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Queen's University  
Heritage Study

APPENDIX B:

OPTIONS FOR  
HERITAGE PROTECTION



## **APPENDIX B: OPTIONS FOR HERITAGE PROTECTION**

The terms of reference for this process stated that the heritage policies will be composed of three elements: recommendations for designation; planning policies and controls; and implementation. The Heritage Policy and Process section addresses these components. With respect to the issue of designation, this report recommends a voluntary conservation approach. The rationale for not recommending designation is given below.

The *Ontario Heritage Act* is the primary legislation for protecting heritage resources in Ontario. However, it is legislation which is problematic for landowners, especially in the designation process. The key question has become: how best to recognize and preserve all settings?

Commonwealth Historic Resource Management Limited has recommended a voluntary conservation process as the best option as discussed in Option 4 herein. Commonwealth has already recommended that the University consider alternatives to designation. In the October 1991 and September 1992 reports, Commonwealth outlined the advantages and disadvantages of heritage policies structured within the *Ontario Heritage Act* and suggested that designation under Part IV or V of the *Act* was not necessarily in the University's best interests. Our explanation for this opinion are described in the following text

### **Option 1: Designation under the Ontario Heritage Act**

A number of methods have been adopted in Ontario for the definition and protection of heritage resources, including techniques beyond the *Ontario Heritage Act*. These legislative means of protection are attractive because they are established, enforceable and acceptable to municipal LACACs. Their relative usefulness for Queen's is discussed below.

#### **1.1 The Ontario Heritage Act, Part IV**

Part IV of the *Ontario Heritage Act* provides for the identification and designation of 'property ... of historic or architectural value or interest.' Guidelines prepared by the Ministry state that 'the significance of the building in demonstrating or interpreting our heritage should be judged by the basic criteria of architectural merit and historical association.'

Individual designation is the most common method of preserving Ontario's historic buildings. The Council of a municipality may designate buildings by municipal by-law after following the due procedure stipulated by the *Act*. This procedure comprises:

- A notice of intent to designate, which includes a statement of the reason for the proposed designation.
- The passing of the by-law after the expiry of a 30-day waiting period.

If there is an objection to the designation, a public hearing is convened by the Conservation Review Board, which makes recommendations as to whether or not the property should be designated.

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 Heritage Conservation District is a collection of buildings, streets and open spaces that are of special significance to the community. The individual elements of the district must combine in such a way as to present a sense of cohesiveness. ... The district can vary in size from one containing only a few buildings to one that encompasses an entire municipality. ... It could be a grouping of architecturally significant buildings, the significance of which may be a result of their workmanship, uniqueness, age, or beauty. Although the buildings within the area may not be worthy of consideration individually, they could, if protected as a group, provide an important heritage resource of value to the community and the province.

In its *Guidelines on the Designation of Heritage Conservation Districts*, the Ministry has emphasized this last point, namely that buildings within a Heritage Conservation District may often not be worthy of individual consideration (i.e. individual designation under Part

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IV of the *Ontario Heritage Act*):

It is clear that in many municipalities there are individual buildings of architectural and historical value. However, in addition to structures that are of demonstrated significance, there may be others that individually may not be worthy of being considered for protection but, taken as a group, provide a good example of the historical or architectural heritage of the community ...

This is the case for a number of University-owned buildings located north of Union Street, whose primary heritage value arises from their contribution to the streetscape and their supportive role in the larger context.

### 1.3 Combinations of Parts IV and V

Part IV may be used to designate individual buildings of particular heritage significance and Part V to designate all those of supporting heritage value as a Heritage Conservation District. The resulting Part V Heritage Conservation District Plan has been described as looking like Swiss cheese, since it leaves holes for the Part IV properties. This technique has been used in Ottawa's Sandy Hill Heritage Conservation Districts. The experience in Cathedral Hill, Ottawa, is slightly different. Eight buildings and a limestone cliff were designated under Part V. To provide interim protection until Part V could be enacted, the cliffs were designated under Part IV - at which time the City rescinded the Part IV designation.

### 1.4 A Comparison of Parts IV and V

Since Queen's is an institution with a long term mandate and a wide range of buildings and landscapes under its care, both Parts IV and V of the *Act* are relevant. These legislative tools are not easily applied in practice. The key question since the initiation of the Heritage Conservation District programme has been whether a historic precinct comprised of buildings of individual architectural significance should be designated under Part IV or Part V of the Act. Parts IV and V of the *Ontario Heritage Act* treat buildings and properties in different ways. Furthermore, they are not entirely parallel. The following is a summary of some of the principal differences between the two (adapted from a discussion paper prepared by the Toronto Historical Board):

- ***Period of Control***  
*Part IV*: Controls come into effect immediately after the intention to designate is passed.  
*Part V*: Controls come into effect only after O.M.B. approval. (It has been argued that they come into effect after the passing of the implementation by-law.) On average this process takes about three years.
- ***Nature of Control***  
*Part IV*: Alterations to both interiors and exteriors of buildings can be controlled, as can alterations to a property (including landscape features).  
*Part V*: Only alterations to the exterior of a building can be controlled. Neither interiors nor other property features can be controlled.

It should be pointed out that existing buildings can benefit if rehabilitated because they may be interpreted under the compliance alternatives of Section 11 of the *Ontario Building Code*.

- ***Reasons for Designation***

*Part IV:* Only proposed alterations that affect the ‘reasons for designation,’ as set out in the designation by-law, need be considered by the Council. Other proposed alterations can be processed by municipal staff or the LACAC.

*Part V:* No provision is made for ‘reasons for designation’ and all applications must be made to the municipal Council.

- ***New Development***

*Part IV:* No provisions are made for new construction.

*Part V:* The *Act* does allow for guidelines as to the form, massing, and detailing of new construction within a District.

In summary, although Part V of the *Ontario Heritage Act* was created specifically to protect heritage precincts and encourage a holistic approach, its provisions have not proven effective, for a number of reasons:

- The study and designation process is lengthy and cumbersome.
- No interim protection is provided during the study process.
- No protection is provided for landscape and other non-architectural features, even though it is those features that provide a district with its distinctive character.
- No protection is provided for building interiors.
- There is no provision for defining the ‘reasons for designation’ where features are considered as having particular heritage value. This makes it difficult for Council to decide which ones should be controlled.
- If selected buildings within a precinct are designated under Part IV, and the remainder under Part V, the Heritage Conservation District must be defined so as to avoid the properties controlled by Part IV, even though it is they that take the lead in giving the District its character.
- Implicit in its control through the *Act* is the co-operation and good will of property owners and occupants.

These weaknesses in Part V of the *Act* have been cited as reasons for the recent decisions of the Ontario Municipal Board to allow alterations and demolitions to buildings within the Barriefield and Wychwood Park Heritage Conservation Districts respectively. When property owners choose not to adhere to the *Act*, there is no other recourse available.

### **1.5 New Heritage Legislation**

It is proposed that many of these problems be corrected in new heritage legislation. Proposed revisions to the *Ontario Heritage Act* have been in preparatory phase for many years. The latest draft from the Ministry of Citizenship, Culture and Recreation (MCCR) is dated November 30, 1993 and it is not clear when the text will be finalized in preparation for the Legislature.

If changes suggested by the Ministry should indeed be instituted, then Part V (or its successor) will be much closer to achieving the desired spirit of heritage district

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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 Culture, Tourism and Recreation, the City of Kingston has made a strong commitment to heritage conservation in its Official Plan by citing the importance of heritage resources with respect to Kingston's identity and economy. The City intends to continue the designation process with its LACAC, to encourage heritage awareness in its citizens, comment via LACAC within the Site Plan Control Process, and provide guidelines for the renovation of listed and designated buildings. The City has not adopted more specific heritage policies and continues to rely on Provincial guidance for interpretation and implementation of heritage conservation.

In summary, the *Planning Act* provides limited guidance and no explicit policies for heritage conservation. All of the Ministry of Municipal Affairs *Planning Act* objectives are focussed on land development first, with few policies involving the sort of long term stewardship and slow growth characteristic of a university. The *Planning Act's* tools are of limited value on their own. Nonetheless, they can be strengthened by combining them with related heritage policies from other government agencies. Making creative use of the *Planning Act* for heritage purposes requires careful discussions between municipality and landowner. This means that the new policies will have to be established especially for Queen's.

### Option 3: Other Policy Tools

Some examples of heritage policies which combine components of different pieces of legislation are:

- *Part IV of The Ontario Heritage Act and The Planning Act*  
This technique combines the individual designation of buildings of heritage significance with the identification of an area or precinct to be regulated by zoning. This is the method used in Streetsville, in the City of Mississauga, where the commercial core of this historic village has been identified as an “historic commercial centre” and is controlled by design guidelines, using provisions of the *Planning Act* in conjunction with Part IV of the *Ontario Heritage Act*. It is important to note that the Streetsville plan had the enthusiastic support of the local Business Improvement Area members.
- *Part V of The Ontario Heritage Act and The Planning Act*  
The City of Kingston has defined a “heritage conservation area” along King Street under the provisions of the *Planning Act*, contiguous to the Market Square Heritage Conservation District which was created under Part V of the *Ontario Heritage Act*. Meadowvale Village, also in the City of Mississauga, was the first Heritage Conservation District designated in Ontario (in 1980). The 19 hectares are also regulated by a secondary plan (also passed in 1980), whose role is to reinforce and legitimize the objectives through the *Planning Act*, as well as to ensure such policies as land-use designations, special site designations to facilitate rezoning, road design, and to restate the requirements of Site Plan Control. As with Streetsville, the plan had the strong support of both residents and municipal planners. Before going to the Council, all applications for building or demolition permits are considered by the Heritage Conservation District Review Committee, three of the five members are residents of the heritage district. (The other two are, a member of the Planning Department and a member of LACAC.)

The Ministry of Culture and Communications has recently issued Advisory Notes on Heritage Conservation and Municipal Planning, which advocate the joint use of the *Ontario Heritage Act* and the *Planning Act* in municipal heritage conservation. The Notes describe specific ways in which official plans, community improvement plans, land-use controls, and other provisions of the *Planning Act* serve to protect heritage resources.

In many respects, the linking of the *Heritage Act* and the *Planning Act* is a wise and logical progression for ensuring uniformity in the planning process. In practice, it has not been widely used. For example, the combination of the *Planning* and *Heritage Acts* is currently being proposed by the City of Toronto's planners as a means of controlling heritage character in the proposed University of Toronto heritage conservation district. The combination has been challenged by the solicitor for the University, who maintains that “character” refers to building form and land use in the *Planning Act*, and not to what he terms “historical personality”. The issue has still not been resolved and the district is not yet designated. Since this is the only current example of the combination as applied to an Ontario university, the idea remains to be tested.



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 are either too general or remain to be developed. Furthermore, the linkages between different legislative tools are not worked out, except for a few innovative attempts by municipalities. Experience in North America and in Great Britain has shown that heritage policies can be weakened by poor administration and monitoring. Staff often lack the time and training to implement policies or experiment with innovative versions of current planning controls. In a development-oriented land use system (such as ours) there are limits to the effectiveness of public policies.

## **Option 4: Self-Managed Heritage Policy**

### **4.1 Voluntary Conservation**

The policy approach proposed here is a departure from standard practice because it relies on what is known as voluntary conservation, that is heritage policies prepared by the landowner rather than imposed by a public body. This approach, combined with any applicable components of the current planning and heritage legislation, gives Queen's the best vehicle for preserving and managing its heritage resources.

Voluntary conservation has several advantages. First and foremost, it is effective. Proponents of other approaches often state - inaccurately - that heritage conservation must be imposed upon a property owner by one or another level of government authority. On the contrary, effective conservation programmes have been initiated by property owners, who have sometimes sought complementary government legislation. The Streetsville and Meadowvale experiences, both in the City of Mississauga, are cases in point.

Secondly, voluntary conservation has the potential to address the main weaknesses in the legislative approaches to conservation. For example, the Queen's Campus Plan and Inventory and Evaluation provide a framework for conservation that is better than either the *Ontario Heritage Act* or *The Planning Act*. The Plan, Inventory and Evaluation already incorporate studies that would normally be required for individual properties or districts, and remove the need for interim protection policies. They protect landscapes as well as buildings. By evaluating all properties (and not just the best ones), they provide a comprehensive context for district-scale conservation. This comprehensive approach also extends to building interiors, identifying any important features. The evaluation text provides detailed explanations for each judgement in a consistent format. This information can form the basis for site-specific conservation policies. Finally, by providing an alternative to the existing heritage legislation, the Plan, Inventory and Evaluation avoid the current problems of integrating Parts IV and V of the *Ontario Heritage Act*.

Thirdly, heritage policies initiated by a landowner provide the strongest basis for conservation over the long term. Such policies particularly suit Queen's because it is an institutional landowner, whose primary concern is the long-term management of its lands rather than short-term speculative profit. The University can produce its own policies because of its organizational structure: as a self-governing institution, with explicitly stated corporate goals and objectives, Queen's has an established and accountable decision-making process. Universities also tend to be the most long-lasting institutions in Western society-outliving governments and fashions. They are thus uniquely suited to

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preparing and administering conservation policies. And as long-standing members of the local community, universities have a vested interest in establishing a consensus with the municipality on any policies affecting current land use and future development.

An example of a university undertaking voluntary conservation is nearby. In a situation that offers many parallels to Queen's University, the University of Toronto established its own list of heritage properties about 15 years ago. It voluntarily consulted with the Toronto Historical Board whenever interventions affecting these buildings were proposed. The University of Toronto completed a Discussion Draft of its *University of Toronto Master Plan* in which built heritage is recognized and heritage conservation is made a part of ongoing campus planning. The principles in the 1990 draft include the following:

- Structures and outdoor spaces of historical, architectural, or environmental significance should be preserved.
- The University's heritage and tradition should be enhanced and emphasized.
- Structures, open space, and areas of historic significance should be preserved and enhanced and an appropriate integration of new development, renovations, or additions must be ensured.

Queen's University has also prepared a Campus Plan. The University therefore has a superb opportunity to incorporate heritage conservation policies that can respond to its own interests and to those of the Kingston community. The objective, therefore, for heritage policies within the Queen's University Campus Plan is that the University should initiate its own policies and work with the City of Kingston to implement them. In practice, such policies should be implemented by the campus administration, in the same way and for the same reasons that the City administers fire, safety and health regulations. The crucial difference is that Queen's prepares its own heritage regulations, covering all of its built and landscape resources.

In summary, these are compelling reasons for Queen's to set its own heritage policies. But the University is not alone in pursuing this type of self-determination; there is a trend for stakeholders to take over control from higher levels of government. Along with aboriginal groups and many non-profit agencies, universities must increasingly find ways of controlling their destinies in light of economic cutbacks. Governments are being forced to devolve power for the same reason. In this context, it is logical for Queen's to develop its own heritage policies, and for the City and the Province to support this initiative.

### 4.2 Prototypes

For Queen's to develop these policies, it will need a strong and tested framework to use as a prototype. The following discussion highlights key federal and provincial precedents. For a broader discussion of policy options and prototypes as applied to Queen's University, see Appendix B.

The Federal precedent is the Federal Heritage Buildings Review Office (FHBRO). The FHBRO establishes a heritage conservation process for all Federal government buildings over 40 years old and provides an inventory and evaluation process for managing these resources in continued use. Central to the FHBRO approach is a process by which custodial departments can ensure that work on significant heritage buildings (and related

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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.