
Queen's University Heritage Study

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options for heritage protection



Once a property has been designated, an owner may alter the property in a way that is likely to affect the reasons for designation by asking for and obtaining the consent of the Council. If, after the statutory period of 90 days, the Council refuses to allow alterations or demolition, the owner may nonetheless carry out the intended changes after the expiry of a further period of 180 days. If a municipality does not follow these procedures carefully, an unwanted demolition may occur. This was the case with the Clegg House in Ottawa. The Supreme Court of Ontario ruled that the City of Ottawa had neglected to follow due process.

A building or property can be designated under either Part IV or Part V but not both. Due to the long processing time necessary to establish a Heritage Conservation District under Part V, municipalities will sometimes designate a property using Part IV if there is a threat of demolition and later rescind the designation once the Ontario Municipal Board (OMB) approval is in place.

1.2 The Ontario Heritage Act, Part V

Part V of the Ontario Heritage Act provides for the designation and protection of Heritage Conservation Districts. Designation comprises a lengthy procedure that requires:

- An Official Plan statement with respect to Heritage Conservation Districts
- A municipal by-law of intent to study a district
- A Heritage Conservation District Plan
- An implementation by-law
- Approval by the Ontario Municipal Board

Once approved, alterations can be made to a building only with approval of the municipal Council. Demolition of a building may occur after a 270-day waiting period. New construction must follow guidelines contained within the Heritage Conservation District Plan.

The Ontario Ministry of Culture and Recreation (precursor of the Ministry of Culture and Communications) has provided a definition of a Heritage Conservation District in its

pamphlet, *Heritage Conservation Districts and the Ontario Heritage Act: A Guide to the Designation Process* (of a 1 Tc servation District Plan)]TJ -0.00J -0.ces ta

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designation. At present, one can only speculate as to what changes will be introduced and when they will be put before the Legislature. It is apparent from the most recent Working Draft of the *Act* (November 30, 1993) that the Province recognizes that significant gaps still remain in the legislation. For example, heritage conservation standards and guidelines are needed regarding the following key components of any comprehensive heritage policy:

- types or classes of heritage resources
- evaluation of heritage resources
- the use of listing
- the use of designation and other tools and incentives for conserving heritage resources; and
- the management of heritage resources”

Given these gaps, it is evident that the *Ontario Heritage Act*, even with its proposed revisions, will still fall short of supplying the guidance and, perhaps, the control required to secure the conservation of heritage resources. All landowners, including universities, will continue to need further conservation tools. As confirmed by the campus planner from the University of Toronto, the restrictions of Part V designation will remain under the new legislation in that *the Act* is essentially “coercive” in its approach and is too confining for an institution as complex as a university. Similarly, a recent study prepared for the university and based on *the Act* is too restrictive because it uses designation as the only means of recognizing and securing further heritage resources on lands owned by the University. This approach does not appear to allow the University sufficient flexibility for its development requirements. Therefore the University of Toronto is pursuing alternative methods of conserving its heritage resources. These methods will be described in more detail as part of our recommended policy approach.

It can be argued that designation is the main tool used by public agencies when dealing with private landowners. As with most legislation, it is regulatory in nature, restrictive rather than proactive and assumes the worst rather than promoting the best. Studies of similar legislation in Great Britain show that heritage designation is necessary but relatively primitive tool, best used with supporting planning legislation and most effective if supported by grants and administered by trained staff. Reviews of the pioneering work in York and Chester show that heritage policies of senior governments can only be truly effective if they are part of a complementary set of regulations and incentives. It is now necessary to examine other legislative tools which are available through *the Planning Act*.

Option 2: Policies within the Ontario Planning Act

Section 2(b) of the *Planning Act* makes heritage a matter of provincial interest by requiring that the Minister of Municipal Affairs, when administering planning matters for the Province, “have regard for...the protection of features of significant natural, architectural, historical or archaeological interest”. From this initial statement of goals, there stems no further guidance as to the components of heritage policies within municipal planning regulations. Unless municipalities take it upon themselves to produce their own policies, heritage is not addressed directly in the rest of *the Planning Act*.

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Heritage conservation policies can be based on other components of the *Planning Act*. Municipalities and provincial agencies sometimes use these tools to great effect. For example, Section 34(1)4 permits municipalities to pass zoning by-laws regulating land uses and some aspects of physical development. Heritage features can be partially protected in a zoning by-law by ensuring that their permitted use perpetuates their conservation. Zoning can also exclude incompatible land uses and ensure that new development is compatible in terms of height, bulk, location and character. When combined with a secondary plan, zoning can be used to identify areas with a heritage character as a precursor to more explicit secondary plan policies regulating development.

Beyond the Official Plan and zoning, the most applicable policy is Site Plan Control (Sect. 41(1)4). Municipalities are able to identify areas where further land use regulations apply. These regulations deal with the layout on the site and the external features of proposed development. They can address such heritage issues as retention of resources, impact of new development on existing resources and streetscape design. It is within the Site Plan Control review process that municipal LACACs, acting as a commenting agency, have the most influence. Site plan control also allows municipalities to provide design guidelines for new development which, although only advisory, is the most explicit tool available to express municipal heritage objectives. Some municipalities, most notably the City of Toronto, have also promoted heritage conservation through the use of related by-laws governing heritage bonusing, interim use, temporary use and parkland provision, or have applied heritage policies to minor variances permitted through a municipal Committee of Adjustment. Such policies are not included in the City of Kingston's Official Plan. However, they could be made available if the University and City so wished.

As applied to Queen's, the current heritage policies in the City of Kingston's Official Plan give broad goals and objectives but little in the way of specific heritage policies. In accordance with recommendations to municipalities from the Ministry of Municipal Affairs and Planning, the City of Kingston should consider amending its Official Plan to include specific heritage policies.

Option 3: Other Policy Tools

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In summary, the combination of legislation still requires a more publicly administered system of conservation than this system can be expected to deliver. The policy guidelines

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landscapes) in their care follows high conservation standards. The means of evaluating the buildings and reviewing proposed interventions is based on internationally accepted standards of cultural preservation, primarily those of the International Charter for the Conservation and Restoration of Monuments and Sites (ICOMOS). According to the FHBRO, the process “was designed to create a climate favourable to conservation, rather than to force adherence”.

The FHBRO review process requires consensus-building and relies heavily on inter-agency cooperation. A clear policy framework is built around the two components of heritage designation (which is prepared according to standard criteria) and review of intervention (which is done on a case by case basis, and has a conflict resolution mechanism). The FHBRO process contrasts with the legislative approach common throughout Canada and the United States because it is an intergovernmental process, essentially internal in its focus.

Of a similar type are the Province of Ontario’s heritage conservation guidelines for its property agency, the Ontario Realty Corporation (formerly the Management Board Secretariat). These policies apply to a single, self-managing agency, and provide an inventory, evaluation and intervention review process for a broad range of buildings, landscapes, and archaeological sites across the Province. The Federal and Provincial processes both demonstrate voluntary conservation, with varying degrees of involvement by outside agencies.

In choosing elements from these precedents, Queen’s will want to have as much control as possible of the heritage management process. Consequently, the recommended heritage policy resembles the Provincial approach more than the Federal one. It will, however, rely on the cooperation of all major stakeholders in campus heritage, including those from the City of Kingston.