

Divisional Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

EDWIN JOHN ROWSE

Applicant

- and -

**MINISTRY OF ENVIRONMENT, CONSERVATION AND PARKS, and MINISTRY OF
HERITAGE, SPORT, TOURISM AND CULTURE INDUSTRIES**

Respondents

**SUPPLEMENTARY AFFIDAVIT OF EDWIN JOHN ROWSE
(Affirmed March 7, 2021)**

I, Edwin John Rowse, a resident of the City of Toronto in the Province of Ontario, AFFIRM:

1. I am a heritage architect, and, as such, I have knowledge of the matters to which I depose, except information provided to me by third parties, which information I believe to be true.
2. Attached and marked as Exhibit “A” is a copy of correspondence from myself, Edwin Rowse, submitted to the Environmental Registry on January 20, 2020.
3. Attached and marked as Exhibit “B” is a copy of correspondence from the Prince Edward Heritage Advisory Committee submitted to the Environmental Registry on January 20, 2020.
4. Attached and marked as Exhibit “C” is a copy of a staff report together with correspondence from Prince Edward County to the Minister of the Environment, Conservation and Parks dated March 10, 2020.

5. Attached and marked as Exhibit “D” is a copy of extracts of the Executive Summary and Section 6 of the Heritage Impact Assessment for the Hyatt House prepared by Letourneau Heritage Consulting Inc. dated October 2020, but not available to the public until March 1, 2021.

6. Attached and marked as Exhibit “E” is a copy of extracts of the Executive Summary and Section 6 of the Heritage Impact Assessment for the MacDonald House prepared by Letourneau Heritage Consulting Inc. dated October 2020, but not available to the public until March 1, 2021.

7. Attached and marked as Exhibit “F” is a copy of correspondence from Ontario Parks to Philip Evans dated February 4, 2021.

8. Attached and marked as Exhibit “G” is a copy of correspondence from Philip Evans to Ontario Parks dated February 7, 2021.

9. Attached and marked as Exhibit “H” is a copy of *Standards and Guidelines for Conservation of Provincial Heritage Properties* dated April 28, 2010.

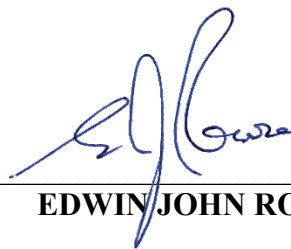
10. Attached and marked as Exhibit “I” is a copy of *Standards and Guidelines for Conservation of Provincial Heritage Properties - Information Bulletin 3* dated January 31, 2017.

11. Attached and marked as Exhibit “J” is a copy of the Province’s *Cultural Heritage Conservation Policy*.

AFFIRMED BEFORE ME in)
The City Toronto)
in the Province of Ontario, this)
7th day of March, 2021)



A commissioner etc.



EDWIN JOHN ROWSE

**This is Exhibit “A” referred to in the
Affidavit of EDWIN JOHN ROWSE affirmed before
me this 7th day of March, 2021.**



A Commissioner, etc.

Amending the Sandbanks Provincial Park Management Plan to enable the demolition of two buildings
ERO number: 019-0977

Comments from Edwin Rowse

I am a founding partner of ERA Architects in Toronto, a 100-person practice specializing in heritage architecture and planning. I am recently retired from the firm and in the process of setting up a new separate architectural practice, to be mostly focused on the heritage architecture of Prince Edward County. I have 45 years of experience in the heritage architectural field, am a long-time member of the Canadian Association of Heritage Professionals, and in 2018 I received a Lifetime Achievement Award from the Architectural Conservancy of Ontario.

I own a farm near Sandbanks Provincial Park, which is designated as a cultural heritage landscape under the *Ontario Heritage Act* and which has an 1860 farmhouse that I restored after it had sat vacant for 13 years under different ownership.

I have reviewed the 2017 Cultural Heritage Evaluation Reports (CHERs) for the Hyatt and MacDonald houses and the 2019 Heritage Impact Assessments (HIAs) prepared for the same buildings, all by Letourneau Heritage Consultants (LHC) on behalf of Ontario Parks (shared with me by a member of the Prince Edward Heritage Advisory Committee). Each HIA contains the report for that particular building prepared by Bradley Engineering in 2012, and I have given special attention to these building condition audits. In my review of the 1993 Management Plan, I noted the commitment to preserve these and other buildings within the Park's historical zone.

The CHERs and HIAs produced by LHC prompt concerns about issues related to lack of action on the commitment in the 1993 Management Plan, the lack of public consultation for these documents, shortcomings in identifying the heritage value of the buildings and in understanding their significance within the context of the special setting of Sandbanks Provincial Park. I understand that the submission by the Prince Edward Heritage Advisory Committee (PEHAC) addresses these issues.

My submission will focus on LHC's assessment of the condition of the heritage architectural fabric and how the consultants evaluate the impact on its significance in reaching their conclusion to recommend demolition.

In preparing my comments, I have relied on descriptions and photographs in the CHERs and HIAs, as I have not had access to the Hyatt and MacDonald houses

Concerns with methodology

My fundamental concern is with the methodology LHC used to assess the condition of the heritage building fabric of the two houses, as expressed in the consultant's analysis in the HIAs. This underdeveloped methodology, not fully supported by evidence, which I describe below, then led to the recommendation to demolish both buildings.

LHC's observations are generally based on Bradley Engineering's 2012 reports, but without investigating more deeply and arriving at a different conclusion (demolition). Bradley Engineering stressed that its comments were based on a visual inspection alone, without any detailed structural analysis. I find both Bradley reports to be very reasonable, practical and careful in their conclusions, some of which were

clearly preliminary pending further investigation. Seven years later and stating clearly that its access to the buildings was limited by health and safety concerns, LHC has made architectural assumptions for the two buildings, involving structural judgment, that the consultant is clearly not qualified to make, and given these assumptions apparent authority by listing a series of relatively minor issues noted in the Bradley reports, as if these collectively added up to determining a basis for demolition.

Not all the issues raised by LHC could be analyzed because for some issues there was insufficient evidence provided even to make effective and useful comment. Thus, in the tables that follow for each building I have presented selected issues to illustrate that the case for demolition has clearly not been made.

1 (a) Hyatt (Gray) House

Bradley Engineer’s comment relied on by LHC:

Quotations from Bradley Engineer report	Edwin Rowse response
In my opinion the west wing will have to be demolished in its entirety. This opinion is based on the observed poor condition of all aspects of the structure. The floor framing is damaged, and it is likely that on closer inspection of the wood framing there will be significant rot found. The presence of other environmental contaminants also may not be able to be properly cleaned	These are sound observations of deterioration. However given that the west wing has not collapsed and the Engineer did not structurally investigate the framing members, a current structural investigation is merited.
The roof framing is significantly undersized and would need to be rebuilt	Most 19 th century framing is undersized by today’s standards. This is because the consistent quality of virgin wood could be relied upon, a quality that modern fast-grown wood does not possess. There is no apparent bending in the roof structures in the photos, which suggests that the roof can take traditional snow loads. It may be possible to supplement the existing structure, rather than incur the cost of rebuilding the entire roof.
The tops of the brick masonry walls have been open to the weather and are anticipated to be deteriorated.	The extent of openness to the weather is not made clear.
With respect to retention of the east and centre wings, the investigation concluded that additional investigation would be required to determine the architectural direction and financial investment required for their potential rehabilitation. The investigation recommended that, at the time, the following further investigations would be required to determine the potential for retention of the east and centre sections:	Additional investigation is sound advice and still applies now.
Cleaning of the building. An environmental consultant should be retained to recommend an appropriate level of testing and cleaning protocol to ensure the building is free from mould and other health hazards.	This is an important issue and such testing is needed before deciding whether rehabilitation is feasible.
The selective removal of finishes to expose the brick and wood.	This still needs to be done, as part of a thorough and comprehensive examination and assessment
An inspection of the brick and wood framing to determine the percentage of these elements that would	Ditto

have to be replaced or repaired.	
<p>In addition, the following work was recommended as required in the event of restoration:</p> <ul style="list-style-type: none"> • Reconstruction of portions of the stone masonry foundations. • Reconstruction of all exterior finishes, windows and doors. • Reconstruction or removal of chimneys. • Removal and reconstruction of the covered entrance to the basement. • Construction of additional roof framing for the east wing roof. • The front entrance porch should be removed [this was subsequently done]. <p>Remove overgrown trees, shrubs, and vegetation from around perimeter of building.</p> <ul style="list-style-type: none"> • Protect foundations from excess water runoff by providing rainwater management from roof surfaces and direct water away from the building foundations. 	<p>This advice is sound but still very general and would need further detailed site examination and specification. These practical rehabilitation steps outlined by Bradley Engineering do not indicate that the Engineer believes that demolition is the logical conclusion.</p>

1 (b) Hyatt (Gray) House

LHC's comments in the HIA relying on information taken from the Engineer's report:

Quotations from LHC's comments in HIA	Edwin Rowse response
The interior of the building is, generally, in poor condition as a result of vandalism, animal droppings, and water infiltration.	The vandalism, droppings and water infiltration appear limited and localized in the <u>photographs and none indicate serious knock-on fabric deterioration</u>
The west wing is the most deteriorated of the three sections; there is currently a hole in the roof and the floor and structural supports may be compromised.	This hole could be readily repaired temporarily with sheet metal and the surrounding wood fabric does not seem heavily impacted. "Structural supports <u>may be compromised</u> " indicates the need for further investigation.
In general, excess moisture has led to continued peeling, warping, bowing and loss of finishes throughout	Bowing and warping are not evident in Figs 3 and 4. The peeling and loss of finishes is likely the result of sealing the windows up without provision for ventilation, which has resulted in very high interior relative humidity, and not the result of running water. Finishes are easily replaced.
The failed west wing first storey floor and framing has continued to deteriorate beyond the poor conditions observed in 2012 and 2017. Almost the entirety of the floor has now failed and timber beams have been added to support the second storey, despite the failure of the first storey timber beams and flooring (Figure 5).	Evidence of this continued deterioration is not given. The temporary support appears to be effective, since there is no signs of distortion of walls or floors
A hole in the roof is clearly visible from the first floor (Figure 6).	The hole is near the eaves and can be temporarily closed with sheet metal
Flooring, throughout (not limited to the west wing), shows signs of excessive moisture and rot when stepped on. Some areas of the structure were not accessed due to safety concerns.	This is not illustrated. There is no back up for the assertion.

Despite efforts to secure the structure, the incidents of pest infestation and droppings has continued (Figure 7) as has unauthorised entry and instances of vandalism (Figure 8 and Figure 9).	As stated above the evidence of these problems appears localized and limited and does not present evidence of continuing issues.
In addition to previously identified concerns related to the foundations and masonry; the exterior plaster cladding was observed to be failing during the 2019 site investigations (Figure 10).	Fig. 10 shows that the exterior stucco (not plaster) has spalled. The damage to the brick work behind is limited and repairable, and more importantly answers Bradley Engineering's concern that it was not possible to determine at that stage whether the stucco was spalling or the brick veneer was bowing. <u>The brick bond indicates clearly that the walls are at least double wythe and not veneer and bowing is highly unlikely.</u>

2 (a) MacDonald House

Bradley Engineer's comment relied on by LHC:

Quotations from Bradley Engineer report	Edwin Rowse response
In my opinion, the structural components of the main sections of the building (East Structure and West Structure), which were the focus of this report, have useful life remaining. Therefore, the structural rehabilitation component of the entire project will not be the critical factor when deciding on proceeding with the rehabilitation.	This assessment was made 7 years ago, but affirms the soundness of the structure. These comments do not support a conclusion for demolition, but given that the comments are 7 years old, a new structural assessment is needed before the future of the building is decided.
An environmental consultant should be retained to recommend an appropriate level of testing and cleaning protocol to ensure the building is free from mould and other health hazards.	This is very sound advice. The ventilation suggested above and in Bradley's 2012 report would likely solve this issue.
Proper ventilation and control of moisture in the basement will minimize the amount of water that moves between the mortar joints, which results in deterioration of the joints and a loss of integrity of the stone masonry foundation walls.	Ditto
If lathe is being removed from the interior face of the wood studs framing the wall, AND no board sheathing is found on the outside face of the studs, the walls must be adequately braced and some other form of permanent bracing must be reestablished [sic] (i.e., plywood).	This is sound advice. Adding bracing if there is no sheathing would be done in proper sequence to safeguard the stability of the walls. There would be no risk to the structural stability of the building.
The stucco finish may have been original or added later. Regardless, the stucco is currently providing the barrier to weather and must be cleaned, repaired, or selectively removed and replaced, to maintain its integrity. Diligent effort must be made to select appropriate material and methods for cleaning and repair of stucco.	This is sound advice given that the reason for adding the stucco is unknown. The exposed brick appears in sound condition.
Remove overgrown trees, shrubs, and vegetation from around perimeter of building.	Removal is part of ongoing preventive maintenance for an older building.
Protect foundations from excess water runoff by improving rainwater management from roof surfaces, direct water well away from the building foundations,	Ditto, and as a relatively cheap and easy intervention to protect the foundation stonework from water

and maintain these systems. Water infiltration through masonry joints is extremely detrimental to the overall integrity of stone masonry foundation walls.	
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2 (b) MacDonald House

LHC's comments in the HIA relying on information taken from the Engineer's report:

Quotations from LHC's comments in HIA	Edwin Rowse response
The rear addition along the east wing has been removed (Figure 5 and Figure 6). The removal of this addition has resulted in the exposure of the rear wall of the west wing (Figure 7) - constructed as an exterior wall, but in a questionable state of repair - and an open gap along the second floor joists (Figure 8).	The rear wall shown exposed in Fig. 7 was constructed as an exterior wall and most of its shiplap siding, which sheds water, appears to be intact. The roof eaves that overhang above will also protect the wall. Minor temporary repairs may be needed to make the wall watertight, but it is not in a "questionable" state of repair. The open gap is where the former lean-to rear addition (Figs 5 and 6) connected to the west wing. The boards here have been disturbed, allowing in the light. This is right under the eaves overhang, so partly protected. The gap could be easily closed by temporary metal or wood boards.
Deterioration of the envelope has resulted in a number of concerns, including evidence of wildlife intrusion and evidence of mould, fungi, mildew and visible rot and warping caused by excess moisture from water infiltration (see Figure 8 to Figure 16). On the day of the site visit, portions of the floor felt spongy throughout.	The wildlife intrusion indicated by animal droppings in Fig. 9 is limited. The extent of dampness and mould shown in Fig. 10 is no great threat. The floor damage illustrated in Fig. 12 shows warped t and g floorboards; however, there is no sign that the integrity of the subfloor is compromised. The hole in the roof in Fig. 13, which caused the water infiltration, is small and can be temporarily closed with sheet metal or roll roofing. The building fabric around the hole shows little sign of damage.
Visible portions of the rubblestone foundation and exposed brick and mortar have continued to crack, spall and otherwise deteriorate and separate (Figure 17 and Figure 18).	There is one crack shown in Fig. 17 in the foundation wall, but there is no sign of movement or settlement existing or continuing. Otherwise, the stone foundations are in good condition, needing limited repair, and the newly exposed brickwork is not spalled or otherwise deteriorated. No evidence is provided to indicate continued opening up of the crack to the lean-to entrance shown in Fig. 18, and the existing movement in no way threatens the structural integrity of that small addition.

Conclusion

From this tabulated analysis, it appears that the only structure whose structural and fabric integrity is in some doubt is the west wing of the Hyatt (Gray) House; and the other issues put forward by LHC as justification for demolition are all relatively minor from the evidence presented and most issues could be temporarily resolved by a small work crew. For example: (i) water penetration could be halted by closing holes in the roof with sheet metal and closing gaps under the eaves with sheet metal or wood boards; (ii) access by small animals could be prevented by closing up gaps; and (iii) vandalism and any other unauthorized access could be discouraged by erecting a perimeter fence around each building.

Such small repairs to the fabric of the buildings would be a first step in creating an opportunity for a careful comprehensive review of the two buildings. A specialist heritage architect, working with a structural engineer with heritage knowledge, would need to be engaged to undertake a heritage condition assessment and prepare information for a feasibility study of how the buildings could be rehabilitated, with options for their future use to meet the commitment made in the 1993 Management Plan.

The intent of such a thorough and comprehensive examination and analysis of the buildings would be to understand their structural systems and construction in detail so that good decisions can be made when considering the rehabilitation of the buildings and each conservation action can be tracked and understood in all its ramifications. A further benefit of detailed analysis is that, although the buildings are constructed of “common” materials (so described by LHC), the eye of an experienced heritage architect will often note subtle vernacular construction and finishing details, easily missed, that would add to the buildings’ established heritage value and interest.

These findings, with photographs and construction sketches, and the resulting analysis, would need to be consolidated into a report that includes a schedule of prioritized repairs, from which a cost estimate with options for the work could be prepared. All the above information would provide the basis for feasibility options, even before necessary upgrades for a particular use were identified.

In my professional opinion, the HIAs by LHC have an underdeveloped methodology and insufficient information and analysis to justify amending the Management Plan to enable demolition of the Hyatt House and MacDonald House.

I strongly support retention, rehabilitation, and repurposing of both buildings.

Respectfully submitted by Edwin Rowse

**This is Exhibit “B” referred to in the
Affidavit of EDWIN JOHN ROWSE affirmed before
me this 7th day of March, 2021.**



A Commissioner, etc.

Amending the Sandbanks Provincial Park Management Plan to enable the demolition of two buildings

ERO: 019-0977

Comments from the Prince Edward Heritage Advisory Committee

Background

In accordance with the Environmental Registry of Ontario, The Ministry of the Environment, Conservation and Parks has posted a proposal regarding a Category B Environmental Assessment associated with a demolition project proposed at Sandbanks Provincial Park, and the associated proposed amendment to the Sandbanks Provincial Park Management Plan to allow for the demolition of the MacDonald and Hyatt houses.

The Prince Edward Heritage Advisory Committee is a statutory committee of Prince Edward County Council appointed to advise Council on all matters relating to the *Ontario Heritage Act* and the protection of the County's heritage. In response to the Environmental Registry posting and at the direction of Mayor Steven Ferguson, four PEHAC members visited the MacDonald and Hyatt sites on December 18, 2020 accompanied by Park Superintendent Robin Reilly, then PEHAC discussed the site visit observations and reviewed the Cultural Heritage Resource Evaluation Reports ("CHERs") and Heritage Impact Assessments ("HIAs") related to each property at its monthly meeting on January 16, 2020, at which the committee authorized the Chair to submit the comments herein to the Environmental Registry.

The 1993 Management Plan for Sandbanks Provincial Park committed to preserving buildings within the historical zone. Section 2 of the Plan identifies "management of heritage resources" as a "significant issue" arising from the extensive public consultation that took place at that time. With respect to cultural heritage resources, Section 6.5 states, "A cultural resources management plan will be developed to guide the management of the cultural resources of the park." With respect to the MacDonald and Hyatt (Gray) houses in particular, the Plan's stated policy at Section 5.2.2 includes:

"... the preservation of the MacDonald House and the barns, as well as the MacDonald / Hyatt wharf site and the site of the Lakeland Hotel. Any deterioration will be arrested, and potential for restoration, adaptive reuse and interpretation of the structures will be examined as part of the cultural resources management plan ... The Gray (Hyatt) House operated as the Lakeview Lodge soon after its construction in 1869 by the Hyatt family. The house is in good condition and it will not be allowed to deteriorate further."

In the over 25 years since this commitment to preserve was made, there is still no cultural resources management plan in place and, due to lack of maintenance and attention, Hyatt House and MacDonald House – buildings that date back to 1869/1878, respectively – are now in an advanced (but not irreversible) state of disrepair and Ontario Parks is proposing demolition. PEHAC submits that Ontario

Parks should develop a cultural resource management plan before any decision to demolish the two houses is contemplated. The time for a conservation management plan is now, while the buildings' deterioration is reversible.

CHERs and HIAs for MacDonald and Hyatt houses

One aim of PEHAC's comments to the Environmental Registry is to highlight for Ontario Parks and the Ministry of Heritage, Sport, Tourism and Culture Industries ("MHSTCI") the three main deficiencies of the CHERs and HIAs, with the recommendation that a peer-review of the existing CHERs and HIAs be carried out, which would include an in-depth consultation with PEHAC.

Firstly, the CHERs and HIAs are not informed by public consultation. A cultural heritage evaluation seeks to define the cultural heritage value of the resource and should be carried out with the involvement of the community. Community input can bring about major changes in a consultant's evaluation and impact assessment. Although the HIA for each house (Section 7) recommends that input from PEHAC and the Friends of Sandbanks be sought and "taken into consideration *in this HIA*," (emphasis added), even this limited community engagement did not happen, and the recommendation and omission is not noted in the HIAs' Executive Summary. (PEHAC understands that a member of the Friends of Sandbanks accompanied the CHER site visit in 2017 at his own request, and only to take photographs for the Friends' documentary purposes.)

Secondly, the CHERs and HIAs do not adequately capture the significance of the heritage resources and the impact of their proposed demolition on a remarkable natural and cultural heritage landscape of provincial significance. Both buildings provide significant physical, visual and historical context to the evolution of the Sandbanks area (not only historical context as the CHER asserts with respect to O. Reg. 9/06). Although the CHERs found that the MacDonald and Hyatt houses had heritage value under O. Reg. 9/06, the consultant found that neither met the criteria for provincial significance in O. Reg. 10/06. "The contextual importance of the MacDonald Farm structures is local, not provincial" (p 39). This contradicts the finding of the 1993 Management Plan, which states: "The MacDonald Farm ... illustrates the historical themes of agriculture and resort development *unique to this area of the province*" (Section 5.2.2, emphasis added). Although the Management Plan pre-dates the O. Reg. 10/06 criteria, its finding for the MacDonald Farm (and by extension the Hyatt house) neatly corresponds to Criteria 4, "The property is of aesthetic, visual or contextual importance to the province." PEHAC submits that both houses are an integral part of the unique Sandbanks landscape and that their physical presence at the Lake Ontario shoreline is crucial for an appreciation of a landscape of provincial significance.

Thirdly, the consultant does not bring the appropriate expertise to determining the condition of the buildings relative to the findings of the 2012 Bradley Engineering report, or to assessing the measures and costs required for rehabilitation at this time. The recommendations of the Bradley Engineering report appear to be generally still relevant. Bradley Engineering found for the MacDonald House that "the structural components of the main sections of the building ... have useful life remaining ... The structural rehabilitation component of the entire project will not be the critical factor when deciding on proceeding with the rehabilitation." (p 3). In the case of the Hyatt House, Bradley Engineering did not

obtain sufficient information to advise on the rehabilitation of the centre block and east wing: “The decision on whether to demolish or rehabilitate is not easy to recommend given the available information” and the report recommends further investigations (p 2). The advice of a qualified heritage architect, informed also by the architect’s engagement of a structural engineer with heritage experience, is needed for both buildings before the irreversible step of demolition is decided. It was the collective opinion of the four PEHAC members who visited the buildings in December 2019, informed by their professional qualifications and expertise in engineering, planning, and cultural heritage, that the buildings can be rehabilitated.

County Context

Over the last decade the County has become an increasingly popular destination for tourists, many of them destined for Sandbanks Provincial Park. In recent years, the County has welcomed upwards of a million visitors annually. Accommodations in the area are at a premium.

At the same time, the County is benefitting from several privately-led projects to restore and repurpose heritage-designated properties including the Royal Hotel and former Picton Legion (now Culinary Arts of Prince Edward – CAPE), among many examples. The private sector is currently a leading force in heritage preservation and restoration in our community because owners recognize that preserving the cultural heritage value of their properties brings both amenities to the visiting public and an economic return to the owner.

PEHAC’s Recommendations

Based on the site visit, document review, lack of stakeholder consultation for the CHERs and HIAs, County context, and motivated by a commitment to protect and promote the County’s heritage, the committee recommends that Ontario Parks:

- postpone the decision to amend the Sandbanks Provincial Park Management Plan, which would enable the demolition of two buildings, until the following recommendations have been addressed;
- take immediate steps to prevent water infiltration into the MacDonald house by using sheet metal to close the hole in the roof (HIA, fig. 13) and the gap between the second floor joists (HIA, fig. 8), and to prevent water infiltration into the Hyatt House by using sheet metal to close the hole visible in fig. 6 in the HIA; and install fencing around each building to prevent unauthorized access;
- commission a peer review of the existing CHERs and HIAs for the MacDonald and Hyatt houses by a qualified heritage architect, the peer review to include engaging a structural engineer with heritage experience for additional assessment, a site visit, review of all documents, and a meeting with PEHAC;
- hold public consultations within Prince Edward County with stakeholders on the future retention and use of all heritage assets in the park;

- create and implement a comprehensive Cultural Heritage Plan for the park, and when creating the Cultural Heritage Plan, evaluate the use of one or both buildings as the anchor for an interpretive center or public space with additional office space; and
- seek the creation of a joint public / private partnership to restore and repurpose the MacDonald and Hyatt properties as commercially viable accommodations for park visitors.

PEHAC requests assurance from Ontario Parks that PEHAC's comments, and all other submitted comments related to culture heritage, will be reviewed and considered by the MHSTCI, before any decision is taken with respect to the proposed amendment to the Management Plan.

PEHAC believes that the MacDonald and Hyatt properties present a unique opportunity to restore and repurpose heritage assets through a joint public/ private venture that can result in a sustainable and commercially viable operation for the benefit of all stakeholders. The committee urges the Ontario Government and Sandbanks Provincial Park to recognize the heritage value of the buildings, in addition to the embodied carbon in the structures, and make a commitment on behalf of the people of Ontario to give careful and due consideration to these Provincial assets.

Ken Dewar, Chair

On behalf of the Prince Edward Heritage Advisory Committee

**This is Exhibit “C” referred to in the
Affidavit of EDWIN JOHN ROWSE affirmed before
me this 7th day of March, 2021.**



A Commissioner, etc.



REPORT

Development Services Department

TO: Mayor and Members of Council

FROM: Paul Walsh, RPP, Manager of Planning

DATE: March 10, 2020

REPORT: DS-18/2020

SUBJECT: Proposed letter to the Province regarding Sandbanks Provincial Park Management Plan and proposed demolition of cultural heritage homes

EXECUTIVE SUMMARY:

The purpose of this report is to provide Council with information related to a posting on the Environmental Registry of Ontario (ERO: 019-0977) that involves an amendment to the Management Plan for the Sandbanks Provincial Park by the Ministry of the Environment, Conservation, and Parks that would allow for the demolition of the MacDonald and Hyatt houses. The houses are identified in the Management Plan to be cultural heritage features.

Members of the Heritage Advisory Committee have drafted a letter intended for the Mayor's signature to be sent to the Minister Heritage, Sport, Tourism & Culture Industries requesting the homes not be subject to demolition and to allow for improvements and re-purposing of the homes, including consideration of public-private/non-profit partnership arrangement. The letter is also intended to be directed to the Minister Heritage, Sport, Tourism & Culture Industries who oversees matters of heritage.

Staff support the recommendation of the Heritage Advisory Committee for the Mayor, on behalf of Council, to send the attached letter to the Province to raise the importance of this local issue.

RECOMMENDATION:

1. **THAT** Council receive report DS-18/2020; and
2. **THAT** Council authorize the Mayor to send a letter to the Minister of the Environment, Conservation, and Parks and to the Minister of Heritage, Sport, Tourism & Culture Industries requesting the proposed amendment to the

Management Plan for Sandbanks Provincial Park be postponed until further study, public consultation and alternate options to demolition have been evaluated.

ANALYSIS:

A posting on the Environmental Registry of Ontario was made by the Ministry of the Environment, Conservation, and Parks on December 6, 2019 that summarized the proposal as follows:

We are changing the Sandbanks Provincial Park Management Plan to allow for the demolition of two buildings (former residential homes) at the park. Removing the buildings will help to ensure the health and safety of park visitors.

See **Attachment #2** for a complete description of the proposed amendments to the Management Plan.

On December 12, 2019, the Prince Edward County Heritage Advisory Committee met and discussed the posting. Significant concerns were raised regarding the timing of the posting over the course of a typical holiday season. The Committee also questioned the inability to access the Heritage Impact Assessment report that was alluded to in the posting. The Committee made the following motion:

Motion PEHAC-74-2019

Moved by: Councillor Ernie Margetson

Seconded by: Liz Driver

THAT PEHAC request that the HIA be posted on the environmental registry and that the public comments period be extended to 45 days from the date of posting on the HIA.

CARRIED

Subsequent to the meeting, members of the Committee attended on site to discuss the posting with the Sandbanks Park Superintendent. The conditions of the two homes were also inspected by Committee members.

On January 16, 2020, the Prince Edward County Heritage Advisory Committee met and re-visited discussion regarding the posting and the condition of the buildings.

The following Motion was made:

Motion PEHAC-03-2020

Moved by: Peter Lockyer

Seconded by: Liz Driver

THAT the following motions be undertaken by the committee:

a) Authorize the Chair to draft a letter to the Environmental Registry of Ontario to comment on behalf of the Committee;

b) Chair request that the Mayor draft a letter to the Ministers of Environment Conservation & Parks and the Ministry of Heritage, Sport, Tourism & Culture Industries.

CARRIED

In keeping with the direction of the Motion, comments were posted on the Environmental Registry of Ontario on January 20, 2020. (**Attachment #3**).

OTHER OPTIONS CONSIDERED:

Council may choose to offer no additional comments other than those previously offered by the Heritage Committee via the EBR posting. However, this effort is less likely to elevate the issue to the level of importance needed to foster public dialogue and a sharpened focus on constructive alternatives to demolition.

CONSULTATION TO DATE:

The Prince Edward Heritage Advisory Committee hosts open public meetings through advanced scheduling of its meetings and through postings of its agenda.

FINANCIAL CONSIDERATIONS:

No financial impacts related to the recommendations of this report have been identified.

RISKS:

RISK DESCRIPTION	RISK TYPE	PROPOSED MITIGATION
The loss of two culturally significant heritage homes with unique attributes of location within the Sandbanks Park environment.	Public/Stakeholder	Through raising public and political awareness and discussion in the cultural heritage value of the homes, Provincial support for the improvement and conservation of the homes may be secured.

RELEVANT POLICY/BY-LAW:

As these properties are on provincial land, no municipal by-law or policy applies.

CORPORATE STRATEGIC PRIORITY ALIGNMENT:

The recommendations of this report support the following Corporate Strategic Priorities:

Priority #4: Maintain Rural and Historic Charm - Maintain the rural and historical character of the County through responsible planning principles and decision-making.

Priority #4 is advanced through the letter recommended herein by making a priority on this example of a significant combination of cultural heritage (the MacDonald and Hyatt homes) and natural heritage (the unique landscape of Sandbanks Provincial Park).

COMMUNICATIONS:

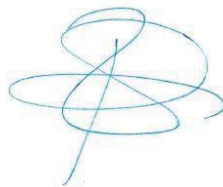
With Council support for this letter, the Clerk will send it to the Minister of the Environment, Conservation, and Parks, and provide a copy to the Prince Edward County Heritage Advisory Committee.

ATTACHMENTS:

1. Letter to the Ministers
2. ERO Posting
3. PEHAC Comments to ERO Posting

Authorizing signatures:

Prepared by: Paul Walsh, RPP
Manager of Planning March 4, 2020



Reviewed by: Peter Moyer, P.Eng
Director of Development Services March 4, 2020



CAO Approval: Marcia Wallace
Chief Administrative Officer March 4, 2020



From the Office of the Mayor
 The Corporation of the County of Prince Edward
 Shire Hall, 332 Main St. Picton, ON K0K 2T0
 T: 613.476.2148 | F: 613.476.5727
sferguson@pecounty.on.ca | www.thecounty.ca



March 10, 2020

The Honourable Jeff Yurek
 Ministry of the Environment, Conservation and Parks
 College Park 5th Floor
 777 Bay Street
 Toronto, Ontario
 M7A 2J3

Re: Proposed Demolition of the MacDonald and Hyatt Houses

Dear Minister Yurek:

On behalf of the Municipality of Prince Edward County, and based on the recommendation of the Heritage Advisory Committee, I would like to formally express Municipal and Council support for the comments submitted regarding heritage assets at Sandbanks Provincial Park.

Prince Edward County's Heritage Advisory Committee recently submitted comments to the Environmental Registry of Ontario (ERO: 019-0977) on the proposal to amend the Sandbanks Provincial Park Management Plan to enable the demolition of two heritage properties, the MacDonald and Hyatt houses.

The Heritage Advisory Committee is a statutory committee of Prince Edward County Council appointed to advise Council on all matters relating to the Ontario Heritage Act and the protection of the County's heritage. The Heritage Committee submission suggests the MacDonald and Hyatt properties present a unique opportunity to restore and repurpose heritage assets. Demolishing the houses disregards/overlooks this community's steadfast and consistent commitment to heritage. Prince Edward County is recognized for its valuable heritage assets, and both the Municipality and the private sector are dedicated to heritage preservation and restoration in our community. Prince Edward County has become an increasingly popular destination for tourists with a million visitors annually, and the heritage fabric of this community is an important component of this popularity.

This correspondence is intended to reinforce the position of the Heritage Advisory Committee, and strongly encourage the review of alternate options to demolition of two heritage buildings within the Park, and to seek a path to respecting the



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Sandbanks Provincial Park Management Plan which originally recognized the heritage value of the buildings proposed to be demolished.

Please contact the undersigned if you require further discussion or elaboration on the foregoing.

Sincerely yours,

Steve Ferguson
Mayor
Prince Edward County

cc. The Honourable Lisa MacLeod
Ministry of Heritage, Sport, Tourism and Culture Industries

DRAFT

Amending the Sandbanks Provincial Park Management Plan to enable the demolition of two buildings

ERO: 019-0977

Comments from the Prince Edward Heritage Advisory Committee

Background

In accordance with the Environmental Registry of Ontario, The Ministry of the Environment, Conservation and Parks has posted a proposal regarding a Category B Environmental Assessment associated with a demolition project proposed at Sandbanks Provincial Park, and the associated proposed amendment to the Sandbanks Provincial Park Management Plan to allow for the demolition of the MacDonald and Hyatt houses.

The Prince Edward Heritage Advisory Committee is a statutory committee of Prince Edward County Council appointed to advise Council on all matters relating to the *Ontario Heritage Act* and the protection of the County's heritage. In response to the Environmental Registry posting and at the direction of Mayor Steven Ferguson, four PEHAC members visited the MacDonald and Hyatt sites on December 18, 2019 accompanied by Park Superintendent Robin Reilly, then PEHAC discussed the site visit observations and reviewed the Cultural Heritage Resource Evaluation Reports ("CHERs") and Heritage Impact Assessments ("HIAs") related to each property at its monthly meeting on January 16, 2020, at which the committee authorized the Chair to submit the comments herein to the Environmental Registry.

The 1993 Management Plan for Sandbanks Provincial Park committed to preserving buildings within the historical zone. Section 2 of the Plan identifies "management of heritage resources" as a "significant issue" arising from the extensive public consultation that took place at that time. With respect to cultural heritage resources, Section 6.5 states, "A cultural resources management plan will be developed to guide the management of the cultural resources of the park." With respect to the MacDonald and Hyatt (Gray) houses in particular, the Plan's stated policy at Section 5.2.2 includes:

"... the preservation of the MacDonald House and the barns, as well as the MacDonald / Hyatt wharf site and the site of the Lakeland Hotel. Any deterioration will be arrested, and potential for restoration, adaptive reuse and interpretation of the structures will be examined as part of the cultural resources management plan ... The Gray (Hyatt) House operated as the Lakeview Lodge soon after its construction in 1869 by the Hyatt family. The house is in good condition and it will not be allowed to deteriorate further."

In the over 25 years since this commitment to preserve was made, there is still no cultural resources management plan in place and, due to lack of maintenance and attention, Hyatt House and MacDonald House – buildings that date back to 1869/1878, respectively – are now in an advanced (but not irreversible) state of disrepair and Ontario Parks is proposing demolition. PEHAC submits that Ontario

Parks should develop a cultural resource management plan before any decision to demolish the two houses is contemplated. The time for a conservation management plan is now, while the buildings' deterioration is reversible.

CHERs and HIAs for MacDonald and Hyatt houses

One aim of PEHAC's comments to the Environmental Registry is to highlight for Ontario Parks and the Ministry of Heritage, Sport, Tourism and Culture Industries ("MHSTCI") the three main deficiencies of the CHERs and HIAs, with the recommendation that a peer-review of the existing CHERs and HIAs be carried out, which would include an in-depth consultation with PEHAC.

Firstly, the CHERs and HIAs are not informed by public consultation. A cultural heritage evaluation seeks to define the cultural heritage value of the resource and should be carried out with the involvement of the community. Community input can bring about major changes in a consultant's evaluation and impact assessment. Although the HIA for each house (Section 7) recommends that input from PEHAC and the Friends of Sandbanks be sought and "taken into consideration *in this HIA*," (emphasis added), even this limited community engagement did not happen, and the recommendation and omission is not noted in the HIAs' Executive Summary. (PEHAC understands that a member of the Friends of Sandbanks accompanied the CHER site visit in 2017 at his own request, and only to take photographs for the Friends' documentary purposes.)

Secondly, the CHERs and HIAs do not adequately capture the significance of the heritage resources and the impact of their proposed demolition on a remarkable natural and cultural heritage landscape of provincial significance. Both buildings provide significant physical, visual and historical context to the evolution of the Sandbanks area (not only historical context as the CHER asserts with respect to O. Reg. 9/06). Although the CHERs found that the MacDonald and Hyatt houses had heritage value under O. Reg. 9/06, the consultant found that neither met the criteria for provincial significance in O. Reg. 10/06. "The contextual importance of the MacDonald Farm structures is local, not provincial" (p 39). This contradicts the finding of the 1993 Management Plan, which states: "The MacDonald Farm ... illustrates the historical themes of agriculture and resort development *unique to this area of the province*" (Section 5.2.2, emphasis added). Although the Management Plan pre-dates the O. Reg. 10/06 criteria, its finding for the MacDonald Farm (and by extension the Hyatt house) neatly corresponds to Criteria 4, "The property is of aesthetic, visual or contextual importance to the province." PEHAC submits that both houses are an integral part of the unique Sandbanks landscape and that their physical presence at the Lake Ontario shoreline is crucial for an appreciation of a landscape of provincial significance.

Thirdly, the consultant does not bring the appropriate expertise to determining the condition of the buildings relative to the findings of the 2012 Bradley Engineering report, or to assessing the measures and costs required for rehabilitation at this time. The recommendations of the Bradley Engineering report appear to be generally still relevant. Bradley Engineering found for the MacDonald House that "the structural components of the main sections of the building ... have useful life remaining ... The structural rehabilitation component of the entire project will not be the critical factor when deciding on proceeding with the rehabilitation." (p 3). In the case of the Hyatt House, Bradley Engineering did not

obtain sufficient information to advise on the rehabilitation of the centre block and east wing: “The decision on whether to demolish or rehabilitate is not easy to recommend given the available information” and the report recommends further investigations (p 2). The advice of a qualified heritage architect, informed also by the architect’s engagement of a structural engineer with heritage experience, is needed for both buildings before the irreversible step of demolition is decided. It was the collective opinion of the four PEHAC members who visited the buildings in December 2019, informed by their professional qualifications and expertise in engineering, planning, and cultural heritage, that the buildings can be rehabilitated.

County Context

Over the last decade the County has become an increasingly popular destination for tourists, many of them destined for Sandbanks Provincial Park. In recent years, the County has welcomed upwards of a million visitors annually. Accommodations in the area are at a premium.

At the same time, the County is benefitting from several privately-led projects to restore and repurpose heritage-designated properties including the Royal Hotel and former Picton Legion (now Culinary Arts of Prince Edward – CAPE), among many examples. The private sector is currently a leading force in heritage preservation and restoration in our community because owners recognize that preserving the cultural heritage value of their properties brings both amenities to the visiting public and an economic return to the owner.

PEHAC’s Recommendations

Based on the site visit, document review, lack of stakeholder consultation for the CHERs and HIAs, County context, and motivated by a commitment to protect and promote the County’s heritage, the committee recommends that Ontario Parks:

- postpone the decision to amend the Sandbanks Provincial Park Management Plan, which would enable the demolition of two buildings, until the following recommendations have been addressed;
- take immediate steps to prevent water infiltration into the MacDonald house by using sheet metal to close the hole in the roof (HIA, fig. 13) and the gap between the second floor joists (HIA, fig. 8), and to prevent water infiltration into the Hyatt House by using sheet metal to close the hole visible in fig. 6 in the HIA; and install fencing around each building to prevent unauthorized access;
- commission a peer review of the existing CHERs and HIAs for the MacDonald and Hyatt houses by a qualified heritage architect, the peer review to include engaging a structural engineer with heritage experience for additional assessment, a site visit, review of all documents, and a meeting with PEHAC;
- hold public consultations within Prince Edward County with stakeholders on the future retention and use of all heritage assets in the park;

- create and implement a comprehensive Cultural Heritage Plan for the park, and when creating the Cultural Heritage Plan, evaluate the use of one or both buildings as the anchor for an interpretive center or public space with additional office space; or
- seek the creation of a joint public / private partnership to restore and repurpose the MacDonald and Hyatt properties as commercially viable accommodations for park visitors.

PEHAC requests assurance from Ontario Parks that PEHAC's comments, and all other submitted comments related to culture heritage, will be reviewed and considered by the MHSTCI, before any decision is taken with respect to the proposed amendment to the Management Plan.

PEHAC believes that the MacDonald and Hyatt properties present a unique opportunity to restore and repurpose heritage assets through a joint public/ private venture that can result in a sustainable and commercially viable operation for the benefit of all stakeholders. The committee urges the Ontario Government and Sandbanks Provincial Park to recognize the heritage value of the buildings, in addition to the embodied carbon in the structures, and make a commitment on behalf of the people of Ontario to give careful and due consideration to these Provincial assets.

Ken Dewar, Chair

On behalf of the Prince Edward Heritage Advisory Committee

**This is Exhibit “D” referred to in the
Affidavit of EDWIN JOHN ROWSE affirmed before
me this 7th day of March, 2021.**



A Commissioner, etc.

REPORT:

Heritage Impact Assessment

Site Number 13, Hyatt House,
Sandbanks Provincial Park, Picton,
Ontario



**Letourneau
Heritage
Consulting Inc.**

837 Princess Street
Suite 400
Kingston, ON K7L 1G8

Phone: 613-507-7817
Toll Free: 1-833-210-7817
E-mail: info@lhcheritage.com

October 2020

Project # LHC0148



EXECUTIVE SUMMARY

Letourneau Heritage Consulting Inc. (LHC) was retained by Kendra Couling, Parks Planner for Ontario Parks, Southeast Zone to prepare a Heritage Impact Assessment (HIA) for Site Number 13, Hyatt House in Sandbanks Provincial Park. As a result of significant deterioration, security, and safety concerns, Ontario Parks is contemplating the demolition of the Hyatt House. Because Site Number 13, Hyatt House, is a Provincial Heritage Property, a HIA is required to evaluate proposed options for the future of the Hyatt House as part of Ontario Parks' obligations under the *Standards and Guidelines for the Conservation of Provincial Heritage Properties* and Section III.1 of the *Ontario Heritage Act*. This HIA has been conducted in compliance with the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) *Information Bulletin 3: Heritage Impact Assessments for Provincial Heritage Properties*.

The Hyatt House has been identified as a Provincial Heritage Property (PHP), as it satisfies Ontario Regulation 9/06 under the *Ontario Heritage Act*. There are no other heritage recognitions by the federal government, no municipal designations and no other heritage recognitions by other provincial agencies.

The boundaries of the PHP are the footprint of the key resource, the 1869 structure comprising the Hyatt House.

A site visit was conducted on April 9, 2019 by M. Létourneau and C. Uchiyama. The purpose of this site visit was to tour the property and document observed changes to the conditions of the cultural heritage resource and its heritage attributes since March 2017 when the property was documented for the CHER.

The following document: provides an overview of the proposed activity and its purpose; summarizes the constraints that led to the selection of the proposed activity; provides an overview of alternatives; outlines potential impacts of the proposed activity on the cultural heritage value and heritage attributes of the Hyatt House; and, provides recommendations to mitigate identified potential impacts.

Direct adverse impacts related to the irreversible loss of the structure and its heritage attributes have been identified. However, Ontario Parks has advised that the resources do not exist to undertake further studies or to rehabilitate and maintain the structure. As a result, Ontario Parks will pursue demolition as a last resort.

Recommended mitigation measures include the following:

- A Designated Substance Report and Salvage Plan should be prepared for the structure to help determine the feasibility of salvage of any of the materials prior to demolition.
- A documentary record of the Hyatt House should be compiled. This record should include digital copies of available archival materials and reports, a set of high-resolution photographs of the structure and its heritage attributes; and, elevations and measured drawings. This documentary record should be held on file by Ontario Parks and a copy should be provided to the MHSTCI and local archives for their files; and,

- A commemorative and interpretive installation should be constructed on-site to illustrate the historical and associative value of the Hyatt House.

6 CONSIDERED ALTERNATIVES AND MITIGATION MEASURES

The following outlines potential alternatives to demolition.

6.1 Retention

This alternative essentially sees the retention of the Hyatt House *in situ*. Retention is generally the preferred option for cultural heritage resources. This alternative is, however, not recommended for the Hyatt House in its current state – without significant intervention - as it poses a safety and security risk. Not only are there concerns for any persons gaining unauthorised access to the structure, but there are also safety concerns for park visitors being in close proximity to the structure as a number of exterior elements appear to be failing.

Given the current condition of the property, Ontario Parks would be required to immediately undertake the additional structural investigations and a Designated Substances Report to determine the extent of repairs that would be required to stabilise, secure, and clean the structure. Significant intervention and replacement of structural elements would be required to make the structure safe. It is unclear to what extent existing materials (structural elements and finishes) might safely be retained, although it is clear that significant intervention is required and it may result in the extensive loss of original fabrics and heritage attributes. Per the 2012 structural engineering investigations, the retention of the west wing, even with significant intervention is unlikely. In the event that a use, such as lodging, can be found for the structure, additional intervention would be required to rehabilitate the structure for use.

Ontario Parks has been unable to identify a use for the structure that fits within its mandate and lacks the resources to undertake additional engineering studies to determine the extent of intervention required to secure the structure or to undertake the necessary work to rehabilitate and maintain the structure. In the interim, efforts to secure the structure against animal and visitor intrusions are ongoing, but unsustainable.

6.2 Demolition

This alternative essentially sees the demolition of the Hyatt House and the removal of all of its heritage attributes.

Given that Ontario Parks has been unable to identify a use for the structure and lacks resources to further study, secure, rehabilitate and maintain the structure, Ontario Parks has advised that this last resort option is the only viable alternative. It is recommended that the demolition be undertaken before the structure and its features are allowed to deteriorate further.

6.3 Mitigation Measures

Per the S&Gs:

F.4. All other alternatives having been considered, consider removal or demolition as a last resort, subject to heritage impact assessment and public engagement. Use best efforts to mitigate loss of cultural heritage value.

The following section outlines recommended mitigation measures to lessen the loss of the cultural heritage value of the Hyatt House.

Salvage and Documentation

Salvage and documentation are preferred to demolition and disposal of materials in landfill. This option allows for the thoughtful demolition of the Hyatt House, ensuring that structural components and features are removed for re-use either for repairs of other structures on site, commemorative feature, or elsewhere. Prior to salvage, a Designated Substances Survey should be undertaken to determine if materials can safely be salvaged.

A documentary record of the Hyatt House should be compiled. This record should include digital copies of available archival materials and reports, a set of high-resolution photographs of the structure and its heritage attributes; and, elevations and measured drawings. This documentary record should be held on file by Ontario Parks and a copy should be provided to the MHSTCI and local archives for their files.

Commemoration and Consideration of Cultural Heritage Value in New Development

It is recommended that the history of the Hyatt House should be commemorated through an interpretive sign, plaque, or similar interpretive medium.

**This is Exhibit “E” referred to in the
Affidavit of EDWIN JOHN ROWSE affirmed before
me this 7th day of March, 2021.**



A Commissioner, etc.

REPORT

Heritage Impact Assessment

Site Number 17, MacDonald House,
Sandbanks Provincial Park,
Picton, Ontario



**Letourneau
Heritage
Consulting Inc.**

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Kingston, ON K7L 1G8

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Toll Free: 1-833-210-7817
E-mail: info@lhcheritage.com

October 2020

Project # LHC0184



EXECUTIVE SUMMARY

Letourneau Heritage Consulting Inc. (LHC) was retained by Kendra Couling, Parks Planner for Ontario Parks, Southeast Zone to prepare a Heritage Impact Assessment (HIA) for Site Number 17, MacDonald Farm in Sandbanks Provincial Park. As a result of significant deterioration, security, safety concerns, and lack of resources Ontario Parks is contemplating the demolition of the MacDonald House. Because Site Number 17, MacDonald House, is a Provincial Heritage Property, a HIA is required to evaluate proposed options for the future of the MacDonald House as part of Ontario Parks' obligations under the *Standards and Guidelines for Conservation of Provincial Heritage Properties* and Section III.1 of the *Ontario Heritage Act*. This HIA has been conducted in compliance with the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) *Information Bulletin 3: Heritage Impact Assessments for Provincial Heritage Properties*.

The MacDonald Farm has been identified as a Provincial Heritage Property (PHP), as it satisfies Ontario Regulation 9/06 under the *Ontario Heritage Act*. There are no other heritage recognitions by the federal government, no municipal designations and no other heritage recognitions by other provincial agencies.

The boundaries of the PHP are the footprint of the key resource, the 1876 structure comprising the MacDonald House, the wood frame hog shed, and concrete silo.

A site visit was conducted on September 27, 2019 by C. Uchiyama. The purpose of this site visit was to tour the property and document observed changes to the conditions of the cultural heritage resource and its heritage attributes since March 2017 when the property was documented for the CHER.

The following document: provides an overview of the proposed activity and its purpose; summarizes the constraints that led to the selection of the proposed activity; provides an overview of alternatives; outlines potential impacts of the proposed activity on the cultural heritage value and heritage attributes of the MacDonald House; and, provides recommendations to mitigate identified potential impacts.

Direct adverse impacts related to the irreversible loss of the structure and its heritage attributes have been identified. However, Ontario Parks has advised that the resources do not exist to undertake further studies or to rehabilitate and maintain the structure. As a result, Ontario Parks will pursue demolition as a last resort.

Recommended mitigation measures include the following:

- A Designated Substance Report and Salvage Plan should be prepared for the structure to help determine the feasibility of salvage of any of the materials prior to demolition.
- A documentary record of the MacDonald Farm should be compiled. This record should include digital copies of available archival materials and reports, a set of high-resolution photographs of the structure and its heritage attributes; and, elevations and measured drawings. This documentary record should be held on file by Ontario Parks and a copy should be provided to the MHSTCI and local archives for their files; and,

- A commemorative and interpretive installation should be constructed on-site to illustrate the historical and associative value of the MacDonald Farm.

6 CONSIDERED ALTERNATIVES AND MITIGATION MEASURES

6.1 Retention

This alternative essentially sees the retention of the house *in situ*. Retention is generally the preferred option for cultural heritage resources. This alternative is, however, not recommended for the residence based in its current state – without intervention to secure the structure - as it poses a health, safety and security risk. Ontario Parks has been unable to identify a use for the structure that fits within its mandate.

Given the current condition of the property, Ontario Parks would be required to immediately undertake the additional structural investigations and a Designated Substances Report to determine the extent of repairs that would be required to stabilise, secure, and clean the structure to ensure adequate mothballing conditions. The financial resources do not exist to allocate towards additional engineering studies or the work to rehabilitate and maintain the structure. Efforts to secure the structure against animal and visitor/vandal intrusions are ongoing, but are unsustainable.

Significant intervention and replacement of structural elements appear to be required to make the structure safe given the visible mould, rot, and warping that was identified during the 2019 site visit. It is unclear to what extent existing materials (structural elements and finishes) might safely be retained, although it is clear that significant intervention is required and it may result in the extensive loss of original fabrics and heritage attributes. Intervention is required to remediate damage to the stucco cladding and adequately address infiltration concerns on exterior walls that have been exposed as a result of the removal of the porch and additions. Per the 2012 structural engineering investigation, additional ventilation and improved rainwater management is required to avoid further water damage.

6.2 Demolition

This alternative essentially sees the demolition of the house and the removal of all of its heritage attributes and can only be considered, under the S&Gs, as a last resort.

Given that Ontario Parks has been unable to identify a use for the structure and lacks resources to further study, secure, rehabilitate and maintain the structure, Ontario Parks has advised that this last resort option is the only viable alternative. It is recommended that the demolition be undertaken before the house and its features are allowed to deteriorate further.

6.3 Mitigation Measures

Per the S&Gs:

- F.4. All other alternatives having been considered, consider removal or demolition as a last resort, subject to heritage impact assessment and public engagement. Use best efforts to mitigate loss of cultural heritage value.

The following section outlines recommended mitigation measures to lessen the loss of the cultural heritage value of the MacDonald Farm.

6.3.1 *Salvage and Documentation*

Salvage and documentation are preferred to demolition and disposal of materials in landfill. This option allows for the thoughtful demolition of the structure, ensuring that structural components and features are removed for re-use either for repairs of other structures on site, commemorative feature, or elsewhere. Prior to salvage, a Designated Substances Survey should be undertaken to determine if materials can safely be salvaged.

A documentary record should be compiled. This record should include digital copies of available archival materials and reports, a set of high-resolution photographs of the structure and its heritage attributes; and, elevations and measured drawings. This documentary record should be held on file by Ontario Parks and a copy should be provided to the MHSTCI and local archives for their files.

6.3.2 *Commemoration and Consideration of Cultural Heritage Value in New Development*

It is recommended that the history of the MacDonald Farm should be commemorated through an interpretive sign, plaque, or similar interpretive medium. If the pig barn and silo are to remain *in situ* commemoration should contextualise the remaining attributes geographically and historically.

**This is Exhibit “F” referred to in the
Affidavit of EDWIN JOHN ROWSE affirmed before
me this 7th day of March, 2021.**



A Commissioner, etc.



Ontario Parks, Southeast Zone
300 Water Street, 4th Fl N.
Peterborough, ON
K9J 3C7

February 4, 2021

Philip Evans
ERA Architects Inc.
625 Church St, Suite 600
Toronto, ON
M4Y 2G1

Dear Mr. Evans,

Thank you for your interest in the Category B Project Evaluation for the demolition of heritage buildings at Sandbanks Provincial Park. I appreciate the submission of your October 7, 2020 comments and proposal submitted during the Notice of Completion period, which ended October 15, 2020.

I would also like to thank you for meeting with the Southeast Zone Planner and Ecologist, and the Assistant Superintendent of Sandbanks on October 29, 2020. They informed me that your presentation and proposal to address challenges by adaptively reusing buildings was very informative.

The Ministry of the Environment, Conservation and Parks appreciates your commitment to preserving heritage buildings in Prince Edward County and we have considered your proposal carefully. We do however respectfully decline your proposal that we pause our processes for three months and later enter into discussion with you regarding a long-term lease for the buildings.

Heritage assessments finalized on March 5, 2020 indicate that the buildings are in an advanced state of disrepair and that they pose significant health and safety risks. Also, Designated Substances Surveys conducted in September 2019 have indicated that the buildings contain asbestos, lead and silica, all of which are hazardous to human health.

Furthermore, the heritage assessments completed for the houses indicate that the buildings are not considered provincially significant and that commemoration is appropriate mitigation.

More information detailing our decision will be posted in the coming months on the [Environmental Registry of Ontario](#).

Ontario Parks, Southeast Zone is interested in engaging with you and other interested parties in discussions regarding the commemoration of these buildings. Should you wish to participate in those discussions, please contact Robin Reilly, Sandbanks Provincial Park Superintendent at robin.reilly@ontario.ca or (613) 393.3319 ext 229.

Thank you again for your continued interest in this project.

Greg Walsh
Southeast Zone Manager

CC: Todd Smith, MPP Bay of Quinte
Robin Reilly, Superintendent, Sandbanks Provincial Park
Kendra Couling, Park Planner, Southeast Zone

**This is Exhibit “G” referred to in the
Affidavit of EDWIN JOHN ROWSE affirmed before
me this 7th day of March, 2021.**



A Commissioner, etc.

From: Philip Evans <PhilipE@eraarch.ca>
Date: Sunday, February 7, 2021 at 11:16 AM
To: Walsh, Greg (MECP) <greg.walsh@ontario.ca>
Cc: Reilly, Robin (MECP) <robin.reilly@ontario.ca>, Couling, Kendra (MECP) <Kendra.Couling@ontario.ca>, todd.smithco@pc.ola.org <todd.smithco@pc.ola.org>
Subject: Re: Heritage Buildings at Sandbanks Provincial Park

Thanks Greg and team,

I appreciate taking the meeting with me last fall and considering my offer.

Regardless of the outcome, I'm totalling excited by any potential to work with the province on the stewardship of these lands and other within the park as outlined in the basins initiative which I know the province shares: <https://basinsproject.ca>

On the matter of the houses, if the province's key concern is the condition I'd like to reiterate: the buildings' condition is not an issue for me or my investors. Our offers will assume as-is condition.

I still have 3 separate and very real investors interested. I just need formal acknowledgement that the province is willing to consider the offers before they invest their time and effort on my behalf.

In light of this, I am willing to extend my offer to include:

1. I accept the building's as-is condition for any offers;
2. I will provide the province a summary of the condition assessment findings (as a sort of second opinion) that you can rely on if my investors do not proceed with an offer at the end of the due diligence;
3. I will commit to access to the property during due diligence be done at our own risk for any concerns the province might have for safety; and
4. I will reduce the due diligence period to 1 month with your expressed acknowledgment to consider offers.

I hope this helps limit any risk for the province, particularly if the only concern is the condition of the buildings.

Respectfully, almost 4 months have passed since my request for a 3-month due diligence. Please give me 1 month to bring you're a committed offer in writing.

Happy to jump on a call,

Cheers,
Philip
647.808.4183

Philip Evans | Principal OAA, CAHP, MRAIC

ERA Architects Inc.

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E PhilipE@eraarch.ca

eraarch.ca | [Twitter](#) | [Facebook](#) | [Instagram](#)

Please note that due to the continued spread of COVID-19 and recommendations from public health officials, ERA is moving to a virtual office mode. We remain committed to ensuring the quality of our work remains high to serve the needs of clients, colleagues and the wider community. [Read our full letter to clients](#). If you have any questions, please don't hesitate to ask.

Note: This e-mail message and its attachments are privileged, confidential, and subject to copyright. Please consider the environment before printing this e-mail.

Note: Ce courriel et toutes ses pièces jointes sont privilégiés, confidentiels, et assujettis au droit d'auteur. S'il vous plaît considérer l'environnement avant d'imprimer.

From: Walsh, Greg (MECP) <greg.walsh@ontario.ca>

Date: Friday, February 5, 2021 at 3:38 PM

To: Philip Evans <PhilipE@eraarch.ca>

Cc: Reilly, Robin (MECP) <robin.reilly@ontario.ca>, Couling, Kendra (MECP) <Kendra.Couling@ontario.ca>, todd.smithco@pc.ola.org <todd.smithco@pc.ola.org>

Subject: Heritage Buildings at Sandbanks Provincial Park

Warning: External Sender

Dear Mr. Evans

Thank you for your recent involvement in the consultation process for the Category B Project Evaluation for the demolition of heritage buildings at Sandbanks Provincial Park. Please find attached a response to your proposal that we pause our processes for three

months and later enter into discussion with you regarding a long-term lease for the buildings.

Regards,

Greg Walsh | A/Zone Manager Southeast

Zone- Ontario Parks

300 Water St., Peterborough, Ontario, K9J 3C7

P: 705-755-2176 (Alternate 905-715-3106) **W:** OntarioParks.com



Ministry of the Environment, Conservation and Parks

Please note: As part of providing accessible customer service, please let me know if you have any accommodation needs or require communication supports or alternate formats.

**This is Exhibit “H” referred to in the
Affidavit of EDWIN JOHN ROWSE affirmed before
me this 7th day of March, 2021.**



A Commissioner, etc.



MINISTRY OF TOURISM AND CULTURE

Standards & Guidelines for Conservation of
Provincial Heritage Properties

STANDARDS & GUIDELINES

April 28, 2010

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Appendix A – Criteria for Determining Cultural Heritage Value or Interest (Ontario Regulation 9/06)

Appendix B – Criteria for Determining Cultural Heritage Value or Interest of Provincial Significance (Ontario Regulation 10/06)

INTRODUCTION AND PURPOSE

These Standards and Guidelines apply to properties the Government of Ontario owns or controls that have cultural heritage value or interest—provincial heritage properties. They are issued under the authority of section 25.2 of the Ontario Heritage Act (the “Act”) and come into effect on July 1, 2010. They are mandatory for ministries and prescribed public bodies and have the authority of a Management Board of Cabinet directive.

Many provincial heritage properties are icons in the Ontario landscape. They are important to the social, economic, and cultural well-being of Ontario communities. The following are some examples:

- Many of Ontario’s courthouses, jails, and provincial hospitals are provincial heritage properties. The Ministry of Energy and Infrastructure manages these capital real estate assets through its agency, the Ontario Realty Corporation.
- Bridges can have cultural heritage value. The Ministry of Transportation, which manages provincial highways, also manages bridges owned by the province.
- Ontario’s 330 provincial parks cover 7.9 million hectares. They include natural heritage resources, but many also have cultural heritage value. The Ministry of Natural Resources manages Ontario’s provincial parks.
- The Ontario Heritage Trust holds title to 180 natural and cultural provincial heritage properties.

The Ontario Heritage Act provides the framework for provincial and municipal responsibilities and powers in the conservation of cultural heritage resources.

In 2005, the Government of Ontario amended the Ontario Heritage Act to strengthen and improve heritage protection in Ontario. The amendments enacted new heritage protection powers and mechanisms including:

- Provincial designation: the Minister of Tourism and Culture may designate properties of cultural heritage value or interest of provincial significance
- Strengthened demolition controls: both municipalities and the Minister of Tourism and Culture, in respect of properties of provincial significance, have the power to prevent demolition of designated heritage structures, subject to the owner’s right of appeal
- Enhanced protection of heritage conservation districts, marine heritage sites and archaeological resources
- Provision for the development of standards and guidelines for the conservation of provincial heritage properties (new Part III.1)

Provincial heritage properties are not subject to designation by municipalities or the Minister. The amendments to the Act gave the Minister of Tourism and Culture the authority to develop standards and guidelines for the conservation of provincial heritage properties. As a result, the province now has the responsibility to establish a comparable standard of identification, protection and care for provincial heritage properties as already exists for private property.

Part III.1 of the Act enables the Minister of Tourism and Culture, in consultation with the ministries and public bodies affected, to prepare standards and guidelines that set out the criteria and process for identifying provincial heritage properties and to set standards for their protection, maintenance, use, and disposal. In developing these Standards and Guidelines, the Ministry of Tourism and Culture drew from existing standards, policies, and best practices currently in use by the Government of Ontario, the federal government, and leading international jurisdictions. The Ministry consulted with affected ministries, public bodies proposed to be prescribed by Regulation 157/10 and the Ontario Heritage Trust.

It is important to recognize that many ministries and public bodies already take steps to protect the cultural heritage resources in their care. Some have processes consistent with the Class Environmental Assessments approved for them by the Minister of the Environment. Others are required to do so by legislation or their own charter, mandate or mission statement. Building on the measures already in place, these Standards and Guidelines will bring consistency and uniformity to the management of provincial heritage assets.

Ontario's cultural heritage resources belong to present and future generations of Ontarians. Managing provincial heritage properties wisely is in the best interest of the people of Ontario. By following these Standards and Guidelines, government ministries and public bodies will show that the province values the cultural heritage resources in its care and leads by example in conservation and responsible stewardship.

APPLICATION AND SCOPE

All Ontario government ministries and prescribed public bodies must comply with these Standards and Guidelines in the management of properties in their ownership or under their control. They apply to provincial heritage properties that are:

- owned by a ministry; or
- owned by a prescribed public body; or
- occupied by a ministry or a prescribed public body if the terms of the occupancy agreement are such that the ministry or public body is entitled to make alterations to the property.

Prescribed public body means a public body prescribed for the purposes of Part III.1 of the Act by a regulation made under clause 70(1)(i) of the Act.

Provincial heritage properties include three types of cultural heritage resources: built heritage resources, cultural heritage landscapes, and archaeological sites.

Built heritage resources means one or more significant buildings (including fixtures or equipment located in or forming part of a building), structures, earthworks, monuments, installations, or remains that have cultural heritage value.

Cultural heritage landscape means a defined geographical area that human activity has modified and that has cultural heritage value. Such an area involves one or more groupings of individual heritage features, such as structures, spaces, archaeological sites, and natural elements, which

together form a significant type of heritage form distinct from that of its constituent elements or parts. Heritage conservation districts designated under the Ontario Heritage Act, villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trails, and industrial complexes of cultural heritage value are some examples.

Archaeological site means any property that contains an artifact or any other physical evidence of past human use or activity that is of cultural heritage value or interest.

PRINCIPLES

The purpose of these Standards and Guidelines is the appropriate conservation and management of provincial heritage properties. They are rooted in the following principles:

Accountability and Transparency

Decisions about provincial heritage properties will be made in an open, accountable way, taking into account the views of interested persons and communities.¹

Identification and Evaluation

Provincial heritage properties will be identified and evaluated based on research and documentary evidence.

Continuing Care

Sustaining the cultural heritage value of provincial heritage properties for long term benefit will be achieved most effectively by preventing deterioration through regular, on-going care.

Impact Assessment

Assessment of the impact of proposed activities on the cultural heritage value and the heritage attributes of provincial heritage properties will inform the decisions that may affect them.

Use and Reuse

Provincial heritage properties in active use by ministries and public bodies will continue to be used, or will be adaptively re-used, but uses that threaten a property's cultural heritage value will be avoided. Where no use of a property is possible, appropriate, timely disposal will take place.

¹ With respect to Aboriginal communities, ministries and prescribed public bodies should be aware that the Crown has a duty to consult with Aboriginal peoples when the following conditions occur:

- The Crown has knowledge, real or constructive, of the existence, or potential existence, of an Aboriginal right or treaty right and
- The Crown contemplates conduct that might adversely affect the right in question.

(From "Draft Guidelines for Ministries on Consultation with Aboriginal Peoples Related to Aboriginal Rights and Treaty Rights," Ministry of Aboriginal Affairs, June 2006)

STANDARDS AND GUIDELINES

(Note: Refer to the Glossary, which begins on page 12, for definitions of *italicized terms*.)

A. General Provisions

Ministries and prescribed public bodies shall:

- A.1. Recognize, manage, and use *provincial heritage properties* as assets that can support ministry or public body mandates and contribute to the social and economic well-being of Ontario's communities.
- A.2. Be accountable for all decisions affecting the cultural heritage value of property in their care and shall integrate provisions for conserving *provincial heritage properties* into decision-making processes in property planning and asset management.
- A.3. Base decisions affecting a *provincial heritage property* on appropriate studies and research (including analysis of physical, documentary, and oral evidence), aimed at understanding the property's cultural heritage value, including its level of significance (e.g., local, provincial, etc.), the impact of proposed activities on its cultural heritage value and *heritage attributes*, and measures to mitigate these impacts.
- A.4. Engage groups and individuals with associations to a *provincial heritage property* by providing them with opportunities to participate in understanding and articulating the property's cultural heritage value and in making decisions about its future.
- A.5. Establish and maintain a cultural heritage conservation policy and procedure(s) for identifying and managing *provincial heritage properties*, including objectives and targets and a commitment to continual improvement. The policy and procedure(s) should be available for review by the public.
- A.6. Follow their cultural heritage policy and procedure(s) in complying with these Standards and Guidelines.

B. Identification and Evaluation

Ministries and prescribed public bodies shall:

- B.1. Apply the "Criteria for Determining Cultural Heritage Value or Interest" set out in Ontario Regulation 9/06 under the Act as amended or replaced from time to time (see Appendix A) to determine the cultural heritage value or interest of a property; and apply the "Criteria for Determining Cultural Heritage Value of Provincial Significance" set out in Ontario Regulation 10/06 as amended or replaced from time to time (see Appendix B) to determine whether a property is of provincial significance.

- B.2. Develop an evaluation process to identify *provincial heritage properties*, consisting of the general sequence of events and actions set out below, and submit the process to the Ministry of Tourism and Culture for approval.
- a. Prepare a description of the property.
 - b. Gather and record information about the property sufficient to understand and substantiate its heritage value.
 - c. Determine cultural heritage value or interest, including potential provincial significance, based on the advice of *qualified persons* and with appropriate community input. If the property meets the criteria in Ontario Regulation 9/06, it is a *provincial heritage property*. If the property meets the criteria in Ontario Regulation 10/06, it is a *provincial heritage property of provincial significance*.
 - d. Document the identification process with a written account of the research and the evaluation.
 - e. For each *provincial heritage property*, prepare a *Statement of Cultural Heritage Value* and a description of its *heritage attributes*.

In reviewing and approving a ministry's or public body's evaluation process under this section the Ministry of Tourism and Culture shall take into account the mandate of the ministry or public body and its cultural heritage conservation policy.

- B.3. As they are identified, add properties to the list of *provincial heritage properties* maintained by the Ministry of Tourism and Culture, in order to ensure that decision-makers, asset managers, and the public know the extent and nature of the *provincial heritage properties* in the control of each ministry and prescribed public body (including whether a property has been evaluated as being of local or provincial significance).
- B.4. If a ministry or prescribed public body has not evaluated a property in its care or control, and if that property contains a building or structure that is 40 or more years old, then the ministry or prescribed public body shall:
- a. prevent the building or structure from undergoing *demolition by neglect*; and
 - b. obtain the consent of the Minister of Tourism and Culture before removing or demolishing the building or structure, or before transferring the property from provincial control.

Property, for purposes of this provision, excludes unpatented Crown land unless the land is within a provincial park or conservation reserve, or is being considered for development, change in use or *disposal*.

C. Protection

Ministries and prescribed public bodies shall:

- C.1. For identified *provincial heritage properties*, prepare a *Strategic Conservation Plan* to provide guidance on conserving, maintaining, using and disposing of them.

For each *provincial heritage property of provincial significance*, submit the *Strategic Conservation Plan* to the Ministry of Tourism and Culture for approval.

- C.2. Place records associated with identifying and conserving a *provincial heritage property* in a permanent archive and make information about *provincial heritage property* publicly accessible, observing security, privacy and other requirements.
- C.3. Protect *archaeological sites* by conserving them in their original location or through *archaeological fieldwork*. Endeavour to *conserve* significant *archaeological resources* in their original location through documentation, protection, and avoidance of impacts. Where activities could disturb significant *archaeological resources* or *areas of archaeological potential*, take appropriate measures to mitigate impacts.
- C.4. Ensure that only archaeologists licensed under Part VI of the Ontario Heritage Act will conduct *archaeological fieldwork* on *provincial heritage property*.

D. Maintenance

Ministries and prescribed public bodies shall:

- D.1. *Maintain provincial heritage properties* through continuous care, guided by the property's *Statement of Cultural Heritage Value* and *Strategic Conservation Plan*.
- D.2. Repair or *conserve*, rather than replace, building materials and finishes and other components that are part of a *provincial heritage property's heritage attributes*. Apply a *minimum intervention approach* that protects the cultural heritage value of the property.
- D.3. Retain and *maintain* the visual settings and other physical relationships that contribute to the cultural heritage value of a *provincial heritage property*. Ensure that new construction, visual intrusions, or other interventions do not adversely affect the *heritage attributes* of the property.
- D.4. If changes that may adversely affect a *provincial heritage property's* cultural heritage value are proposed for purposes of compliance with *health and safety requirements*, obtain advice from *qualified persons* on compliance alternatives or reasonable variances that protect cultural heritage value while satisfying health and safety objectives.
- D.5. In *maintaining provincial heritage properties*, consider energy-efficiency technologies and energy-saving practices and incorporate them in ways that do not adversely affect cultural heritage value. Make decisions on energy saving measures based on the total environmental cost of proposed changes compared to the total environmental cost of retaining existing features.

E. Use

Ministries and prescribed public bodies shall:

- E.1. Where the use of a *provincial heritage property* is significant or of long standing, and the property has cultural value or interest because of that use, apply best efforts to continuing that use.
- E.2. When an existing use of a *provincial heritage property* ends, or the property is no longer fully used, or any part of the property becomes surplus to the needs of the occupant, apply best efforts to arrange for an alternate use of the property that requires minimal or no change to its heritage attributes (*adaptive reuse*).
- E.3. Apply best efforts to avoid uses which adversely affect the cultural heritage value of a *provincial heritage property*.
- E.4. Give preference to using existing *built heritage resources* over constructing or leasing new space for accommodation needs, if those needs can be met without adverse impact on the cultural heritage value of a *provincial heritage property*. In accommodation design and space planning, respect and reinforce the heritage attributes of the property.
- E.5. In implementing accessibility standards made pursuant to the Accessibility for Ontarians with Disabilities Act, 2005, balance accessibility needs with the need to *conserve* the cultural heritage value of *provincial heritage properties*, with the objective of providing the highest degree of access with the lowest level of impact on the *heritage attributes* of the property. Determine appropriate solutions by consulting *qualified persons* as well as affected users.
- E.6. Ensure that the cultural heritage value or interest of a *provincial heritage property* is appropriately interpreted and presented to communicate its meaning and to enhance public understanding and enjoyment.

F. Disposal

Ministries and prescribed public bodies shall:

- F.1. Where an *adaptive reuse* cannot be found within a reasonable period, take timely steps to *mothball* or otherwise *dispose* of the property.
- F.2. If a *provincial heritage property* is to leave provincial control, use best efforts to the extent possible in law to ensure the ongoing, legally binding protection of the property's cultural heritage value (such as designation under Part IV of the Act, heritage conservation easement, etc.) in any sale or other *disposal* agreement. The level of protection should be appropriate to the cultural heritage value of the property.

- F.3. Make provisions for effective protection of *heritage attributes when granting leases, licences, rights, or operating agreements affecting provincial heritage property.*
- F.4. All other alternatives having been considered, consider removal or demolition as a last resort, subject to heritage impact assessment and public engagement. Use best efforts to mitigate loss of cultural heritage value.
- F.5. In the case of a *provincial heritage property of provincial significance*, obtain the consent of the Minister of Tourism and Culture before removing or demolishing buildings or structures on the property, or before transferring the property from provincial control. The Minister may grant consent, with or without conditions, where the Minister is of the opinion that all alternatives to the removal, demolition or the transfer of the property have been considered by the Ministry or the prescribed public body requesting consent, including alternatives that would not adversely affect the property, and the best alternative in all the circumstances has been adopted. The Minister, as a condition of consent, may require that such reasonable steps as the Minister may specify be taken to minimize or mitigate adverse effects on the property resulting from the removal, demolition or the transfer of the property.
- F.6. When disposing of property considered to contain an area of archaeological potential, take appropriate measures to notify future owners, tenants or licensees of the existence of archaeological potential.

RESPONSIBILITIES

Management Board of Cabinet

- a. Reviews the Standards and Guidelines and recommends their approval to the Lieutenant Governor in Council.

Minister of Tourism and Culture

- a. Prepares the Standards and Guidelines, consulting with affected ministries, the Ontario Heritage Trust, and prescribed public bodies.
- b. Reports to Management Board of Cabinet and the public on the effectiveness of the Standards and Guidelines and on compliance with them.
- c. Consents to proposals for the removal, demolition or transfer from provincial control any *provincial heritage properties of provincial significance*.

Deputy Minister of Tourism and Culture

- a. Interprets and communicates the Standards and Guidelines to ministries and prescribed public bodies.

- b. Provides guidance and advice on the application of the Standards and Guidelines. Develops, as appropriate, advisory materials and training programs on the Standards and Guidelines for ministries and prescribed public bodies.
- c. Reviews and approves:
 - i) the process ministries and prescribed public bodies use to evaluate property of cultural heritage value or interest, including the assessment of provincial significance; and
 - ii) *Strategic Conservation Plans* for *provincial heritage properties of provincial significance*
- d. Advises the Minister on requests for the Minister's consent to proposals for the removal, demolition or transfer from provincial control of *provincial heritage property of provincial significance*.
- e. Keeps and maintains a list of all *provincial heritage properties* based on information provided by ministries and prescribed public bodies.
- f. Monitors and reviews the effectiveness of the Standards and Guidelines and compliance with them.

Deputy Ministers of ministries and Executive Leads of prescribed public bodies

- a. Develop and implement a cultural heritage conservation policy and procedure(s) to identify and manage *provincial heritage properties* consistent with these Standards and Guidelines.
- b. Establish heritage conservation objectives and plans for management of the ministry's or prescribed public body's *provincial heritage properties* consistent with these Standards and Guidelines.
- c. Record the ministry's or prescribed public body's *provincial heritage properties* on the list maintained by the Ministry of Tourism and Culture.
- d. Make strategic plans and decisions that conform to their cultural heritage conservation policies and objectives.
- e. Include measures for conserving the ministry's or prescribed public body's *provincial heritage properties* as an integral part of overall business planning, decision-making and resource requests to Treasury Board.
- f. Ensure that the Ministry of Tourism and Culture is consulted and its approval is obtained for:
 - i. the process for evaluating *provincial heritage properties*; and
 - ii. *Strategic Conservation Plans* for *provincial heritage properties of provincial significance*
- g. Ensure that the Minister of Tourism and Culture is consulted and the Minister's consent is obtained for the demolition, removal, or transfer from provincial control of *provincial heritage property of provincial significance*.
- h. Ensure that staff responsible for giving advice, making decisions, and undertaking activities that may affect *provincial heritage properties* are aware of and adhere to these Standards and Guidelines and any other approved cultural heritage conservation policies and procedures.
- i. Report on progress in implementation of their heritage policies, plans and procedures.

TRANSITION AND PHASE-IN

It is recognized that ministries and prescribed public bodies may already have policies or processes for the conservation of provincial heritage properties in their ownership or control. It is also recognized that on the date when these Standards and Guidelines take effect, planning and other activities affecting provincial

heritage properties may be underway following those existing policies or processes. The provisions below are intended to facilitate a smooth transition between those existing policies or processes and the requirements of these Standards and Guidelines.

1. Until the evaluation process required under section B.2. has been developed and approved by the Ministry of Tourism and Culture, ministries and prescribed public bodies may continue to use their existing evaluation processes. Properties evaluated and identified as heritage properties under those processes shall be subject to the requirements of section B.3. and parts C, D, E and F of these Standards and Guidelines.
2. The requirements of section B.4. apply in all cases.
3. At the request of the Ministry of Tourism and Culture, each ministry and prescribed public body shall establish with the Ministry of Tourism and Culture a mutually agreeable timeframe, no later than one year of the date of approval of these Standards and Guidelines, for the submission for approval of the evaluation process required under section B.2.
4. If, before the date when these Standards and Guidelines take effect, a ministry or prescribed public body has applied a planning process authorized by legislation to a proposed undertaking and has concluded that its preferred alternative for the undertaking involves demolishing or removing a building or structure on provincial heritage property of provincial significance, the requirement for the consent of the Minister of Tourism and Culture under section F.5. does not apply.

GLOSSARY

Adaptive reuse means the *alteration* of heritage buildings and structures to fit new uses or circumstances while retaining their heritage attributes.

Alter means to change in any manner and includes to restore, renovate, repair, or disturb. "Alteration" has a corresponding meaning.

Archaeological fieldwork means any activity carried out on, above or under land or water for the purpose of obtaining and documenting data, recovering artifacts and remains or altering an *archaeological site* and includes monitoring, assessing, exploring, surveying, recovering and excavating. (Ontario Heritage Act, O.Reg. 170/04)

Archaeological resources include artifacts, *archaeological sites*, and marine *archaeological sites*. The identification and evaluation of such resources are based upon *archaeological fieldwork* undertaken in accordance with the Ontario Heritage Act.

Archaeological site means any property that contains an artifact or any other physical evidence of past human use or activity that is of cultural heritage value or interest. (Ontario Heritage Act, O.Reg. 170/04)

Areas of archaeological potential means areas with the likelihood of containing *archaeological resources*. Criteria for determining archaeological potential are established by the Ministry of Tourism and Culture. Archaeological potential is confirmed through *archaeological fieldwork* undertaken in accordance with the Ontario Heritage Act.

Built heritage means one or more significant buildings (including fixtures or equipment located in or forming part of a building), structures, monuments, installations, or remains associated with architectural, cultural, social, political, economic, or military history and identified as being important to a community. For the purposes of these Standards and Guidelines, "structures" does not include roadways in the provincial highway network and in-use electrical or telecommunications transmission towers.

Conserve means identifying, protecting, using, and/or managing cultural heritage resources in such a way that retains their heritage value. "Conserving" and "conservation" have corresponding meanings.

Cultural heritage landscape means a defined geographical area of heritage significance that human activity has modified and that a community values. Such an area involves a grouping(s) of individual heritage features, such as structures, spaces, *archaeological sites*, and natural elements, which together form a significant type of heritage form distinct from that of its constituent elements or parts. Heritage conservation districts designated under the Ontario Heritage Act, villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trails, and industrial complexes of cultural heritage value are some examples.

Demolition by neglect occurs when preventative actions are not taken with the result that a building or structure is allowed to undergo change, through natural action, arson or vandalism, to the point of severe deterioration or collapse, often beyond repair.

Development means the construction or placing of buildings or structures on land; the addition to or alteration of existing buildings or structures; site alteration, including but not limited to, alteration of the grade of land, and placing or dumping fill; or the removal of vegetation.

Dispose means transferring control to another ministry or prescribed public body, granting licences or rights, entering into operating agreements, or leasing or selling the property. "Disposal" has a corresponding meaning.

Health and safety requirements include public health, occupational health and safety, life safety, fire code/safety, and electrical, seismic, structural, and building codes.

Heritage attributes means the physical features or elements that contribute to a property's cultural heritage value or interest, and may include the property's built or manufactured elements, as well as natural landforms, vegetation, water features, and its *visual setting*.

Maintenance generally includes routine, cyclical, anticipatory actions necessary to keep a property's *heritage attributes* in sound condition and to retard deterioration, and remedial or reactive actions that are intended to retain the integrity of a resource. "Maintain" has a corresponding meaning. Maintenance may include minor repair and refinishing operations; replacement of damaged, broken, or deteriorated materials that are impractical to save (e.g., broken window glass); rust removal; and cyclical horticultural activities such as pruning, planting, etc.

Minimum intervention approach means the course of action that applies the most benign physical effects to achieve the longest-term protection of *heritage attributes* while allowing compatible functional goals to be met.

Mothball means to remove a resource from active use and apply long-term stabilization intended to safeguard it from deterioration or damage over an extended period. Mothballing should provide for adequate safety, security, and regular monitoring.

Provincial heritage property means real property, including buildings and structures on the property, that has cultural heritage value or interest and that is owned by the Crown in right of Ontario or by a prescribed public body; or that is occupied by a ministry or a prescribed public body if the terms of the occupancy agreement are such that the ministry or public body is entitled to make the alterations to the property that may be required under these heritage standards and guidelines.

Provincial heritage property of provincial significance means provincial heritage property that has been evaluated using the criteria found in Ontario Heritage Act O.Reg. 10/06 and has been found to have cultural heritage value or interest of provincial significance.

Qualified persons means individuals – professional engineers, architects, archaeologists, etc. – having relevant, recent experience in the conservation of cultural heritage resources.

Statement of Cultural Heritage Value means a concise statement explaining why a property is of heritage interest; this statement should reflect one or more of the criteria found in Ontario Heritage Act O.Reg. 9/06 and 10/06.

Strategic Conservation Plan means a document detailing how the property will be conserved in accordance with these Standards and Guidelines.

Visual setting includes significant views or vistas to or from a heritage property.

Appendix A – REGULATION: Criteria for Determining Cultural Heritage Value or Interest**Ontario Heritage Act
ONTARIO REGULATION 9/06****CRITERIA FOR DETERMINING CULTURAL HERITAGE VALUE OR INTEREST****Criteria**

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).

(2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
 - ii. displays a high degree of craftsmanship or artistic merit, or
 - iii. demonstrates a high degree of technical or scientific achievement.
2. The property has historical value or associative value because it,
 - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,
 - ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
 - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
3. The property has contextual value because it,
 - i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark. O. Reg. 9/06, s. 1 (2).

Transition

2. This Regulation does not apply in respect of a property if notice of intention to designate it was given under subsection 29 (1.1) of the Act on or before January 24, 2006. O. Reg. 9/06, s. 2.

Appendix B – REGULATION: Criteria for Determining Cultural Heritage Value or Interest of Provincial Significance**Ontario Heritage Act
ONTARIO REGULATION 10/06****CRITERIA FOR DETERMINING CULTURAL HERITAGE VALUE OR INTEREST OF PROVINCIAL SIGNIFICANCE****Criteria**

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 34.5 (1) (a) of the Act. O. Reg. 10/06, s. 1 (1).

(2) A property may be designated under section 34.5 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest of provincial significance:

1. The property represents or demonstrates a theme or pattern in Ontario's history.
2. The property yields, or has the potential to yield, information that contributes to an understanding of Ontario's history.
3. The property demonstrates an uncommon, rare or unique aspect of Ontario's cultural heritage.
4. The property is of aesthetic, visual or contextual importance to the province.
5. The property demonstrates a high degree of excellence or creative, technical or scientific achievement at a provincial level in a given period.
6. The property has a strong or special association with the entire province or with a community that is found in more than one part of the province. The association exists for historic, social, or cultural reasons or because of traditional use.
7. The property has a strong or special association with the life or work of a person, group or organization of importance to the province or with an event of importance to the province.
8. The property is located in unorganized territory and the Minister determines that there is a provincial interest in the protection of the property. O. Reg. 10/06, s. 1 (2).

**This is Exhibit "I" referred to in the
Affidavit of EDWIN JOHN ROWSE affirmed before
me this 7th day of March, 2021.**



A Commissioner, etc.

Information Bulletin 3

Heritage Impact Assessments for Provincial Heritage Properties

The purpose of this Bulletin is to provide guidance on preparing a Heritage Impact Assessment to meet the requirements of the *Standards and Guidelines for the Conservation Provincial Heritage Properties*.

Purpose

The conservation of Ontario's cultural heritage resources is a matter of public and provincial interest. The purpose of the *Standards & Guidelines for Conservation of Provincial Heritage Properties* (S&Gs) is the conservation and good stewardship of provincial heritage properties – properties the Government of Ontario owns or controls that have cultural heritage value or interest. Working together with other government legislation, regulations and policies, the S&Gs provide a framework for the consistent protection, maintenance, use and disposal of these properties. They are intended to ensure that decisions about these properties are made in an open and accountable way.

Context

The S&Gs contain a principle that requires the assessment of impact of proposed activities that may affect the cultural heritage value or interest and the *heritage attributes* of a *provincial heritage property*¹ and inform decisions that may affect them. .

Provision F.4. requires that, the removal or demolition of any building or structure on a *provincial heritage property* be considered a last resort after all other alternatives have been considered, subject to heritage impact assessment and public engagement. Ministries and prescribed public bodies are required to use best efforts to mitigate loss of cultural heritage value or interest.

Provision F.5. requires that, in the case of a *provincial heritage property of provincial significance*, the consent of the Minister of Tourism, Culture and Sport (MTCS) be obtained before removing or demolishing buildings or structures on the property or before transferring the property from provincial control. A Heritage Impact Assessment will provide the documentation and rationale for applications for MTCS Ministers' Consent.

What is a Heritage Impact Assessment?

A Heritage Impact Assessment is an independent study to determine the impacts of a proposed activity on a *provincial heritage property*. It will recommend options and mitigation measures, consistent with the property's *Strategic Conservation Plan*, in order to reduce negative impacts, and *conserve* its cultural heritage value or interest.

A Heritage Impact Assessment under the S&Gs:

- is based on the *Statement of Cultural Heritage Value*

¹ Italicized terms are defined in the Glossary section of the *Standards and Guidelines for the Conservation of Provincial Heritage Properties* document [link]

- is prepared by a *qualified person(s)*
- considers impacts to the whole property even if the proposed activity only directly affects a portion of it
- considers and recommends alternatives and mitigation measures that are consistent with the strategies articulated in the *Strategic Conservation Plan* approved by the ministry or prescribed public body and/or MTCS, if it is a *provincial heritage property of provincial significance*
- considers the relevant findings of any archaeological assessment(s) and other technical studies that have been undertaken
- takes into account the views of interested persons or communities.

When to Prepare a Heritage Impact Assessment

A Heritage Impact Assessment will be prepared when an activity is proposed for a *provincial heritage property* that may affect its cultural heritage value or interest and/or *heritage attributes* and:

- a Strategic Conservation Plan is not yet in place
- the adopted *Strategic Conservation Plan* directs that a Heritage Impact Assessment be prepared for a proposed activity (e.g. the removal or demolition of a building or structure on a *provincial heritage property*)
- the adopted *Strategic Conservation Plan* did not anticipate or consider in detail the proposed activity or cannot be followed for reasons that were unforeseen when it was completed.

Ministries and prescribed public bodies are encouraged to seek advice from MTCS to determine whether a Heritage Impact Assessment should be prepared.

Who prepares a Heritage Impact Assessment

A Heritage Impact Assessment is prepared by a *qualified person(s)* with individual expertise, recent experience and knowledge relevant to the type of cultural heritage resources² being considered and the nature of the activity being proposed.

A person qualified to work on a *provincial heritage property* will demonstrate:

- qualifications and expertise gained through having personally worked on cultural heritage resources in the past (i.e. individual credentials and personal experience must be demonstrated over that of the consulting firm that may employ the individual)
- expertise that is relevant to the type of resource and the nature of the activity or project being considered
- recent experience in the *conservation* of cultural heritage resources (i.e. within the last three to five years)

² Provincial heritage properties include three types of cultural heritage resources: built heritage resources, cultural heritage landscapes, and archaeological sites (see page 3 of S&Gs).

- in accordance with the *Ontario Heritage Act*, only a licensed archaeologist may alter or disturb an *archaeological site*. If an archaeological site may be impacted, altered or disturbed in any way, the only *qualified person* is a licensed archaeologist³.

The **expertise of more than one *qualified person* working in a multi-disciplinary team may be required**. For example, a complex property with more than one type of cultural heritage resource may require a historian, a **professional engineer**, an **architect**, a licensed archaeologist, a landscape architect, a **specialist in historic preservation**, conservator, heritage planner, or other. Similarly, determining appropriate solutions to address specific issues, such as accessibility, security, way finding system, signage, may also require specialized qualifications.

Before undertaking the preparation of a Heritage Impact Assessment the *qualified person(s)* must develop a thorough understanding of the property, its cultural heritage value or interest and the level of significance. In addition to site investigation(s), this would require review of the *Statement of Cultural Heritage Value*, the *Strategic Conservation Plan*, and any other existing documents, reports or technical studies such as archaeological assessment(s) provided to them by the ministry or prescribe public body.

Qualified person(s) must also have an understanding of the ministry or prescribed public body's heritage management process, and mandate, needs and objectives as they relate to the property. The ministry or prescribed public body should ensure that its consultant(s) is provided with all available documents, reports and information they may require.

Community Engagement

Under the S&Gs, ministries and prescribed public bodies are required to engage with and take into account the views of individuals and communities when making decisions about a property's future and when considering alterations that may affect property users (E.5.). Community engagement protects the public interest in identifying and protecting cultural heritage resources, while helping to ensure that any concerns are identified and appropriately addressed.

In the case of Heritage Impact Assessments engagement could include local communities (including Indigenous communities⁴), stakeholders, local government, other ministries and agencies, such as:

- municipal staff (e.g. municipal heritage planners and/or Municipal Heritage Committees)
- local neighbourhood or residential community
- heritage interest groups that operate locally or in the larger area
- those that may be affected by anticipated *alterations* or changes (e.g. affected users in implementing accessibility standards – see Provision E.5.)
- any person who is responsible for *maintenance*, inspection and *alterations* of the property, such as facility managers, service providers and/or maintenance personnel.

³ Archaeological assessment reports must conform to the MTCS's *Standards and Guidelines for Consultant Archaeologists* (2011) [link]

⁴ The Crown has a duty to consult with Indigenous communities when it has knowledge, real or constructive, of an Aboriginal right or treaty right and the Crown contemplates conduct that might adversely affect the right in question.

Community engagement should:

- provide for early and ongoing dialogue to inform appropriate strategies
- explain the purpose of the engagement and how the community's input will be used
- respect a community's preferences regarding information exchange (e.g. formal or informal face-to-face meetings, presentations, written communiqués, interviews and surveys).

Conclusions and recommendations should be shared with the consulted community to allow for further review, consideration and response. Conclusions and recommendations may have to be amended based on the community's response.

Coordination with other Planning Processes, Activities or Requirements

Under certain circumstances, a proposed activity may require a ministry or prescribed public body to follow and comply with legislative or regulatory requirements such as the Environmental Assessment Act, the Planning Act, and the Renewable Energy Approvals (REA) regulation. Where appropriate and to avoid duplication, common process elements, such as preparation of a Heritage Impact Assessment and the requirement for public or community engagement, may be coordinated, while ensuring that the requirements of the S&Gs are met.

Content of a Heritage Impact Assessment

The Heritage Impact Assessment must consider how the cultural heritage value or interest and *heritage attributes* identified in the approved *Statement of Cultural Heritage Value* will be affected by the proposed activity. The *qualified person(s)* are to develop a thorough understanding of the property, its cultural heritage value or interest and the level of significance. This requires a thorough review of the *Statement of Cultural Heritage Value*, and other relevant documents, reports or technical studies such as archaeological assessment reports, as provided by the ministry or prescribed public body, as well as site investigation(s).

A Heritage Impact Assessment under the S&Gs includes:

1. Introduction
2. *Statement of Cultural Heritage Value*
3. Assessment of Existing Conditions
4. Description and Purpose of Proposed Activity
5. Impact Assessment
6. Considered Alternatives and Mitigation Measures
7. Summary of Community Engagement
8. Recommendations

1. Introduction

The introduction provides an overview and context for the report that follows and includes:

- a brief description of the property, including its level of significance (i.e. provincial, regional or local significance)
- a brief summary of the proposed activity and the purpose for the activity. This may include a ministry mandate or priority.
- other applicable processes or requirements (e.g. Environmental Assessment, Renewable Energy Approval, Realty Directive)
- reference to the *Strategic Conservation Plan* and the applicable strategy
- a brief overview of the potential impacts to the property's cultural heritage value or interest
- a brief summary of the recommended mitigation measures
- if the removal or demolition of a building or structure is being proposed, provide a statement that all the other alternatives have been considered and rejected and that removal or demolition is the best alternative and a last resort
- if MTCS Minister's consent is being sought, provide rationale for Minister's approval for removal/demolition.

2. Statement of Cultural Heritage Value

A full copy of the *Statement of Cultural Heritage Value*, as approved by the ministry or prescribed public body, should be included. Supplementary material, such as site plan, photographs and a key map that can assist the reader in understanding the property, cultural heritage value or interest, *heritage attributes* and the areas that may be affected by the proposed activity should also be included.

Technical heritage studies and reports developed under the S&Gs are meant to be complementary and not duplicative. In preparing the Heritage Impact Assessment the cultural heritage value or interest of the property should not be re-evaluated and the *Statement of Cultural Heritage Value* should not be modified. If new information comes to light that could affect the reliability of the *Statement of Cultural Heritage Value* the *qualified person(s)* should inform and seek advice from the ministry or prescribed public body.

3. Assessment of Existing Conditions

A concise written and visual description of the property in its current condition should be included in the Heritage Impact Assessment and details of the on-site investigation(s) including:

- any significant changes in the current physical or material condition of the property from that depicted in the approved *Statement of Cultural Heritage Value*
- how, when and who conducted the on-site investigation(s)
- any limitations of the on-site investigation(s), such as limited access.

4. Description and Purpose of Proposed Activity

A written description of the proposed activity and its purpose should be provided and include:

- the rationale, purpose and need for the proposed activity

- how the proposed activity fits within the ministry or prescribed public body's objectives for the property
- where there is an adopted *Strategic Conservation Plan*, how the proposed activity fits within the ministry or prescribed public body's objectives as articulated in the *Strategic Conservation Plan*
- supporting graphic materials, such as site plans, design drawings and specifications, photographs and detailed descriptions supporting drawings and graphics as appropriate
- how the proposed activity fits within the physical context of the overall property, even if only a portion of the property will be directly impacted
- how the proposed activity fits within a broader community and land use planning context
- any other applicable considerations or planning process requirements or required permits or approvals, such as municipal planning considerations, Environmental Assessment, Renewable Energy Approval

5. Impact Assessment

The impact assessment will identify and assess the proposed activity to determine any impacts – positive or negative, direct or indirect – the proposed activity may have on the property's cultural heritage value or interest. For the purposes of this document, an impact is a change in an identified cultural heritage resource resulting from a particular activity.

In order to make predictions about potential impacts, additional factors should be considered. Factors may include the scale or severity of impacts, whether they are to be temporary or permanent, reversible or irreversible, etc.

A direct adverse impact would have a permanent and irreversible negative affect on the cultural heritage value or interest of a property or result in the loss of a *heritage attribute* on all or part of the *provincial heritage property*. Examples of direct adverse impacts on a *provincial heritage property* may include, but are not limited to:

- removal or demolition of all or part of any *heritage attribute*
- removal or demolition of any building or structure on the *provincial heritage property* whether or not it contributes to the cultural heritage value or interest of the property (i.e. non-contributing buildings)
- any land disturbance, such as a change in grade and/or drainage patterns that may adversely affect a *provincial heritage property*, including archaeological resources
- alterations to the property in a manner that is not sympathetic, or is incompatible, with cultural heritage value or interest of the property. This may include necessary alterations, such as new systems or materials to address health and safety requirements, energy-saving upgrades, building performance upgrades, security upgrades or servicing needs
- alterations for access requirements or limitations to address such factors as accessibility, emergency egress, public access, security

- introduction of new elements that diminish the integrity of the property, such as a new building, structure or addition, parking expansion or addition, access or circulation roads, landscape features
- changing the character of the property through removal or planting of trees or other natural features, such as a garden, or that may result in the obstruction of significant views or vistas within, from, or of built and natural features
- change in use for the *provincial heritage property* that could result in permanent, irreversible damage or negates the property's cultural heritage value or interest
- continuation or intensification of a use of the *provincial heritage property* without conservation of *heritage attributes*.

An indirect adverse impact would be the result of an activity on or near the property that may adversely affect its cultural heritage value or interest and/or *heritage attributes*. Examples of indirect adverse impacts include, but are not limited to:

- shadows that alter the appearance of a *heritage attribute* or change the visibility of an associated natural feature or plantings, such as a tree row, hedge or garden
- isolation of a *heritage attribute* from its surrounding environment, context or a significant relationship
- vibration damage to a structure due to construction or activities on or adjacent to the property
- alteration or obstruction of a significant view of or from the *provincial heritage property* from a key vantage point.

Positive impacts are those that may positively affect a property by conserving or enhancing its cultural heritage value or interest and/or *heritage attributes*. Examples of positive impacts may include, but are not limited to:

- changes or alterations that are consistent with accepted conservation principles, such as those articulated in MTCS's *Eight Guiding Principles in the Conservation of Historic Properties*, *Heritage Conservation Principles for Land Use Planning*, Parks Canada's *Standards and Guidelines for the Conservation of Historic Places in Canada*
- *adaptive re-use* of a property – alteration of a *provincial heritage property* to fit new uses or circumstances of the of property in a manner that retains its cultural heritage value of interest
- public interpretation or commemoration of the *provincial heritage property*.

6. Considered Alternatives and Mitigation Measures

The Heritage Impact Assessment must describe the alternative options and mitigation measures that were assessed in order to avoid or reduce any negative impacts to the property's cultural heritage value or interest. These should be consistent with the relevant conservation strategies established in the adopted *Strategic Conservation Plan* where one exists.

Where a proposed activity may result in a negative, irreversible impact to the property's cultural heritage value or interest or *heritage attribute(s)*, the report should explain why the proposed course of action is the

only viable solution and why other alternatives that do not involve negative impact are not viable. In addition, the report should describe proposed mitigation measures and provide evidence as to why they should be adequate. The specific negative impacts should be listed, with statements made under each as to why they cannot be avoided, and what steps have been planned to mitigate their effects.

In cases where the proposed activity will result in the demolition or removal of a building or structure and/or MTCS Minister's Consent is being sought, the Heritage Impact Assessment must **clearly demonstrate the efforts that have been made to mitigate the loss** of cultural heritage value or interest, including but not limited to:

- **the alternative options that were considered and why they were not feasible**
- **why** the building(s) or structure(s) cannot be adapted to fit new uses
- **why** retention and/or modification of the building(s) or structure(s) is not viable
- **that demolition or removal is the only viable option, and the last resort.**

7. Summary of Community Engagement

The Heritage Impact Assessment should provide a brief summary of the steps and results of the community engagement and include:

- the groups and individuals who were engaged
- how and when community engagement was undertaken
- whether stakeholder and community engagement was combined with another planning process, such as Environmental Assessment, Renewable Energy Approval
- the results of the engagement, including responses, comments or concerns expressed and
- how they were considered (a detailed summary can be attached as an appendix).

8. Recommendations

The best alternative to the proposed activity should be summarized, describing how the proposed activity should proceed and the mitigation measures that are proposed. The recommendations should demonstrate how they are consistent with the objectives and strategies outlined in the adopted *Strategic Conservation Plan* where one exists. The recommendations should also provide direction for additional requirements such as:

- any required approvals and permits, such as municipal approvals/permits, federal permits, etc.
- special qualifications required for anyone responsible for conservation work
- further technical studies that may be required such as archaeological assessment(s).

Ministry or Prescribed Public Body Review and Acceptance of Recommendations

On completion of the Heritage Impact Assessment the ministry or prescribed public body should attach a written confirmation that it has reviewed the completed report and has accepted the *qualified person(s)* final recommendations on the preferred alternative and/or mitigation measures that will be implemented.

Submission Requirements

In the case of *provincial heritage properties of provincial significance* or properties not yet evaluated, MTCS Minister's consent is required before removing or demolishing buildings or structures on the property, whether or not they contribute to the cultural heritage value or interest of the property (i.e. non-contributing buildings, or before transferring the property from provincial control).

The Heritage Impact Assessment adopted/approved by the ministry or prescribed public body must accompany any application for MTCS Minister's consent.

For further information refer to MTCS Approvals and Consents (February 2011).

Ministries and prescribed public bodies are encouraged to seek the advice of MTCS Heritage Advisors and to share a draft of the Heritage Impact Assessment for comments and feedback prior to submitting application for MTCS Minister's Consent.

Contact us:

Ministry of Tourism, Culture and Sport

Culture Division | Programs and Services Branch | Heritage Program Unit
401 Bay Street, Suite 1700 | Toronto, ON M7A 0A7

Heritage Advisors and Registrar:

Provide technical advisory services and/or comments on implementation of the S&Gs and province wide policies and procedures to ministries and prescribed public bodies.

Karla Barboza, Heritage Advisor
T. 416.314.7120 | F. 416.212.1802
Email: karla.barboza@ontario.ca

Deborah Hossack, Registrar/Heritage Advisor
T. 416.314.7204 | F. 416.212.1802
Email: deborah.hossack@ontario.ca

APPENDIX: Outline for a Heritage Impact Assessment for a Provincial Heritage Property
MTCS recommends that this format be used for Heritage Impact Assessments for all *provincial heritage properties* including those of *provincial significance* that are to be submitted for MTCS' approval.

Executive Summary (1-2 page maximum)

The Executive Summary provides a brief summary and key recommendation(s) of the report.

Confirmation of Ministry or Prescribed Public Body Review and Acceptance of Recommendations

Provide confirmation that the ministry or prescribed public body has reviewed the Heritage Impact Assessment report and accepts the recommendations and mitigation measures articulated in it.

1.0 Introduction

The introduction provides an overview and context for the Heritage Impact Assessment. It includes benchmark information about the property, the activity being proposed, reference to the *Strategic Conservation Plan* and the applicable strategy, and the recommended mitigation measures.

The introduction should also state whether the removal or demolition of a building or structure is being proposed, provide a statement that all the other alternatives have been considered and rejected and that removal or demolition is the best alternative and a last resort.

If MTCS Minister's consent is being sought, provide rationale for Minister's approval for removal/demolition.

2.0 Statement of Cultural Heritage Value

A full copy of the approved *Statement of Cultural Heritage Value* is to be included and any supplementary material to assist with understanding the property and its cultural heritage value or interest, *heritage attributes* and the areas that may be affected by the proposed activity.

3.0 Assessment of Existing Conditions

This section provides a written and visual description of the cultural heritage resource(s) in its current condition, identifies any significant changes to the property, and provides key information about the on-site investigation(s).

4.0 Description and Purpose of Proposed Activity

This section provides a detailed written and visual description of the proposed activity, and the rationale, purpose and need for the proposed activity.

5.0 Impact Assessment

This section identifies and articulates how the proposed activity will affect the cultural heritage value or interest of the property and assesses impacts, whether positive or negative, direct or indirect.

6.0 Considered Alternatives and Mitigation Measures

The section provides details of alternative options that were considered and that would reduce or mitigate negative impacts. This section should also demonstrate how the alternatives or mitigation measures are consistent with conservation strategies established in the adopted *Strategic Conservation Plan*.

If the proposed activity will result in the demolition or removal of a building or structure, demonstrate why:

- the alternative options that were considered and why they were not feasible
- why the building(s) or structure(s) cannot be adapted to fit new uses
- why retention and/or modification of the building(s) or structure(s) is not viable
- that demolition or removal is the only viable option, and the last resort.

7.0 Summary of Community Engagement

This section provides a brief summary of the groups and individuals who were engaged, how and when community engagement was undertaken and the results of the engagement, including responses, comments or concerns expressed and how these were considered (a detailed summary can be attached as an appendix). Also indicate whether engagement was combined with the requirements of another process such as an Environmental Assessment.

8.0 Recommendations

This section describes how the proposed activity may proceed, the mitigation measures that are to be implemented, and provide direction for any additional requirements.

APPENDICES

References/Bibliography

Provide a list of the documents referenced in the Heritage Impact Assessment report.

Project Personnel

List the personnel involved in preparing the report, indicating their qualifications and their role in preparing the report.

**This is Exhibit “J” referred to in the
Affidavit of EDWIN JOHN ROWSE affirmed before
me this 7th day of March, 2021.**



A Commissioner, etc.

Ministry of Tourism, Culture and Sport

Cultural Heritage Conservation Policy

1.0 INTRODUCTION AND PURPOSE

The Standards and Guidelines for Conservation of Provincial Heritage Properties (S&Gs) apply to properties the Government of Ontario owns or controls that have cultural heritage value or interest—provincial heritage properties. They came into effect on July 1, 2010 and are mandatory for all ministries and prescribed public bodies.

Compliance with the S&Gs will demonstrate that the province values its cultural heritage resources, and provide an opportunity to lead by example in conservation and responsible stewardship of real property.

The Ministry of Tourism, Culture and Sport's (MTCS) Cultural Heritage Conservation Policy records our commitment to conserving provincial heritage properties under our control, and identifies how the ministry will fulfill that commitment through specific objectives. This policy will be reviewed and updated as necessary every five years in order to ensure that commitments, objectives and any associated targets remain relevant.

2.0 APPLICATION

This policy applies to property: (i) owned by the Crown, if responsibility or authority for control of the property is granted to MTCS by statute or by order made by the Lieutenant Governor in Council; or (ii) occupied by MTCS, if the terms of the occupancy agreement are such that MTCS is entitled to make alterations to the property.

Where MTCS and one or more other Ministries or agencies share responsibility for or control of a property, as provided for by statute, order made by the Lieutenant Governor in Council or applicable occupancy agreement(s), MTCS may enter into an agreement with such other Ministries or agencies about which Cultural Heritage Conservation Policy shall apply to the property in question.

See Appendix A for a list of properties that this policy currently applies to. This policy applies as of July 2014.

3.0 MINISTRY MANDATE

The ministry of Tourism, Culture and Sport supports three important sectors of Ontario's economy to directly promote economic growth and job creation and enhance the quality of life for Ontarians:

- The ministry works with the tourism sector to support a strong and more competitive industry that positions Ontario as a premier tourism destination.
- The ministry works to build a strong and prosperous cultural sector through its leadership within the arts, culture and heritage communities.
- By providing sport and recreation opportunities and supporting the success of Ontario athletes, the ministry promotes a culture that values sport, recreation and physical activity and champions the social and economic benefits of active, engaged living for all Ontarians.

As the ministry responsible for the administration of the *Ontario Heritage Act*, MTCS develops and implements policies and programs for the conservation of the cultural heritage of Ontario, including the S&Gs. This Cultural Heritage Conservation Policy is an articulation of MTCS's responsibilities as a ministry that is obligated to comply with the S&Gs. MTCS also has an implementation, review and approval role for the government which is further explained in the S&Gs, but is not reflected in this document.

4.0 POLICY STATEMENT

The Ministry of Tourism, Culture and Sport recognizes that Ontario's cultural heritage resources belong to present and future generations of Ontarians. The conservation of provincial heritage properties is important to the social, economic, and cultural well-being of our communities, and integral to our identity now and for the future.

MTCS recognizes the critical importance heritage and archaeological sites often have for Aboriginal communities and the role the ministry can play as part of Ontario's commitment to improving relationships between the provincial Crown and Aboriginal communities.

MTCS will contribute to identifying and protecting provincial heritage properties in its care through compliance with all of the requirements of the S&Gs and the implementation of this policy and associated procedures as outlined in the MTCS Heritage Identification and Evaluation Process.

MTCS will make best efforts to meet, and continually improve upon, the objectives and commitments outlined below. Where appropriate, annual targets that support the achievement of these objectives and commitments will be reflected in the ministry's Results-based Plan.

MTCS will:

1. Continue to manage and use our provincial heritage properties¹ as assets which support a prosperous creative economy and vibrant, liveable communities that understand, respect and celebrate their origins, and interpret their cultural heritage value in a manner that enhances public understanding and enjoyment. In order to achieve this objective, MTCS will:
 - Undertake Strategic Conservation Plans and other studies to help inform any capital revitalization and conservation, maintenance and management plans to ensure the ongoing viability and success of our special purpose properties.
 - Ensure the sustainability of our special purpose properties through their role as stewards of heritage assets.
 - Revisit interpretations of the cultural heritage value of special purpose properties as appropriate.
2. Engage interested groups and individuals in any decisions affecting the cultural heritage value or future of an MTCS provincial heritage property, tailoring the nature

¹ Refers to a property that MTCS has responsibility for evaluating under this policy and has determined to be a "provincial heritage property" under O. Reg. 10/06.

and timing of engagement to the circumstances. Key issues on which MTCS will seek input from interested groups and individuals includes, but is not limited to:

- determining cultural heritage value (evaluation);
 - managing the site (Strategic Conservation Plan);
 - demolition or disposal (Heritage Impact Assessment).
3. Meet any duty to consult with Aboriginal peoples that arise as a result of implementing this policy².
 4. Make public any relevant information regarding decisions affecting the cultural heritage value of an MTCS provincial heritage property subject to security, privacy and other considerations.
 5. Ensure the Cultural Heritage Conservation Policy remains relevant and reflects the ongoing objective of continuous improvement with respect to the identification and management of MTCS provincial heritage properties. The Cultural Heritage Conservation Policy will be reviewed every five years and will be available on the ministry website.
 6. Ensure all staff that are responsible for giving advice, making decisions, and undertaking activities that may affect MTCS provincial heritage properties are made aware of and adhere to this policy and their obligations under it. In order to achieve this objective, MTCS will develop and disseminate information and training materials through a range of tools, including, but not limited to, e-learning and in-person training sessions.
 7. Implement the MTCS Identification and Evaluation Process.
 8. Direct and oversee the timely preparation and implementation of Strategic Conservation Plans by:
 - ensuring that strategic conservation plans are prepared within one year of a completed evaluation;
 - implementing an approach to monitoring MTCS provincial heritage properties for compliance with their respective strategic conservation plans;
 - reviewing plans every five years.
 9. Ensure all relevant records related to the identification and conservation of MTCS provincial heritage properties are archived within a reasonable timeframe and are readily accessible to the public, subject to security, privacy and other considerations. MTCS will achieve this objective by including information on the MTCS website about how to access records relating to the identification and conservation of MTCS provincial heritage properties.

² As outlined on page 4 of the *Standards and Guidelines for Conservation of Provincial Heritage Properties*, the duty to consult with Aboriginal peoples arises when the following conditions occur:

- The Crown has knowledge, real or constructive, of the existence, or potential existence, of an Aboriginal right or treaty right; and
- The Crown contemplates conduct that might adversely affect the right in question.

10. Mitigate impacts to archaeological sites through avoidance and protection, opting for excavation only when necessary.
11. Promote the continued use or adaptive re-use, repair or conservation of provincial heritage properties, or components/features of provincial heritage properties that have cultural heritage value, over replacement or new build, while remaining compliant with health and safety objectives and accessibility requirements. MTCS will achieve this objective by:
 - making best efforts to use provincial heritage properties when seeking out leases or event venues;
 - engaging in adaptive reuse studies to extend the viability and use of buildings and structures located on MTCS provincial heritage properties;
 - repairing and conserving features that are part of a provincial heritage property's heritage attributes;
 - retaining and maintaining visual settings that contribute to the cultural heritage value of a provincial heritage property;
 - ensuring all alterations to a provincial heritage property respect the heritage value and attributes as identified in the Statement of Cultural Heritage Value and comply with the Strategic Conservation Plan for the property.
12. Update all occupancy agreements to reflect roles and responsibilities of MTCS and Ministry of Economic Development, Employment and Infrastructure (MEDEI)/Infrastructure Ontario (IO).
13. Ensure the appropriate implementation of MEDEI cultural heritage conservation policies and procedures for all MTCS occupied properties that are controlled or owned by MEDEI.
14. Work with MEDEI, and consult with the Ontario Heritage Trust, to ensure that disposal provisions of the S&Gs are appropriately implemented for MTCS provincial heritage properties.

5.0 ROLES AND RESPONSIBILITIES

Persons with duties and responsibilities that could impact an MTCS provincial heritage property are responsible for reviewing and consulting this policy as necessary and carrying out any relevant obligations under it. Specific responsibilities are outlined below.

The Deputy Minister of Tourism, Culture and Sport is responsible for:

- Approving the Cultural Heritage Conservation Policy and any future modifications;
- Establishing any annual targets and measures that support the objectives and commitments of this policy; and
- Ensuring competent management of the ministry's provincial heritage properties.

The Assistant Deputy Minister of the Culture Division is responsible for:

- Developing the Cultural Heritage Conservation Policy and any future modifications; and
- MTCS compliance with the Standards and Guidelines, as Executive Lead.

The Assistant Deputy Minister for Tourism Planning and Operations is responsible for:

- Reviewing and approving the Cultural Heritage Conservation Policy and any future modifications; and
- Ensuring MTCS Historical Parks applies the Cultural Heritage Conservation Policy for the properties they manage.

Chief Administrative Officer/Assistant Deputy Minister for Regional and Corporate Services Division is responsible for:

- Reviewing and approving the Cultural Heritage Conservation Policy and any future modifications; and
- Ensuring Facilities Staff apply the Cultural Heritage Conservation Policy.

General Managers of special purpose properties are responsible for:

- Applying the Cultural Heritage Conservation Policy for the properties they manage.

MTCS Facilities, Information and Records Management Manager is responsible for:

- Administering the Cultural Heritage Conservation Policy for MTCS.

APPENDIX A – MTCS PROPERTIES

The MTCS Cultural Heritage Conservation Policy applies to the following properties:

- Fort William Historical Park
- Huronia Historical Parks:
 - Discovery Harbour
 - Sainte-Marie among the Hurons Historical Park

EDWIN JOHN ROWSE

- and -

**MINISTRY OF ENVIRONMENT,
PARKS AND CONSERVATION, and
MINISTRY OF HERITAGE, SPORT,
TOURISM AND CULTURE
INDUSTRIES**

Divisional Court File No.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

Proceeding Commenced at Toronto

**SUPPLEMENTARY AFFIDAVIT OF
EDWIN JOHN ROWSE
(Affirmed March 7, 2021)**

**ERIC K. GILLESPIE
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