Canadian Environmental Law Association
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The Canadian Environmental Law Association's Comments on "Increasing Housing Supply in Ontario"

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Introduction

The Canadian Environmental Law Association (CELA) is a legal aid clinic which has a mandate to protect public health and the environment. Since it was established in 1970, CELA's casework and law reform has focused on land use planning at provincial, regional and local levels. CELA lawyers have represented clients and citizen groups before the Ontario Municipal Board in appeals under the *Planning Act* on Official Plans, zoning by-laws, subdivision plans, as well as other planning instruments.

CELA has also been involved extensively in reforms of the land-use planning process, including reviews of the Provincial Policy Statement, the Development Charges Review System, as well as the review of the *Aggregates Resources Act* by the Standing Committee on General Government. More recently, CELA provided a detailed analysis on Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017* and Bill 66, *Restoring Ontario's Competitiveness Act, 2018*.

A CELA representative attended the Ministry of Municipal Affairs and Housing's (MMAH) multi-stakeholder consultation on January 14, 2019.The stakeholder consultation was intended to solicit views as to whether amendments to the *Planning Act* and Provincial Policy Statement were warranted to facilitate development. We provided many of the same comments made below to MMAH staff at the multi-stakeholder consultation.

General Comments

We have reviewed the Ontario government's document titled "Increasing Housing Supply in Ontario" (Consultation Document) and have the following comments.

(a) Empirical data indicates an ample supply of serviced land for development

An underlying rationale which guides the Consultation Document is that there is a "lack of serviced land available for development" and that efforts must be made to ensure serviced land is available.

However, the empirical data indicates that there is, in fact, an ample supply of land in the province to accommodate housing needs. A 2017 report by the Neptis Foundation, titled "An Update on the total land supply: Even more land is available for home and jobs in the Greater Golden Horseshoe" found that the "total unbuilt supply of land to accommodate housing and employment to 2031 and beyond now stands at almost 125,600 hectares… Most of that land is in the Designated Greenfield Area contiguous to existing built up urban areas, where full municipal water and wastewater servicing is available or planned."

Consequently, the underlying assumption in the Consultation Document, that there is a lack of supply of "serviced land in the right places" appears to be incorrect. CELA is very concerned that the erroneous assumption that there is a lack of adequate supply of land for development will be utilized to justify legislative and policy changes that will lead to urban sprawl into farmland and other protected areas in the province.

(b) MMAH needs to obtain data on the nature, causes and extent of delay for approval of development projects

The Consultation Document states that it takes too long for development projects to get approved and that efforts have to be made to "streamline the development approval process."

The Consultation Document, however, fails to provide any details on this issue. Instead the discussion regarding delay is vague and unsubstantiated and merely states "duplication, lack of coordination and delays add burden to the development process and increase costs for builders and homebuyers." It remains unclear why delay is occurring in the development approval process and the precise cause and extent of the problem. Indeed, it is not even clear whether there is, in fact, delay in the development approval process, since the Consultation Document fails to provide any hard data on whether delay exists and how this was determined. We note that a review last year by Environmental Defence to assess the claims about housing delay revealed that the delay was actually caused by appeals of Official Plans to the Ontario

Municipal Board by industry, as opposed to any legislative or policy constraints. These appeals resulted in an average delay of 3 years and 5 months.

It remains unclear whether there are also other factors, beyond appeals by industry, which may contribute to delay. We note, for instance, that when the Ontario Ministry of Environment, Conservation and Parks (MECP) undertook to streamline environmental approvals, it found that a significant portion of the delay was caused by the failure of applicants to correctly complete application forms. Consequently the MECP, in response, imposed regulatory requirements related to the quality of submissions and completeness of the application as well as sign-off requirements by appropriate or accountable persons. Similarly, MMAH should undertake a thorough review and assess whether there is, in fact, delay in Ontario's development approval process. If so, MMAH should also determine precisely what factors are causing delay. It is essential this be done prior to the government embarking on any initiative to streamline the development approval process since this information should inform whether administrative, policy or legislative changes may be required.

(c) Ontario's Planning System should ensure the best planning decision as opposed to simply a speedy decision

The Consultation Document states that potential appeals of planning decisions can add to "further delays and uncertainty" and that efforts must be made to "streamline" regulatory and approval requirements.

CELA remains concerned that many of the measures that the Ontario government undertook previously through Bill 139 to streamline and reduce delays in the planning process have fundamentally undermined land use planning in the province. One of these measures was to replace the Ontario Municipal Board with the Local Planning Appeal Tribunal (LPAT). CELA expressed concerns about the Bill, particularly the proposal to no longer allow *de novo* hearings for planning appeals. We stated that the "merits of *Planning Act* appeals must continue to be adjudicated in traditional oral hearings, with the usual procedural safeguards in place (e.g. testimony under oath, cross-examination of parties, etc.) as oral hearings offer the highest and most effective form of public participation in the decision-making process." Accordingly, we recommended that LPAT "should hold *de novo* oral hearings, featuring evidence under oath and cross-examination."

We also expressed concerns that the changes proposed under Bill 139 would preclude LPAT from having access to accurate, relevant and current information pertaining to land use appeals, given that an appeal to LPAT has to be confined to the record that

was before municipal council. Our recent experience representing clients before the LPAT have confirmed the validity of these concerns. A more detailed discussion regarding CELA concerns with Bill 139 is provided in the attached brief.

The Consultation Document states that efforts to streamline the development approval process must balance economic development with other goals. The other goals identified in the Consultation Document include the need to ensure public health and safety and protect environmentally sensitive areas. We note in this regard, Schedule 10 of Bill 66 proposes to empower municipalities to pass open-for-business planning by-laws which would trump crucial environmental and land use controls established in provincial laws, plans and policies, including s. 39 of the *Clean Water Act* (*CWA*). The objective of Schedule 10 is the same as that outlined in the Consultation Document, namely to facilitate new development in Ontario. Unfortunately the measures taken to achieve this objective will, amongst other impacts, significantly increase Ontarians risk of exposure to contaminated drinking water. We were, therefore, extremely pleased with the government's announcement earlier this week that it will remove Schedule 10 from Bill 66 when the Legislature resumes in February.

Conclusion

The recent experience with Bill 139 and Bill 66 underscores the importance of avoiding ill-conceived reforms to Ontario's land use planning process which can have unintended negative consequences. Accordingly, CELA recommends that the government not proceed with any initiative to streamline the development approval process, until it has undertaken a very detailed and thorough review to ascertain whether there is delay and the reasons for the delay. Furthermore, it is imperative that any proposal to streamline the development process not undermine environmental protection or compromise the health and safety of current and future generations of Ontarians.

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