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**PRESENTATION TO THE  
ONTARIO LEGISLATIVE ASSEMBLY  
STANDING COMMITTEE ON JUSTICE POLICY**

***Re: Bill 60***

***Ontario Heritage Amendment Act, 2004***

***URBAN DEVELOPMENT INSTITUTE/ ONTARIO***

***December 1, 2004***

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Good morning, Mr. Chairman and members of the Standing Committee on Justice Policy. My name is Neil Rodgers, President of the Urban Development Institute/Ontario (“UDI”). We are pleased to have this opportunity to present our views on *Bill 60*, the Ontario Heritage Amendment Act, 2004. Joining me is Michael Stewart of the law firm Goodmans who has been offering technical and legal advice to UDI with respect to the Bill.

### **Who We Are**

UDI/Ontario has acted as the voice of the land development industry in Ontario for over 40 years. The Institute is a member supported, non-profit organization. With over 300 members, the Institute is actively involved in all facets of public policy research and advocacy, working with private and public stakeholders across Ontario. UDI serves as a forum for knowledge and research on land use planning, urban affairs, land development and housing.

Together, UDI members constitute the collective forces guiding the creation and improvement of Ontario’s built environment and are vital contributors to the Ontario’s economy and its sustainable growth. We are committed to planning and building the best possible communities for Ontarians.

### ***Contribution of the Development Industry to the Provincial Economy***

UDI members play a crucial role in the provincial economy and its sustainable growth. The land development and construction industries are vital contributors to the Provincial economy. The industry and its related construction activity accounts for over 10% of the total Provincial GDP – over \$50B - and directly employs 350,000 workers.

Ontario's construction industry in 2003 expanded at a rate of 8.9% per year – nearly twice the annual growth rate for the Ontario economy as a whole. This economic growth is essential in order for the government to deliver quality health care, education and infrastructure to all Ontarians.

### ***Introduction***

UDI believes that the foundation of the planning and development process in Ontario should be built upon the principles of fairness, accountability, transparency and certainty. These are the same principles that were embedded in the “core values” of the Liberal campaign commitments.

UDI recognizes the challenges presented by attempting to successfully balance the competing priorities inherent in land use planning. UDI is concerned that *Bill 60*, as drafted, will upset that balance and lead to unintended consequences. UDI recognizes the government's intention to reform this process but, in our respectful submission, the proposed changes to the *Ontario Heritage Act* in *Bill 60* will remove fairness, transparency, accountability and certainty from the planning process.

In fact, the principle of fairness and ethics related to the Ontario Heritage Act has been weighed by the Supreme Court of Canada in 1982. The Court's opinion basically states that the preservation of Ontario's heritage should be accomplished at the cost of the community at large, not at the cost of the individual property owner, certainly not in total disregard of the property owner's rights. Unfortunately, in many respects, *Bill 60* does not respect this balanced and fair approach.

## *Demolition of Municipally Designated Heritage Property*

Under the *Ontario Heritage Act*, municipal councils may designate buildings that they consider to be of historic or architectural value or interest. Once designated, a building may not be altered and demolished without the approval of municipal council. However, if the owner wishes to demolish the building, council must then decide whether the municipality will acquire it, if necessary by expropriation.

UDI believes that the municipal power to delay the demolition of a designated heritage property, up to 270 days under the current *Ontario Heritage Act*, represents the right balance between the public interest and private property rights and should not be amended. In the current system, the municipal power to delay means that it is in a municipality's interest to negotiate with property owners to effect the preservation of heritage properties, which encourages and often results in innovative solutions.

Under *Bill 60*, municipalities would acquire the power to prohibit the demolition of property designated by the municipality or the Minister. UDI believes that the addition of this municipal power opens up the process to potential abuse, as it creates the opportunity for effective expropriation without compensation. UDI submits that the benefits realized by the community of the preservation of heritage properties is a public good and in the interests of fairness the cost for providing public goods should not be borne by individual landowners.

However, if the government does not intend to remove this provision from the Bill, UDI recommends that the Province develop and integrate innovative fiscal tools and policy approaches to realize its goal.

UDI believes that if the preservation of heritage properties is a government priority...a public desire, then the Province ought to develop means and tools to appropriately compensate owners of designated heritage properties for providing benefits to the community.

To that end, UDI suggests that the government consider creating a Province-wide fund to compensate affected landowners. In addition, UDI also recommends that the government devise a mechanism whereby owners of designated heritage properties would be permitted to sell their density/development rights to neighbouring property owners. If properly implemented, this instrument would also have the additional advantage of promoting intensification and assisting municipalities in reaching their targets, while saving scarce municipal resources for other priorities. We would encourage this measure be considered as part of the next phase of *Planning Act* reform and further that this section(s) of the Bill be held in abeyance until such time as a comprehensive approach is developed that will deliver public good within a fair and ethical framework.

### ***Appeal to the Ontario Municipal Board***

Under *Bill 60*, the owner of a designated property, that is refused an application to demolish a building, would be allowed to appeal the refusal to the Ontario Municipal Board (“the Board”). After holding a hearing the Board would have the power to dismiss the appeal, allow the demolition or allow the demolition with terms and conditions.

To address concerns of owner compensation for providing public benefits, UDI believes that the Board requires *additional powers* to those included in *Bill 60*.

UDI recommends that *Bill 60* be amended to allow the Board, (after holding a hearing appealing a municipality's refusal to allow demolition of a designated heritage property), to;

1. *Award compensation to a landowner whose land has been effectively sterilized, and,*
2. *Refuse the demolition under the condition that the municipality will acquire the property within a specified period of time, failing which the municipality would consent to the demolition.*

These additional Board powers would assist in balancing the interests involved and ensure that the measure of fairness is included in the process.

### ***Maintenance and Repair of Heritage Property***

Bill 60 would allow municipalities to prescribe minimum standards for the maintenance and repair of the heritage attributes of properties designated by the municipality or the Minister. UDI understands that the intent of this clause is to provide municipalities with the tools to prevent demolitions by neglect, i.e., situations where a landowner allows a property to decay to such an extent that preservation is no longer possible.

The wording of this section is confusing and sufficiently vague to make it unclear as to what standards would apply and if the municipality would have the power to impose significantly higher standards than those applicable to other types of property. UDI is concerned that some municipalities would attempt to use this newly acquired power in order to secure the actual restoration of such properties by forcing owners to engage in costly refurbishment of the heritage elements of their designated properties.

There currently exists a framework to effect restoration for heritage properties. At present, if municipalities want to see extensive restoration work undertaken, they have the tools to encourage it. Municipalities can either help finance the work directly or, if the owner is proposing to redevelop the property, the municipality can agree to higher densities than are otherwise permitted in exchange for the public benefit of the restoration of the heritage building.

UDI acknowledges that there is a fine line between maintenance and restoration but believes that this section must be amended to close the potential backdoor that exists for municipalities to force restoration to be paid for with private monies.

### ***Potential Unintended Consequences***

UDI believes that the current *Ontario Heritage Act* works reasonably well to accomplish its goals. The rules are clear and unambiguous, and the interests of municipalities and property owners are relatively well balanced. UDI believes that there are several potential unintended consequences that may arise if *Bill 60*, as currently drafted, is passed, including:

- Investment in redevelopment opportunities will decrease, due to the uncertainty of the process, potentially affecting the ability of municipalities to reach their growth and intensification targets;
- Municipalities becoming the owner of properties where the value of the restoration exceeds the value of the land; and,
- Scarce municipal resources squandered on OMB appeals.

## ***Transitional Matters***

A consistent theme evidenced in legislation coming forward from this government has been the notion of retroactivity of landowner rights/approvals that have been legitimately been vested by municipalities or other decision-making bodies. Under s. 34(7) of Bill 60, unless the building is in the course of demolition at the time that it receives Royal Assent, the new Act will apply in full force and effect. UDI has and will continue to express serious objections to retroactive legislation. I remind the Committee and the government that we argued the notion of this point during the Bill 26 hearings recently. The government recognized that the Bill, as drafted, was patently unfair and has dealt with the effective date of the Bill in a manner that has been consistently applied in the Province of Ontario.

## ***Conclusion***

UDI submits that *Bill 60*, in its current form, risks simply bogging down planning in even more process, squandering scarce resources, threatening private sector investment. UDI is committed to the principles of fairness, accountability, transparency and certainty. We hope that you support these principles and support the recommendations to amend the Bill as stated in this submission.

Thank-you.