environmental defence

March 25, 2021

Isaiah Thorning, Clerk
Standing Committee on General Government
Room 1405, Whitney Block,
99 Wellesley Street West
Toronto ON M7A 1A2

RE: Submission to the Standing Committee on General Government Regarding *Bill 257:Supporting Broadband and Infrastructure Expansion Act*

Dear Isaiah Thorning,

Environmental Defence requests the removal of Schedule 3 of Bill 257***:*** *Supporting Broadband and Infrastructure Expansion Act.*

The body of this submission will be directed to the grave substantive and procedural damage that Schedule 3 will cause to land-use planning and environmental protection *going forward* if the legislature fails to remove it from Bill 257. However, as a preliminary matter, Environmental Defence agrees with and adopts in their entirety submissions of Ecojustice regarding the serious constitutional and rule of law breaches that arise from the *ex post facto* nature of Schedule 3.

Schedule 3 of Bill 257 aims to empower a single Minister to authorize essentially any form of development, almost anywhere in the more populated parts of the province, in defiance of the most basic principles of good land use planning. The dangers of this ill-considered course are hard to overstate.

- Substantively, this would strip away one the last remaining protections against dangerous, wasteful, or hard-to-service development, therefore endangering individual Ontarians in the short-term and undermining the viability of our towns and cities and in the long term.
- On the systemic level, it would move Ontario from a system of principled, predictable evidence- and rule-based planning, to a system of development approval by fiat.

Schedule 3 Would allow development that endangers people, the environment, and the long-term viability of towns, cities and rural areas

Ontario's *Provincial Policy Statement (PPS)* establishes and requires adherence to the minimum standards for land development approvals in Ontario - standards which are the product of years of careful refinement. The effect and the only

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plausible forward-looking purpose of this legislation is let the Minister unilaterally approve development that fails to meet these basic standards.

Schedule 3 Endangers the Environment

Because so many of Ontario's rarest and most sensitive ecosystems are in areas vulnerable to residential, commercial, industrial and institutional sprawl, the yawning gap Schedule 3 would create in the land use planning regime created by Schedule 3 would also create a gaping hole in the system that protects Ontario's environment.

This legislation appears to have been conceived in an attempt to frustrate Environmental Defence and Ontario Nature's legal challenge of an MZO that breached PPS prohibitions on development in Provincially Significant Wetlands. Hence, the most obvious environmental harm it would cause would be to allow development and site alteration that destroys Provincially Significant Wetlands, Coastal Wetlands, Significant Woodlands, Significant Wildlife Habitat, and Areas of Natural and Scientific Interest, contrary to s. 2.1 of the PPS.

However, development that it exempted from PPS requirements would pose many other very real environmental and public health risks. That is because it is the PPS that imposes requirements such as:

- "avoiding development and land use patterns which may cause environmental or public health and safety concerns"
- "efficiently use land and resources"
- "minimize negative impacts to air quality and climate change, and promote energy efficiency"
- "support active transportation"
- "[m]ajor facilities and sensitive land uses shall be planned and developed to avoid, ... minimize and mitigate any potential adverse effects from odour, noise and other contaminants, [and] minimize risk to public health and safety".

The danger that Schedule 3's proposed *Planning Act* amendments would pose for the environment and public safety are multiplied because the legislature has already removed, through Schedule 6 Bill 229, the other meaningful protection against the most reckless and dangerous forms of development. One of December's amendments to the *Conservation Authorities Act* was designed to force Conservation Authorities to issue development permits even where they know the development in question is likely to put Ontarians in harm's way from flooding, landslides, or other such environmental hazards.

Schedule 3 Threatens the Long-Term Viability of Towns and Cities

Schedule 3's proposed amendments to the *Planning Act* threaten the long-term viability of Ontario's towns and cities in ways that go well beyond direct impacts on the environmental and natural heritage. That is because it is the Provincial Policy Statement that establishes the many other minimum standards for the long term viability of communities. For example it is that PPS that requires that planning:

- "provid[e] for an appropriate mix and range of employment, institutional, and broader mixed uses to meet long-term needs"
- provide "for public streets, spaces and facilities to be safe"
- for infrastructure and public service facilities " be coordinated and integrated with land use planning and growth management so that they are financially viable over their life cycle" and "available to meet current and projected needs:
- that planned developments "appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion", and "ensure sewage and water services ...are provided in a manner that…can be sustained by the water resources upon which such services rely and ...protects human health and safety".

Without the requirement that all development - including the increasing volume of development now being authorized via Minister's Zoning Orders, be consistent with the Provincial Policy Statement, there is every reason to expect that towns and cities will be burdened with ill-conceived development patterns, sewage systems, public facilities and public spaces. Without either the rigorous municipal land use planning process, or mandatory consistency with the PPS, such developments can be expected to cause long-term social problems and - create long-term net costs for municipalities - that drag Ontario down for decades to come.

Schedule 3 Would undermine Ontario's predictable, rules-based land use planning system

Schedule 3 would have negative consequences for Ontario's land development and environmental protection that would extend far beyond the boundaries of land directly subject to Minister's Zoning Orders. That is because Minister's Zoning Orders that are exempt, not just from municipal planning process, but also from the substance of land use planning restrictions, transforms our land use planning *system.*

While the present Minister has at times stated that he will not issue Minister's Zoning Orders for land not owned by the province unless requested by a municipal government, the *Planning Act's* MZO power does not contain any express constraint to this effect. Thus, even where no MZO has been issued, the possibility of a proponent obtaining an MZO that breaches the Provincial Policy Statements would

deprive municipal governments and land use planners of the leverage they need to make developers and landowners conform with the PPS in conventional official plan and zoning applications. Indeed Schedule 3 could be expected to deter municipalities from adhering rigorously to the Provincial Policy Statement, even in their proactive Official Plan and zoning processes, where the results would be opposed by developers.

At a deeper level, we submit that allowing a single official to authorize individual developments unconstrained by pre-set substantive rules which govern development more broadly is anathema to the rule of law in Ontario. In liberal democracies, people seeking permissions relating to their land, or opposing such permissions, should have confidence that it doesn't matter what politicians think of them. They should have no incentive to curry favour with the government of the day. However, the removal of clear and enforceable substantive constraints on decision-making, together with the absence of a rigorous and transparent process for evaluating and issuing MZO requests, would leave few reasons to trust that planning will conform even with that basic norm.

The use and content of MZOs should be governed by consistent rules

These proposed changes to the *Planning Act*, last December's problematic changes to the *Conservation Authorities Act*, and the government's extraordinarily broad interpretation and use of the existing Minister's Zoning Order power have the effect undermining elected municipal governments and concentrating arbitrary power in the hands of the Minister of Municipal Affairs and Housing .

Ontario should be moving in the opposite direction. There are undoubtedly valid circumstances for the use of Minister's Zoning Orders:the fast-tracking COVID-safe outdoor dining and emergency public housing for people in homeless shelters come to mind. However the rule of law and the practicalities of good land use planning demand that such circumstances be defined at the outset. In particular Ontario should introduce legislation which limits the power to issue Minister's Zoning Orders to Orders:

a. which are limited to addressing an extraordinary and emergent circumstance that is a matter of provincial interest;
b. which are limited to measures which the relevant municipality could not otherwise bring into force in time to adequately address the relevant extraordinary and emergent circumstance,
c. which are consistent with the Official Plan, Provincial Policy Statement, 2020, and Growth Plan for the Greater Golden Horseshoe and s. s. 24, s. 2, s. 3 of the Planning Act,
d. which do not authorize urbanization outside of settlement area boundaries,

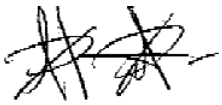
e. which do not authorize development that would destroy or displace a Provincially Significant Wetland, Provincially Significant Woodland, Provincially Significant Valley Lands, Provincially Significant Wildlife Habitat, Coastal Wetlands, Areas of Natural and Scientific Interest or farmland,
f. which are supported by the Minister's comprehensive, written, and publicly-disclosed reasons for determining that the above criteria have been met,and
g. whose issuance is expressly requested through a lawfully adopted motion of the relevant single-tier or upper and lower tier municipalities.

Conclusion

If you do not act today to remove Schedule 3 of Bill 257, it will cause lasting harm to our towns, cities and rural areas - and ultimately to the people who live in them. Ontarians increasingly understand this risk to their future. In the past week alone more than 7,500 people have copied us on their emails to the Minister and to you or other MPPs. More than 650 let us know that they called you about this issue.

What's happened at the lower Duffins Creek provincially significant wetland over the last few months has shown us all just how prone Minister's Zoning Orders are to producing short-sighted and ill-considered decisions. Schedule 3 of this Bill would make that problem much worse, and it should be removed in its entirety.

Sincerely,



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