



REPORT TO: Christopher D. Coates, Chief Administrative Officer
FROM: Laura Beckett, Planner
DATE: October 8, 2009
SUBJECT: Heritage Protection Options – A Framework to Begin

RECOMMENDATION:

That Council have preliminary discussions on this topic at their Committee of the Whole Meeting of October 13, 2009, and then possibly give direction to staff for further refined information for a subsequent Committee of the Whole Meeting, with a possibility of sending those results to the Select Committees for comment.

Executive Summary and Comments RE: Options for Ross-Durrance Millstream Lake Roads

There are three possible options, which are described in detail in this report:

1. Creating a *Community Heritage Register* then adding Ross-Durrance Millstream Lake Roads and their rights of way to it. While this requires community consultation for its success, it only requires a resolution of Council to come into effect. After the resolution, a statement of significance is written and passed to the Province, which forwards it to the federal government for inclusion on the Canadian Register of Historic Places.
2. *Local Government Heritage Designation* for the roads and rights of way. This is a step further and offers protection. This is what has been done for the Caleb Pike House, etc.
3. *Heritage Conservation Area* – This step requires an OCP amendment, and thus is the strongest. BC Heritage staff advise that the creation of such an area is usually most successful if it occurs during an OCP update (thus part of a large scale community consultation).

BC Heritage staff also advise that protection/recognition of a roadway only would, naturally, also require adjacent land-owner buy-in for its success. This fact should not be underestimated. For example, a road right of way only extends so far, and the trees or vegetation or other features on the private land also contribute to that roadway's unique character. The question then becomes, if or how do those properties (or parts of properties) also receive the same level of protection or recognition in order to preserve the character of the roadway/drive. One suggestion was a requirement for a landscape plan for land along road frontage.

A question to help focus discussion may be: What does Council hope to achieve by having the roads/rights of way registered, designated, protected, etc.? That answer may provide direction for what type of conservation mechanism to use.

BACKGROUND

In their 2009 Strategic Plan, Council has identified Heritage Property Recognition as a priority. This largely was a result of a desire to have some form of protection on the 'Gregory House' and to have a policy or program that would be applicable to all Highlands properties. (As Council may recall, a covenant has been placed on the title of the land on which the Gregory House resides for no damaging changes for 5 years, or until Council has a heritage program in place.) At their September 2009 meeting, the Fiscal and Environment Select Committee (FESC) discussed as an emerging issue the potential protection of Ross-Durrance and Millstream Lake Roads as a heritage road.

Staff has been directed to provide Council with a framework on heritage protection options generally, with some focus on Ross-Durrance and Millstream Lake Roads.

EXISTING POLICY AND REGULATIONS

Official Community Plan (OCP)

Section 7.4 discusses heritage. For ease of reference, staff copies it below.

7.4 Heritage

Archaeological sites are protected by Provincial legislation (the *Heritage Conservation Act*). Protection means that these sites cannot be altered without a heritage permit. Developments are reviewed by local governments to determine conflicts between protected archaeological sites and proposed development through the use of the Remote Access to Archaeological Data website. If a conflict is identified, the project proponent will be required to hire a professional consulting archaeologist for direction on how to proceed.

Heritage - Objective

- To promote the preservation of heritage buildings, heritage landscapes and archaeological sites.

Heritage - Policies

1. Prior to the approval of any development on land that could have heritage, or cultural heritage, values, the District may require an assessment pursuant to the Heritage Conservation Act.
2. In addition to the Caleb Pike Heritage Park, selected roads, views, landscapes and heritage trees might be considered for heritage protection.
3. Providing landowner consent is given, all attempts should be made to identify, map, and conserve sites, structures, and landscapes of historical significance.
4. The District supports initiatives of Highlanders to collect, preserve and present the history of the community

This is the starting point. It gives clear direction for staff to provide Council with options for heritage conservation and preservation for a wide variety of items – structures, roads, lands, and land-and-view-scapes – with further direction for staff to recommend to Council, "to do something".

Heritage Designation (Old Highlands Schoolhouse and Caleb Pike House) Bylaw No. 132, 2000

This bylaw, pursuant to *Local Government Act* section 967, designates as protected the Old Highlands School, Teacherage, and the Caleb Pike House. These buildings are all located at 1589 Millstream Road. This bylaw was adopted February 7, 2000.

Policy Manual – Section V – Policy No. 3103

Please find the above attached. While this policy is very specific and has now passed the timelines it set for itself, staff advises that there is a documented desire to reduce the safety concerns on Ross-Durrance and Millstream Lake Roads. This policy combined with FESC's recent recommendation contributes to elevating this item's prioritization in Council's 2009 Strategic Plan.

Other Works

Beautiful Rocks: A History of the Highland District, published in 2008 by Highland Heritage Park Society, is a locally-compiled source of the history of Highlands.

PROVINCIAL LEGISLATION – OPTIONS

Discussions with staff from BC Heritage provided the follow advice for options around heritage conservation. Staff also attaches 'Principles of Heritage Conservation,' which is an excerpt from, "Heritage Conservation: A Community Guide." This guide was published by the Province and can be reviewed in its full at web site: http://www.tca.gov.bc.ca/heritage/docs/pdf/HC_guide.pdf . Much of the information below has been copied from this guide.

Formal Recognition Options (without Protection)

Local government, by resolution, creates a Community Heritage Register and adds (also by resolution) listings to the register. A Community Heritage Register is an official listing of properties identified by a local government as having heritage value or heritage character. Inclusion on a community heritage register does not constitute heritage designation or any other form of permanent heritage protection. Formal recognition enables the local government to use a variety of tools through the *Local Government Act* to provide incentives for conservation with approval for alterations or demolition, etc.

The process for adding an item to a community's Community Heritage Register involves the writing of a statement of significance, which is sent to the BC Heritage branch, which then sends it for inclusion to the Canadian Register of Historic Places.

Protection Options

1. *Heritage Conservation Covenant*: A heritage conservation covenant, which has its legislative power from section 219 of the *Land Title Act*, is a contractual agreement between a property owner and a local government or heritage organization. Conservation covenants are registered on the title of the property. The covenant outlines the responsibilities of the covenant parties with respect to the conservation of a heritage property. Conservation covenants can apply to natural or man-made heritage resources, and may not vary or change local government regulations such as siting, use, or density. A separate application would be necessary for this, as with any property.

Steps in using this type of covenant are:

- a) A community identifies a property that requires long-term protection.
- b) Alternative long-term protection tools (such as heritage designation and heritage revitalization agreements) are considered. It is agreed by the parties involved that a conservation covenant is the most appropriate long-term protection tool for this situation.
- c) Terms of the conservation covenant are negotiated by the parties to the covenant.

- d) The parties seek legal advice and the heritage conservation covenant is drafted.
- e) If local government is party to a heritage conservation covenant, the council must adopt a resolution authorizing the execution of the covenant.
- f) Local government registers the conservation covenant on the property title in the Land Title Office.
- g) The property is monitored by the local government or heritage organization for compliance with the terms of the conservation covenant.

2. *Heritage Revitalization Agreement:* Heritage revitalization agreements, legal basis in section 966 *Local Government Act*, are intended to provide a powerful and flexible tool which enable agreements to be specifically written to suit unique properties and situations. They may be used to set out the conditions which apply to a particular property. The terms of the agreement supersede local government zoning regulations, and may vary use, density, and siting regulations. They are negotiated with the local government if there is interest in developing the balance of the land on the property. The key is that heritage protection must be a requirement on the part of the municipality in exchange for relaxation or change of any zoning restrictions which may hinder development potential. A heritage revitalization agreement may only be altered with the consent of the property owner and local government. Local government must adopt a bylaw to amend a heritage revitalization agreement.

The steps for heritage revitalization agreements are:

- a) Local government identifies the need for the use of a heritage revitalization agreement. The need may arise from the unusual siting of a building, a unique lot configuration or other unique circumstances.
- b) Local government and the property owner negotiate the terms of the heritage revitalization agreement, including the obligations, duties, and benefits of the agreement.
- c) Local government seeks legal advice and drafts the heritage revitalization agreement bylaw.
- d) If the use or density of the property are proposed to be changed, a public hearing must be held.
- e) Council or regional district board adopts the bylaw.
- f) Within 30 days of adoption of the bylaw, local government files a notice in the Land Title Office to register the heritage revitalization agreement on the property title. Local government must also notify the minister responsible for the *Heritage Conservation Act*.

3. *Local Government Heritage Designation:* Highlands has already done this for the Caleb Pike House, the Teacherage, and the School House, as noted above. A bylaw is passed by municipal council designating a site or structure which provides long-term protection and which requires approval by the municipal council for any major alterations or any particular elements as stipulated in the bylaw, such as

- a. exterior alterations,
- b. structural changes,
- c. moving of a structure,
- d. actions which would damage a specified interior feature,
- e. actions which would damage a specified heritage landscape feature, and/or
- f. alteration, excavation or construction on protected land.

Unless permitted in the designation bylaw, no changes may be made to a heritage designated property without a heritage alteration permit. The land or area to be designated must be able to be legally described. This may be achievable by a map.

Steps for Heritage Designation include:

- 1) Through a process of planning and research, a local government identifies heritage property considered to be worthy of long-term protection.
- 2) Alternative long-term protection tools are considered.
- 3) Consultation takes place with the property owner.
- 4) Local government considers the possible ramifications of designating the property, including the potential requirement to provide compensation to the property owner for any reduction in market value of the property directly attributable to the designation.
- 5) Local government prepares a report on the property and makes it available to the public. The report must include information regarding:
 - i. the heritage value or heritage character of the property;
 - ii. compatibility of conservation with the official community plan;
 - iii. compatibility of conservation with the lawful use of the property and adjoining lands;
 - iv. the condition and economic viability of the property; and
 - v. the need for financial support.
- 6) A proposed heritage designation bylaw is prepared, usually by the city clerk or planning department.
- 7) A public hearing must be held prior to the adoption of a heritage designation bylaw. Notice of the public hearing must be a) published in a local newspaper, and, b) sent to all owners of, owners with an interest in, and occupiers of property proposed to be designated.
- 8) Within 30 days of approval or defeat of the bylaw, property owners and occupiers must be notified of the outcome.
- 9) Following adoption of a designation bylaw, notification must be sent to the Land Title Office and the minister responsible for the *Heritage Conservation Act*.
- 10) A property owner may apply for compensation within one year of the designation coming into effect. The amount of compensation may be determined by agreement of the owner and the local government, or, if they are unable to agree, by binding arbitration under the *Commercial Arbitration Act*. If a property owner waives the right to compensation, the local government prepares a waiver form and has it signed by the property owner and local government officials.
- 11) Heritage designation may be rescinded by bylaw.

Heritage Conservation Area: References for this form of protection are from *Local Government Act* sections 970.1, 971, and 972. A heritage conservation area is a distinct district with special heritage value and/or heritage character, identified for heritage conservation purposes in an official community plan. A heritage conservation area is intended to provide long-term protection to a distinctive area which contains resources with special heritage value and/or heritage character. Staff understands that, at this time, Council is only seeking information on protecting the road and likely road right of way of Ross-Durrance and Millstream Lake Roads.

A heritage conservation area can provide protection to all or some of the properties in a heritage conservation area, or possibly no properties as may be the case of Ross-Durrance and Millstream Lake Roads. Properties that are to be protected must be specifically identified in the bylaw.

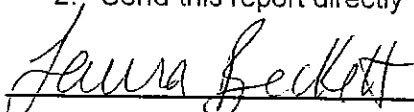
The process for establishing a heritage conservation area is typically:

1. Through a process of planning and research, a community identifies a distinctive area that it determines should be managed by long-term heritage protection.
2. Local government, in consultation with the area property owners, agrees that a heritage conservation area is the best tool to provide long-term protection.

3. Local government consults with area property owners regarding the control mechanisms (including design controls) which may be included in the bylaw. In this case, control mechanism may relate only to the road and likely road right of way along Ross-Durrance and Millstream Lake.
4. Local government prepares a bylaw to amend the official community plan to identify the heritage conservation area.
 - a) The bylaw must include:
 - i. a description of the special features or characteristics which justify the establishment of a heritage conservation area,
 - ii. the objectives of the heritage conservation area, and
 - iii. guidelines for how the objectives will be achieved.
 - b) The bylaw may also:
 - i. identify circumstances for which a permit is not required, and
 - ii. include a schedule listing the protected properties in the area, and identify features or characteristics that contribute to the heritage value or heritage character of the area.
5. At least ten days before a public hearing is held to discuss the amendment, local government notifies all owners of property listed on the heritage conservation area schedule.
6. Local government adopts the heritage conservation area bylaw.
7. Local government notifies the Land Title Office and the minister responsible for the *Heritage Conservation Act* of the adoption of the heritage conservation area bylaw, as well as any additions or deletions that may be made to the heritage conservation area schedule.

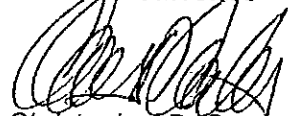
OPTIONS FOR NEXT STEPS

1. *(Recommended.)* Council may wish to have preliminary discussions on this topic at their Committee of the Whole Meeting of October 13, 2009, and then possibly give direction to staff for further refined information for a subsequent Committee of the Whole Meeting, with a possibility of sending those results to the Select Committees for comment.
2. Send this report directly to the Select Committees for comment.



Respectfully submitted by Laura Beckett, MCIP

CAO Concurrence



Christopher D. Coates, CAO

DISTRICT OF HIGHLANDS
POLICY MANUAL
SECTION V - Policy No. 3103

SAFETY CONCERNS RELATED TO THE MILLSTREAM LAKE/ROSS-DURRANCE ROAD REGION

Resolution of the Council of the District of Highlands

- A. Whereas the Council of the District of Highlands (the "Council") is aware of safety concerns related to the Millstream Lake/Ross-Durrance Road region, as detailed in the report by IAO Municipal Consulting Services dated June 1, 2001 (the "Report");
- B. Whereas the Council, due to financial and other constraints, is unable or unwilling to undertake all the recommendations made in section 5.6.2 of the Report; and
- C. Whereas the Council wishes to make the amelioration of the safety concerns identified in the Report a Council priority.

Therefore the Council establishes the following interim policy guidelines regarding the safety concerns raised in the Report:

- 1. The Council shall immediately initiate a study of the feasibility and costs of the implementation of the 3-part plan relating to Ross/Durrance Road that was endorsed by Council resolution at a regular meeting of Council on July 17, 2000.
- 2. The Council shall, within 6 months of this resolution:
 - (i) initiate a study to determine accident rates in the Millstream Lake/Ross-Durrance Road area;
 - (ii) initiate a study to determine the costs of bringing the Millstream Lake/Ross-Durrance Road up to a standard that would ensure adequate fire protection services;
 - (iii) initiate a study to determine whether the Millstream Lake/Ross-Durrance Road region should be declared a "fire limit area";
 - (iv) reduce the permitted motor vehicle speed on the Millstream Lake/Ross-Durrance Road to 25 km/hr;
 - (v) instruct District staff to install road signage in the Millstream Lake/Ross-Durrance Road region designed to increase motorist awareness of any safety concerns; and
 - (vi) recommend to the Highlands Fire Department that it embark on regular driver training in the Millstream Lake/Ross-Durrance Road region.

3. That Council shall review the studies and shall undertake to determine, as soon as is practicable, what its long term plans should be to reduce the safety concerns relating to the Millstream Lake/Ross-Durrance Road that are raised in the Report. Council will conduct a public consultation process with the District of Highlands residents with respect to the work to be carried out. In no case shall the Council wait more than one year from the date of this resolution to consider its long term plans.

Resolution No.: 242/05

Resolution No.: 321/05

Date: May 16, 2005

Amended Date: July 4, 2005

Certified Correct:

Scott Coulson,
Administrator

Principles of Heritage Conservation

Legislation in British Columbia enables heritage conservation practices to be integrated into the day to day mainstream planning activities of local government.

The principles of heritage conservation that follow have evolved out of the collective experience of British Columbians over the last two decades.

1. Planning Comes First

Communities should make every effort to plan for the conservation of their heritage resources. Planning will help to avoid conflict and last minute attempts to save valuable community resources.

Planning involves a number of steps that include:

- taking time to **communicate with owners** of heritage property and those who have an interest in heritage conservation,
- **identifying a vision** for the future of the community and its heritage resources,
- **identifying and evaluating** the community's heritage resources,
- **setting goals and objectives** for the conservation of the community's heritage resources,
- **assessing the various ways** the goals and objectives may be achieved, and
- **setting out a strategy** for how they will be achieved.

Once you have agreed on a plan, the conservation of resources is the next step. This could involve:

- implementing legal protection for a resource,
- undertaking physical preservation of a resource, and
- monitoring and evaluating completed work.

2. Legislation is Not a Substitute for Planning

By themselves, the tools enabled by the legislation are not enough. Used on their own, these tools can lead to ad hoc and piecemeal management of heritage resources. In order for these tools to be effective, they must be used in the context of heritage planning.

3. Plan Incrementally and Build on Success

An incremental approach to planning is recommended because most communities lack the financial resources, experience, and technical expertise to undertake comprehensive planning.

An incremental or one-step-at-a-time approach will help communities to acquire experience and to achieve some level of success before undertaking large projects. An incremental approach will help communities to proceed with heritage conservation at a pace they can handle, and will give communities the confidence and experience to take on new and larger initiatives.

Communities can achieve more when they build on past successes. Communities may succeed with a parade, a public art project with a heritage theme, or the restoration of a small commercial building. Whatever the projects or activities, the next step should be to build on those successes.

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NOTE: *This guide is for information and advice only. Local governments looking to implement the heritage conservation tools outlined here should seek legal counsel.*

4. Heritage Conservation is an On-going Process

Most of us think of planning as a linear process that has a beginning, a middle, and an end. Heritage conservation, however, involves a continuing series of planning cycles:

- plan,
- implement, and
- evaluate.

5. Get Organized and Build Community Support

The communities in British Columbia that have had the most success with heritage conservation are those that have been able to get organized.

Getting organized means integrating heritage activities within the context of the larger community, making a plan, recruiting volunteers, and building partnerships with property owners, business, and local government.

Community support is essential to achieving success in heritage activities. The more that members of the community are aware of their heritage, the more likely they will be to lend support and energy to heritage activities. Ideally all cultural interests should be involved in the heritage conservation activities of a community, including aboriginal and other cultural groups.

6. Consider the Whole Community

Rather than focusing on conserving individual heritage resources, a community should look at the role heritage conservation can play in the life of the community. The more the community's interests, needs, and issues as a whole are considered, the more likely it is that heritage conservation will be integrated into mainstream planning and other community activities.

7. Identify the Issue First, then Select the Tool

It is important to assess the problem or opportunity before a tool is selected. It helps to identify the problem first, look at alternative solutions, and then select the tool(s) which can best be used to solve the problem. The risks of choosing an inappropriate tool are higher when a community tries to fit the circumstance to the tool, rather than when it fits the tool to the circumstance.

8. Heritage Conservation Must be Fair

The legislation has been designed to provide fairness to both the public interest and to property owners. It is important that heritage proponents work with and consider the needs of owners of heritage properties to achieve fairness in conserving heritage resources.

9. Heritage Resources Require Stewardship

Stewardship is more than the physical tasks of restoration. It is a process of commitment and long-term management of community heritage resources. This may involve finding a new role for a resource to play in a community, or finding a way to make a resource more economically viable.

Heritage conservation is an on-going process of stewardship that must be carried on after physical restoration is complete. On-going stewardship of heritage resources will help to ensure conservation over the long term. Stewardship involves three steps:

- protection legal protection of the resource

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- preservation physical maintenance or upgrading of a resource
- interpretation presentation and commemoration; the education component of a conservation project

10. Invest in Your Future

Heritage conservation activities have successfully contributed to the economic development of many communities in British Columbia over the last fifteen years. If approached from a business point of view, heritage conservation efforts can help to preserve a community's past and generate much needed economic activity.
