Written Submission to Standing Committee on Heritage, Infrastructure and Cultural Policy

Regarding

Bill 23, More Homes Built Faster Act, 2022

November 15, 2022

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Canadian
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EQUITY. JUSTICE. HEALTH.

November 15, 2022

Ms. Laurie Scott, MPP
Chair, Standing Committee on Heritage, Infrastructure and Cultural Heritage
Whitney Block, Room 1405, 99 Wellesley Street W
Toronto, ON
M7A 1A2

RE: CELA'S WRITTEN SUBMISSIONS ON BILL 23 (*More Homes Built Faster Act, 2022*)

Canadian Environmental Law Association (CELA) writes to provide these submissions to the Committee in follow up to our attendance as a witness on November 9, 2022 in respect of Bill 23 (*More Homes Built Faster Act, 2022*).

We provide detailed analysis and recommendations on various Schedules to the Bill in several Appendices attached below to this letter.

Our first request is that the Committee take the time before commencing clause by clause review and reporting out of Committee, in order to assess the information and evidence provided to this Committee, both by witnesses and by way of written submissions. Since the written submissions to the Committee are not due until 7 pm on November 17, 2022, and the accompanying Environmental Registry of Ontario (ERO) posting specifies that public comments are not due until November 24, 2022, it is critical that the Committee fully consider all the public input and advice that it receives on Bill 23.

We further note that the vast majority of witnesses to the Committee, representing a very diverse set of perspectives and areas of expertise, were of the view that Bill 23 had not struck the right balance, nor included the right provisions, in its attempt to improve the housing supply situation in Ontario. The overwhelming advice to the Committee was that the Bill will not achieve its stated objectives, but is extremely likely to cause unintended adverse consequences, and to create new and difficult problems in Ontario communities. Therefore, we ask the Committee to pause its proceedings in order to assess all of the input, oral and written, before continuing any further consideration of this Bill.

Similarly, we also urge the Government of Ontario to undertake robust and meaningful consultation with Indigenous Peoples on the far-ranging matters provided in Bill 23 and the accompanying policy proposals that were posted to the ERO.

CELA is an Ontario specialty legal aid clinic, and for over 50 years we have been providing environmental legal services to low-income Ontarians and vulnerable communities. On behalf of our clients, we are frequently involved in land use planning appeals heard by the Ontario Land Tribunal and we have been extensively engaged in Ontario's land use planning reforms over the past five decades.

The communities we represent, the general public, and the provincial government have many shared goals. At this point in history with climate change impacts already upon us, it is critical to get things right in the areas of land use planning and community building as we work toward safe, affordable, accessible, quality housing and communities across Ontario.

CELA's input on Bill 23 can be summarized in 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 – Schedules 1 and 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.

The COVID-19 pandemic demonstrated how essential it is to have green space but also revealed how many neighbourhoods had far too little access to green space. Many neighbourhoods also lack safe, walkable, bikeable, transit-friendly transport options. 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 farmland out of production for food and decreasing or degrading Ontario's remaining critical, irreplaceable natural spaces. Sprawl type development is far more expensive than building up density in existing urban communities.

Accordingly, CELA is very concerned about the Bill's 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 at the local level.

CELA recommends withdrawal of section 2 of Schedule 1 and section 11 of Schedule 9 so that the City of Toronto and other municipalities across the province 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.

Please see Appendix A below for additional analysis and recommendations regarding the foregoing matters.

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 (CA's) are established and work on a watershed basis, across municipal boundaries. Similarly upper-tier municipalities like Waterloo Region also work across multiple lower-tier municipal boundaries. These arrangements help to avoid costly planning mistakes and assist municipalities in protecting the quality of life and ecosystem features and functions within their areas.

For example, the Grand River Conservation Authority has worked over decades to protect groundwater and surface water, allowing for increased populations restoring a world-renowned brown trout cold water fishery. Conservation authorities' role in protection of natural heritage such as wetlands, grasslands, and forests within the watershed has been 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 portion of that watershed, has provided exceptional oversight over Waterloo's growth by leading the way with innovative and effective approaches to transit, transportation, water protection and treatment, and waste management, thus attracting innovative employment and new residents who are drawn to the quality of life in the area.

Accordingly, CELA recommends that Schedule 2 to Bill 23 be amended by removing those sections that would restrict a conservation authority's comments on development and planning applications, as well as those sections of Schedule 2 providing for delegation of natural hazards review to municipalities.[1] Furthermore, CELA recommends deleting those

[1] This will require the deletion of sections 3, 4, 7(2), 13(2), and 14 (1) and (3) of Schedule 2. We also note that MNRF technical briefing listed several pieces of legislation that would be prescribed and therefore under these provisions (if enacted), conservation authorities would be prohibited for commenting on matters under the *Aggregate Resources Act; Condominium Act; Drainage Act; Endangered Species Act; Environmental*

sections of Schedule 2 that remove the ability of conservation authorities to consider factors related to conservation of land and prevention of pollution in their permit decisions under the *Conservation Authorities Act*. CELA also recommends retaining ministerial approval for any land disposition by conservation authorities, and strongly recommends against converting to housing any conservation authority lands that have been secured and safeguarded for environmental and natural hazard protection purposes.[2]

With respect to Schedule 9, CELA recommends that those sections[3] which remove upper-tier municipal planning responsibilities be deleted, as well as the deletion of section 1(4) (limitation of conservation authority comment/appeal rights).

More detail on CELA's submissions in respect of these topics is included below in Appendices A, B, and C.

3. Citizen engagement – Schedules 7 and 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 under the *Planning Act*, residents who are concerned about any zoning change that would negatively affect local water or air quality will be left without the opportunity to seek a reasoned, fair, and transparent review by the independent Ontario Land Tribunal.

Without this long-standing "safety valve" mechanism for challenging or reversing poor municipal planning decisions at the Tribunal, public consultation rights under the *Planning Act* will be hollow and illusory. No persuasive policy-based or evidence-based reasons for abruptly terminating current and future third party appeal rights under the *Planning Act* have been provided in support of Schedule 9.

Assessment Act; Environmental Protection Act; Niagara Escarpment Planning and Development Act; Ontario Heritage Act; Ontario Water Resources Act; and *Planning Act*.

[2] See, for example, sections 8 to 14 of Schedule 2.

[3] See, for example, sections 1(2), 1(5), 1(6), 2(1), 2(2), 3, 4(2), 5(4), 8(6), 17(2), 20, and 23 of Schedule 9.

CELA further submits that the proposed potential changes to the costs regime at the Ontario Land Tribunal will also discourage the participation of concerned citizens, with no profit motive or personal interest at stake, who presently take on the responsibility of local environmental protection. If Schedule 7 is enacted, this new cost power will apply not only to *Planning Act* appeals, but also to all other appeals heard and decided by the Tribunal under other provincial statutes, including the *Environmental Protection Act* and the *Ontario Water Resources Act*.

The Tribunal does not decide "winners and losers" like a court does during civil litigation. Instead, when adjudicating appeals, the Tribunal makes public interest determinations on what constitutes good planning or what is required for environmental protection purposes. Citizens should not be deterred by potential adverse cost awards from fully participating as parties in Tribunal hearings. On this point, CELA notes that the Tribunal already has sufficient tools to control its hearing process and the Ontario government has not offered any compelling reasons to impose a whole new (and inappropriate) cost 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…."[4] He also 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 7 relating to costs and summary dismissal of appeal proceedings,[5] and the deletion of all sections in Schedule 9 that terminate third-party appeal rights.[6]

More detailed submissions from CELA on these topics are found in Appendices A and C.

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[4] David Estrin & John Swaigen, *Environment on Trial – A Guide to Ontario Environmental Law and Policy,* 3rd ed. (Toronto: Emond Montgomery Publications Limited, 1993) at p xviii.
[5] See sections 2, 3 and 4 in Schedule 7.
[6] See sections 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 official plans, zoning by-laws, etc.).

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 infrastructure services such as drinking water systems. We also strongly support affordable housing and access to quality housing by tenants. CELA also supports retention of inclusionary zoning.

However, we note that the government's housing task force concluded that there is already a large existing supply of land available for housing supply purposes. Accordingly, CELA strongly questions the underlying rationale, or alleged "need", for Bill 23. CELA therefore urges the government to ensure, based on current provincial circumstances, that Ontario is not relying upon inflated housing need numbers which will sacrifice our scarce remaining agricultural lands and critical natural heritage.

More detailed submissions relating to these topics is found in Appendices A, B, and D.

We thank the Committee for its attention, and we urge you to pause your proceedings to consider these submissions, as well as those of all the other organizations, groups, individuals who have provided their comments to you, or will do so before the end of the Committee's written submission deadline, as well as in relation to the Environmental Registry of Ontario posting.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Theresa A. McClenaghan
Executive Director and Counsel

APPENDIX A

CELA's COMMENTS ON SCHEDULES 1 AND 9 OF BILL 23: PROPOSED AMENDMENTS TO THE *PLANNING ACT* AND THE *CITY OF TORONTO ACT* AS REFLECTED IN ENVIRONMENTAL REGISTRY OF ONTARIO NUMBER 019-6163[1]

Prepared by
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A. About Canadian Environmental Law Association

CELA is a non-profit, public interest law organization that works toward protecting public health and the environment by seeking justice for those harmed by pollution or poor decision-making and by advocating for improvements to laws and policies to prevent problems in the first place. Since 1970, CELA has used legal tools, conducted public legal education, undertaken ground-breaking research, and advocated for increased environmental protection and to safeguard communities. As a specialty clinic funded by Legal Aid Ontario, our primary focus is on assisting and empowering low-income, disproportionately impacted, and vulnerable communities to further access to environmental justice.

Since our inception, CELA's casework, law reform and public outreach activities have included work on behalf of our client communities on land use planning matters at the provincial, regional and local levels in Ontario. For example, CELA lawyers provide summary advice and represent low-income persons and vulnerable communities involved in disputes under the *Planning Act* in relation to official plans, zoning by-laws, subdivision plans and other planning instruments, including Minister's zoning orders ("MZOs").

On the basis of our decades-long experience in land use planning matters throughout Ontario, CELA has carefully considered this proposal from the public interest perspective of our client communities. For the reasons outlined below, CELA's overall conclusion is that Schedules 1 and 9 of Bill 23 should not be enacted in its present form.

RECOMMENDATION NO. 1: Schedules 1 and 9 of Bill 23 should not be enacted as currently proposed. Instead, Schedules 1 and 9 should be withdrawn by the Ontario government unless the legislative proposals are significantly amended in order to safeguard the public interest, and to ensure that Ontario's land use planning system is fair, robust, participatory, transparent and accountable.

[1] See: https://ero.ontario.ca/notice/019-6163

B. CELA's Comments re Schedule 1 of Bill 23 (Proposed City of Toronto Act Changes)

Schedule 1, section 2 of Bill 23 proposes amendments to the *City of Toronto Act, 2006*[2], by removing authority of the City of Toronto to impose site plan rules relating to external design. The Bill makes the same proposed changes to section 41 of the *Planning Act*[3], thereby implicating other municipalities.

Specifically, the Bill amends section 114(1) of the *City of Toronto Act, 2006* by adding the qualifier that site plan controls only apply to parcel of land where there are 10 or more residential units and repeals the provision that required exterior design to be a matter of site plan control.[4] Bill 23 also proposes a new subsection 6.1 to 114(1) that explicitly states that 'the appearance of the elements, facilities and works on the land…under the City's jurisdiction [are] not subject to site plan control.'[5]

Together, the proposed amendments and repeals contained in Bill 23, Schedule 1 remove the authority the City relied upon in creating and enforcing its *Toronto Green Standards* which set out the city's sustainable design and performance requirements for new private and city-owned developments.

i. Schedule 1 Impedes the City of Toronto's Ability to Respond to Climate Change

CELA is very concerned by Bill 23's proposed removal of a municipality's authority to set performance standards for new developments, which is critical to respond to climate change. As CELA has previously commented, municipalities are on the front lines of climate change.[6] Municipalities also own most of Canada's infrastructure, meaning investment in sustainable building design will help the province in meeting emission targets, while protecting residents and economies from the effects of climate change.[7]

Bill 23 would remove the authority the City relied upon, in section 114 of the *City of Toronto Act, 2006* in establishing its *Toronto Green Standards* (TGS). The TGS set out the city's sustainable design and performance requirements for new private and city-owned developments. Established in 2010, the TGS's address the City's environmental priorities to:

- Improve air quality and reduce the urban heat island effect

[2] *City of Toronto Act, 2006*, SO 2006, c 11, Sched A.
[3] *Planning Act,* RSO 1990, c P13.
[4] Bill 23, Schedule 1, section 2(1), 2(2)
[5] Bill 23, Schedule 1, section 2(3)
[6] *See for instance,* CELA's materials related to municipal power to address climate change, online: https://cela.ca/legal-information-municipal-powers-to-address-climate-change/ and https://cela.ca/wp-content/uploads/2020/08/Climate-Change-Municipalities.pdf
[7] *Ibid*

- Reduce energy use and greenhouse gas emissions from new buildings while making buildings more resilient to power disruptions, and encourage the use of renewable and district energy
- Reduce storm water runoff and potable water consumption while improving the quality of storm water draining to Lake Ontario
- Protect and enhance ecological functions, integrate landscapes and habitats and decrease building-related bird collisions and mortalities
- Divert household and construction waste from going to landfill sites.[8]

Most recently, the *Toronto Green Standards* were updated to account for the City's adoption of the "Net Zero by 2040 Climate Strategy" requiring that buildings constructed on or after 2030 be near zero emissions.[9]

RECOMMENDATION NO. 2: Section 2 of Schedule 1 must be withdrawn so that the City's authority to oversee the design and performance standards for new private and city-owned developments, currently required by the *Toronto Green Standards*, remains in place. This authority is critical if the City is to have the means to respond to and be more resilient to climate change.

ii. Schedule 1 Threatens Migratory Birds and Ecosystem Services

Among the TGS's performance standards are requirements for bird collision deterrence and light pollution. During the spring and fall bird migrations, each of Toronto's 950,000 buildings kills between 1 to 10 birds. As birds cannot perceive windows or glass, millions of migratory bird deaths occur each year due to collisions. Between 1 million to 1 billion unnecessary bird deaths are caused by collisions with windows and building exteriors.[10]

A court decision from 2013 ruled that under the provincial *Environmental Protection Act,* building owners must take all reasonable actions to protect birds from window strikes.[11] As this has not been enforced by the province, the prevention of bird strikes from the built environment rests with municipalities. Since 2010, the TGS's adoption of bird-friendly measures has meant new buildings are less dangerous to migratory birds.

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[8] City of Toronto, "Toronto Green Standard: Overview," online: https://www.toronto.ca/city-government/planning-development/official-plan-guidelines/toronto-green-standard/toronto-green-standard-overview/
[9] City of Toronto, "Toronto Green Standard," online: https://www.toronto.ca/city-government/planning-development/official-plan-guidelines/toronto-green-standard/
[10] CELA, "Consultation on proposed Changes to Ontario's Building Code" (29 Sept 2017), online: https://cela.ca/consultation-on-proposed-changes-to-ontarios-building-code-impacts-on-migratory-birds/
[11] *Podolsky v. Cadillac Fairview Corp*., 2013 ONCJ 65 (CanLII), https://canlii.ca/t/fw6g3

If passed, the amendments in Bill 23 would mean more migratory birds, which already face substantial threats from climate change and habitat loss, would face further decline.

RECOMMENDATION NO. 3: Section 2 of Schedule 1 must be withdrawn so that the City of Toronto can mandate bird-friendly design in all new private and city-owned developments.

C. CELA's Comments re Schedule 9 of Bill 23 (Proposed Planning Act Changes)

After reviewing the Registry posting and the content of the Schedule 9 changes to the *Planning Act*, CELA has identified several fundamental problems, which are summarized below.

i. Revocation of Third-Party Appeal Rights

CELA strongly opposes Bill 23's proposed amendments to subsections 17(24), 17 (36), 34 (19), 45 (12) and 53 (19) and (27) of the *Planning Act*, which would revoke third-party appeal rights of official plans and official plan amendments, zoning by-laws and zoning by-law amendments, consents, and minor variances to the Ontario Land Tribunal ("OLT").

If enacted as currently drafted, Schedule 9 of Bill 23 would limit these appeals to certain participants such as the applicant, the Province, public bodies including Indigenous communities and utility providers that participated in the process. CELA is concerned about these amendments for several reasons.

First, these changes would significantly impede access to justice for members of the public, who would no longer have the ability to challenge important land-use planning decisions that often disproportionately impact low-income, vulnerable, and disadvantaged communities, and have direct adverse impacts on the environment and/or the health and safety of the public.

The importance of citizen engagement at the Tribunal has been reiterated over and over again. In 2003, David J. Johnson, Chairman of the Ontario Municipal Board stated:

> "At the OMB, the impact of decisions can be far-reaching. People rightly hold strong opinions on questions of planning and development in their communities. Given such diverse viewpoints, making decisions on matters affecting people and their neighbourhoods is a significant challenge. Debate and media reports on the OMB tend to focus on large-scale development, sometimes questioning the very existence of the Board.

> This debate and coverage is healthy, articulating and reinforcing the importance people place on the future of their communities."[12]

As J.A. Kennedy, Chairman of the Ontario Municipal Board from 1960-1972 stated:

> "The Municipal Board … allows any citizen who wishes to take the time and trouble to present an argument before the board to do so. This has not in any way come close to paralysing the board, nor has it resulted in, for example, a developer being subject to multiple board proceedings, each dealing with the same proposal. If there are several persons interested in having the board rule on a particular issue or project, the board has developed procedures to ensure fairness to the person or government department whose project is under scrutiny."[13]

Again, as J.A. Kennedy, Chairman of the Ontario Municipal Board from 1960-1972 stated:

> "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 and there is no logical reason to deny the public an opportunity not only to protect its own property and neighbourhoods, but also to have a voice in the formulation of plans and policies. The citizen should not be forced to oppose such a project after it is presented as a fait accompli."[14]

CELA submits the revocation of third-party appeal rights is contrary to principles of good land-use planning, procedural fairness and natural justice, as persons interested in or potentially affected by land-use decisions should be able to fully participate in and influence such decision-making. It is advisable to ensure that the OLT has a robust appeal authority and the public is not excluded from appealing to the OLT on important land use planning matters.

<u>Second</u>, restricting access to the OLT is contrary to sound, participatory decision-making and will likely result in more issues being litigated in the Ontario court system, which lacks the planning expertise of the OLT. A move to a court-based system for challenging these types of decisions will also have unanticipated consequences, including delays and high costs for all parties.

CELA would also like to point out that there will very likely be a large increase in court actions relating to the impacts of development *after* they have been approved. Thus, for instance,

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[12] David J. Johnson, Chairman of the Ontario Municipal Board and Board of Negotiation 2003, "Ontario Municipal Board and Board of Negotiation Annual Report 2001-2002", June 2003, online: <https://olt.gov.on.ca/wp-content/uploads/2015/03/2001-2002-Report.pdf>.

[13] David Estrin and John Swaigen, "Environment on Trial – A Guide to Ontario Environmental Law and Policy", 1993, p xix Foreword to the First edition by J.A. Kennedy (1973).

[14] David Estrin and John Swaigen, "Environment on Trial – A Guide to Ontario Environmental Law and Policy", 1993, p xviii Foreword to the First edition by J.A. Kennedy (1973).

neighbours with concerns about a development may turn to civil causes of action in Court, such as nuisance claims, which would otherwise have been resolved through the administrative tribunal process.

Finally, third-party appeal rights have been a long-standing feature of the *Planning Act,* and there have been no persuasive evidence-based reasons put forward by the provincial government to demonstrate that such appeals should now be wholly abolished both retroactively and prospectively.

The government's rationale for the changes contained in Bill 23 has been to streamline the development process to ensure "more homes are built faster". However, there is no evidence that the alleged housing supply shortage has been caused by the existence of third-party appeal rights at the OLT. The narrative that concerned citizens who want to be involved in their community's future growth are the ones creating a housing shortage is misleading and false.

Further, the proposed elimination of public appeal rights is not limited to housing matters, but would apply to every other type of land use or development requiring *Planning Act* approval (e.g., landfills, incinerators, quarries, or other industrial facilities that may cause off-site adverse impacts to the environment and/or the health/safety of site neighbours).

CELA is also deeply concerned that these amendments will have a retroactive effect, applying to any matter that has been appealed but has not yet been scheduled by the OLT for a hearing on the merits as of October 25, 2022. This will have a substantial impact on many members of the public, who will have their appeals dismissed after having potentially spent years and significant resources on ongoing appeals before the OLT.

RECOMMENDATION NO. 4: Schedule 9's proposed amendments to subsections 17(24), 17 (36), 34 (19), 45 (12) and 53 (19) and (27) of the *Planning Act*[15] must be withdrawn to ensure third-party appeal rights to the Ontario Land Tribunal are upheld.

ii. Restriction of Conservation Authority Appeals

CELA is also opposed to Schedule 9's proposal to limit conservation authority ("CA") appeals of land-use planning decisions to matters where they are the applicant, or when acting as a public body, to appeals with respect to matters related to natural hazard policies in provincial policy statements.

[15] See sections 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 official plans, zoning by-laws, etc.)

CAs bring a critical watershed perspective to land-use planning and development decisions to ensure that development proposals are reviewed with the health of the watershed in mind. CAs are the only agency in Ontario that hold deep expertise at a watershed-scale. This expertise has been acquired through decades of extensive stewardship, monitoring, research, mapping, and on-the-ground contact with the people within and the lands and waters of the regions in which they operate.

The role of CAs in *Planning Act* appeals must be retained so that development does not put communities at risk from flooding and other climate change impacts through loss of wetlands, woodlands, and farmland.

RECOMMENDATION NO. 5: Section 1(4) of Schedule 9 should be withdrawn to ensure the ability of Conservation Authority's to appeal land-use planning decisions is not limited.

iii. Removal of Moratorium for Pit and Quarry Applications

Currently, the *Planning Act* prohibits amendments to new official plans, secondary plans, and comprehensive zoning by-laws for a period of two years, unless these changes are supported by a resolution of municipal council. Schedule 9 of Bill 23 would remove this prohibition for applications related to pits and quarries.

CELA is concerned that the proposed amendments will likely expedite the proliferation of new or expanded pits and quarries across Ontario, resulting in serious environmental and nuisance impacts.

RECOMMENDATION NO. 6: Sections 6(1) and 8(1) of Schedule 9 should be withdrawn.

iv. Removal of Public Meetings for Plans of Subdivision

CELA is opposed to the proposed changes to subsections 51(20) to (21.1) of the *Planning Act*, which would remove the public meeting requirement for draft plans of subdivision. One of the hallmarks of good land use planning includes engaging with the public in a fair and transparent manner. Public meetings provide the public with an opportunity to review, ask questions and provide suggestions or comments about draft plans of subdivision. CELA is concerned that this amendment eliminates one of the key mechanisms by which the *Planning Act* encourages public participation in the land-use planning process.

RECOMMENDATION NO. 7: Section 17(4) of Schedule 9 should be withdrawn to maintain the public meeting requirement for draft plans of subdivision.

v. Facilitating Minister's Amendments of Official Plans

CELA is opposed to Schedule 9's proposed amendments to section 23 of the *Planning Act*, which would allow the Minister to make an amendment to an official plan if the Minister is of the opinion that the plan is likely to adversely affect a matter of provincial interest. Currently, section 23 requires the Minister to follow several procedural steps, including inviting the council of the municipality to submit proposals to resolve the issue, before they can make such an order.

CELA is worried that Bill 23's proposed amendments to section 23 would allow the Minister to dictate land-use in a municipality without first providing the municipality an opportunity to address the issue in a manner that would respond to local circumstances, prevent sprawl, and protect the environment.

RECOMMENDATION NO. 8: Section 7 of Schedule 9 should be withdrawn.

vi. Removal of Upper-Tier Municipal Planning Responsibilities

Currently, upper-tier municipalities deal with broad planning issues that affect more than one municipality to ensure that future planning and development in a region is coordinated and sustainable.

Schedule 9 proposes to create "upper-tier municipalities without planning responsibilities". This would mean that certain planning responsibilities, such as the approval of lower-tier official plans and amendments, would be removed from the County of Simcoe, and the Regional Municipalities of Halton, Peel, York, Durham, Niagara and Waterloo. As a result, the Minister would become the approval authority for all lower-tier official plans and amendments, and the Minister's decisions would not be subject to appeal.

Schedule 9 also proposes to add a new subsection 1(4.3), which provides that "upper-tier municipalities without planning responsibilities" no longer constitute a "public body" with the right to appeal official plans and amendments, zoning by-laws and amendments, interim control by-laws, minor variances, draft plans of subdivision, and consents, to the Ontario Land Tribunal.

CELA is concerned that these amendments will hinder sustainable growth and development at the regional scale, particularly in the rapidly growing areas which have been designated as "upper-tier municipalities without planning responsibilities".

RECOMMENDATION NO. 9: Sections 1(2), 1(5), 1(6), 2(1), 2(2), 3, 4(2), 5(4), 8(6), 17(2), 20, & 23 of Schedule 9 should be withdrawn to ensure the upper-tier municipal planning authority of the County of Simcoe, and the Regional Municipalities of Halton, Peel, York, Durham, Niagara and Waterloo is maintained.

vii. Removal of Municipalities' Ability to Act on Climate

Schedule 9, section 11 of Bill 23 proposes amendments to section 41 the *Planning Act*, by removing authority of municipalities to impose site plan rules relating to external design. The Bill makes the same proposed changes to section 114 of the *City of Toronto Act, 2006.*

Specifically, the Bill amends section 41(1) of the *Planning Act*, 2006 adding the qualifier that site plan controls only apply to parcel of land where there are 10 or more residential units and repeals the provision that required exterior design to be a matter of site plan control.[16] Bill 23 also proposes a new subsection 4.1.1 to section 41(4.1) of that the Act , explicitly stating that 'the appearance of the elements, facilities and works on the land…under a municipality's jurisdiction [are] not subject to site plan control.'[17]

Together, the proposed amendments and repeals contained in Bill 23, Schedule 9 remove municipalities authority to create and rely on green standards which can set out a municipality's sustainable design and performance requirements for new private and municipal-owned developments.

CELA is very concerned by the Bill 23's proposed removal of a municipality's authority to set performance standards for new developments, which is critical to respond to climate change. As CELA has previously commented, municipalities are on the front lines of climate change.[18] Municipalities also own most of Canada's infrastructure, meaning investment in sustainable building design will help the province in meeting emission targets, while protecting residents and economies from the effects of climate change.[19]

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[16] Bill 23, Schedule 9, s 11(1)
[17] Bill 23, Schedule 9, s 11(2) and 11(3)
[18] See for instance, CELA's materials related to municipal power to address climate change, online: https://cela.ca/legal-information-municipal-powers-to-address-climate-change/ and https://cela.ca/wp-content/uploads/2020/08/Climate-Change-Municipalities.pdf
[19] *Ibid*

RECOMMENDATION NO. 10: Section 11 of Schedule 9 must be withdrawn so that a municipality's authority to implement green development standards for new private and municipal-owned developments remains in place. This authority is critical if municipalities are to have the means to respond to and be more resilient to climate change.

APPENDIX B

CELA's COMMENTS ON SCHEDULE 2 OF BILL 23: PROPOSED AMENDMENTS TO THE *CONSERVATION AUTHORITIES ACT* AS REFLECTED IN ENVIRONMENTAL REGISTRY OF ONTARIO NUMBER 019-6163[1]

Prepared by
Joseph Castrilli, CELA Counsel

I. Selected Provisions of Concern Under Bill 23, Schedule 2

Conservation authorities ("CAs") provide at least three critical roles that are threatened by Bill 23: (1) under the *Conservation Authorities Act* ("*CAA*") they: (i) make regulations restricting or regulating the use of wetlands, including prohibiting, regulating, or requiring the permission of the authority for development if the control of flooding, pollution, or the conservation of land may be affected by development; as well as (ii) play a critical role in the municipal planning process that can provide important non-point source water pollution controls with respect to development in urban, suburban, and rural development; and (2) under the *Clean Water Act* ("*CWA*") they act as source protection authorities for the purpose of protecting drinking water sources from contamination.[2]

The following covers a selected number of concerns with the Bill 23 amendments to the *CAA* that may undermine the above CA powers.

A. Restrictions on Entering into Agreements with Municipalities to Review Planning Applications on Behalf of Municipalities

- Bill 23 would amend sections 21.1.1 and 21.1.2 of the *CAA* to provide that conservation authorities ("CAs") may not provide a program or service related to reviewing and commenting on certain matters under prescribed Acts:

> 21.1.1 (1.1) An authority shall not provide under subsection (1), within its area of jurisdiction, a municipal program or service related to reviewing and commenting on a proposal, application or other matter made under a prescribed Act.

[1] See: https://ero.ontario.ca/notice/019-6141

[2] While no specific amendments to CA powers under the *CWA* are proposed by Bill 23, the changes to CA powers authority under the *CAA* could create conflict situations for CAs where CA powers to protect source water under the *CWA* run afoul of Bill 23 changes to the *CAA* designed to accommodate development, such as through potential disposition of CA lands.

> 21.1.2 (1.1) An authority shall not provide under subsection (1), within its area of jurisdiction, a program or service related to reviewing and commenting on a proposal, application or other matter made under a prescribed Act.

Comment: These amendments will have a deleterious effect on the ability of CAs to assist municipalities during the municipal planning process to control non-point source water pollution (e.g., erosion and sedimentation from construction site runoff including the release of contaminated sedimentary materials into water bodies) from urban, suburban, and rural development. This could occur if the *Planning Act* is listed as a prescribed Act under section 21 as anticipated. The result may well be that non-point source water pollution from urbanization will increase in rivers, streams, and lakes throughout the Ontario portion of the Great Lakes Basin.[3] Historically, CA involvement in the municipal planning process, though not acknowledged in the *Planning Act*, has included reviewing official plan, zoning, subdivision applications, and related matters. The role is both advisory and regulatory (through CAs ability to enter into agreements with municipalities to act as a reviewing body and through their authority to regulate development in certain hazard or sensitive areas under the *CAA*).[4] Conservation Ontario itself has recently commented as follows on the proposed Bill 23 changes in this regard:

> "The plan review process by [CAs] ensures the protection of the watershed-based approach and enables the connections to be made between flood control, wetlands, and other green infrastructure or natural cover, thus ensuring safe development".[5]

Thus, the proposed amendments will have the potential to undermine both non-point source water pollution control and public safety.

B. Exemption from CA Natural Hazard Permits for Select Municipalities Where Planning Act Approvals Are in Place

- Bill 23 would amend section 28 of the *CAA* to provide that certain prohibitions on activities in the area of jurisdiction of a CA (e.g., development in areas that are hazard lands or

[3] Great Lakes Water Quality Board, Report to the International Joint Commission, *1980 Report on Great Lakes Water Quality* (November 1980) at 47 (noting that the 1978 GLWQA required Canada and the United States to develop and implement measures for the abatement and control of water pollution from a variety of land use activities, such as urbanization). It was expected that these measures would be undertaken at the sub-national (i.e., provincial and state) levels. See J.F. Castrilli and A.J. Dines, *Control of Water Pollution from Land Use Activities in the Great Lakes Basin: An Evaluation of Legislative and Administrative Programs in Canada and the United States*, Prepared for the International Joint Commission Reference Group on Great Lakes Pollution from Land Use Activities (March 1978) at 7-8.

[4] J.F. Castrilli, *Control of Water Pollution from Land Use Activities in the Canadian Great Lakes Basin: An Evaluation of Legislative, Regulatory and Administrative Programs*, Prepared for the International Joint Commission Reference Group on Great Lakes Pollution from Land Use Activities (1977) at 50-52;

[5] Conservation Ontario, Media Release, "Province Continues to Change Roles and Responsibilities of Conservation Authorities" (October 27, 2022) at 1 (quote from Angela Coleman, General Manager, Conservation Ontario).

wetlands) do not apply if the activities are part of development authorized under the *Planning Act* and if other specified conditions are satisfied:

> 28 (4.1) Subject to subsection (4.2), the prohibitions in subsection (1) do not apply to an activity within a municipality prescribed by the regulations if,
>
> (a) the activity is part of development authorized under the *Planning Act*; and
>
> (b) such conditions and restrictions as may be prescribed for obtaining the exception and on carrying out the activity are satisfied.
>
> (4.2) If a regulation prescribes activities, areas of municipalities or types of authorizations under the *Planning Act* for the purposes of this subsection, or prescribes any other conditions or restrictions relating to an exception under subsection (4.1), the exception applies only in respect of such activities, areas and authorizations and subject to such conditions and restrictions.

Comment: Our comments above are also applicable with respect to the section 28 amendments. These amendments, in conjunction with other proposed changes to the Ontario Wetlands Evaluation System being undertaken by the provincial government at the same time as Bill 23 that could see many wetlands re-defined to downgrade their significance on the basis of local municipal decision-makers,[6] will produce or contribute to many of the water pollution and hazard conditions the historical statutory mandate of CAs was designed to avoid.

C. Removal of Conservation of Lands and Pollution as Considerations in CA Permit Decisions

- Currently, several factors must be considered when making decisions relating to a permission to carry out a development project or a permit to engage in otherwise prohibited activities. The factors include the possible effects on the control of pollution and the conservation of land. Bill 23 would amend section 28.0.1(17) of the *CAA* to instead require consideration of the effects on the control of unstable soil or bedrock:

> 28.0.1(17) (a) effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or unstable soil or bedrock;

Comment: This amendment again undermines the historic role of CAs with respect to pollution and conservation of land by narrowing it unnecessarily as per the above comments.

D. Converting to Housing Purposes CA Lands Meant for Environmental and Natural Hazard Protection

[6] Ministry of Natural Resources and Forestry, *Proposed Updates to the Ontario Wetlands Evaluation System*, EBR Registry 019-6160 (October 25, 2022).

- Detailed amendments to section 21 under Bill 23 set out the circumstances surrounding potential sale of CA lands to support housing development.

Comment: The amendments to section 21 contemplate the potential disposition of CA lands that have the following characteristics: (1) areas of natural and scientific interest ("ANSIs"); (2) habitat of threatened or endangered species; (3) forest lands; and (4) natural hazard lands (e.g., dynamic beach hazard, erosion hazard, flooding hazard, hazardous lands or sites, low water or drought conditions, as set out in section 1(1) of O. Reg. 686/21 of the *CAA*). Conservation Ontario has identified the following potential problems with the disposition of such lands for private development:

> "[CAs] own approximately 147,000 hectares of land which are made up of important natural systems and biodiversity such as wetlands, forests, moraines, and ecologically sensitive lands. These lands typically have clear functions and purposes.
>
> [CA] lands are often located in floodplains and help to protect against flooding and erosion. They offer trails and other outdoor amenities that contribute to public well-being and they protect important sources of drinking water and biodiversity. They also contribute to climate change adaptation measures by capturing emissions, cooling temperatures, and protecting water quality."[7]

E. Freezing Fees Conservation Authorities May Charge on Development

- Bill 23 adds a new section 21.3 to the *CAA* authorizing the Minister to direct an authority not to change the fees it charges for a specified period of time:

> **Minister's direction re fee changes**
> **21.3** (1) The Minister may give a written direction to an authority directing it not to change the amount of any fee it charges under subsection 21.2 (10) in respect of a program or service set out in the list referred to in subsection 21.2 (2), for the period specified in the direction.
>
> **Compliance**
> (2) An authority that receives a direction under subsection (1) shall comply with the direction within the time specified in the direction.

Comment: CAs expect that by freezing CA cost recovery fees respecting development this will produce "a backlog of costs that will eventually need to be addressed". They ask the question: "Who will pay for the eventual shortfall?"[8] It is not inconceivable to imagine that the shortfall will result in increased pressure on CAs to begin to divest their lands. For the reasons discussed under Part D, above, given the purposes and functions of CA lands, divesture could produce the very environmental and public safety problems the original acquisition of the lands was meant to avoid.

[7] Conservation Ontario, Media Release, "Province Continues to Change Roles and Responsibilities of Conservation Authorities" (October 27, 2022) at 2.
[8] *Ibid*.

APPENDIX C

CELA's COMMENTS ON SCHEDULE 7 OF BILL 23: PROPOSED AMENDMENTS TO THE *ONTARIO LAND TRIBUNAL ACT, 2021* AS REFLECTED IN ONTARIO'S REGULATORY REGISTRY NUMBER 22-MAG011[1]

Prepared by
Jacqueline Wilson, CELA Counsel

The Canadian Environmental Law Association has long experience representing members of the public and community groups at the Ontario Land Tribunal ("OLT"). CELA is opposed to the proposed amendments to the *Ontario Land Tribunal Act, 2021* in Schedule 7 of Bill 23 and recommends the schedule be withdrawn.

Ontario Land Tribunal Jurisdiction Involves Many Different Public Interest Matters

The proposed amendments to the *Ontario Land Tribunal Act, 2021* affects all matters within OLT jurisdiction. The OLT is an amalgamation of a number of tribunals and adjudicates issues relating to:

1- Environmental matters previously heard by the Environmental Review Tribunal, including applications and appeals under the following statutes:

   -*Clean Water Act 2006*
   -*Environmental Assessment Act*
   -*Environmental Bill of Rights, 1993*
   -*Environmental Protection Act*
   -*Nutrient Management Act 2002*
   -*Ontario Water Resources Act*
   -*Pesticides Act*
   -*Resources Recovery and Circular Economy Act, 2016*
   -*Safe Drinking Water Act, 2002*
   -*Waste Diversion Transition Act, 2016*

   Members of the OLT also conduct hearings under the *Niagara Escarpment Planning and Development Act*, the *Oak Ridges Moraine Conservation Act, 2001*, and the *Greenbelt Act, 2005.*

[1] See: https://www.ontariocanada.com/registry/view.do?language=en&postingId=42913

2- The OLT includes the former Mining and Lands Tribunal. It hears disputes relating to mining and appeals of decisions made by conservation authorities, which involve owners who want to develop lands in floodplains and wetlands.

3- The OLT considers claims for compensation for land expropriations, which were formerly heard by the Board of Negotiation under the *Expropriations Act.*

4- The OLT hears matters under the *Ontario Heritage Act,* for instance the proposed designation of a property as having cultural heritage value or interest, amendments to designation by-laws, and archaeological licensing. These matters were formerly heard by the Conservation Review Board.

5- The OLT hears planning appeals related to Official Plan amendments, zoning by-law amendments, and other planning approvals.

The OLT looks at issues of wide public interest. Most of its decisions do not involve "winners or losers".

Many of the statutes falling into the jurisdiction of the OLT focus on open and fair decision-making. For instance, section 1.1 of the *Planning Act* states that its purpose is to provide for planning processes "that are fair by making them open, accessible, timely and efficient" and to encourage cooperation and coordination among various interests.[2] Similarly, the *Environmental Bill of Rights, 1993* similarly provides that its environmental protection, conservation and restoration mandate is to be fulfilled by creating a "means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario" and increased accountability of the Government of Ontario for its environmental decision-making.[3]

Costs Regime at the OLT

CELA recommends that the costs regime at the Tribunal, which is regulated by Rule 23.9 of the Ontario Land Tribunal's *Rules of Practice and Procedure,* be maintained.[4] Rule 23.9 only allows for costs to be awarded against a party for unreasonable, frivolous or vexatious conduct, or if the party has acted in bad faith. This costs regime reflects the broad public interest mandate of the tribunal.

[2] *Planning Act*, RSO 1990, c. P.13, s.1.1(d), (e)
[3] *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28, s. 3(a) and (b)
[4] Ontario Land Tribunal, *Rules of Practice and Procedure,* June 1, 2021, Rule 23.9 <OLT | Rules of Practice and Procedure (gov.on.ca)>

The proposed amendment to s.20 of the *Ontario Land Tribunal Act, 2021* adds a new subsection which states that the Tribunal has the power to order an unsuccessful party to pay a successful party's costs. Although the Tribunal maintains the power to set its own procedure, we strongly oppose any proposal that may encourage a change to the costs regime at the tribunal.

OLT hearings are very expensive and inaccessible due to the high cost of retaining experts. In our experience, the cost of mounting a case at the tribunal is already a barrier to participation, irrespective of the seriousness of the potential impact of an application, including on the health of members of the community, or the strength of a potential appeal.

Tribunal hearings are often a few weeks and involve several parties and multiple expert witnesses. Access to justice would be severely hindered by creating the risk of an astronomical costs award that would potentially cover expensive private counsel and multiple expert witnesses.

No Expansion of Summary Dismissal Powers or Arbitrary Timelines

CELA is also opposed to the proposed amendments to s.19(1)(b.1) and 19(1)(1.1), which provide expanded power for the Tribunal or another party, on a motion, to seek dismissal of proceedings without a hearing. Although an independent Tribunal always has the power to control its own process, we are concerned that unrepresented litigants at a hearing may be disproportionately impacted by these new rules. It is difficult for unrepresented litigants to navigate a complex tribunal process. It is therefore particularly concerning that a member of the public or a community group may have their appeal dismissed without a hearing if they inadvertently do not comply with an order, for instance, or fail to understand the implications of a Tribunal order.

Introducing further interlocutory steps may also have the unintended consequence of delaying a hearing on the merits and increasing costs to all parties.

Section 29 provides for regulation-making authority to set timelines for hearings. We are concerned about setting arbitrary timelines for proceedings without regard to the complexity of a proceeding or to ensure there is adequate time for all involved parties to retain experts.

Recommendation: CELA recommends that Schedule 7 of Bill 23 be withdrawn.

APPENDIX D

THE QUESTION OF NEED

Prepared by
Joseph Castrilli, CELA Counsel

A. Overview

The government of Ontario justifies Bill 23 because it says Ontarians face a housing shortfall. To address this problem, the government is prepared to: (1) eliminate citizen appeal rights under land use planning legislation, rights that have existed under Ontario law since shortly after the Second World War; (2) give the Ontario Land Tribunal new powers to impose costs against those who are unsuccessful before the Tribunal, an expanded costs power that will have a chilling effect on the willingness of the ordinary citizen – and even less well-funded municipalities – to participate in land use planning decisions that directly or indirectly impact them; and (3) further undermine the role of conservation authorities in protecting what is left of Ontario's wetlands, which play a vital role in preventing flooding, pollution, and other environmental hazards from poorly planned and located development.

The provincial government justifies these and other harmful new measures because a February 2022 provincial task force it established concluded there was a need to build 1.5 million homes over the next ten years in the province.[1] The EBR registry notices concerning Bill 23 indicate that the government proposes to amend a wide array of laws and policies to facilitate meeting this purported need by, for example:

- making "it easier and faster to build new homes for Ontarians as part of its commitment to build 1.5 million homes over the next ten years";[2] and
- removing "duplicate requirements and streamline the evaluation process" for what qualifies as a wetland under the province's Wetland Evaluation System as part of the "government's commitment to support the construction of 1.5 million new housing units over the next ten years".[3]

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[1] Report of the Ontario Housing Affordability Task Force, (February 8, 2022) at 3-4, 7-9. See also Ontario Ministry of Municipal Affairs and Housing, News Release, "Ontario Publishes Housing Affordability Task Force Report" (February 8, 2022) at 1.
[2] See EBR Registry Notice 019-6163, Proposal Summary, Proposed Planning Act and City of Toronto Act Changes (Schedules 9 and 1 of Bill 23 – the proposed More Homes Built Faster Act, 2022) (October 25, 2022).
[3] See EBR Registry Notice 019-6160, Proposal Summary, Proposed Updates to the Ontario Wetland Evaluation System (October 25, 2022).

However, CELA suggests that the task force report, relied upon by the government for its estimates of housing need, is flawed for the reasons set out below. By relying on flawed estimates, the government is needlessly unravelling the province's land use planning and environmental protection framework.

B. Problems with the Task Force Report's Assessment of Need

The Ontario Task Force report states that Ontario is 1.2 million houses short of the G7 average and needs to build 1.5 million new homes over the next ten years. This amounts to building 150,000 new dwellings per year. CELA takes issue with these conclusions of need for a variety of reasons:

- The Task Force Report claim that Ontario is 1.2 million housing units short was based on showing that Canada has the lowest number of houses per 1,000 people of any G7 nation.[4] However, commentators suggest that the number of dwellings per 1,000 people is not a very useful comparison because people live in households. In Ontario, because the average household size is 2.58 people per household, 1,000 people would only require 388 housing units, whereas in Germany, for example, 1,000 people would require 507 dwelling units because of an average household size of only 1.97;[5]

- Commentators also suggest that the Task Force Report is over-aggressive in calling for 150,000 new dwellings per year. Ontario's population grew by an average of 155,090 per year for the 2016-2021 period. Applying the Ontario average household size to this population growth produces the need for housing for roughly 60,000 new households per year, not 150,000 new ones per year. Moreover, 60,000 housing starts is lower than the 79,000 housing starts Ontario averaged per year between 2016 and 2021;[6]

- The Task Force Report also accepted the view that Ontario has not built enough houses to accommodate its growing population.[7] However, commentators have cast doubt on this Task Force Report conclusion as well. They note that the 2021 Census reported that from 2011 to 2021, Ontario's population grew by 10.7 percent while the number of occupied dwellings grew by 12.5 percent, a trend that has been true for the past thirty years, which bears repeating. During this period, dwellings have grown faster than population;[8]

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[4] Report of the Ontario Housing Affordability Task Force, (February 8, 2022) at 7, footnote 6 (referring to a May 2021 Scotiabank report by Jean-Francois Perrault, "Estimating the Structural Housing Shortage in Canada: Are We 100 Thousand or Nearly 2 Million Units Short?" at 1).
[5] Brian Doucet, University of Waterloo, "Ontario's 'affordable housing' task force report does not address the real problems", *The Conversation,* (February 10, 2022).
[6] *Ibid*.
[7] Report of the Ontario Housing Affordability Task Force, (February 8, 2022) at 7.
[8] George Fallis, "A shortage of homes isn't the main reason house prices keep rising", *The Globe and Mail*, (March 14, 2022). George Fallis is a professor emeritus of economics and urban studies at York University.

- Even if one accepts the view that many of the new units are high rise condominiums, and not the ground-oriented units many buyers might prefer, this would not justify the regressive changes being proposed for provincial land use planning and conservation authority legislation under Bill 23 and related policies that will simply accelerate urban sprawl and environmental destruction, undermine efforts at curbing greenhouse gas emissions,[9] and precipitate a significant decline in public participation in government decision-making. CELA says this because:

  - The Task Force Report itself confirmed that there is plenty of land available in existing built-up areas.[10] This includes at least 250,000 new homes and apartments that were approved in 2019 or earlier but have not yet been built.[11] Indeed, the Greater Toronto Hamilton Area has 88,000 acres of already designated new (or greenfield) development lands within existing settlement area boundaries that would meet the region's entire projected housing demands for the next 30 years.[12]

- Finally, it bears noting that municipal officials are increasingly casting doubt on the Task Force Report estimates as not being relevant to their local circumstances. For example, based on the Task Force Report, Ontario assigned the City of Ottawa the housing target of 151,000 new homes by 2031. However, the City's interim general manager of planning, real estate and economic development stated that this target "is not aligned with Ottawa's housing needs" and is double the amount of new housing that the city has projected it will require as its population grows over the same period. The city's staff "have requested clarification on how these targets were calculated and assigned to municipalities". City staff also indicated that they exceed by 70 percent what provincial ministry of finance projections would suggest are necessary, and if the province is using construction starts as its metric, "then the target for Ottawa is too high".[13]

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[9] Dianne Saxe, "Why Urban Sprawl is Ontario's Oil Sands", Ontario Professional Planners Institute (February 3, 2020). See also Environmental Commissioner of Ontario, "Urban Sprawl: The Road to Gridlock,", in *Energy Conservation Progress Report* (2019) at 130-173.
[10] Report of the Ontario Housing Affordability Task Force, (February 8, 2022) at 10.
[11] Anne Bell, "The Housing Crisis: What You Need to Know", *Ontario Nature* (April 8, 2022) (referring to Berry Vrbanovic, *et al*, "Waterloo Region mayors call for collaboration to fix housing crisis", *The Waterloo Region Record* (January 18, 2022)).
[12] Phil Pothen, Media Backgrounder, "Housing Affordability and the Provincial-Municipal Housing Summit", *Environmental Defence Canada* (January 2022) at 1.
[13] Taylor Blewett, "City of Ottawa staff have analyzed the local impacts of the province's new housing bill, and their conclusions are grim", *Ottawa Citizen* (November 8, 2022).

C. Conclusions

In short, if there is neither a shortage of already authorized housing starts to accommodate Ontario's growing population, nor a shortage of already designated land on which to build such homes, there is no need for Bill 23's root and branch attack on provincial land use planning and conservation authority legislation and policies.