

April 2, 2021

Ministry of Municipal Affairs and Housing
777 Bay Street,
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Toronto, Ontario
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Via email: PlanningConsultation@ontario.ca

Dear Members of the Ministry of Municipal Affairs and Housing,

Re: **Bill C 257**

Thank you for the opportunity to comment on ERO 019-3233, the proposed changes to the Minister's zoning orders and the Planning Act. The proposal was placed on the Environment Registry of Ontario on March 4, 2021, with comments due by April 3, 2021.

I am concerned with the timing of the proposed amendments, as well as the short response window of only 30 days, given the uncertainty and disruption brought on by Covid-19. I do not believe these amendments should be made at this time (or any time!). I am also concerned that many of the proposed changes are misaligned with current provisions and will negatively impact all life and larger communities within the regions impacted, which is potentially all of Ontario.

The Planning Act is an instrument established to promote sustainable economic development within the constraints of a predetermined policy framework. Bill 257 seeks to expedite the completion of broadband projects that are provincially significant. However, the proposed amendments foster unsustainable development projects that are inconsistent with the Provincial Policy Statement that do not fit under the umbrella of broadband infrastructure. The proposed amendments attack Ontario's most fundamental planning principles and leave the environment vulnerable against industrial forces.

The Planning Act guiding principles; where decisions are made in the best interest of the environment and local communities, planning processes are fair and transparent, and land use for industrial purposes is actively controlled. We value a community that promotes sustainability, environmental protection, and harmonious living between the population and government authorities where decisions are collectively consolidated instead of independently enforced. We fear that the new changes oppose every one of these values and jeopardize community growth and safety.

They also pose a significant risk to future generations and I am concerned that communities will become too unsustainable to accommodate growing populations. There is significant evidence world wide that 5G and all EMFs are detrimental to life, human and otherwise. The question arises, “Have any of the Committee members reviewed this information?”

These proposed changes appear short sighted in light of the unprecedented and dangerous drop in biodiversity we are currently witnessing alongside the increased extreme weather conditions connected with climate change. Nature in its complexity, when left to behave freely, has produced an abundance of interdependent life; if an economy thrives with access to resources then we would be wise to maximize our available biodiversity and biomass instead of harming it.

Concerns
Schedule 3
Specific Policy Concerns

Under Schedule 3 of Bill 257, there are proposed amendments to the Planning Act which would have a strong impact on existing and future Minister’s Zoning Orders implemented by the provincial government. Furthermore, this amendment would be unaligned with the Provincial Policy Statement (PPS) which outlines the provisions “for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment.”

The PPS is the baseline for which the Planning Act is required to be consistent with its intent in order to ensure fairness and equality in the process of land use planning within the province. Any type of developmental infrastructure that needs to be created while being excluded from both the Planning Act and the PPS should not be accepted or permitted at all.

Moreover, giving the allowance to the Minister to approve these developments without taking into consideration the environmental implications, would create a large impact on planning in Ontario and would undermine the regulations that municipalities and other authorities follow.

This imbalance in power is further exemplified as the Minister's Zoning Orders (MZO) do not need any public consultation nor are they subject to appeal, which excludes Ontario citizens from important planning processes (see below).

Additionally, there is concern with the changes that would encompass both past and future MZOs being approved by the government. Between 2020/21 there has been a stark increase in MZOs being issued, many being approved quickly and quietly, increasing the potential impacts on environmental and anthropogenic health. Schedule 3 is giving carte blanche to these harmful developments in breach of the PPS, in turn making them legal and lawful.

Lack of Transparency and the Democratic Implications

Not only do I object to the content and policy of Schedule 3, I also find the means and tactics of including this Schedule in Bill 257 to be unethical and deceitful. Including proposed legislation about changes to Minister's Zoning Orders in an unrelated Bill is an intentional tactic used to deter public attention from the said legislation in order to abscond your government of responsibility for its illegal actions. The lack of transparency demonstrated by the introduction of Schedule 3 in Bill 257 is unacceptable and I am troubled that the government would go to such lengths to hide its actions from its constituents and residents.

Schedule 3 of Bill 257 not only shows a clear lack of respect for the environment, Ontario's municipalities and planning legislation, but also for Ontarians and the political process in the province of Ontario.

No true consultation

The concept of consultation has never been truly defined by a Canadian Court. As a consequence the concept, unlike in the United Kingdom, has never been defined. The consequences sadly lead to abuse. The few days silently allotted to respond in this case reflects that intent. I am summarizing below the case that I believe defines 'consultation' in common law jurisdictions. It is time we have our own decision.

The UK's highest court has endorsed the basic requirements of a "fair" consultation exercise for the first time, while overturning a consultation conducted by a London local authority.^{03 Nov 2014 (Moseley vs. London Borough of Haringey [2014] UKSC 56).}

The Court of Appeal confirmed the so-called 'Gunning principles', named after the 1985 High Court case in which they were established, in 2001. However, neither the Supreme Court nor its predecessor, the House of Lords, had previously endorsed them.

"Consultation is a concept which comes into play in a wide range of legal disciplines, from employment through planning to local government, but what does it mean?" said litigation expert Craig Connal QC of Pinsent Masons, the law firm behind Out-Law.com. "The cynical definition used to be 'listen carefully, then ignore completely'; but now, helpfully, the Supreme Court has endorsed a definition which it describes as a 'prescription for fairness'."

"One can now expect that quote to appear, on either side of the argument, in every case where adequacy of consultation is argued over. Nevertheless, the stamp of approval is welcomed, if only to avoid others having to re-invent the wheel," he said.

A public authority's duty to consult those potentially affected before taking a decision may be a statutory requirement, or may be required by its general duty to act fairly. The Gunning case set out four principles that must apply in order for a consultation to be considered fair:

1. that it take place when the proposal is still at a formative stage;
2. that sufficient reasons for the proposal be put forward to allow for intelligent consideration and response;
3. that adequate time be given for that consideration and response;
4. and that responses be conscientiously taken into account."

It is suggested that none of these principles were followed in this matter and therefore there has not been true public consultation that falls within the definition of FAIR as defined by the UK Supreme Court.

Conclusion

In conclusion, I am concerned with the divergence from the Provincial Policy Statement and ethical ramifications of Schedule 3 of Bill 257. I suggest that Schedule 3 of the Bill be removed outright with the goal of upholding the legitimacy of Ontario political institutions and the real concept of consultation.

I look forward to your response.

Sincerely,

Richard Jackman JD