

## Ontario's Heritage Conservation Districts

*A community's heritage assets often comprise more than individual structures or properties. Many communities can boast of heritage areas or districts, consisting of a collection of heritage properties that may include residential, commercial or institutional buildings, streetscapes, landscapes, bridges, roads, footpaths, vistas and viewsheds, all making up a distinct area with special character.*

*The Ontario Heritage Act provides municipalities with the ability to protect the character of these areas through Heritage Conservation District designation. Some examples of designated districts are:*

*The Square in Goderich (commercial)*

*The First and Second Street Districts in Oakville (residential)*

*St. Mary's in Kitchener (WW II veterans' housing)*

*Queen and Picton Streets in Niagara-on-the-Lake (commercial and residential)*

*These have been designated as heritage districts because of their unique planning, historic associations, or the distinctive architectural style of their buildings.*

*This document outlines how Heritage Conservation District designation works and how it affects property owners by answering these questions:*

***What is a Heritage Conservation District?***

***How is a district designated?***

***What does designation mean for the property owner?***

***What does designation mean for the municipality?***

## What is a Heritage Conservation District?

Part V of the *Ontario Heritage Act* deals with Heritage Conservation Districts. A district may comprise a few buildings or properties, a whole downtown area, an entire village or a cultural landscape. It may have architectural, historic or scenic attributes that make it worthy of designation. Whatever the particular grouping, the area represents a heritage asset to a community in the same way that individually designated properties do, exhibiting a special character or association that distinguishes it from its surroundings.

As with individual properties designated under Part IV of the Act, once a district is designated, it gains public recognition as well as some measure of protection against the demolition or unsympathetic alteration of properties. Future changes to a heritage conservation district will need to be carried out in a sympathetic manner, compatible with the area's established heritage character as identified in the heritage conservation district plan and designation by-law.

Heritage designation establishes a process through which changes can be assessed and guided so that the integrity and character of the district and its heritage attributes can be maintained and even enhanced.

The Act requires municipalities, when a designation by-law is passed, to adopt a heritage conservation district plan which includes policies and guidelines for property owners and the municipality as to what is regarded as acceptable and desirable changes within the district.

The Act also allows municipalities to pass a by-law to adopt a heritage conservation district plan for an existing heritage conservation district designated before the Bill 60 amendments to the Act came into force in April of 2005.

## **How is a district designated?**

A municipality's power to designate a heritage conservation district is set out in sub-section 41 (1) of the Ontario Heritage Act. To pass a heritage conservation district designation by-law, the municipality's official plan is required to have provisions relating to establishment of heritage conservation districts.

To establish a heritage conservation district, Council must pass a by-law to designate a defined area of the municipality as a heritage conservation district. This is usually preceded by a study to establish the area's character, to identify its heritage attributes and to consider a suitable boundary for the district. As part of the study, policies and guidelines for future protection and enhancement of the district will also be developed. While it is not mandatory, council may also pass a by-law to designate the area as a heritage conservation study area. Pending completion of the study, council may also put in place interim controls, for up to one year on alterations and demolition of properties within the proposed district.

The scope of a heritage conservation district study and contents of a district plan are specified in the Act. Municipalities should ensure that the area to be designated is clearly shown or described in a map or description attached to the by-law. Properties that are already individually designated under Part IV of the Act can be included in the new district, and will usually be subject to the protections of Part V and the provisions of the heritage conservation district plan. (Section 33 of Part IV of the Act will, however, continue to apply to any alterations to interior heritage attributes that have been identified in the designation by-law.)

Before passing the designation by-law and adopting the heritage conservation district plan, council is required to notify the public about the proposed heritage conservation district plan and hold at least one public meeting to discuss it. Following passage of the by-law, any person who objects to the by-law can appeal to the Ontario Municipal Board, which will usually hold a hearing to consider objections against the passing of the by-law and adoption of the plan.

Comments on or objections to the proposed district plan can be made through oral representations at the municipal public meeting or by written submissions to council. Persons who did not make representations at the meeting or written submissions on the plan may be later denied the opportunity to appeal to the Ontario Municipal Board.

At the conclusion of the hearing, the Board will decide whether the appeal should be dismissed or allowed in whole or part. Where the Board allows an appeal it may repeal the by-law, amend it or direct council to do so. The Board's decision to allow the appeal may

apply either to the whole, or part of the area proposed. The Board's decision is final and the by-law comes into effect when all appeals have been dismissed or when the board or council amends the by-law. The designation by-law must be registered on the title of properties in the district when it comes into force and will bind current and future property owners within the district.

Once the heritage conservation district by-law and plan come into effect, a permit (sometimes referred to as a "heritage permit") will be required to erect, demolish or remove any building or structure on the property; or to alter any part of the property or exterior of any building within the district. As provided for under Section 41.1(5)(e) of the Act, a property owner will not need to apply for a permit to carry out alterations or types of alterations that have been identified or described in the district plan as "minor" in nature.

### **What does designation mean for the property owner?**

Designation is a way for owners to express pride in the heritage value of their property, and for the community to protect and promote awareness of its local history. Most importantly, it provides a *process* to ensure that changes to the property respect its heritage value and are appropriately managed.

District designation helps to ensure that future changes to property in the district will be carried out according to the plan's policies and guidelines and will not detract from the area's special character. Property owners will be able to benefit from technical advice and assistance from municipal staff or the local Municipal Heritage Committee concerning preservation and maintenance of their property.

It is important that property owners understand what designation does and does not do.

Designation:

- Recognizes and reinforces the cultural value and community appreciation of heritage property
- Provides protection against inappropriate changes to properties within a designated district by ensuring that alterations and new development and construction are in keeping with the approved guidelines for the district
- Provides a municipality with the power to prevent the demolition or removal of any building or structure or alterations to property within a designated district, subject to the property owner's right to appeal to the Ontario Municipal Board
- Enables access to financial incentives (such as heritage property tax relief, grants and other programs) where they exist.

Designation does not:

- Restrict the use of property
- Prevent alteration or additions that are in keeping with the heritage character of the district

- Impose onerous obligations or undue expenses to maintain property
- Render property ineligible for insurance coverage
- Restrict the sale of property
- Prevent installation of modern conveniences or contemporary interior designs, except where the interior has been designated under Part IV of the *Ontario Heritage Act*
- Enable public access to private property without the owner's consent

### How will designation affect the value of my property?

There are many factors that affect property values and sale prices including zoning, general location and proximity to any area of development potential. Heritage designation itself is not likely to lead to any significant change in the value of a property and may help to maintain its value.

A 1998 study of 3,000 designated properties in 24 Ontario communities found that:

- designation did not have a negative effect on property values
- the rate of sale of designated properties was as good or better than the general market
- the value of heritage properties tended to resist downturns in the general market

(Robert Shipley, "Heritage Designation and Property Values: is there an effect?" *International Journal of Heritage Studies*, Vol. 6, No. 1, 2000, pp. 83-100.)

### How will designation affect my insurance premiums?

Premiums should not go up as a result of heritage designation. A variety of other reasons cause insurance companies to increase premiums for older buildings if there is a higher level of risk, such as out-dated wiring, old heating systems, etc. In fact, some companies do not insure buildings over a certain age. Designation itself, however, does not place additional requirements on the insurer and therefore should not affect premiums.

### Restoration, alterations and maintenance

The aim of district designation is not to prevent change, but to ensure that changes are carried out in a manner that respects the special character of the district. The adopted plan will include detailed a description of the area's historic character-defining features and attributes, and guidelines for ongoing protection.

Heritage designation does not require owners to restore their buildings to their original design or to carry out alterations. If owners want to restore lost or missing original features, they should first discuss the project with the Municipal Heritage Committee or municipal staff who can best advise on the authenticity of the work and its likely effect on the property.

Alterations that may require a “heritage permit” can include replacement of the roof, porch, steps, re-pointing, windows, trim or other elements of the building or painting the exterior in a colour different from the original.

General maintenance work, such as repainting exterior trim in the existing or original colour, or repair to an existing roof, will likely fall into the category of “minor alterations” that will be identified in the district plan as those that can be carried out without a “heritage permit”. Normal building permit requirements may still apply to interior or exterior alterations and the local building department should be consulted before the start of any project.

### “Heritage permit” process

The local municipal council is responsible for approving work applications requiring a heritage permit. Applications are reviewed initially by the heritage planner (or other appointed municipal staff person) or by the heritage district committee or local district steering committee (where appointed), who will check for compliance with the approved guidelines. If there are any concerns, alternative options can be explored with the owner before the application is referred to council for a decision. Council has 90 days from the date of notice of receipt of the application (or a mutually agreed upon longer period when necessary) to either issue the permit, possibly with conditions, or refuse it. The applicant has the right to appeal to the Ontario Municipal Board if the application is refused or if approved with terms and conditions attached. The decision of the Board is final. If council does not make a decision within the 90 day period it is deemed to have granted the permit.

Some municipalities use a specific permit application form, as they do for other permit functions such as planning or building permit applications. Standard information includes the building’s location, municipal address and name of owner clear and detailed information about the proposed work, the materials and processes to be used, along with any drawings that may be required by the municipality.

In some municipalities, staff have delegated authority to approve minor work that complies with local area guidelines. This helps to streamline the approval process.

### Demolition

Council’s approval is required before an owner can demolish or remove a building or structure in the heritage district. A property owner has the right to appeal to the Ontario Municipal Board if council refuses an application for a demolition permit. The Board’s decision is final.

### Expropriation

Subject to compliance with the provisions of the Expropriations Act, municipal council may pass a by-law under Section 36 (2) of the Ontario Heritage Act to expropriate property designated under Part IV or V of the Act, if required for the purposes of Part IV or V of the Act.

Since the *Ontario Heritage Act* was passed in 1974, only one municipality is known to have expropriated a designated property. Given the time and expense of expropriation proceedings, expropriation is usually regarded as the means of last resort to preserve and protect an important heritage resource.

### Fines

Section 69 of the Act allows for imposition of a fine of up to \$1 million for any person found illegally demolishing a property in a Heritage Conservation District. This amount recognizes that illegal demolition of designated heritage properties is one of the most serious offences under the Act. Provision is also made for municipalities to recover the costs of restoring illegally altered buildings or structures designated under Part IV or Part V.

Since the *Ontario Heritage Act* was passed in 1974, there have been only a small number of prosecutions carried out by municipalities for contravention of the provisions of the Act, mainly for unauthorized alterations or demolition of designated property.

## **What does designation mean for the municipality?**

The Ontario Heritage Act requires the adoption of a district plan with policies and guidelines for the future protection and enhancement of the area when a bylaw is passed to designate a new heritage conservation district.

As an essential tool for implementing a district, the plan should be reviewed at regular intervals, to see whether the objectives of district designation are being met and whether the plan's policies and guidelines are still effective.

As stipulated in the Act, a municipality may not pass any by-law or carry out public works that will conflict with the district plan's objectives. Before passing the by-law to adopt or amend the heritage conservation district plan, municipal staff should review the municipal official plan and secondary plan policies for the area to ensure that they support the district plan's objectives and propose changes to those policies as appropriate.

If changes are being proposed to the district boundary, i.e. to add or remove properties from the district, it will be necessary to enact a by-law to amend the original district designation by-law. If there are objections to changes proposed in the amending by-law, then the appeal procedure for district designation by-laws will apply. To avoid confusion and loss of public confidence, changes to the district boundary, plan and guidelines should only be carried out after extensive consultation with property owners, residents and other stakeholders.

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