
- 2) That Improvements 1, 2 and 3, as outlined in this report be adopted and staff be directed to return with:
  - a. a revised Terms of Reference for the Heritage Markham Committee;
  - b. Appointment Committee guidelines for the Heritage Markham Committee;
  - c. Code of Conduct for all City of Markham advisory committees and boards;and further,
- 3) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

**PURPOSE:**

The purpose of this report is to provide Development Services Committee with information on the current composition of the Heritage Markham Committee and the applicable conflict of interest legislation. This report will also suggest amendments with regards to improving the conflict of interest declaration process for the Heritage Markham Committee.

**BACKGROUND:**

At the December 5, 2016 Development Services Committee Meeting staff was requested to review conflict of interest issues related to Heritage Markham Committee members. The request was made based on a recent increase in the number of conflicts of interest being declared at Heritage Markham Committee meetings, in particular, conflicts of a financial nature relating to a member’s profession.

**DISCUSSION:**

The discussion within this report is divided into two sections: 1) the current composition of the Heritage Markham Committee; and, 2) Conflict of Interest Legislation/Procedures. The discussion is followed by three improvements for Council’s consideration.

**1. Current Composition of the Heritage Markham Committee**

The Heritage Markham Committee is comprised of three public representatives from the following communities: Thornhill, Unionville and Markham Village; one representative from Buttonville or the rural area; and three Members of Council. In general, most Heritage Markham Committee members live in a heritage home and/or community, and/or have special heritage expertise and knowledge.

**Current Committee Appointment Process**

Markham's Board and Committee Appointment Policy, approved by Council on March 22, 2011, governs the City's appointment process, including appointments to the Heritage Markham Committee. Prospective members are interviewed by the Mayor and Regional Councillors and are appointed by Council. An overview of the process undertaken to fill a vacancy on the Heritage Markham Committee is included, as **Appendix 'A'** of this report.

**Desired Qualification for Heritage Markham Members**

According to the Ontario Ministry of Culture, successful heritage committees have members: with an interest and/or expertise in heritage conservation; knowledge or understanding of local heritage resources/history; diverse skill sets; and that are from different geographical areas. A list of the expertise the Ministry recommends heritage members have is included, as **Appendix 'B'** of this report.

The City's terms of reference for Heritage Markham does not identify a list of attributes a member should possess, but indicates that the function of the committee is to advise and assist Council in matters relating to heritage conservation districts, individual buildings, and archaeological resources as well as to encourage and promote heritage conservation, and to assist property owners in undertaking appropriate conservation maintenance practices.

City of Markham By-law Number 54-91 in respect to the operation of Heritage Markham indicates that members should have an interest in or knowledge of subjects such as Markham's local history, restoration, architecture, heritage planning, financial incentives and/or other subject areas considered by Council to be appropriate for the Heritage Markham Committee.

**Other Municipalities' Heritage Appointment Practices and Member Qualifications**

Staff contacted a number of other municipalities to obtain information of the issue of municipal heritage committee membership criteria and appointments (see **Appendix 'C'**).

Based on the survey findings, in most cases, a committee of Councillors either reviews or interviews candidates prior to submitting recommended names for full Council approval with coordination provided by the Clerks Department. In two municipalities (Oakville and Kitchener), Heritage staff provides input into the process. In Kitchener, the nominating committee includes five community members. In Toronto, the heritage committee appointments are undertaken by a separate jury.

Based on the survey findings, all the municipalities have a list of qualities or skills which are desirable for heritage committee members. These criteria are often identified in the committee's terms of reference and include demonstrated interest, knowledge or expertise in:

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- Heritage matters/ local history within the community;
  - Heritage related research;
  - Architecture, design;
  - Restoration, conservation, construction approaches; and,
  - Interpreting heritage guidelines or plans.

Generally, a member must possess expertise, experience, dedication and commitment to the committee's mandate. Kitchener is the only municipality that specifically endeavors to appoint 5 to 7 "sector specific" members including an architect, a building industry rep (developer, renovator, tradesperson), a professional planner and a historian (teacher, historical society member).

## **2. Conflict of Interest Legislation**

### **The Municipal Conflict of Interest Act**

In accordance with the Municipal Conflict of Interest Act, when a member has a direct or indirect pecuniary interest in a matter before Heritage Markham Committee, it is their responsibility to declare the conflict. The conflict and the nature of the conflict should be declared prior to any consideration of the matter. After a member has declared a conflict they shall not participate in any discussion on the matter or vote on any questions on the matter. They should also not attempt in any way before, during or after the meeting to influence the vote. Additionally, Section 5(2) of the Municipal Conflict of Interest Act requires members to leave the meeting room if the matter is being discussed in a closed meeting.

### **City of Markham Advisory Committee Code of Ethics**

All Committee Members sign a Code of Ethics when they submit their application to serve on a City Committee. The Code of Ethics is included, as **Appendix 'D'** to this report. The Legislative Services Department plans to bring forward a Code of Conduct for all City of Markham advisory committees and boards in the summer of 2017.

### **Heritage Markham's Current Process for Declaring a Conflict of Interest**

Currently, when a member declares a conflict of interest on a matter listed on an agenda due to their professional involvement in the project (or for being an employee of the entity hired by the client), the process as approved by the Legal Department and adopted by Heritage Markham in 1991, is as follows:

- The member provides a presentation on the application, if required;
- Any technical questions on the application from other members of the Committee are answered;
- Once all questions are addressed, the member is asked to leave the room while Heritage Markham discusses the application and formulates a recommendation. In practice, however, the member usually remains in the room but not at the committee table; and,
- Once the Committee has approved a recommendation, the member is invited to rejoin the discussion and proceed with other business.

Members declaring a conflict of interest for all other reasons follow the process outlined above in the accordance with the Municipal Conflict of Interest Act.

### **Other Municipalities' Approach to Professional Conflicts Involving Committee Members**

Staff contacted a number of other municipalities to obtain information on the approach used when there is a conflict due to the member's involvement in a professional capacity (Staff's research has been included as **Appendix 'C'**).

In general, staff found that municipalities have conflict of interest policies which are usually in their Procedural By-law, and most heritage committee conflict of interest declarations involve the members' own property.

As to the procedure for members involved in an application in a professional capacity, two of the municipalities (Oakville and Kingston) follow a similar process to that used in Markham – the member is permitted to present the material and answer questions, and then has no other role in the proceedings. Three of the municipalities would not allow the member to participate in any capacity.

Most of the surveyed municipalities do not require the member to leave the room given that the meeting is considered open to the public, but the member is required to leave the committee table during the deliberations and vote. Toronto, Kitchener and Kingston require the member to leave the room.

### **Heritage Markham Conflict of Interests from 2014 to 2016**

**Appendix 'E'** illustrates the number of conflict of interests declared at Heritage Markham Committee meetings between 2014 and 2016. There were a total of 93 conflicts of interest declared during this time period. However, when counting one conflict of interest per application the total number of conflicts of interests in this time period decreases to 50. The decrease in the number of conflicts being declared when counting one conflict per application is due to a number of contentious applications being brought before the Heritage Markham Committee multiple times prior to the Committee making a decision on the matter.

In 2016, the Heritage Markham Committee reviewed 272 applications and of those there were 16 declared 'financial' conflicts of interest which represents approximately 6% of applications.

## **CONCLUSION**

Based on the information provided in the discussion section, there are two key issues:

### Issue 1

Whether it is desirable to have Heritage Markham members employed in heritage related occupations on the committee notwithstanding that from time to time these individuals may have conflicts of interest due to their professional employment.

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### Comment

Both the Ministry of Culture and the feedback from other surveyed municipalities support the importance of having municipal heritage committee members who possess expertise, experience, dedication and commitment to the local heritage conservation program. It is often beneficial to have members who have hands-on, real world experience in such subjects as architecture, renovation and the building trades. However, from time to time, these individuals may have to declare conflicts. The existing Heritage Markham policy provides a good balance between attracting professionals who have valuable heritage knowledge and interest, and who can contribute to the committee's work while not preventing them from undertaking heritage related consulting work and affecting their ability to make a living.

Assuming the City wishes to continue its efforts to attract the best possible candidates for the Heritage Markham Committee, it should not discourage applications from those individuals in heritage related occupations who may have to declare occasional conflicts.

### Issue 2

Whether the City's Conflict of Interest policies or procedures for Heritage Markham need to be revised in any way to address conflicts due to a member's professional involvement in an application which is before the committee.

### Comment

The existing Heritage Markham policy provides a good balance between attracting professionals who have valuable heritage knowledge and interest and can contribute to the committee's work whilst not preventing them from undertaking heritage related consulting work and affecting their ability to make a living. However, some minor policy/procedure adjustments could be implemented to limit the active participation of members with professional conflicts.

## **SUGGESTED IMPROVEMENTS TO ADDRESS CONCERNS:**

To address the above noted concerns, staff is recommending the following improvements:

### **Improvement 1**

Revise the Heritage Markham Terms of Reference to better identify the characteristics or attributes desired for committee members so the Appointment Committee fully understands the desired qualifications.

### **Improvement 2**

Require the Appointment Committee to enquire as to the extent to which a candidate employed in a heritage-related occupation expects to be undertaking local heritage work and whether there are others in his or her organization who could present before the heritage committee in the place and stead of the member, who will still declare a conflict if he or she were to be appointed to the Committee.

### **Improvement 3**

Incorporate the principles already found in the Heritage Markham Members Occupation-Related Conflict of Interest Policy into the new Code of Conduct that is being developed by

the Legislative Services Department in the summer of 2017 and ensure that the new Code of Conduct clearly outlines the responsibilities of members who have a direct or indirect pecuniary interest in agenda items and the process for how these will be handled.

**FINANCIAL CONSIDERATIONS**

Not applicable

**HUMAN RESOURCES CONSIDERATIONS**

Not applicable

**ALIGNMENT WITH STRATEGIC PRIORITIES:**


This report aligns with Council's strategic priority of an engaged, diverse and thriving City.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

Legislative Services Department, Heritage Section of Planning and Urban Design Department, and Legal Department

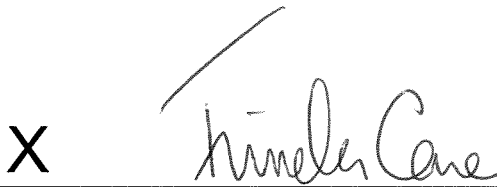
**RECOMMENDED BY:**

X 

 Kimberley Kitteringham  
City Clerk

X 

Jim Baird, M.C.I.P., R.P.P.  
Commissioner, Development Services

X 

Trinela Cane  
Commissioner, Corporate Services

**APPENDICES:**

**Appendix 'A'** - Markham's Board and Committee Appointment Policy

**Appendix 'B'** - Ministry of Culture, Municipal Heritage Committee - Membership

**Appendix 'C'** - Survey of Other Municipalities

**Appendix 'D'** - Markham's Code of Ethics

**Appendix 'E'** - Heritage Markham Committee Conflict of Interest Statistics

File Path:

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**Appendix A****Markham's Board and Committee Appointment Policy**

In accordance with the City's Board and Committee Appointment Policy, the following process is undertaken to fill a vacancy on the Heritage Markham Committee:

- Vacancies are advertised and interested residents submit their applications to the Clerk.
- Applicants are selected for an interview based on their knowledge, experience and expertise with heritage properties and areas.
- Interviews are coordinated by the Legislative Services Department and conducted by an Appointment Committee, which is comprised of the Mayor and all four Regional Councillors. The applicants are evaluated based on their knowledge and expertise of heritage matters.
- The Appointment Committee recommends candidates for appointment through the General Committee to Council for final approval.

**Appendix B**  
**Your Community-Your Heritage-Your Committee**  
**A Guide to Establishing and Sustaining an**  
**Effective Municipal Heritage Committee**  
**Ontario Heritage Tool Kit, Ministry of Culture, 2006**

According to the Ontario Ministry of Culture, members of heritage committees should have expertise in one or more of the following areas:

- Understanding of heritage conservation
- Knowledge of historical research
- Expertise in trades-work
- Expertise in architectural history
- Knowledge of land planning policies and regulations
- Understanding of municipal procedures and legislation
- Effective marketing strategies and approaches
- Knowledge of legal issues
- Research and writing skills



## **Appendix C**

### **Survey of Other Municipalities**

#### **APPENDIX “C”**

**Who vets the candidates for the municipal heritage committee and makes the recommendation to Council on proposed members?**

<b>Municipality</b>	<b>Comment</b>
Caledon	<ul style="list-style-type: none"> <li>- former system- Heritage staff and two Councillors would interview applicants and make recommendations to Council</li> <li>-current system – there are no interviews, Heritage Staff are not involved. Clerks forward the candidates to Council.</li> </ul>
Kingston	<ul style="list-style-type: none"> <li>- a Nominations Committee, comprised of City Councillors review the applications and make recommendations to Council. Heritage staff is not involved.</li> </ul>
Kitchener	<ul style="list-style-type: none"> <li>- Nominating Committee comprised of five community members and at least 2 Councillors</li> <li>- staff is present as a resource</li> <li>- citizen applications are reviewed for all advisory committees preparing a suggested list of candidates for Council approval</li> </ul>
Oakville	<ul style="list-style-type: none"> <li>- Heritage staff provides feedback on candidates</li> <li>- Sub-Committee of Council interviews and makes recommendations led by the Clerk Dept</li> <li>- Approval is by full Council</li> </ul>
Ottawa	<ul style="list-style-type: none"> <li>- Clerks office advertizes the positions, reviews the applications, organizes the process</li> <li>- Councillors conduct interviews who make recommendations</li> <li>- Council appoints the members</li> </ul>
Richmond Hill	<ul style="list-style-type: none"> <li>-Heritage staff do not have a role in committee member selection</li> <li>- completely managed by Clerks Dept</li> <li>- Clerks does not circulate any applicant info to Councillors</li> <li>- final appointment is made by Council on Clerk’s recommendation</li> </ul>
Toronto	<ul style="list-style-type: none"> <li>- Manager of Preservation Services reviews application submissions and selects potential candidates to present to a Jury. The Jury (comprised of a person from each: 1) Heritage Toronto, 2) the ACO and 3) a former member of Toronto Preservation Board) reviews applications, prepared a short list and conducts interviews.</li> </ul>
Vaughan	<ul style="list-style-type: none"> <li>- Heritage staff do not participate</li> <li>- applications are submitted to Clerks and Council appoints the members.</li> </ul>

**Does your municipality have a list of qualifications, qualities or desired skill-sets that your municipality uses to help in the selection of future heritage committee members?**

Municipality	Comment
Caledon	- members shall have the following qualifications: <ul style="list-style-type: none"> <li>• resident/ not an employee of the Town</li> <li>• demonstrated interest, knowledge or expertise in heritage matters with the community</li> <li>• a passion for heritage</li> <li>• relevant training or professional expertise in heritage fields</li> <li>• expertise in such disciplines as archaeology or architecture</li> </ul>
Kingston	- members of the public that represent a balanced cross-section of local interests and perspectives and that demonstrate an understanding and appreciation of Kingston's cultural heritage resources - desired qualities include skills/knowledge in: <ul style="list-style-type: none"> <li>• Cultural heritage, local history and historical research</li> <li>• Architectural history</li> <li>• Architectural heritage conservation approaches and trades-work</li> </ul>
Kitchener	- committee must include 5-7 sector specific members, 2-3 members at large and 1 rep from each heritage district - for sector specific positions, Council will endeavour to appoint one rep from each of the following areas: <ul style="list-style-type: none"> <li>• architect</li> <li>• building industry (developer, renovator, expert)</li> <li>• professional planner</li> <li>• historian (teacher, historical society member)</li> <li>• museum specialist or conservator</li> <li>• landscape specialist</li> <li>• archaeologist</li> </ul> - Qualities also to include: a demonstrated interest and participation in heritage matters, academic qualifications, work experience and professional expertise.
Oakville	- members need to work to achieve a common approach which is reasonable and practical in promoting and facilitating heritage planning, preservation and conservation in Oakville - should possess expertise, experience, dedication and commitment to the mandate - qualifications include : <ul style="list-style-type: none"> <li>• knowledge and/or interest of heritage resources</li> <li>• residency/ no criminal offence convictions</li> </ul> - attempts are made to include representatives from local historical associations and impacted organizations (i.e BIA)
Ottawa	Some expertise in heritage matters is used as a screening tool to obtain an interview.
Richmond Hill	- uses the Committee's Terms of Reference

	<ul style="list-style-type: none"> <li>- applicant must have knowledge and expertise related to mandate</li> <li>- seeking a broad based range of heritage expertise and knowledge.</li> </ul>
St Catherines	<ul style="list-style-type: none"> <li>- heritage skills and experience including but not limited to:               <ul style="list-style-type: none"> <li>• Heritage related research</li> <li>• Architecture, design</li> <li>• Restoration, conservation, construction</li> <li>• History, genealogy, planning, geography</li> <li>• Experience interpreting heritage guidelines or plans</li> <li>• Demonstrated interest in heritage matters through membership in local or provincial heritage organizations is desirable</li> </ul> </li> </ul>
Toronto	<ul style="list-style-type: none"> <li>- City of Toronto has its own legislation (municipal code) which identifies eligibility criteria, composition and qualifications for civic appointments.</li> </ul>
Vaughan	<ul style="list-style-type: none"> <li>- application form indicates that experience in architectural history and heritage is an asset</li> <li>- members must demonstrate a strong interest in the complexities and challenges of heritage preservation, and have a special interest or knowledge in one or more of the following:               <ul style="list-style-type: none"> <li>• architecture</li> <li>• cultural landscapes</li> <li>• urban design and planning</li> <li>• natural heritage</li> <li>• land development, law</li> <li>• local history</li> <li>• culture and education</li> </ul> </li> <li>- Council has appointed both field-related experts, non-heritage architects and regular citizens with a passion or interest in heritage</li> <li>- members are paid (\$50/meeting attended); Chair (\$60)</li> </ul>

**Does your municipality have a policy addressing how a heritage committee member is to conduct themselves if they have a conflict related to an application because they are working for the client and expected to represent the client at the heritage meeting?**

<b>Municipality</b>	<b>Comment</b>
Caledon	<ul style="list-style-type: none"> <li>- members are subject to the Procedural By-law and Conflict of Interest Act</li> <li>- have not experienced this issue yet (professional involvement)</li> <li>- members have had to declare a conflict when their own property is on the agenda. They are allowed to stay in the room as meetings are considered open to the public.</li> </ul>
Kingston	<ul style="list-style-type: none"> <li>- members who are involved professionally in an application may present and answer questions, but must physically leave the room during committee discussions so as not to influence the outcome.</li> <li>- these members must not communicate with other committee members about the matter before, during or after the meeting.</li> </ul>
Kitchener	<ul style="list-style-type: none"> <li>- the member must disclose the interest (real or perceived) and leave the room for the duration of time the matter is being considered. Also cannot influence the voting before, during or after the meeting</li> <li>- members who own property and are seeking approvals are permitted to address the committee, but cannot take part in the deliberations or vote.</li> </ul>
Oakville	<ul style="list-style-type: none"> <li>- they have had situations where members have to declare conflicts when they or their firm is presenting to the committee or if the member is representing themselves for a permit application.</li> <li>- the member is allowed to present and answer questions and then sits in the audience and does not participate in the debate or vote. There is no requirement to vacate the room.</li> </ul>
Ottawa	<ul style="list-style-type: none"> <li>- a member who is a heritage consultant involved in a file cannot speak to it at all, and must not be seated at the table when it is discussed. They do not have to leave the room.</li> </ul>
Richmond Hill	<ul style="list-style-type: none"> <li>- a member must abide by same rules as Council</li> <li>- a member must declare any perceived conflict of interest and vacate the room</li> </ul>
Toronto	<ul style="list-style-type: none"> <li>- standard conflict of interest policy, but if the person self identifies as having a conflict with an application, they do leave the room</li> <li>- have not had an issue with heritage consultants who are board members (at present they have one member who is a consultant that has chosen not to take on work involving Toronto heritage properties)</li> <li>- they have had members in the past who are consultants but part of larger firms which have the ability to have others present before the Board.</li> </ul>
Vaughan	<ul style="list-style-type: none"> <li>- a member must abstain and not participate in the discussion</li> <li>- no requirement to leave the room</li> </ul>

## **Appendix D**

### **Code of Ethics**



#### **IV. CODE OF ETHICS**

Recognizing responsibilities to the people, desiring to inspire public confidence and respect for government and believing that honesty, integrity, loyalty, justice, and courtesy form the basis of ethical conduct, an appointed member:

- Puts public interest above individual group or special interest and considers the position as an opportunity to serve society.
- Recognizes that government service is a public trust that imposes responsibility to conserve public resources, funds and materials.
- Never offers, gives nor accepts any gifts, favours, or service that might tend to influence the discharge of duties.
- Never uses the position to secure advantage or favour for self, family or friends.
- Never discloses confidential information gained by reason of position, nor uses such information for personal gain.
- Never makes recommendations, while a member of a Committee, on any matter that involves a business in which there is a personal direct or indirect financial interest.

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Date

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Signature

Please return this form to the Clerk's Office, Markham Civic Centre.

## Appendix E

### Heritage Markham Committee Conflicts of Interest Stats

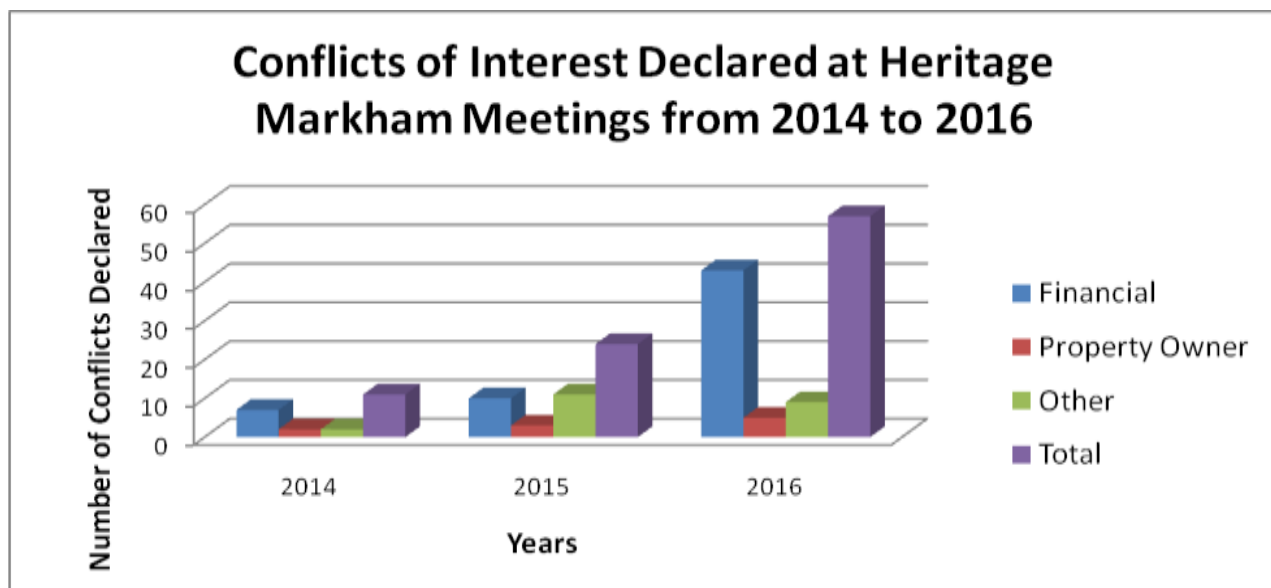
**Table C.1 - Conflict of Interest Declared at  
Heritage Markham Committee Meetings from 2014 to 2016**

The following Table displays the type and number of conflicts of interest declared at Heritage Markham Committee meetings from 2014 to 2016.

Reason for Conflict	2014	2015	2016	Total No. of Conflicts	Percentage of Total Conflicts of Interest
Financial	7	10	43	60	64%
Property Owner	2	3	5	11	12%
Other	2	11	9	22	24%
<b>Total</b>	<b>11</b>	<b>24</b>	<b>57</b>	<b>93</b>	<b>100.00%</b>

**Chart C.2 – Conflicts of Interest Declared at  
Heritage Markham Committee Meetings from 2014 to 2016**

Chart C.2 displays the type and number of conflicts of interest declared at Heritage Markham meetings from 2014 to 2016.



**Table C.3 - Conflicts of Interest Declared per Application at Heritage Markham Committee Meetings from 2014 to 2016**

The following Table displays the type and number of conflicts of interest declared per application at Heritage Markham Committee meetings from 2014 to 2016.

Reason for Conflict	2014	2015	2016	Total No. of Conflicts	Percentage of Total Conflicts of Interest
Financial	6	8	16	30	60%
Property Owner	2	2	3	7	14%
Other	2	7	4	13	26%
<b>Total</b>	<b>10</b>	<b>17</b>	<b>23</b>	<b>50</b>	<b>100%</b>

**Chart C.4 – Conflicts of Interest Declared at Heritage Markham Committee Meetings per Application from 2014 to 2016**

Chart C.4 displays the type and number of conflicts of interest declared per application at Heritage Markham Committee meetings from 2014 to 2016.

