

TOWN OF BANFF

BYLAW 374

Municipal Heritage Designation Bylaw – Old Banff Cemetery

A Bylaw to designate the Old Banff Cemetery as a Municipal Heritage Resource

WHEREAS the *Historical Resources Act*, R.S.A. 2000, c. H-9, as amended, permits the Municipal Council of a municipality to designate any historic resource within the municipality whose preservation it considers to be in the public interest as a Municipal Historic Resource upon giving notice to the owner of the resource in accordance with the *Historical Resources Act*; and

WHEREAS it is deemed in the public interest to designate the site located in the Town of Banff at 604 Buffalo St., known as the Old Banff Cemetery, as a Municipal Historic Resource; and

WHEREAS the owners of the Old Banff Cemetery have agreed to the terms and conditions of the compensation proposal set out in **Schedule “C”** as compensation for the designation of the Old Banff Cemetery as a Municipal Historic Resource;

NOW THEREFORE the Municipal Council of the Town of Banff, having complied with the *Historical Resources Act*, and duly assembled, hereby enacts as follows:

1.0 SITE DESIGNATED AS A MUNICIPAL RESOURCE

- 1.1 The site, including structures and improvements known as the Old Banff Cemetery, specifically described in **Schedule “A”** which are located on the lands legally described as follows:

Cemetery, Plan: 51092 CLSR AB

is designated a Municipal Historic Resource.

2.0 PERMITTED REPAIRS AND REHABILITATION

- 2.1 In this bylaw, subject to section 3 hereof, the site hereby designated in section 1 as a Municipal Historic Resource shall not be removed, destroyed, disturbed, altered, rehabilitated, repaired or otherwise permanently affected, other than in accordance with the terms of **Schedule “B”** attached.

3.0 ADMINISTRATOR

- 3.1 The Manager of the Town of Banff Planning and Development Department is hereby appointed to administer the implementation of any matters arising from the matters set out in **Schedule “B”**.

4.0 COMPENSATION

- 4.1 Compensation shall be paid to the registered owners of the Old Banff Cemetery herein designated a Municipal Historic Resource in the manner, at the times and in the amounts set out in **Schedule “C”**.

5.0 SCHEDULES

- 5.1 Schedules “A” and “B” and “C” form part of this bylaw.

6.0 ENACTMENT

- 6.1 This bylaw comes into force when it receives third reading and is signed by the Mayor and the Town Manager or designates.

READ A FIRST TIME this 28th day of November, 2016.

READ A SECOND TIME this 28th day of November, 2016.

READ A THIRD TIME this 28th day of November, 2016.

SIGNED AND PASSED this 30th day of November, 2016.

2016.11.30
Karen Sorensen
Mayor

2016.11.30
Robert Earl
Town Manager

SCHEDULE A – IDENTIFICATION OF REGULATED PORTION

This is Schedule “A” to Bylaw No. 374 and identifies by written description and photographs, those portions of the Old Banff Cemetery located at 604 Buffalo Street which are regulated by the “General Guidelines for Rehabilitation” (**Schedule “B”**) and must be preserved (“the Regulated Portion”).

THE IDENTIFICATION OF REGULATED PORTIONS OF THE OLD BANFF CEMETERY

The Regulated Portions of the Old Banff Cemetery include: the area within the property lines.

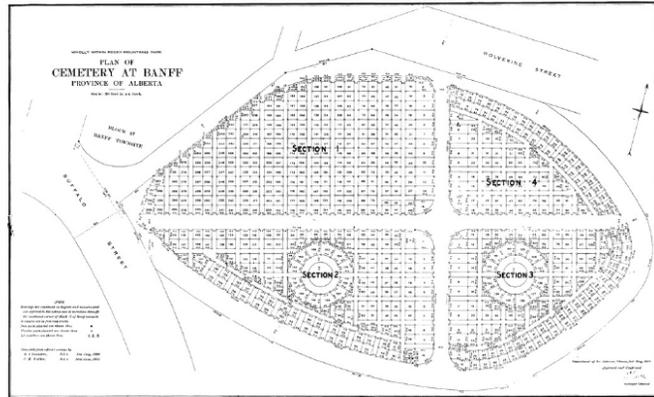
Non-regulated portions of the landscape, being all other portions of the landscape not specifically identified as a Regulated Portion, may be rehabilitated, altered, repaired or otherwise permanently affected in any manner provided that such rehabilitation, alteration or repair does not impact on the regulated historic features of the landscape. Any development or alterations considered to be non-regulated portions of the Municipal Resource must meet the General Guidelines for Rehabilitation. Any development of any portion of the Land shall be undertaken in a manner that is sympathetic to the regulated historic features of the landscape.

The following regulated character-defining elements must be retained:

- Unique oval-and-cross layout of the original four sections of the cemetery
- Stone, cement and iron enclosures around individual and family graves
- Planned central landscaping in Sections 2 & 3
- The aspen, quaking aspen and white spruce hedgerow trees that line the east-west pathway between Sections 1 & 2, as well as parts of the north-south pathway, of the original 1899 cemetery. This results in a forested character with limited sky and mountain views.
- The 1933 toolshed at the cemetery’s southern edge (later addition, but architecturally valuable)
- Variety of styles, stone materials and art/symbolism (particularly mountain and nature imagery) in the headstones. Several commemorative plaques designed by local artist Charlie Beil.
- The Brett, Brewster and Grant mausolea, likely built by local craftspeople (Brett Mausoleum built by stonemason J. E. Malloy), and built from local materials
- Military Field of Honour at the cemetery’s southern end

PHOTOGRAPHIC DETAILS

Unique oval-and-cross layout of the original four sections of the cemetery



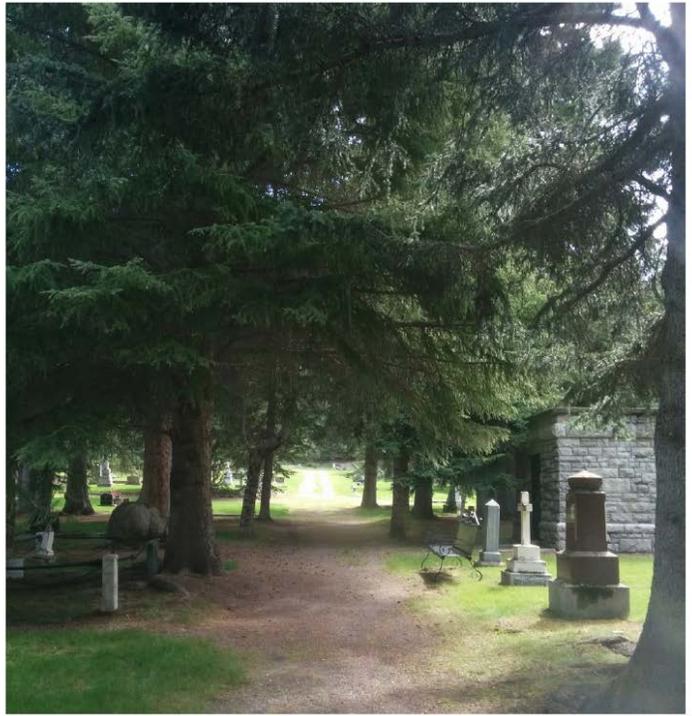
Stone, cement and iron enclosures around individual and family graves



Planned central landscaping in Sections 2 & 3



The aspen, quaking aspen and white spruce hedgerow trees that line the east-west pathway between Sections 1 & 2, as well as parts of the north-south pathway, of the original 1899 cemetery. This results in a forested character with limited sky and mountain views.



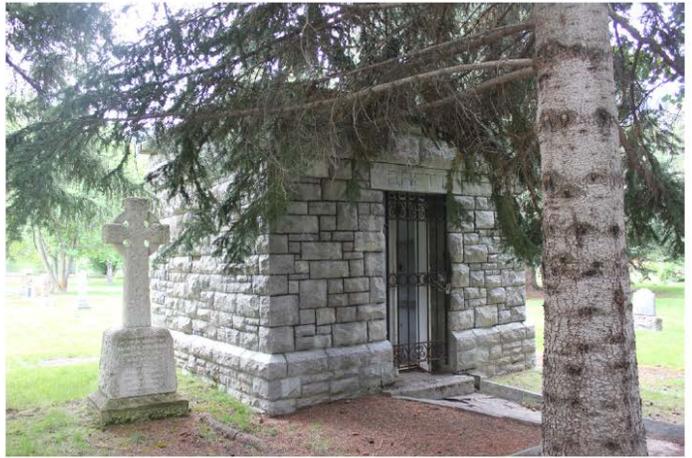
The 1933 toolshed at the cemetery's southern edge (later addition, but architecturally valuable)



Variety of styles, stone materials and art/symbolism (particularly mountain/nature imagery) in the headstones. Many commemorative plaques designed by local artist Charlie Beil.



The Brett, Brewster and Grant mausolea, likely built by local craftspeople (Brett Mausoleum by local stonemason J. E. Malloy), and built from local materials



Military Field of Honour at the cemetery's southern end



SCHEDULE B – GENERAL GUIDELINES FOR REHABILITATION

1. Approval of Rehabilitation Work

As per section 26 (6) of the Alberta *Historical Resources Act*, notwithstanding any other Act, no person shall destroy, disturb, alter, restore or repair an historic resource or remove any historic object from an historic resource that has been designated under this section, without the written approval of the Council or person appointed by the Council of the purpose.

The Manager of the Planning and Development Department has been appointed by Town Council as the approving authority for this purpose.

2. Compatible Uses

Wherever possible, the uses proposed for a Municipal Historic Resource shall be compatible with the existing building such that only minimal changes are required to the building. The use of a Municipal Historic Resource for its original purpose is desirable.

3. Original Character

The original distinctive qualities and character of the building as designated by the Municipal Historic Resource bylaw should be preserved. The removal or alteration of any historical materials or features shall be avoided whenever possible.

4. The Historic Period

The Municipal Historic Resource should be recognized as a product of its own time. Alterations which are not based on historical fact or which recreate an earlier or later idiom shall be discouraged.

5. Witness to Change

Changes to the Municipal Historic Resource may have occurred over time. These alterations are evidence of the history and development of the building. Because this evolution may have acquired significance in its own right, alterations to the original building should be recognized and respected where indicated.

6. Repair and Replacement

Deteriorated architectural features shall be repaired rather than replaced wherever possible. Where replacement is necessary, the new material should match the original as to composition, colour, texture, design, etc. The repair or replacement of architectural features shall be based on a sound knowledge of the original characteristics of the feature. Such knowledge shall be based on historical or pictorial evidence and not upon conjecture.

7. Style and Craftsmanship

Distinctive stylistic features and examples of skilled craftsmanship that have been designated by the Municipal Historic Resource Bylaw shall be preserved and treated sensitively.

8. Cleaning

In all cases, surface cleaning shall be undertaken with the gentlest means available. Sandblasting in particular, but also other cleaning methods, damage historic buildings and should not be undertaken without thorough testing prior to use on a building. Sandblasting is not recommended on brick, stone or wood. In all instances, it should be ascertained that a building exterior is really in need of cleaning prior to undertaking the work.

9. Reversibility of Improvements

When the introduction of new elements or materials is necessary to stabilize or preserve a municipally designated historic resource, alterations shall be undertaken such that the new materials, should they fail, may be removed at a later date without damage to the original fabric of the Municipal Historic Resource. Where this is not possible, (i.e., use of epoxy) only those methods and materials that have been thoroughly tested and found satisfactory in situ shall be used.

10. Recording

Prior to undertaking any alterations, particularly in cases where alterations may threaten the building fabric (underpinning, moving structures), the applicant shall compile a complete record of the architectural features of the Municipal Historic Resource. Measured drawings and photographs of details may prove invaluable if major features are damaged or lost during the subsequent repair work.

11. Original Construction Details

In some historic structures, poor construction details or inappropriate material resulted in rapid deterioration of certain building elements. In these instances, accurate restoration of the original detail will inevitably result in the failure of the element. Therefore, restoration of the resource should be undertaken in such a fashion as to duplicate the original appearance as closely as possible while using details based on sound construction practice.

12. Enforcement

The owner and the Town shall enter into an agreement to ensure that the designated structure will be maintained in such a manner as to prevent any deterioration.

13. Improvements

Prior to undertaking any improvements, a schedule of alterations should be prepared. This schedule should include phasing of alterations where necessary due to program or budget restrictions. The type and timing of both short and long term maintenance work shall also be included.

14. Codes

At no time should the life and safety of occupants of a Municipal Historic Resource be deemed of lesser importance than the preservation of the original fabric of the Municipal Historic Resource. The required life and safety standards are those required by the current Alberta Building Code. However, notwithstanding these Code requirements, where the essential character of the structure is threatened by changes for code reasons, every effort shall be made to achieve an equivalent safety standard by alternate means so as to minimize the impact on the historic fabric.

15. Signs

As a general rule signs should be limited to signs that were originally present on the building. In instances where new use or interpretive functions dictate the use of additional signs, these new elements should be integrated into the general design of the project. The size, typeface, graphics and materials should be chosen to suit the period of the Municipal Historic Resource wherever possible. All signs must conform to the Banff Land Use Bylaw.

SCHEDULE C – SUMMARY OF COMPENSATION

1. Pursuant to section 28 of the *Historical Resources Act*, R.S.A. 2000, c. H-9, as amended, the Town of Banff (the “Town”) may provide compensation to the Owner as a result of the designation of the Old Banff Cemetery as a Municipal Historic Resource. The Town of Banff, the Owners of the Old Banff Cemetery as of the effective date of this Bylaw, have agreed, in the Compensation Agreement, upon the adequate compensation for the designation and any loss of economic value to the owners as a result of the designation. Neither the Town of Banff nor the Banff Heritage Corporation shall be obligated to provide any further consideration other than as set out in the Compensation Agreement.
2. Provided that at all times the Owner has performed its obligation under the Compensation Agreement and is not in default in any way under the Compensation Agreement, the Town and/or the Banff Heritage Corporation shall provide the following consideration to the Owner for the designation of the Old Banff Cemetery as a Municipal Historic Resource:
 - 2.1 During the years 2017-2021, the amount of the grant shall not exceed \$15,000, and in no circumstances shall the Town or the Banff Heritage Corporation be obliged to advance more than this amount.

The Consideration shall be provided to the Owners in the manner described in paragraphs 4 through 13 of this **Schedule “C”**.

3. Unless otherwise defined in this Bylaw the terms used in **Schedule “C”** shall have the same meaning as was assigned to them in the Compensation Agreement between the Town, the Banff Heritage Corporation and the Owners.

Matching Restoration/Rehabilitation Grant

4. The grant shall be advanced to the Owner in installments as each phase of the Restoration/Rehabilitation Work is completed. After 2021, neither the Town nor the Banff Heritage Corporation shall be obligated to advance further monies to the Owner notwithstanding that some of the Restoration/Rehabilitation Work is not completed or that the full amount of the grant has not been advanced.
5. Upon completion of any phase of the Restoration/Rehabilitation Work the owner shall provide the Town with:
 - 5.1 A statutory declaration from the Owner certifying that the phase of the Restoration/Rehabilitation Work has been completed and the value of any personal labour claimed pursuant to clause 6 is reasonable and correct,
 - 5.2 Receipts or other documents indicating that all suppliers and contractors involved in performing that phase of the Restoration/Rehabilitation Work have been paid in full for their goods or services; and
 - 5.3 Evidence that the Owner received competitive bids or estimates before engaging any contractor or supplier.

6. Any labour performed by the Owner (Town of Banff employees) that is directly related to a phase for which funding was approved can be claimed and calculated equivalent the amounts paid to said employees for the time spent on the work.
7. Within 30 days of receiving the documents described in clause 5 above, the Town shall inspect the Old Banff Cemetery and either:
 - 7.1 Issue a Notice of Completion for that phase, indicating that the work has been performed to the satisfaction of the Manager of the Planning and Development Department, or
 - 7.2 Provide the Owner with a description of the particulars in which the work performed is incomplete or deficient in the opinion of the Manager of the Planning and Development Department (a “Deficiency List”).
8. If the Town issues a Deficiency List, the Owner may either remedy the deficiencies to the satisfaction of the Manager of the Planning and Development Department or submit the question of whether the work has been properly performed to an arbitrator in accordance with the provisions of the Compensation Agreement.
9. If the Town issues a Notice of Completion or an Arbitrator directs that a Notice of Completion be issued, and provided that the Owner is not in default of any of its obligations under the Compensation Agreement, within 60 days of issuance of the Notice of Completion, grant monies shall be advanced to the Owner in an amount equal to or the lesser of:
 - 9.1 the actual cost to the Owner of having the phase of the Restoration/Rehabilitation Work performed (the “Actual Cost”); or
 - 9.2 the amount allocated for that phase of the Restoration/Rehabilitation Work in Schedule “B” to the Compensation Agreement (the “Allocated Amount”) plus any Surplus Funds as defined in paragraph 11 below.
10. In calculating the cost of performing the Restoration/Rehabilitation Work, the Owner and the Town shall include the cost of labour and materials and any reasonably incurred professional fees and disbursements. However, such costs shall not include costs related to the interruption of the use of the Old Banff Cemetery due to renovations, or costs or repairing any damage unintentionally caused to the buildings.
11. If after completion of any phase of the Restoration/Rehabilitation Work, an amount is paid pursuant to clause 9.1, that is less than the Allocated Amount for that Phase, the difference between the amount paid and the Allocated Amount for that Phase shall be deemed to form part of the Surplus Funds and may be used to pay compensation for future Phases of the Restoration/Rehabilitation Work.
12. After the Owner has completed the final phase of the Restoration/Rehabilitation Work and all grant advances have been made to the Owner in accordance with clause 9 above, the Owner shall not be entitled to any further advances, notwithstanding that all Surplus Funds have not been paid to the Owner.