

## Municipal, Planning and Property Tax

January 18, 2005

### ***Ontario Heritage Act* Amendments Impact Demolition Rights**

#### **Introduction**

The provincial government has proposed a number of changes to the *Ontario Heritage Act* (the “Act”), some of which would significantly affect a landowner’s right to demolish buildings or structures that are designated under the Act. Bill 60 is expected to receive Third Reading and Royal Assent shortly after the Legislature reconvenes in February 2005. It is important that landowners be aware of the changes proposed in Bill 60, as the new legislation has the potential to considerably impact development rights on properties that contain heritage buildings.

#### **Existing Ontario Heritage Act**

Under the existing Act, the Council of a municipality can designate a property to be of “cultural heritage value or interest”. If a property has been designated, a landowner cannot demolish or remove a building on the property without first seeking the consent of Council. Council has 90 days to make a decision on the demolition application (otherwise consent is deemed to have been given), and if Council refuses the demolition request, the owner cannot demolish the building until:

- 180 days have elapsed from the date of Council’s refusal; and

- the landowner has obtained a building permit to erect a new building on the site.

Accordingly, under the existing Act, a municipality can currently delay the demolition of a designated building, but cannot ultimately prevent demolition.

#### **Impact of Bill 60 on Demolition Rights**

Bill 60 proposes to significantly impact a landowner’s demolition rights. If Bill 60 is enacted as currently drafted, a landowner would still be required to apply to Council for consent to demolish a designated building, but where the municipality refuses the application, the landowner would no longer have an automatic right to demolish the building upon the issuance of a building permit for a replacement building. Instead, a landowner would be entitled to appeal Council’s refusal of the demolition request to the Ontario Municipal Board. If Council approves a demolition request, but it imposes terms and conditions that are unsatisfactory to the landowner, the landowner would also be entitled to appeal the terms and conditions to the OMB. The landowner would be the only party capable of filing an OMB appeal under the Act, as Bill 60 does not provide for third-party appeals of a municipality’s decision to approve or reject the demolition of a designated building.

After holding the hearing, the OMB could dismiss the appeal (i.e. uphold the refusal or the imposition of conditions), consent to the demolition or consent to the demolition with terms and conditions. The decision of the Board would be final.

Bill 60 does not introduce any new financial incentives for landowners to retain designated buildings, and purports to restrict compensation in respect of any decision made by a municipality, the Province or the OMB under the legislation.

Accordingly, under the proposed Act, a landowner would no longer be assured that it could ultimately

# Goodmans<sup>LLP</sup> Update

---

demolish a designated building. Instead, its ability to demolish a designated building would be subject to approval by the municipality or, on appeal, by the OMB.

## Other Changes Proposed in Bill 60

Although the demolition provisions are expected to have the most impact on landowners, Bill 60 also introduces a number of other changes to the Act, the most significant of which are as follows:

- If enacted, Bill 60 would provide municipalities with the power to pass by-laws establishing minimum standards for the maintenance of the heritage attributes of designated properties.
- Under the new legislation, the Province would be entitled to prescribe criteria for the designation of properties under the Act. As a result, municipalities would be able to designate only those properties that meet the criteria.
- The Minister of Culture would be able to designate any property in Ontario as a “property of cultural heritage value or interest of provincial significance”. Once a property is provincially designated, the landowner would not be able to alter the heritage attributes of the property or demolish any building or structure on the property without the consent of the Minister, although a landowner could appeal to the OMB where the Minister refuses a demolition request.

## Further Information

For additional information on Bill 60 and its implications, contact a member of the Goodmans Municipal Law Group listed below.

## Goodmans’ Municipal, Planning and Tax Group

<b>Mark Blidner</b> mblidner@goodmans.ca	416.597.6294
<b>David Bronskill</b> dbronskill@goodmans.ca	416.597.4299
<b>Darlene Gilliland</b> dgilliland@goodmans.ca	416.597.5918
<b>Roslyn Houser</b> rhouser@goodmans.ca	416.597.4119
<b>Robert Howe</b> rhowe@goodmans.ca	416.597.5158
<b>Allan Leibel</b> aleibel@goodmans.ca	416.597.4131
<b>Catherine Lyons</b> clyons@goodmans.ca	416.597.4183
<b>Melissa Muskat</b> mmuskat@goodmans.ca	416.597.6297
<b>Mark Noskiewicz</b> mnoskiewicz@goodmans.ca	416.597.4136
<b>Julia Ryan</b> jryan@goodmans.ca	416.597.4149
<b>Michael Stewart</b> mstewart@goodmans.ca	416.597.6284

All Updates are available online at [www.goodmans.ca](http://www.goodmans.ca). If you would prefer to receive this client Update by e-mail, require additional copies or would like to inform us of a change of address, please e-mail: [updates@goodmans.ca](mailto:updates@goodmans.ca). This Update is intended to provide general comment only and should not be relied upon as legal advice. © Goodmans LLP, 2005.