



environmental
defence

January 25, 2021

Planning Consultation
Provincial Planning Policy Branch
Ministry of Municipal Affairs and Housing
777 Bay Street, 13th floor
Toronto, ON
M7A 2J3

Dear Sir/Madam:

RE: ERO 019-2811 - SCHEDULE 17 OF BILL 197 (AMENDMENTS TO THE *PLANNING ACT*)

These are the comments of Environmental Defence in relation to the above-noted matter, which is posted as ERO No. 019-2811.

The power to issue Minister's Zoning Orders should be significantly restricted

To begin, Environmental Defence has had the opportunity to review the comments of the Canadian Environmental Law Association (CELA), and Ontario Nature and it endorses and adopts them in their entirety. Without limiting the generality of the foregoing, we wish to draw attention to their view that the Ministry has, since 2019, been using Minister's Zoning Orders to such an excessive degree, and in such inappropriate circumstances, as to seriously undermine the protection of agricultural lands, hazard lands and significant natural heritage. We agree, also, that:

- The *Planning Act* should be amended to permit Minister's Zoning Orders only in unorganized territories or circumstances where there is an extraordinary and emergent provincial interest. Such an interest should, in the view of EDC, go beyond a generalized desire to create economic stimulus or market housing supply.
- All Minister's Zoning Orders should conform to, or be consistent with the official plans, provincial plans, provincial policies (including the Provincial Policy Statement, 2020) and other such instruments, applicable to the relevant geographic area, and should, notwithstanding their framing as regulations, be subject to binding Local Planning Appeal Tribunal appeals on that basis. In Environmental Defence's further view, the *Planning Act* should be amended so as to require that any Minister's Zoning Order be accompanied by the Minister's written reasons for determining that it complies with s. 24, s. 2, s. 3 of the *Planning Act*.
- Minister's Zoning Orders should not be exempt from the Environmental Bill of Rights. Public consultations and consultations with all relevant indigenous nations should be



required for MZOs, including consultation under Part II amendment or revocation of an MZO.

- The *Conservation Authorities Act* should be amended so that Minister's Zoning Orders do not alter either the authority of conservation authorities to refuse, or impose conditions on, permits for the relevant development, or the appeal route for such conditions or refusals.

Environmental Defence shares the view of the Canadian Environmental Law Association and Ontario Nature that the absence of appropriate consultation as per s. 15(1) of the Environmental Bill of Rights is itself sufficient to warrant a full repeal of Schedule 17 of Bill 197. A retrospective consultation cannot cure this failure, so any provisions the government wishes to proceed with should be introduced, with consultations, as stand-alone legislation.

The Minister should not be empowered to exempt properties from Site Plan control

Separately, Environmental Defence has substantive concerns regarding the content of Schedule 17 of Bill 197. These pertain, for the most part, to provisions which amend the *Planning Act* (ss. 47 (4.3) - 47 (4.12)) to empower the Minister to strip municipal governments of site plan control where a Minister's Zoning Order is issued. In our view, municipal site plan control is an essential tool for environmental protection, and the Minister should not have the power to override or remove it. These provisions should not have been introduced, and ought now to be repealed.

The purpose of the Site Plan Control mechanism is to address sites whose context and characteristics are such that the social, logistical *and environmental* consequences of developing them hinge upon aspects of the development that are fine grained, complex or otherwise unsuited to being dealt with through the ordinary zoning review process.

- In some locations, the substantial environmental impacts of such factors (e.g. placement of proposed buildings and earthworks within a development site, the selection and placement of trees, ground covers, and paving) are quite direct. For example, many municipalities have specific municipal zoning designations, and corresponding site plan control bylaws, for land within or closely linked with the Oak Ridges Moraine. Such bylaws allow the relevant municipality to provide the more detailed examination and control that is required to ensure each development proceeds in a way that does not harm source waters or other values. Schedule 17 of Bill 197 prevents this essential work from happening at all when the Minister issues an MZO with site plan control. This outcome will arise because the Ministry of Municipal Affairs and Housing simply does not have the site-specific knowledge and expertise to do this work prior to the issuance of a Minister's Zoning Order, and the MZO process does not mandate the incorporation of the relevant municipality's knowledge and expertise into the Minister's decision.



- In more populated locations, site plan control is essential to minimizing long-term and indirect environmental harms, and to maximizing indirect environmental benefits associated with urban development. For example, in cities, and in the vicinity of suburban transit stations, site plan control is essential to ensure that the organization of buildings on a development site, and the situation of their entrances and internal passageways, facilitates, rather than obstructs active transportation. The absence of appropriate site planning - which incorporates public consultation and is coordinated with larger plans for circulation - can significantly impede access to mass transit stations, reducing transit modal share and thus squandering major infrastructure investments and potential carbon emissions reductions. Likewise, preventing public input and municipal control over the massing of buildings in dense or otherwise strategic locations is likely to result in public spaces and streets that are inhospitable for pedestrians, and thus to drive up automobile modal share.

The problems and dangers created by removing municipal governments' site plan control are not remedied by empowering the Minister of Municipal Affairs and Housing to impose an "agreement" between a landowner and the relevant municipalities with respect to the same subject areas. This is because the Ministry and Ministry staff will not have a municipality's familiarity with either the physical and long term planning context of a development site, and because the MZO process itself does not prescribe that such municipal input (or public consultation processes) be factored into the decision.

"Affordable Housing" Should Not Serve as a Trojan Horse for Minister's Zoning Orders

Secondarily, Environmental Defence has concerns regarding s. 47(4.3)(c) of the amended *Planning Act*. While we approve of requiring, for any development that is approved by way of Minister's Zoning Order, that a substantial percentage of the new units created be affordable, we are concerned that relatively minor contributions to the supply of affordable housing will be used as a pretext for broader Minister's Zoning Orders that should not be issued at all. For at least two reasons, this concern is not merely speculative. Firstly, while municipalities are empowered to set their own, more stringent definitions of "affordable housing", the provincial definition, set out in the 2014 Provincial Policy Statement is so lax that it allows the term to be applied to units which are neither genuinely below the range of "market" rents, nor "affordable" to households receiving less than the median income. Second, since the arrival of the COVID-19 pandemic in Ontario, the government has consistently seemed to rely on elements with a mere thematic connection to COVID-19 (e.g., retirement homes) in precisely that way, to "sugar-coat" much larger developments which consume land of ecological or agricultural value and violate the principles of good planning.

Rather than expanding the scope of Minister's Zoning Orders, we would advise that the government introduce legislation to substantially limit the circumstances in which they are



permissible, and in particular to prohibit the issuance of MZOs for land that includes significant wetlands or other features of ecological or agricultural significance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Philip Pothen', with a horizontal line drawn through the middle of the signature.

Philip Pothen, JD, M.L.A., Ontario Environment Program Manager,
Environmental Defence