Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

May 5, 2023

Standing Committee on Heritage, Infrastructure and Cultural Policy
Whitney Block
Room 1405
99 Wellesley Street W
Toronto, ON M7A 1A2

Attn: Isaiah Thorning, Committee Clerk

And to:
Environmental Registry of Ontario Planning Consultation ERO # 019-6821

Delivered via E-mail

Re: Canadian Environmental Law Association Comments on Bill 97 – An Act to amend various statutes with respect to housing and development - Schedules 3 and 6

Dear Members of the Standing Committee on Heritage, Infrastructure and Cultural Policy:

Canadian Environmental Law Association (CELA) writes to provide our submissions in relation to Bill 97, An Act to amend various statutes with respect to housing and development - Schedules 3 and 6, namely proposed amendments to the *Development Charges Act*, and the *Planning Act*.

CELA has extensive experience in land use planning matters and environmental protection in Ontario. This includes our longstanding work as a legal aid specialty clinic representing clients who qualify for our services, providing public legal education, and assisting with improvement of laws related to the environment including protection of public health, safety, and housing, as a result of the implementation of those laws.

CELA has provided separate submissions in respect of Schedule 7 to Bill 97, in a joint letter provided by CELA, the Low Income Energy Network (LIEN), and the Advocacy Centre for Tenants Ontario (ACTO).

We trust these submissions below in relation to Schedules 3 and 6 will be of assistance.

Schedule 3 – Development Charges Act

No development charges for adding one unit to low density housing.

Schedule 3 proposes that Subsection 2 of section 3 of the *Development Charges Act* would be amended such that there would be no development charges for adding one unit to a new detached, semi-detached or row-housing unit. The underlying provision passed previously in prior legislation. Bill 97 changes the wording from applicability of this restriction from a parcel of "urban residential parcel of land" to read "parcel of land"; i.e. it removes "urban residential" as a qualifier.

CELA supports this amendment in that this change will assist with more infill development in communities where development has already been approved, and/or infrastructure already exists. This in turn assists in reducing green-field development and makes more efficient use of services. It also improves density and potentially therefore density supportive of transit and active transportation and makes use of existing local services and schools.

Schedule 6 – Planning Act

Changes related to prohibition of appeals relating to addition of one residential unit in low-density housing including non-urban lands.

A set of proposed changes to sections 17, 22, 34 and 42 of the *Planning Act* all remove the phrase "parcel of urban residential land" and change it to "parcel of land". These are sections in the *Act* that state that there is no right of appeal for policies adopted to authorize the use of one additional residential unit in a building or structure ancillary to a detached house, a semi-detached house, or a row house on a parcel of land, (if there are no more than 2 residential units in the house and no residential units already located in the ancillary building). These prohibitions on appeals relate to appeals of such policies adopted in Official Plans or zoning by-laws to authorize these additional units. There are already similar restrictions on appeals of 2nd and 3rd residential units in houses or ancillary buildings where residential uses are permitted. The result is that the new provisions would allow for one additional residential unit in these cases including on non-urban lands.

CELA supports these amendments. In general, allowing for additional low-density and ancillary residential uses in existing residential use areas and in relation to existing residences as provided in these proposed amendments is another way of adding some more housing in both urban and rural and remote areas. These provisions will not significantly increase density in those locations; nor will they significantly affect infrastructure or servicing needs which would be the status quo regarding the affected existing units. They do not authorize land severances (those provisions are elsewhere). They may also allow for additional multi-generational housing and additional affordability. This in turn assists in reducing green field development and makes more efficient use of services; it also improves density and potentially therefore density supportive of transit and active transportation and makes use of existing local services and schools.

Reduction of minimum parking requirements.

Proposed amendments to sections 16 (3.1) and 35.1 (1.1) will restrict the municipality from requiring a minimum parking allotment to no more than one parking spot for the primary unit in cases where there are 2 or 3 residential units in a detached dwelling, semi-detached dwelling, or row-house. CELA generally supports reduced minimum parking requirements for residential dwellings; particularly where transit is available. This is consistent with policies aimed at increasing other modes of transportation than cars, and reducing vehicle miles travelled as a function of better land use. Less dependence on cars supports active transportation and public transportation, and encourages local services.[1]

Provision for discretion to order non-application of provincial plans and official plans to Minister's orders respecting land use.

A proposed amendment to section 47 of the *Planning Act* – (a new section 47 (4.01.01) would provide that in a Minister's Order respecting land use of specified land, the Minister may provide that any Official Plan, provincial plan, or provincial policy provided by section 3(1) of the *Planning Act*, does not apply in respect of a permit, approval, licence, permission, or other matter before a use authorized by the Minister's Order may be established. This provision does not apply to lands in the Greenbelt, including Niagara Escarpment Plan and Oak Ridges Moraine Plan lands.

The proposed section reads:

> "(4.0.1) The Minister may, in an order made under clause (1) (a), provide that policy statements issued under subsection 3 (1), provincial plans and official plans do not apply in respect of a licence, permit, approval, permission or other matter required before a use permitted by the order may be established."

Section 3(1) provides for the adoption by the province of policy statements upon notice and publication in the Ontario Gazette; such as for example the Provincial Policy Statement. "Provincial plans" are defined in the Planning Act as follows:

"provincial plan" means,

(a) the Greenbelt Plan established under section 3 of the *Greenbelt Act, 2005*,

(b) the Niagara Escarpment Plan established under section 3 of the *Niagara Escarpment Planning and Development Act*,

(c) the Oak Ridges Moraine Conservation Plan established under section 3 of the *Oak Ridges Moraine Conservation Act, 2001*,

(d) a development plan approved under the *Ontario Planning and Development Act, 1994*,

(e) a growth plan approved under the *Places to Grow Act, 2005*,

(e.1) a designated policy as defined in section 2 of the *Lake Simcoe Protection Act, 2008*,

[1] Burda, Cherise, Allan, T., Lintner, A., Dunn, B., McClenaghan, T., "Live Where You Go: Encouraging Location Efficient Development in Ontario." https://cela.ca/live-where-you-go-encouraging-location-efficient-development-in-ontario/ (Pembina Institute, Canadian Environmental Law Association, Ecojustice, Zizzo Allen, 2012)

(e.2) a designated policy as defined in section 3 of the *Great Lakes Protection Act, 2015*,

(e.3) a designated Great Lakes policy or a significant threat policy, as those terms are defined in subsection 2 (1) of the *Clean Water Act, 2006,* or

(f) a prescribed plan or policy or a prescribed provision of a prescribed plan or policy made or approved by the Lieutenant Governor in Council, a minister of the Crown, a ministry or a board, commission or agency of the Government of Ontario; ("plan provincial")

The result would be that for lands in respect of which the Minister exercises ministerial zoning powers, "specified lands" (not including Greenbelt lands), the Minister may specify the non-application of any of designated water protection policies, the Provincial Policy Statement, or an Official Plan.

CELA submits that this provision is contrary to the public interest. These provincial plans such as Source Protection Plans under the Clean Water Act; as well as the provincial policy statement and Official Plans contain important provisions for protection of many aspects of communities, including health and safety, and protection of resources. The discretion provided to the Minister in respect of exempting these specified lands from these important provincial plans and policies is very broad, and there is no appeal. This power will undermine the careful work done by communities in developing their Official Plans with public input, as well as the thorough consideration of potential significant threats to safe drinking water and the Great Lakes. The importance of protecting sources of drinking water was one of the fundamental recommendations of the Walkerton Inquiry; and the mandatory threat policies apply to the highest priority threats to safe drinking water. These important protections, developed with extensive science and multi-sector and public review by the Source Protection Planning Authorities must not be undermined.[2] CELA also submits that this broad discretion of the Minister to declare the non-application of these policies and plans is also contradictory to, and undermines the Purpose of the Act set out in Section 1 of the *Planning Act* which provides:

Purposes

1.1 The purposes of this Act are,

(a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;

(b) to provide for a land use planning system led by provincial policy;

(c) to integrate matters of provincial interest in provincial and municipal planning decisions;

(d) to provide for planning processes that are fair by making them open, accessible, timely and efficient;

(e) to encourage co-operation and co-ordination among various interests;

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[2] Lindgren, R. and McClenaghan, T., "Briefing Note: Bill 66 and the Clean Water Act" (Canadian Environmental Law Association 2018) https://cela.ca/briefing-note-ontario-bill-66-and-the-clean-water-act-2006/

(f) to recognize the decision-making authority and accountability of municipal councils in planning. 1994, c. 23, s. 4.

Similarly, CELA submits that this broad discretion undermines the stated provincial interests defined in Section 2 of the Act:

Provincial interest

2 The Minister, the council of a municipality, a local board, a planning board and the Tribunal, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,

(a) the protection of ecological systems, including natural areas, features and functions;

(b) the protection of the agricultural resources of the Province;

(c) the conservation and management of natural resources and the mineral resource base;

(d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;

(e) the supply, efficient use and conservation of energy and water;

(f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;

(g) the minimization of waste;

(h) the orderly development of safe and healthy communities;

(h.1) the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies;

(i) the adequate provision and distribution of educational, health, social, cultural and recreational facilities;

(j) the adequate provision of a full range of housing, including affordable housing;

(k) the adequate provision of employment opportunities;

(l) the protection of the financial and economic well-being of the Province and its municipalities;

(m) the co-ordination of planning activities of public bodies;

(n) the resolution of planning conflicts involving public and private interests;

(o) the protection of public health and safety;

(p) the appropriate location of growth and development;

(q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians;

(r) the promotion of built form that,

(i) is well-designed,

(ii) encourages a sense of place, and

(iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant;

(s) the mitigation of greenhouse gas emissions and adaptation to a changing climate. 1994, c. 23, s. 5; 1996, c. 4, s. 2; 2001, c. 32, s. 31 (1); 2006, c. 23, s. 3; 2011, c. 6, Sched. 2, s. 1; 2015, c. 26, s. 12; 2017, c. 10, Sched. 4, s. 11 (1); 2017, c. 23, Sched. 5, s. 80.

CELA therefore recommends that Schedule 6, Section 11 of Bill 97 be withdrawn or deleted.

RECOMMENDATION 1:
CELA recommends that Schedule 6, Section 11 of Bill 97 be withdrawn or deleted.

Provision for mandated landowner agreements relating to specified lands.

Schedule 6 proposes a new Section 49.2 (1) in the *Planning Act*, setting out requirements for landowners to enter into agreements with the Minister or a Municipality on such matters as the Minister "considers necessary for the development of the land."
The proposed new section provides:

> **49.2** (1) If the Minister has directed the Provincial Land and Development Facilitator or a Deputy Facilitator appointed under subsection 12 (2) of the *Ministry of Municipal Affairs and Housing Act* to advise, make recommendations or perform any other functions with respect to land, the Minister may, by order, require the owner of the land to enter into one or more agreements with the Minister or with a municipality addressing any matters that the Minister considers necessary for the appropriate development of the land.

This provision would apply to lands for which the Minister has sought the advice and recommendations of the provincial Facilitator. It is difficult to ascertain the intended subject matter of these Agreements from the language of the Bill. A search of Hansard for the disclosed rationale provided by the government members in support of the Bill that simply stated that it is intended to streamline planning rules for more housing and similar arguments. [3] [4]

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[3] April 17 Hansard: MPP Matthew Rae, Parliamentary Assistant to Minister, MMAH "Of course, we're also proposing some further legislative measures to support our actions to streamline land use planning rules to build more housing. Our proposed changes would allow the Minister of Municipal Affairs and Housing to require landowners to enter into agreements for projects assigned to the Provincial Land and Development Facilitator. This would help ensure commitments made by property owners are fulfilled; for example, in a case where a ministerial zoning order may be contemplated." At 3562

[4] April 18 Hansard: MPP Sheref Sabawy, Parliamentary Assistant to the Minister of Public and Business Service Delivery: "We are looking into new changes to help Ontarians to be able to buy a new home, to have their own house. When we look into the exact pieces that this legislation will add, we are proposing some changes to the Planning Act so we can facilitate priority

Additionally, as a consequence in the proposed new section 49.2, there would be restrictions on new uses other than the previous lawful use, and restrictions on placing fill, locating new buildings or structures, using existing buildings or structures other than as they were lawfully used on the day the order was made, placing fill, grading, removal of trees. The provisions also provide that the Agreement may be registered against the title under Registry Act or Land Titles Act; and the owner is liable for the costs of removal of work or structures erected contrary to this restriction. Further, the Agreement imposed under section 49.2 may require the owner to pay for anything beyond what they are obligated to pay for under Planning Act, Development Charges Act, or any other Act.

Additional provisions state that Part III of the Legislation Act (regulations) do not apply to an Order to a landowner to enter into an Agreement with the Minister or a Municipality under the proposed section 49.2 (1) – for example, the requirements for publishing in the Ontario Gazette; filing of the regulation; and right of public to inspect the regulation. These provisions exempting these Orders from requirements related to regulation making reduce transparency and public accountability in respect of local land use planning.

CELA notes that this provision regarding 49.2 in respect of the agreements that owners may thus be required to enter, are very general and broad. The wording provided in Bill 97 does not constrain the types of matters to be included, nor the types of costs to be imposed. Similarly, the lands in question (other than being those subject to the advice of the Provincial Facilitator[5]) are not constrained by the Act.

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projects. It gives the minister some authority to exempt individual projects from certain provincial policies, and specifies zoning as part of the MZOs. This is to, again, accelerate some of the projects which we feel go with the plan we are putting out. It requires homebuilders to work with the provincial land and development facilitator to come to an agreement. So we are adding some facilities so that they can negotiate and get things done faster." At 3634

[5] *Ministry of Municipal Affairs and Housing Act* provides for a Provincial Land and Development Facilitator in section 12 which reads as follows:

12 (1) The office to be known as the Provincial Land and Development Facilitator in English and Facilitateur provincial de l'aménagement in French is established. 2020, c. 18, Sched. 10, s. 1.

Same

(2) The Minister may appoint the Facilitator and fix their terms of reference. 2020, c. 18, Sched. 10, s. 1.

Functions

(3) The Facilitator shall, at the direction of the Minister,

(a) advise and make recommendations to the Minister in respect of growth, land use and other matters, including Provincial interests; and

(b) perform such other functions as the Minister may specify. 2020, c. 18, Sched. 10, s. 1.

From a rule of law perspective, CELA has concerns about this section relating to Orders for mandatory agreements. CELA recommends that it be withdrawn, and after appropriate consultation, if necessary, any re-introduction include provisions as to the subject matter of the agreements, criteria for such agreements, specificity in respect of potential costs imposed on the landowner and other matters to be included, so as to provide clarity in the law. CELA also recommends that the provisions relating to the non-applicability of part III of the Legislation Act be deleted.

RECOMMENDATION 2: CELA recommends that section 12 of Schedule 6 be withdrawn for further consultation and clarification of purpose and scope, so as to provide certainty in law.

SUMMARY OF RECOMMENDATIONS:
RECOMMENDATION 1:
CELA recommends that Schedule 6, Section 11 of Bill 97 be withdrawn or deleted.

RECOMMENDATION 2: CELA recommends that section 12 of Schedule 6 be withdrawn for further consultation and clarification of purpose and scope, so as to provide certainty in law.

We would be pleased to answer any questions in relation to the foregoing submissions.

Yours very truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Theresa McClenaghan
Executive Director & Counsel

cc.
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