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Heritage Branch, Ministry of Citizenship and Multiculturalism
400 University Avenue, 5th Floor
Toronto, ON
M7A 2R9
Canada**Re: Proposed changes to the Ontario Heritage Act and O.Reg. 385/21 General with respect to certain alteration requests – ERO # 019-7684**

On behalf of the City of Toronto Planning Division, I would like to thank you for the opportunity to comment on the proposed changes to the Ontario Heritage Act (OHA) and O.Reg. 385/21 (General) as part of the Less Red Tape, More Common Sense Act, 2023 (Bill 139). In providing this feedback, our intention is to emphasize the need for clear guidance on implementing the proposed changes at the municipal level.

Eligible Properties

We understand that Bill 139 proposes changes to the process of seeking municipal consent for alterations to “buildings” used for religious practices. For the purposes of Bill 139, “building” is defined as follows:

- (i) With respect to an application for the benefit of an Indigenous community or organization, a building that the Indigenous community or organization has identified as a place used for Indigenous religious or spiritual practice*
- (ii) With respect to an application for the benefit of a religious organization that is not an Indigenous organization, a building that the religious organization has identified as a church, mosque, synagogue, temple, chapel, or other place of worship*

It is our understanding and experience that Indigenous religious and spiritual practices do not typically take place exclusively within buildings that are primarily used for religious/spiritual purposes. Indigenous spiritual practices are often integrated with cultural expression and place keeping. The definition of “building” for the purposes of Bill 139 reflects a distinctly Western (and often Eastern) religious concept of places of worship and therefore excludes the many ways in which Indigenous spiritual and religious practices are expressed in the built and natural environments.

We strongly encourage comprehensive, direct, and meaningful engagement with Indigenous communities and organizations so that the proposed amendment will provide a definition that is inclusive of Indigenous knowledge-keeping and spiritual and religious practices, as determined by Indigenous organizations themselves.

Furthermore, the proposed changes under Bill 139 include the requirement that the building, or part thereof, to be altered is primarily used for religious practices. We would appreciate clarification on

whether spaces of worship within institutional or other building types would be eligible to meet this requirement. For example, many schools, hospitals, universities, hospices, student residences, cultural facilities and community buildings (including those used by Indigenous organizations) incorporate dedicated spaces for religious and spiritual practices.

We strongly believe that if the amendments through Bill 139 are going to be made, they should not come into effect until consultation is undertaken to guide the appropriate application of the amendments through regulations prescribed by the Lieutenant Governor in Council. Such consultation is fundamentally necessary to ensure that rights-oriented definitions and terms are used in the new proposed subsection 33(18) and (19) of the OHA, in particular defining “religious practices” and “indigenous religious or spiritual practices”. Without such regulations there will be a likelihood of inconsistent application of these new provisions, and potential disputes regarding the scope of what may or may not be permitted under these new proposed subsections.

Process and Implementation

Bill 139 contains statutory amendments to Section 33 of the OHA, which relates to the alteration of a property if the alteration is likely to affect the property’s heritage attributes. Under Section 33 (6), City Council may – upon receipt of a complete application for alterations to a property – either consent, consent with terms or conditions, or refuse the application. This section is distinct from Section 34, which addresses the demolition or removal of any of a property’s heritage attributes.

We understand that under Bill 139 municipalities must either consent to an application that meets the bill’s requirements, or else provide notice of an incomplete application within a prescribed timeline. We would appreciate clarification on what other response options would be possible. For example, if the application called for the demolition or removal of a heritage attribute rather than an alteration, it appears that we would have no recourse under Bill 139 to determine the appropriateness of using this section of the Act.

Given the intended permissiveness, it is critical that there be clarity about which heritage attributes would be subject to the changes proposed by Bill 139. As currently written, the statutory amendments would apply if “the heritage attributes to be altered are connected to religious practices.” We suggest that this wording is excessively broad and could easily come into dispute.

The City of Toronto has an existing Protocol for the Identification and Review of Heritage Places of Worship, and related policies regarding Heritage Places of Worship in our Official Plan. Our policies were created to balance the conservation of religious heritage properties with the primacy of “liturgical elements,” which we consider beyond our jurisdiction if the property is an active place of worship. Our OP defines a liturgical element as “a building element, ornament or decoration that is a symbol or material thing traditionally considered by a religious organization to be part of the rites of public worship.” While this terminology would need to be adjusted to include places of Indigenous spiritual practice, it exemplifies the specificity that we believe would strengthen Bill 139.

With respect to the proposed application requirements, we further suggest that applicants must submit documentation and photographs of the existing heritage attributes to be **altered**, not just provide a description, and provide a statement from the owner that the proposed alterations will conserve the heritage attributes of the property. We also suggest that the requirement of “an explanation as to whether the proposal is for the benefit of the owner or a tenant” should be scoped further to address how the alteration relates to religious practices. Finally, given how many congregations of all faiths are selling their properties in Toronto, we would advocate that unused consents under this section of the Act expire once the building is no longer in use as a place of worship, or be otherwise time limited to ensure that such permits are being used for their intended purposes.

We hope that this feedback is helpful in identifying opportunities for further clarification. We agree that it is important for faith groups and Indigenous organizations to self-determine what has sacred and spiritual value, and we strongly support efforts to limit the regulation of distinct, sacred, and evolving faith traditions. Should regulations be forthcoming, as we hope they will be, we look forward to providing further comment at that time.

If there be any questions on this submission, we would be pleased to meet with you.

Sincerely,

A handwritten signature in cursive script that reads "Mary L. MacDonald". The signature is written in black ink and is positioned above the typed name.

Mary L. MacDonald, Senior Manager
Heritage Planning, Urban Design
City Planning