

Cassels

November 24, 2022

By Email: paul.kulpa@ontario.ca

Heritage Branch, Ministry of Citizenship and
Multiculturalism
400 University Avenue, 5th Floor
Toronto, ON M7A 2R9

Attention: Paul Kulpa

Dear Mr. Kulpa:

**Re: ERO Number 019-6196
Feedback on Proposed Changes to the *Ontario Heritage Act***

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file # 1-3309

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

The University is among the top 10 non-government employers in Toronto, adding \$12 billion stimulus to the GTA annually in the form of salaries, benefits and expenditures of faculty, staff and students. The University’s global success is dependent upon the continual adaptation in the provision of world class facilities.

The three campuses of the University of Toronto contain a concentration of the country’s foremost educational, cultural, research, medical and government institutions. These institutions are of global significance and situated amongst a concentration of significant heritage resources, dynamic contemporary architecture, and a wealth of publicly accessible open spaces. The University is the owner of approximately 265 hectares of land across its St. George, University of Toronto Scarborough and University of Toronto Mississauga campuses. The St. George Campus alone occupies 176 acres, making the University one of the largest landowners in downtown Toronto.

Subject to the comments below, the University is supportive of the Ministry’s efforts to renew and update heritage policies to reduce red tape and remove barriers that are slowing down housing construction and other priority projects.

The University has a proven track record of successful heritage conservation and adaptive reuse of heritage assets, with 80 listed and designated buildings on the St. George Campus alone, representing over 50% of the campus. Large parts of the campus are also subject to heritage easements in favour of the City of Toronto. However, continuing disagreement regarding the relative cultural heritage value of currently unlisted or undesignated buildings has escalated to become the single greatest risk factor in the University’s ability to fulfil its Master Plan and address its significant space shortfall, contrary to numerous expert reports demonstrating the lack of heritage value.

Increase in the threshold for designation of individual properties

Current interpretation and application of the *Ontario Heritage Act*, together with the Provincial Policy Statement, 2020 (“PPS”), has led to significant development delays and may ultimately prevent crucial development projects.

The University is supportive of the Minister’s proposed amendment to increase the threshold for designation by requiring that a property meet two or more of the criteria prescribed under Ontario Regulation 9/06. However, given the breadth of the criteria as drafted, this amendment alone will not be sufficient to remove barriers while ensuring the continued protection of heritage resources.

Section 2.6.1 of the PPS directs that “Significant built heritage resources and significant cultural heritage landscapes shall be conserved”. “Significant” is defined as:

“resources that have been determined to have cultural heritage value or interest. Processes and criteria for determining cultural heritage value or interest are established by the Province under the authority of the *Ontario Heritage Act*”.

“Built heritage resource” is further defined to include a property that is either designated or simply listed on a register.

These definitions provide no measurable standard for determining significance. Rather, it directs that any property is significant if it satisfies the criteria for determining cultural heritage value or interest pursuant to O. Reg. 9/06. Pursuant to O. Reg. 9/06, the criteria for determining cultural heritage value or interest are extremely broad and subjective and are regularly applied in a manner that was not originally intended. Any property in Ontario could be potentially captured, even if two or more criteria are required to be met.

If the Province is desirous of effecting change to the current regime, further amendments to O. Reg. 9/06 are required to insert a standard of significance when considering each of the criteria for determining cultural heritage value or interest, and an objective definition of “significant” should be added to the PPS that provides a measurable standard. Please see attachment “A” for a proposed amendment to O. Reg. 9/06 for your consideration.

New requirements for non-designated properties on the municipal register need further clarity

Increasing the standards for listing property on a municipal register by requiring that the property meet one or more of the prescribed criteria may have the result of effectively removing the distinction between listing and designation. Listing a property is intended to provide a means for quick, interim protection, subject to further evaluation of the property in the future. Any prescribed criteria for listing a property must ensure that the merits of designation are not pre-determined, as there is no appeal of a heritage listing.

While the University is supportive of imposing timelines for a municipality to designate a listed property and preventing a municipality from designating a property that has not already been listed, the University is concerned that the proposed changes will have the unintended consequence of ultimately encouraging an increase in designations prior to the expiry of the two-year limitation period, particularly if the criteria for designation are not further refined. While leaving properties on the heritage registry indefinitely is not ideal, there can be benefit and efficiency to deferring consideration of the merits of a potential designation until the time of redevelopment, rather than requiring an owner to incur costs in objecting to a potential designation in advance of any proposed development. To address this concern, we request that provisions be added to allow the potential for the two-year time period for designation be extended upon the agreement of both the municipality and the owner.

Changes to Heritage Conservation Districts

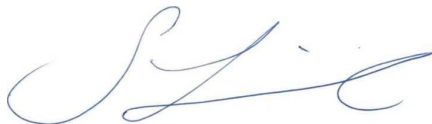
The University is supportive of increasing rigour in the process of identifying and protecting heritage conservation districts (“HCDs”), ensuring they are not used to freeze a community in a moment of time and restrict future investment and intensification. In determining the criteria to apply to the identification of HCDs, the economic needs of communities, such as the current housing crisis, the needs of area institutions and significant employers, must be given priority consideration before redevelopment is discouraged through HCD identification.

Care must also be taken to ensure HCD identification and protection is limited to prescribing the “look and feel” of HCDs and is not used as a tool to for regulating standards of development that are properly prescribed by the municipal zoning bylaw, such as height and density.

We welcome the opportunity to discuss our comments further.

Yours truly,

Cassels Brock & Blackwell LLP

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

Signe Leisk
Partner

SL/MW/cm

Attachment “A”

Ontario Heritage Act

ONTARIO REGULATION 9/06

CRITERIA FOR DETERMINING CULTURAL HERITAGE VALUE OR INTEREST

Consolidation Period: From January 25, 2006 to the [e-Laws currency date](#).

No amendments.

This is the English version of a bilingual regulation.

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~~ **two** or more of the following criteria for determining whether it is of cultural heritage value or interest **and it is significant to a community**:

1. The property has design value or physical value because it,
 - i. is a rare, unique, **and** representative ~~or early~~ example of **an early** 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.

[Français](#)

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