



November 5, 2020

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Dear Ms. Dooley:

**Re: ERO 019-1348 - Proposed Regulation under the *Ontario Heritage Act* (Bill 108)**

We represent The Governing Council of the University of Toronto (the "University").

The University is one of the largest landowners in the City of Toronto and over the next 15-20 years, intends to invest billions of dollars towards new development projects that will address a critical need for on-campus housing, affordable home ownership options for faculty and staff, and innovation space. The University welcomes proposed changes to applicable legislation and provincial policies that will assist with the timely delivery of housing supply and academic and entrepreneurial space.

In the University's submissions to the Province as part of the "Increasing Housing Supply in Ontario" consultation, we advised of the University's current shortfall of hundreds of thousands of sqm of academic, entrepreneurial and industry-related support space, and thousands of student housing beds. As the interpretation and application of the *Ontario Heritage Act* ("Act") has exacerbated this issue and threatened to prevent crucial development projects, we were pleased with the Province's changes to the Act through the *More Homes, More Choice Act, 2019* (Bill 108). While the University is content with the proposed Regulation in many respects, the University has two primary concerns: (1) the proposed principles that a municipal council shall consider when making decisions undermine a balanced interpretation and application of the Act; and (2) the proposed transition provisions will undermine the Province's goal of establishing a more fair and balanced approach to the identification and conservation of cultural heritage resources. We have suggested specific amendments to mitigate these issues.

**Proposed Principles**

The University is concerned that the proposed principles will not lead to more predictable and consistent determinations as to what has heritage value. Consistent with the approach taken in other jurisdictions, the principles should emphasize the importance of consensus-building in the process of determining cultural heritage value or interest, particularly given that assessment of heritage value is often subjective. More than directing that municipalities consider the views of all interested persons and communities, the municipality should seek to identify the heritage

value that is common amongst applicable stakeholders, including the property owner. The University has a proven track record of successful heritage preservation and adaptive reuse and a deep understanding of its heritage, yet the University's perspective, and that of its independent heritage professionals, are routinely dismissed by the City of Toronto.

*Proposal: Amend paragraph 2 of s. 1(3) of the proposed Regulation to add additional subparagraph to provide that decisions affecting the cultural heritage value or interest of a property or heritage conservation district should: "be based on cultural heritage value or interest that is common amongst stakeholders, including the property owner"*

Further, we are concerned that the requirements to "minimize adverse affects", "protect" heritage value for all generations, and the inclusion of "protection" as a method of achieving conservation, may be interpreted as more stringent than the Provincial Policy Statement 2020 or accepted heritage practice which emphasizes "conservation", which allows for appropriate and thoughtful change.

*Proposal: Delete "protected and" from paragraph 1 of s.1(3); delete subparagraph 2(i) in s. 1(3) to remove additional requirement to minimize adverse impacts; and delete "protection" from paragraph 3 of s.1(3)*

While we are pleased to see recognition of "adaptive reuse" as a means to conserve cultural heritage value, the proposed definition is too restrictive. Greater flexibility should be provided by requiring making reasonable efforts to retain the heritage attributes, consistent with a purposive interpretation of the term and provincial policy.

*Proposal: Amend definition in s. 1(4) to provide that "adaptive reuse" means the alteration of a property of cultural heritage value or interest to fit new uses or circumstances while making reasonable efforts to retain the heritage attributes of the property*

Explicit recognition of the practice of long term, celebratory or commemorative action as a means to conserve cultural heritage value or interest would provide further flexibility to conserve historic or associative value that is not inherent in the built structure.

*Proposal: Amend paragraph 3 of s. 1(3) to add "celebratory or commemorative action" as an additional means to achieve conservation of properties of cultural heritage value or interest*

## **Transition Provisions**

The University is also concerned with the proposed transition provisions which delays application of the amendments to January 1, 2021, despite Royal Assent for Bill 108 being granted well over a year ago. Interested stakeholders have had sufficient time to contemplate these changes. Allowing a further extension only provides incentive for decisions to be made

for the purpose of avoiding application of the new Act. A more fair and efficient process would be to ensure all existing applications benefit from the legislative amendments.

*Proposal: Simplify the s. 20 transition rules to provide that all applications and proceedings, save for scheduled hearings, commenced on or after the day Bill 108 More Homes, More Choice Act, 2019 received royal assent (June 6, 2019) and all decisions made by a municipality as of the day the proposed Regulation was posted (September 21, 2020) proceed under the new Act and Regulation*

We are appreciative of the Province's efforts to eliminate development constraints and the opportunity to comment on the proposed Regulation. We welcome the opportunity to discuss our comments further.

Yours truly,

Cassels Brock & Blackwell LLP

A handwritten signature in blue ink, appearing to read 'Signe Leisk', written in a cursive style.

Signe Leisk  
Partner

SL/AP/cm