

ORAL SUBMISSION BY CELA TO STANDING COMMITTEE ON HERITAGE INFRASTRUCTURE AND CULTURAL POLICY

BILL 23 – MORE HOMES BUILT FASTER ACT, 2022

NOVEMBER 9 2022, MARKHAM ONTARIO

INTRODUCTION – THERESA MCCLENAGHAN

THANK YOU FOR INVITING US TO APPEAR TODAY.

CELA IS AN ONTARIO SPECIALTY LEGAL AID CLINIC; FOR OVER 50 YEARS WE HAVE BEEN PROVIDING ENVIRONMENTAL LEGAL SERVICES TO LOW-INCOME ONTARIANS & VULNERABLE COMMUNITIES.

ON BEHALF OF OUR CLIENTS, WE ARE FREQUENTLY INVOLVED IN LAND USE PLANNING APPEALS HEARD BY THE ONTARIO LAND TRIBUNAL & WE HAVE BEEN EXTENSIVELY ENGAGED IN ONTARIO'S LAND USE PLANNING REFORMS OVER THE PAST 5 DECADES

I ASSUME THAT THE COMMUNITIES WE REPRESENT, THE GENERAL PUBLIC AND THE GOVERNMENT HAVE MANY SHARED GOALS. AT THIS POINT IN HISTORY WITH CLIMATE CHANGE ALREADY UPON US, IT IS CRITICAL TO GET THINGS RIGHT IN THE AREAS OF LAND USE AND COMMUNITY BUILDING.

I WILL ADDRESS FOUR AREAS OF CONCERN:

- THE NEED FOR CLIMATE-SAFE COMMUNITIES
- THE NEED TO PRESERVE THE ESSENTIAL ROLES OF CONSERVATION AUTHORITIES AND UPPER TIER MUNICIPALITIES IN GOOD PLANNING AND ENVIRONMENTAL PROTECTION
- THE NEED FOR ROBUST CITIZEN ENGAGEMENT
- THE NEED FOR AN AFFORDABLE, EQUITABLE QUALITY HOUSING SUPPLY

1. CLIMATE SAFE COMMUNITIES – SCHEDULE 9

CLIMATE CHANGE IMPACTS LOW INCOME AND VULNERABLE COMMUNITIES IN MANY WAYS. HEAT ISLANDS ARISE IN AREAS WITH INADEQUATE GREEN SPACES AND TOO MUCH HARD SURFACING. IN NEIGHBOURHOODS PRONE TO FLOOD RISKS, OCCUPANTS MAY BE DENIED INSURANCE COVERAGE AND FALL PREY TO DANGEROUS MOLD IN HOUSING.

WE SAW IN THE PANDEMIC HOW ESSENTIAL IT IS TO HAVE GREEN SPACE BUT HOW MANY NEIGHBOURHOODS HAD FAR TOO LITTLE ACCESS. MANY ALSO LACK SAFE, WALKABLE, BIKEABLE, TRANSIT-FRIENDLY TRANSPORT OPTIONS, AND THIS CAN BE AVOIDED WITH INCREASED WELL DESIGNED DENSITY, MIXED ZONING, INCLUDING INCLUSIVE ZONING, AND AVOIDANCE OF CAR-DEPENDANT COMMUNITY DESIGN.

SPRAWL ALSO MAKES CLIMATE CHANGE WORSE AS A RESULT OF INCREASED EMISSIONS FROM BUILDINGS AND TRANSPORT, WHILE ALSO TAKING VALUABLE FARM LAND OUT OF PRODUCTION FOR FOOD, AND EATING INTO OUR REMAINING CRITICAL, IRREPLACEABLE NATURAL SPACES. SPRAWL TYPE DEVELOPMENT IS FAR MORE EXPENSIVE THAN BUILDING UP DENSITY IN EXISTING URBAN COMMUNITIES.

CELA IS VERY CONCERNED ABOUT THE PROPOSED REMOVAL OF A MUNICIPALITY'S AUTHORITY TO SET GREEN DEVELOPMENT STANDARDS FOR NEW DEVELOPMENTS. THIS RESPONSIBILITY IS CRITICAL FOR AN EFFECTIVE RESPONSE TO CLIMATE CHANGE.

CELA RECOMMENDS WITHDRAWAL OF SECTION 2 OF SCHEDULE 1 AND SECTION 11 OF SCHEDULE 9 SO THE CITY OF TORONTO AND OTHER MUNICIPALITIES RETAIN THEIR AUTHORITY TO REQUIRE GREEN DEVELOPMENT AND PERFORMANCE STANDARDS VIA SITE PLAN CONTROL. THESE STANDARDS ARE RESPONSIVE TO ISSUES SUCH AS MODERATING CLIMATE IMPACTS, REDUCING HEAT ISLAND EFFECTS AND REQUIRING BIRD-FRIENDLY DESIGN.

CELA ALSO RECOMMENDS ENSURING ADEQUATE PARKLAND PROVISIONS IN AREAS WITH LOWER INCOME HOUSING.¹

2. ROLE OF CONSERVATION AUTHORITIES AND UPPER TIER MUNICIPALITIES IN PROTECTING WATER AND NATURAL HERITAGE WITH GOOD PLANNING AND INFRASTRUCTURE – SCHEDULES 2, 7 AND 9

ONTARIO'S HIGHLY EXPERT CONSERVATION AUTHORITIES WORK ON A WATERSHED BASIS, ACROSS MUNICIPAL BOUNDARIES. SIMILARLY UPPER TIER MUNICIPALITIES LIKE WATERLOO REGION ALSO WORK ACROSS MULTIPLE LOWER TIER MUNICIPAL BOUNDARIES. THEY AVOID COSTLY MISTAKES, AND HELP MUNICIPALITIES PROTECT QUALITY OF LIFE AND ECOSYSTEMS WITHIN THEIR AREAS.

FOR EXAMPLE, THE GRAND RIVER CA WHERE I LIVE, HAS WORKED TO PROTECT GROUND AND SURFACE WATER, ALLOWING FOR INCREASED POPULATIONS, AND BROUGHT BACK A WORLD-RENOWNED BROWN TROUT COLD WATER FISHERY. THE CA ROLE IN PROTECTION OF NATURAL HERITAGE SUCH AS WETLANDS, GRASSLANDS AND FORESTS WITHIN THE WATERSHED IS KEY TO THESE SUCCESSES. SURROUNDING MUNICIPALITIES BOAST OF THE HIGH QUALITY OF LIFE OFFERED BY ITS TRAILS AND CONSERVATION AREAS. MEANWHILE, WATERLOO REGION, IN THE UPPER GRAND, HAS PROVIDED EXCEPTIONAL OVERSIGHT OVER THE REGION'S GROWTH BY LEADING THE WAY WITH INNOVATIVE AND EFFECTIVE APPROACHES TO TRANSIT, TRANSPORTATION, WATER PROTECTION AND TREATMENT, AND WASTE MANAGEMENT.

CELA RECOMMENDS THAT SCHEDULE 2 TO BILL 23 BE AMENDED BY REMOVING THOSE SECTIONS THAT WOULD RESTRICT CONSERVATION AUTHORITY COMMENT ON DEVELOPMENT AND PLANNING APPLICATIONS, AS WELL AS THOSE SECTIONS OF SCHEDULE 2 PROVIDING FOR DELEGATION OF

¹ AND THEREFORE DELETION OF SECTION 18 OF SCHEDULE 9.

NATURAL HAZARDS REVIEW TO MUNICIPALITIES.² FURTHERMORE, CELA RECOMMENDS DELETING THOSE SECTIONS OF SCHEDULE 2 THAT REMOVE THE ABILITY OF CAS TO COMMENT ON FACTORS RELATED TO CONSERVATION OF LAND AND PREVENTION OF POLLUTION IN THEIR PERMIT DECISIONS. CELA ALSO RECOMMENDS RETAINING MINISTERIAL APPROVAL FOR ANY CA LAND DISPOSITION AND STRONGLY RECOMMENDS AGAINST CONVERTING TO HOUSING LANDS THAT HAVE BEEN PROTECTED FOR ENVIRONMENTAL AND NATURAL HAZARD PROTECTION PURPOSES.³

CELA ALSO RECOMMENDS THAT THOSE SECTIONS ⁴ OF SCHEDULE 9 THAT REMOVE UPPER TIER MUNICIPAL PLANNING RESPONSIBILITIES BE DELETED, AS WELL AS DELETION OF SECTION 1(4) (LIMITATION OF CA APPEAL RIGHTS).

3. CITIZEN ENGAGEMENT – SCHEDULES 7 & 9

THE PLANNING ACT AND ACCOMPANYING PROVINCIAL LEGISLATION AND POLICY HELP PROTECT CRITICAL RESOURCES AND VALUES LIKE AGRICULTURAL LAND AND WATER RESOURCES. THE CORE ROLE OF MUNICIPALITIES IN DEVELOPING OFFICIAL PLANS AND ZONING BY-LAWS WITH PUBLIC INPUT MEANS THESE DECISIONS ARE RESPONSIVE TO LOCAL CIRCUMSTANCES.

WITHOUT HEALTHY CITIZEN ENGAGEMENT AND INPUT IN A WELL UNDERSTOOD, TRUSTED AND ACCOUNTABLE LAND USE PLANNING SYSTEM, CONFLICTS ARE NOT EASILY RESOLVED, LEAVING COMMUNITY-DIVIDING ILL WILL AS A RESULT.

GIVEN THE UNJUSTIFIABLE PROPOSAL IN SCHEDULE 9 OF BILL 23 TO REMOVE THIRD PARTY APPEAL RIGHTS, RESIDENTS WHO ARE CONCERNED ABOUT A ZONING CHANGE THAT WOULD AFFECT LOCAL WATER OR AIR QUALITY WILL BE LEFT WITHOUT THE OPPORTUNITY FOR A REASONED REVIEW IN THE FACE OF A MUNICIPAL DECISION THAT COULD NEGATIVELY AFFECT THE QUALITY OF THEIR LOCAL ENVIRONMENT.

WITHOUT THIS LONG-STANDING “SAFETY VALVE” MECHANISM FOR CHALLENGING OR REVERSING POOR PLANNING DECISIONS AT THE TRIBUNAL, PUBLIC CONSULTATION RIGHTS UNDER THE PLANNING ACT WILL BE “HOLLOW AND ILLUSORY.” NO EVIDENCE-BASED REASONS FOR ABRUPTLY TERMINATING CURRENT & FUTURE THIRD PARTY APPEAL RIGHTS UNDER THE PLANNING ACT HAVE BEEN PROVIDED.

CELA FURTHER SUBMITS THAT THE PROPOSED CHANGES TO THE COSTS REGIME AT THE ONTARIO LAND TRIBUNAL WILL ALSO DISCOURAGE THOSE CITIZENS WHO PRESENTLY TAKE ON THE RESPONSIBILITY OF LOCAL ENVIRONMENTAL PROTECTION, WITH NO PROFIT MOTIVE.

² THE REMOVAL OF SECTIONS 3, 4, 7(2), 13(2), AND 14 (1) & (3) OF SCHEDULE 2. Note that MNR technical briefing listed several pieces of legislation that would be prescribed and therefore under these provisions, CAs would be prohibited for commenting: Aggregate Resources Act; Condominium Act; Drainage Act; Endangered Species Act; Environmental Assessment Act; Environmental Protection Act; Niagara Escarpment Planning and Development Act; Ontario Heritage Act; Ontario Water Resources Act; Planning Act.

³ PROVIDED IN SECTIONS 8 TO 14 OF SCHEDULE 2; CELA WILL PROVIDE DETAILED RECOMMENDATIONS IN OUR WRITTEN COMMENTS TO THE COMMITTEE

⁴ 1(2), 1(5), 1(6), 2(1), 2(2), 3, 4(2), 5(4), 8(6), 17(2), 20, & 23 OF SCHEDULE 9

THE TRIBUNAL DOES NOT DECIDE “WINNERS & LOSERS” LIKE A COURT; INSTEAD, WHEN ADJUDICATING APPEALS, THE TRIBUNAL MAKES PUBLIC INTEREST DETERMINATIONS ON WHAT CONSTITUTES GOOD PLANNING, & CITIZENS SHOULD NOT BE DETERRED BY POTENTIAL ADVERSE COST AWARDS FROM FULLY PARTICIPATING AS PARTIES IN TRIBUNAL HEARINGS. ON THIS POINT, THE TRIBUNAL ALREADY HAS SUFFICIENT TOOLS TO CONTROL ITS HEARINGS & THE ONTARIO GOVERNMENT HAS NOT OFFERED ANY COMPELLING REASONS TO IMPOSE A WHOLE NEW COSTS REGIME FOR TRIBUNAL HEARINGS

INCLUSIVE PUBLIC HEARING PROCESSES ARE DEEPLY IMPORTANT TO A HEALTHY DEMOCRACY, IN THE LITERAL SENSE OF LIVING A CREDO OF “THINK GLOBAL AND ACT LOCAL.” THE FORMER CHAIR OF THE ONTARIO MUNICIPAL BOARD FROM 1960 TO 1972, J.A. KENNEDY, STATED THAT “PUBLIC PARTICIPATION IS AN IMPORTANT FEATURE OF THE PLANNING ACT, AND IT HAS SERVED THIS PROVINCE WELL. THE ADMINISTRATION OF THE NATURAL ENVIRONMENT IS ALSO PUBLIC BUSINESS....” HE NOTED THE IMPORTANCE OF THE PUBLIC HAVING A VOICE IN THE FORMULATION OF PLANS AND POLICIES THAT AFFECT THEIR NEIGHBOURHOODS. THE SUPREME COURT OF CANADA HAS NOTED THAT MUNICIPALITIES ARE TRUSTEES OF THE ENVIRONMENT, AND ARE RESPONSIBLE TO RESPOND TO THE CONCERNS OF THEIR CITIZENS, AND TO TAKE LOCAL ACTION TO RESPOND TO GLOBAL CONCERNS.

CELA STRONGLY RECOMMENDS DELETION OF THE SECTIONS IN SCHEDULE 7⁵ RELATING TO COSTS & SUMMARY DISMISSAL, AND DELETION OF SECTIONS THAT TERMINATE THIRD-PARTY APPEAL RIGHTS.⁶

4. AFFORDABLE, EQUITABLE QUALITY HOUSING SUPPLY – SCHEDULES 4 AND 9

CELA SUPPORTS INCREASED DENSITY IN EXISTING URBAN AREAS, PARTICULARLY AROUND TRANSIT AND IN ORDER TO TAKE ADVANTAGE OF THE EXISTING BUILT ENVIRONMENT AND SERVICES SUCH AS DRINKING WATER. WE ALSO STRONGLY SUPPORT AFFORDABLE HOUSING AND ACCESS TO QUALITY HOUSING BY TENANTS.

CELA ALSO SUPPORTS RETENTION OF INCLUSIONARY ZONING AND WE WILL RECOMMEND CHANGES TO THE BILL TO BETTER PROTECT AND ADD TO RENTAL HOUSING SUPPLY IN ONTARIO IN OUR SUBSEQUENT WRITTEN COMMENTS.

HOWEVER WE NOTE THAT THE GOVERNMENT’S HOUSING TASK FORCE CONCLUDED THAT THERE IS A LARGE EXISTING SUPPLY OF LAND AVAILABLE FOR HOUSING SUPPLY PURPOSES. CELA URGES THE GOVERNMENT TO ENSURE, BASED ON ONTARIO CIRCUMSTANCES, THAT IT IS NOT USING INFLATED HOUSING NEED NUMBERS AND TO AVOID SACRIFICING OUR SCARCE REMAINING AGRICULTURAL LANDS AND CRITICAL NATURAL HERITAGE.

SUBJECT TO THE COMMITTEE’S QUESTIONS, THOSE ARE SOME OF CELA’S KEY CONCERNS & RECOMMENDATIONS ABOUT BILL 23, & WE WILL BE FILING A MORE DETAILED WRITTEN SUBMISSION SHORTLY.

⁵ 2, 3 AND 4 OF SCHEDULE 7

⁶ 1(1) (DEFINITION OF “SPECIFIED PERSON”), 5(6) 5(7), 5(9), 5(10), 8(2), 8(3), 19(2), 19(3), 19(4), 19(5) IN SCHEDULE 9 (THIRD PARTY APPEAL RIGHTS RE OP’S, ZB’S, CONSENTS, etc.)

