

To: Economic and Development Services Committee

From: Warren Munro, HBA, MCIP, RPP, Commissioner,
Economic and Development Services Department

Report Number: ED-23-62

Date of Report: April 12, 2023

Date of Meeting: April 17, 2023

Subject: Process for Handling Applications made under Various
Sections of the Ontario Heritage Act

Ward: All Wards

File: 12-04-0239

1.0 Purpose

On March 8, 2021, the then Development Services Committee referred to staff a motion recommending that staff “review the heritage policies of other municipalities in order to develop in a timely way policies for the comprehensive protection and conservation of Oshawa’s cultural heritage assets and report back to Council with recommendations for appropriate new heritage policies for Council to consider integrating into Oshawa’s Official Plan” (Item DS-21-57).

On September 26, 2022, City Council endorsed Item DS-22-185, the tenth report of Heritage Oshawa (HTG-22-45), which recommended that the City create and implement documents necessary to implement Sections 33 and 42 of the Ontario Heritage Act (“Heritage Act”).

Section 33 of the Heritage Act provides the legislative framework for the processing of applications to alter properties designated under Section 29, Part IV of the Heritage Act.

Section 42 of the Heritage Act provides the legislative framework for the processing of applications to demolish, alter, remove/demolish heritage attributes, or erect a new building or structure in a Heritage Conservation District (“H.C.D.”).

Through review and investigation of this matter, staff noted that the creation of processes to implement Sections 33 and 34 of the Heritage Act would logically be accompanied by processes for applications under Sections 27(9) and 34 of the Heritage Act. Staff also found that municipalities commonly provide formal processes and forms for applications for heritage designation under Section 29 of the Heritage Act.

In consideration of the foregoing, the purpose of this Report is to advance proposed processes for each of these application types for Council's consideration.

Attachment 1 is a flow chart illustrating the staff recommended process for applications under Section 27, Part IV of the Heritage Act to demolish a "listed, non-designated" property under Section 27, Part IV of the Heritage Act.

Attachment 2 is a flow chart illustrating the staff recommended process for applications under Section 33, Part IV of the Heritage Act to alter a designated property under Section 29, Part IV of the Heritage Act.

Attachment 3 is a flow chart illustrating the staff recommended process for applications under Section 34, Part IV of the Heritage Act to demolish, or demolish/remove heritage attributes from, a designated property under Section 29, Part IV of the Heritage Act.

Attachment 4 is a copy of the South Field Heritage Conservation District Plan, which details the Council-approved process for applications under Section 42, Part V of the Heritage Act to demolish, alter, remove/demolish heritage attributes, or erect a new building or structure within the South Field H.C.D. Owing to its length, this document is not attached but rather is available at the following link: <https://www.oshawa.ca/en/parks-recreation-and-culture/resources/Documents/South-Field-Heritage-District-Plan.pdf>.

Attachment 5 is an excerpt from the minutes of the March 8, 2021 meeting of the then Development Services Committee, concerning Item DS-21-57, being a Notice of Motion to have staff review the heritage policies of other municipalities, which was referred to staff for a report.

Attachment 6 is a summary of the results of staff's investigation of the heritage permit processes in place for other Ontario municipalities with respect to Sections 27, 29, 33, 34 and 42 of the Heritage Act.

Attachment 7 is a listing of heritage permit fees for other Ontario municipalities compiled through staff's investigation of the processes in place in other municipalities to implement under Sections 27, 29, 33, 34 and 42 of the Heritage Act.

Attachment 8 is a draft flow chart released by the Provincial government illustrating the process to designate a property under Section 29 of the Heritage Act.

2.0 Recommendation

That the Economic and Development Services Committee recommend to City Council:

1. That, pursuant to Report ED-23-62 dated April 12, 2023, Economic and Development Services staff be authorized to implement the staff recommended processes for applications made under Sections 27, 29, 33 and 34 of the Ontario Heritage Act, as outlined in Section 5.3 of said Report.
2. That, pursuant to Report ED-23-62 dated April 12, 2023, Economic and Development Services staff be directed to undertake a detailed review of the heritage policies of

other municipalities and recommend appropriate heritage policies for inclusion in the Oshawa Official Plan, through the process of carrying out and reporting on the City's next Municipal Comprehensive Review of the Oshawa Official Plan.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

Staff reviewed the websites of several municipalities that have processes for reviewing applications under Sections 27, 29, 33, 34, and 42 of the Heritage Act, as follows:

- Town of Ajax
- City of Burlington
- Town of Cobourg
- City of Hamilton
- Town of Kincardine
- City of Kitchener
- City of Mississauga
- City of Ottawa
- City of Pickering
- City of Sault Ste. Marie
- City of Sudbury
- City of Waterloo
- City of Barrie
- Municipality of Clarington
- City of Guelph
- City of Kawartha Lakes
- City of Kingston
- City of Markham
- Town of New Tecumseth
- City of Peterborough
- Municipality of Port Hope
- City of St. Catharines
- City of Toronto
- Town of Whitby

5.0 Analysis

5.1 Background

5.1.1 Direction to Review Municipal Heritage Policies

At the March 8, 2021 meeting of the then Development Services Committee, Item DS-21-57 was introduced as a Notice of Motion, and subsequently referred to staff for a report. Owing to its length, this Item is affixed to this Report as Attachment 5.

As noted in Section 1.0 of this Report, the motion recommended that staff review the heritage policies of other municipalities with the aim of developing policies for the comprehensive protection and conservation of the Oshawa's cultural heritage assets. As part of this process, staff would report back to Council with recommendations for appropriate new heritage policies for Council to consider integrating into Oshawa's Official Plan.

It is appropriate that such a review be undertaken as part of Oshawa's next Municipal Comprehensive Review of the Oshawa Official Plan. This will commence with the approval of Envision Durham, the Region of Durham's Municipal Comprehensive Review of the Durham Regional Official Plan, by the Province. It is anticipated that the Region's new official plan developed through Envision Durham will be brought forward to Regional

Council for adoption prior to the 2023 Summer recess. Once adopted, the Region's new official plan will be submitted to the Province for approval.

Economic and Development Services staff would include as part of the City's upcoming Municipal Comprehensive Review process a detailed review of the heritage policies of other municipalities and recommend appropriate heritage policies for inclusion in the Oshawa Official Plan.

5.1.2 Sections 33 and 42 of the Heritage Act

On June 23, 2022, Heritage Oshawa passed the following motion (HTG-22-45):

“Whereas the Mandate of Heritage Oshawa is to advise and assist Council on all matters relating to the preservation and promotion of cultural heritage resources within the city of Oshawa; and,

Whereas the approved 2022 Heritage Oshawa Workplan states “Advise and assist Council on all matters relating to cultural heritage including, but not limited to, buildings and structures, cultural heritage landscapes and archeological sites; and,

Whereas there is current Provincial legislation regarding Altering a Part IV Designated Property, such as a Heritage Permit and all necessary information;

Therefore be it resolved that the city of Oshawa create and implement any and all such documents necessary to implement Part 33 (1) and 42 (1) of the Ontario Heritage Act.”

On September 12, 2022, the then Development Services Committee considered HTG-22-45 as Item DS-22-185. The Development Services Committee forwarded Item DS-22-185 to Council as presented. Council endorsed DS-22-185 on September 26, 2022.

Section 33 of the Heritage Act provides the legislative framework for the processing of applications to alter properties designated under Section 29, Part IV of the Heritage Act.

Section 42 of the Heritage Act provides the legislative framework for the processing of applications to:

- Alter properties designated as part of an H.C.D under Section 41, Part V of the Heritage Act. This excludes building interiors, which cannot be protected through H.C.D. designation.
- Erect any building or structure in an H.C.D.
- Demolish/remove “heritage attributes” in an H.C.D. “Heritage attributes” in an H.C.D. are those features deemed to have cultural heritage interest or value, as listed within the Heritage Conservation District Plan (“H.C.D. Plan”).
- Demolish properties designated within an H.C.D.

5.1.3 Section 34 of the Heritage Act

Section 34 of the Heritage Act provides the legislative framework for the processing of applications to demolish properties designated under Section 29, Part IV of the Heritage Act. It also provides the framework for applications to demolish/remove “heritage attributes” from designated properties. “Heritage attributes” in a Part IV designation are those features deemed to have cultural heritage interest or value, as listed within the Designation Statement and Description contained within a property’s designation by-law.

5.1.4 Section 27(9) of the Heritage Act

Section 27(9) of the Heritage Act provides the legislative framework for the processing of applications to demolish properties placed on the Municipal Register by Council as “listed, non-designated” properties.

Under Section 27(9), Council has 60 days after a property owner submits to the City a Notice of Intention to Demolish to decide whether to permit the demolition, or provide Notice of Intention to Designate and begin the process under Section 29 of the Heritage Act. Pursuant to Section 27(11) of the Heritage Act, the Notice of Intention to Demolish must be accompanied by such plans and shall set out such information as Council may require.

5.2 Investigation

Given the direction to staff under Item DS-22-185 with respect to the process for handling applications made under Sections 33 and 42 of the Heritage Act, as well as the logical association of applications made under Section 27(9), 29, and 34 of the Heritage Act, Economic and Development Services staff have investigated the following:

- The existing staff process for handling such applications;
- The number of applications received to date of each type of application;
- The number of listed, non-designated properties under Section 27, Part IV of the Heritage Act, that would potentially be subject to Section 27 of the Heritage Act, current and projected;
- The number of properties designated under Section 29, Part IV of the Heritage Act, that would potentially be subject to Sections 33 and 34 of the Heritage Act, current and projected;
- The number of properties listed in the Heritage Oshawa Inventory of City of Oshawa Heritage Properties as having potential for heritage designation and therefore potentially candidates for applications for designation under Section 29 of the Heritage Act;
- The number of properties designated under Section 41, Part V of the Heritage Act, that would potentially be subject to Section 42 of the Heritage Act, current and projected; and,

- The processes put in place by other municipalities – including other Durham Region municipalities and municipalities elsewhere in Ontario considered to be leaders in heritage conservation – including the use of application forms (see Attachment 6) and the associated required submittals and processing fees (see Attachment 7).

Based on the foregoing, staff have created a recommended new procedure for the identified application types, as outlined in Section 5.3 of this Report. Staff have also identified the powers which would need to be delegated to staff from Council, in order to effectively implement the recommended processes.

5.2.1 Application Forms or “Heritage Permits”

“Heritage permit” is a term commonly used to reference an application form or forms intended to facilitate applications made under the Heritage Act, including under Sections 27(9), 33, 34 and 42.

Attachment 6 to this Report is a summary of the heritage permit processes in place for various other Ontario municipalities, compiled through staff’s investigation of the processes under Sections 27, 33, 34 and 42 of the Heritage Act that are in place for other municipalities. Attachment 6 also identifies those municipalities with formal processes and forms to accept requests for heritage designation under Section 29 of the Heritage Act.

Attachment 6 indicates that:

- With some exceptions, municipalities largely do have heritage permits in place to coordinate the processing of applications under Sections 33, 34 and 42 of the Heritage Act;
- With respect to applications to demolish listed, non-designated properties under Section 27(9) of the Heritage Act, only a minority of municipalities have formal processes in place to handle such applications; and,
- Roughly half of the municipalities investigated have processes in place to accept requests for heritage designation under Section 29 of the Heritage Act.

5.2.2 Heritage Permit Fees

Attachment 7 to this Report is a listing of heritage permit fees charged by other Ontario municipalities, compiled through staff’s investigation of the processes under Sections 27, 33, 34 and 42 of the Heritage Act that are in place for other municipalities.

Attachment 7 indicates that, with some exceptions, municipalities do not charge fees for heritage permits. In staff’s view, this may be attributable to the desire on the part of municipalities to encourage heritage designation by not burdening the owners of designated properties with additional costs through heritage permit fees. A heritage permit fee would be in addition to the fees associated with building permits, demolition permits, or planning application fees required as part of a larger application.

In view of the foregoing and in consideration of the findings identified in Attachment 7, staff recommend that fees not be included within the processes outlined under Section 5.3 of this Report.

5.3 Recommended Next Steps

5.3.1 Section 27(9) Applications

Attachment 1 to this Report is a flow chart illustrating the staff recommended process for applications under Section 27(9), Part IV of the Heritage Act to demolish a “listed, non-designated” property under Section 27, Part IV of the Heritage Act.

In order to implement the recommended process, staff recommend that the following actions be undertaken:

- Update the City’s website to include an application form for applications to remove “listed, non-designated” properties from the Municipal Register; and,
- Pursuant to Section 27(11) of the Heritage Act, include in said application form an optional requirement for a Cultural Heritage Evaluation Report (C.H.E.R.) to be submitted as part of the application, at the discretion of the Commissioner of Economic and Development Services.

Staff note that among those municipalities surveyed having formal application processes under Section 27(9) of the Heritage Act (see Attachment 6), the majority required a C.H.E.R. to be submitted with a Section 27(9) application, in consultation with staff.

5.3.2 Section 29 Applications

Attachment 8 to this Report is a flow chart created by the Province illustrating the process for designation under Section 29, Part IV of the Heritage Act.

In order to formalize the receipt of requests to initiate the Part IV designation process, staff recommend the following actions be undertaken:

- Update the City’s website to include an application form for applications to request designation under Section 29, Part IV of the Heritage Act, including a requirement for proof of ownership where the request is from the owner of the subject property, and any relevant research compiled;
- In instances where the request is from the owner of the subject property, present the request to Heritage Oshawa; and,
- In instances where the request is not from the owner of the subject property, present the request to the Economic and Development Services Committee.

5.3.3 Section 33 Applications

Attachment 2 to this Report is a flow chart illustrating the staff recommended process for applications under Section 33, Part IV of the Heritage Act to alter a designated property under Section 29, Part IV of the Heritage Act.

In order to implement the recommended process, staff recommend that the following actions be undertaken:

- Advance for Council's consideration amendments to the Delegation of Authority By-law 29-2009, as amended, to allow the Commissioner of Economic and Development Services to issue Notice of Complete Application under Section 33(4) of the Heritage Act;
- Advance for Council's consideration amendments to the Delegation of Authority By-law 29-2009, as amended, to allow the Commissioner of Economic and Development Services to issue Notice of Incomplete Application under Section 33(4) of the Heritage Act;
- Update the City's website to include an application form for applications to alter Part IV designated properties; and,
- Within said application form, include an optional requirement for a Heritage Impact Assessment (H.I.A.) and/or a Conservation Plan to be submitted as part of the application, at the discretion of the Commissioner of Economic and Development Services.

5.3.4 Section 34 Applications

Attachment 3 to this Report is a flow chart illustrating the staff recommended process for applications under Section 34, Part IV of the Heritage Act to demolish, or demolish/remove heritage attributes from, a designated property under Section 29, Part IV of the Heritage Act.

In order to implement the recommended process, staff recommend the following actions be undertaken:

- Advance for Council's consideration amendments to the Delegation of Authority By-law 29-2009, as amended, to allow the Commissioner of Economic and Development Services to issue Notice of Complete Application under Section 34(4) of the Heritage Act;
- Advance for Council's consideration amendments to the Delegation of Authority By-law 29-2009, as amended, to allow the Commissioner of Economic and Development Services to issue Notice of Incomplete Application under Section 34(4) of the Heritage Act;
- Update the City's website to include an application form for applications to demolish, or remove heritage attributes from, a Part IV designated property; and,

- Within said application form, include an optional requirement for a H.I.A. and/or a Conservation Plan to be submitted as part of the application, at the discretion of the Commissioner of Economic and Development Services.

5.3.5 Section 42 Applications

The City of Oshawa currently has only one (1) H.C.D., that being the South Field H.C.D. at the Oshawa Executive Airport. Attachment 3 to this Report is a copy of the South Field Heritage Conservation District Plan (the “South Field H.C.D. Plan”), which contains the Council-approved process for applications under Section 42 to demolish, alter, remove/demolish heritage attributes, or erect a new building or structure within the South Field H.C.D.

Commonly across Ontario, a municipal council will delegate review and approval of certain classes of alterations to City staff, rather than requiring Council approval for all alterations. Currently, there is no delegated authority to City staff from Oshawa City Council for the review of alterations.

Given that the property in the South Field H.C.D. is all City-owned, and the only privately-owned building is the No. 10 Building owned by the 420 Wing, the South Field H.C.D. Plan did not recommend undertaking such delegation to staff. It did, however, note that if in the future it is found that the volume of applications becomes exceedingly cumbersome to be dealt with solely by City Council, Council may undertake such delegation in the future. This option would also be relevant in the event Council were to advance an H.C.D. for another area of the City.

In view of the foregoing, staff do not recommend any additional next steps within this Report with respect to applications under Section 42 of the Heritage Act.

6.0 Financial Implications

As discussed in Section 5.2.2 of this Report, staff do not recommend that fees be included within the processes outlined under Section 5.3 of this Report. Consequently, there are no direct financial implications associated with the recommendations of this Report.

7.0 Relationship to the Oshawa Strategic Plan

The recommendation in the Report advances the Accountable Leadership and Cultural Vitality goals of the Oshawa Strategic Plan.

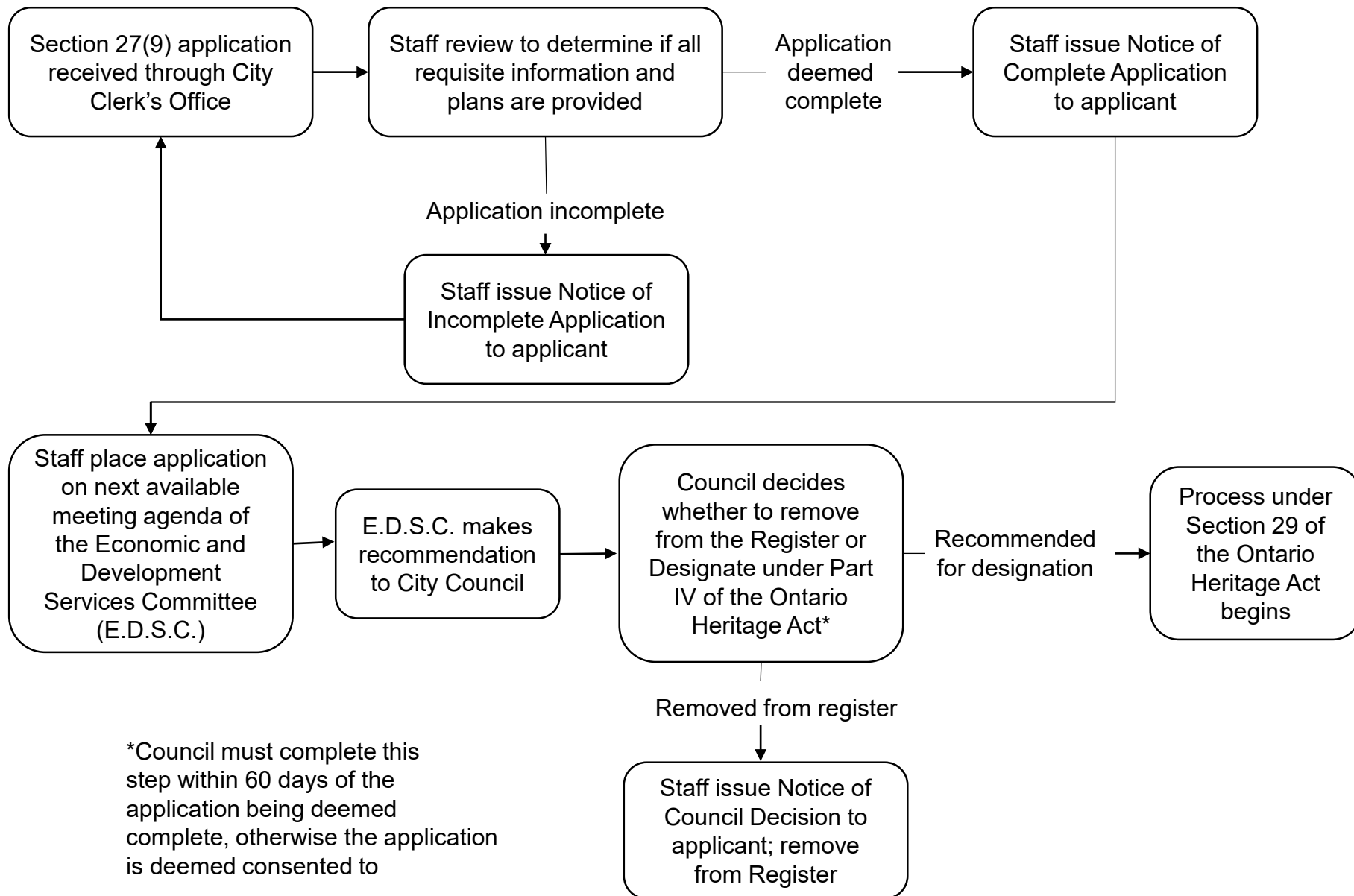


Tom Goodeve, M.Sc.Pl., MCIP, RPP, Director,
Planning Services



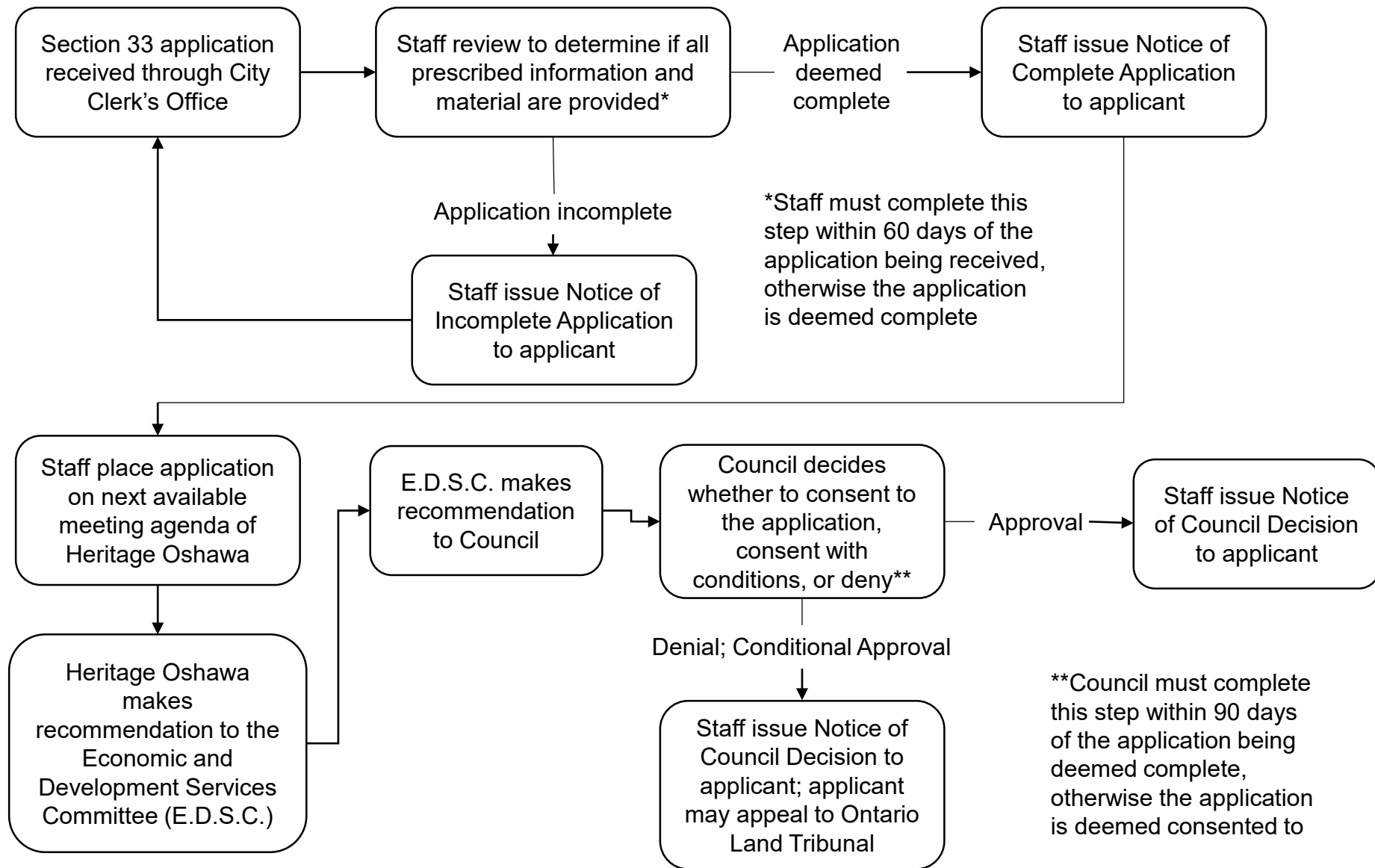
Warren Munro, HBA, MCIP, RPP, Commissioner,
Economic and Development Services Department

Staff Recommended Process for Applications under Section 27(9) of the Ontario Heritage Act

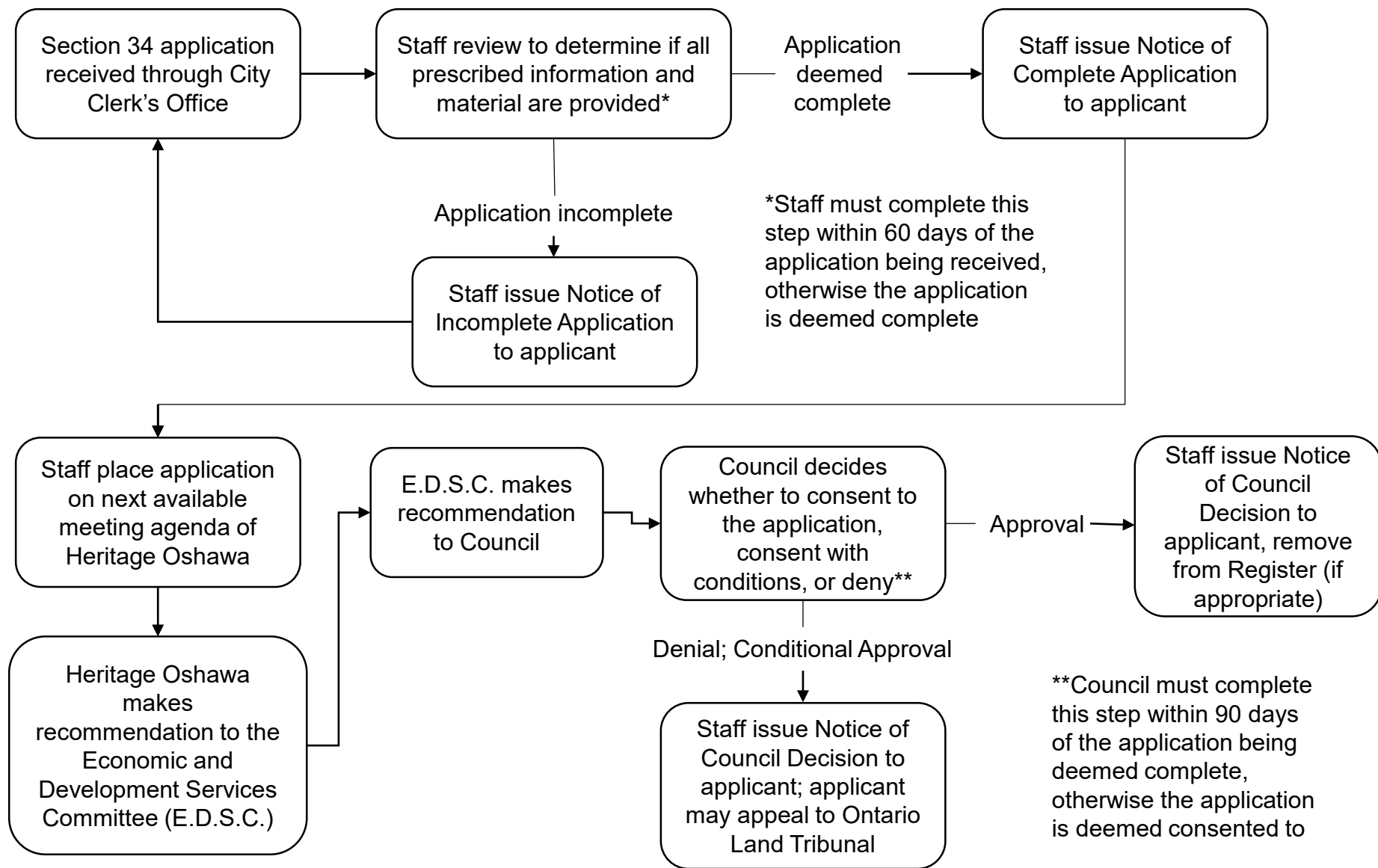


*Council must complete this step within 60 days of the application being deemed complete, otherwise the application is deemed consented to

Staff Recommended Process for Applications under Section 33 of the Ontario Heritage Act



Staff Recommended Process for Applications under Section 34 of the Ontario Heritage Act



“That the Development Services Committee recommend to City Council:

Whereas cultural heritage resources enrich a community and are a shared responsibility and legacy for future generations. Since a number of current heritage assets could be at risk given Oshawa’s rapid growth and massive new development plans, a timely investigation of expanding the City’s ongoing commitment to the protection and conservation of heritage resources has benefits; and,

Whereas other municipalities have strong and comprehensive cultural heritage conservation policies within their Official Plans; and,

Whereas Oshawa has just five heritage policies in its Official Plan which could be strengthened, considering the importance of the City safeguarding of its cultural heritage resources, and having mechanisms to protect them; and,

Whereas the City of Markham clearly states that the protection and conservation of its cultural heritage is essential to the character of the community and contributes to other social, cultural, economic, and environmental objectives; and,

Whereas among Markham’s Heritage Policies that Oshawa could consider, in no particular order, are:

- To give immediate consideration to the designation of any significant cultural heritage resource under the Ontario Heritage Act if that resource is threatened with demolition, inappropriate alterations or other potentially adverse impacts; and,
- To impose conditions of approval on development containing a cultural heritage resource itself and adjacent lands to ensure the continued protection of the cultural heritage resources; and,
- To provide for the protection and conservation of cultural heritage resources or the mitigation of adverse effects on cultural heritage resources as a condition of minor variance and severance approval and associated agreements; and,
- If an order of an Officer is not completed with in accordance with the order as deemed confirmed or as confirmed or modified by the Committee or Judge, the City may cause the property to be repaired or demolished accordingly and the amount spent on the repair or demolition may be added to the collector’s role and collected in the same manner and with the same priorities as municipal real property taxes; and,
- To avoid the demolition of properties of significant cultural heritage resources as listed in the Register of Property of Cultural Heritage Value or Interest by:
 - a) encouraging the conservation, and where appropriate, the restoration of these properties; and,
 - b) developing minimum standards for the maintenance of heritage attributes in a heritage property standards by-law; and,

- To consider the use of the following development incentives, when appropriate for specific development proposals, to facilitate the retention, conservation and restoration of cultural heritage resources: a) increasing the height and density of development otherwise permitted; b) transfer of height and density of development on site or to other areas of the city; and c) excluding designated cultural heritage resources from the parking requirements of the zoning by-law; and,
- To use fiscal tools, incentives and financial assistance, where appropriate, to facilitate the maintenance and conservation of protected heritage properties including making available grants, loans and other incentives as provided for under the Ontario Heritage Act, the Municipal Act and other sources;

Now therefore Oshawa Council direct staff, in consultation with the Heritage Oshawa advisory committee and the public, to review the heritage policies of other municipalities in order to develop in a timely way policies for the comprehensive protection and conservation of the Oshawa's cultural heritage assets and report back to Council with recommendations for appropriate new heritage policies for Council to consider integrating into Oshawa's Official Plan."

Summary of Heritage Permits Available in Ontario Municipalities (2023)

Municipality	Section 27(9) Application for Demolition	Section 29 Application for Designation	Section 33 Application for Alteration	Section 34 Application for Demolition	Section 42 Application for Alteration or Demolition
Ajax	No	No	Yes	Yes	Yes
Barrie	No	Yes	No	No	No
Burlington	No	No	Yes	Yes	Yes
Clarington	No	No	Yes	Yes	Yes
Cobourg	No	No	Yes	Yes	Yes
Guelph	Yes	Yes	Yes	Yes	Yes
Hamilton	No	No	Yes	Yes	Yes
Kawartha Lakes	No	Yes	No	No	No
Kincardine	No	Yes	No	No	No
Kingston	No	Yes	Yes	Yes	Yes
Kitchener	No	No	Yes	Yes	Yes
Markham	No	No	Yes	No	Yes
Mississauga	No	No	No	No	No
New Tecumseth	No	Yes	No	No	No
Ottawa	Yes	Yes	Yes	Yes	Yes
Peterborough	No	No	Yes	Yes	Yes
Pickering	No	No	Yes	Yes	Yes
Port Hope	No	No	Yes	Yes	Yes
Sault Ste. Marie	No	Yes	No	No	No

Municipality	Section 27(9) Application for Demolition	Section 29 Application for Designation	Section 33 Application for Alteration	Section 34 Application for Demolition	Section 42 Application for Alteration or Demolition
St. Catharines	No	Yes	Yes	Yes	Yes
Sudbury	No	Yes	No	No	No
Toronto	No	No	Yes	Yes	Yes
Waterloo	No	No	Yes	Yes	Yes
Whitby	Yes	No	Yes	Yes	Yes
Total	3/24 Yes	10/24 Yes	17/24 Yes	16/24 Yes	17/24 Yes

Listing of Fees for Heritage Permits in Ontario Municipalities (2022)

Municipality	Fee Description
Ajax	There is no fee for submitting a Heritage Permit application.
Barrie	There is no fee for submitting a Heritage Permit application.
Burlington	There is no fee for submitting a Heritage Permit application.
Clarington	There is no fee for submitting a Heritage Permit application.
Cobourg	There is no fee for submitting a Heritage Permit application.
Guelph	There is no fee for submitting a Heritage Permit application.
Hamilton	There is no fee for submitting a Heritage Permit application.
Kawartha Lakes	There is no fee for submitting a Heritage Permit application.
Kincardine	There is no fee for submitting a Heritage Permit application.
Kingston	\$300.00
Kitchener	There is no fee for submitting a Heritage Permit application.
Markham	There is no fee for submitting a Heritage Permit application.
Mississauga	There is no fee for submitting a Heritage Permit application.
New Tecumseth	There is no fee for submitting a Heritage Permit application.
Ottawa	<p>Staff-level authority:</p> <ul style="list-style-type: none"> • Alterations: \$274.00 • Additions: \$821.00 <p>Council-level authority:</p> <ul style="list-style-type: none"> • Minor Alterations: \$2,295.00 • Major Alterations: \$8,757.00 • Demolitions: <ul style="list-style-type: none"> ○ Part IV/Grade 1/Contributing: \$13,683.00 ○ Grade 2/Non-Contributing: \$2,737.00 • New Construction in a Heritage Conservation District: <ul style="list-style-type: none"> ○ Small-scale new construction: \$3,284.00 ○ Medium-scale new construction: \$5,473.00 ○ Large-scale new construction: \$8,757.00
Peterborough	There is no fee for submitting a Heritage Permit application.
Pickering	There is no fee for submitting a Heritage Permit application.
Port Hope	There is no fee for submitting a Heritage Permit application.
Sault Ste. Marie	There is no fee for submitting a Heritage Permit application.
St. Catharines	\$254.75
Sudbury	There is no fee for submitting a Heritage Permit application.

Municipality	Fee Description
Toronto	There is no fee for submitting a Heritage Permit application.
Waterloo	There is no fee for submitting a Heritage Permit application.
Whitby	There is no fee for submitting a Heritage Permit application.