



Federation of Ontario Cottagers' Associations

#201-159 King St.,

Peterborough ON K9J 2R1

705-749-3622 info@foca.on.ca

January 30, 2021

Provincial Planning Policy Branch
777 Bay Street, 13th floor
Toronto, ON M7A 2J3

Re: *ERO number 019-2811 Proposed implementation of provisions in the Planning Act that provide the Minister enhanced authority to address certain matters as part of a zoning order*

To Whom it May Concern,

FOCA is an Ontario association of over 500 community groups and represent the interests of the 250,000+ waterfront landowners who collectively contribute over \$800 million each year in property taxes, and who collectively own 15,000 kilometres of freshwater shorelines and 50,000 hectares of environmentally important lands.

With member associations across Ontario in over 100 different municipalities, we have considerable stake and a vested interest in the proper, thoughtful development in our communities, informed by proper land use planning.

We write today with respect changes to legislative provisions in the Planning Act that further enable the Minister's use of zoning orders.

Our main concerns include: The fact that the changes to the Planning Act and More Homes, More Choice Act, 2019 contained in Bill 197 were environmentally significant, and that as a prescribed ministry under the EBR Act the Ministry was required to post the proposed changes on the Registry for public consultation.

We believe the Bill 197 changes first enacted and then proclaimed in force in July 2020 clearly represent a change that could have a significant effect on the environment and as such, the responsible minister "shall do everything in his or her power give notice of the proposal to the public at least thirty days before the proposal is implemented. There was never such a posting.

By now posting the Schedule 17 amendments at this late stage, the Ministry appears to implicitly recognize that they should be subject to public comment due to their environmental significance. The Registry notice does not indicate how or when the Ministry came to the realization that Schedule 17 was sufficiently significant in the environmental context to warrant public notice/comment under the EBR. Moreover, the Registry notice does not identify or evaluate the potential environmental effects of using MZO in general or using the new powers under section 47 of the Planning Act (e.g., site plan control) in particular.

We are concerned that this "consultation" does not meet the posted description as a "policy" that is at the "proposal" stage. The EBR specifies that a governmental intention to "make, pass, amend or revoke or repeal" an Act is deemed to be a "proposal" for an Act. There is no particular "policy" measure outlined in this Registry notice.

Despite the posting stating the Ministry "is interested in hearing feedback as to whether the legislative changes made in this regard by Bill 197...should be expanded, repealed or otherwise adjusted [and] how this enhanced authority, subject to any potential changes that might be made to it, ought to be used", there is no apparent or expected outcome, without knowing what, if anything, that the Ministry proposes to do with comments related to these Planning Act changes.

It is unclear as to why the Ministry has failed to undertake any form of enhanced public notice/comment in relation to the Schedule 17 changes to the Planning Act. In previous consultations on land use planning reforms the Province has used other and more participatory approaches to consultation include webinars, discussion papers, questionnaires, news releases, media advertisements, etc. to engage Ontarians. In the case of Schedule 17 there appears to be no news release, public notice or other information indicating that the Ministry is now seeking comments.

Given the deficient notice and limited consultation provided thus far FOCA recommends that this matter should be re-posted on the Registry for a further 90-day comment period, and that the Ministry should provide enhanced public notice/comment through appropriate COVID-compliant means. During and after this extended comment period, FOCA submits that the new MZO powers conferred by Schedule 17 should not be exercised by the Minister until a proper decision notice is posted on the Registry to indicate what, if anything, will be done in relation to these Planning Act amendments.

While the Minister's authority to issue MZOs pre-dates Schedule 17 of Bill 197, until very recently, MZOs have been infrequently issued by the Minister, and they have been largely confined to unorganized townships that lack land use planning controls, or to situations that clearly engage provincial interests (e.g., preservation of agricultural lands, protection of ecologically significant areas, features or functions, etc.). Since 2019, however, over three dozen MZOs have been issued and these orders have been within municipalities that already have official plans and zoning bylaws in place. We are concerned with recent use of these orders to approve development on agricultural lands, hazard lands, or that impact natural heritage. We are further concerned that the Minister will continue to increase the use of these orders to facilitate development even if it is not permissible under the applicable official plan or zoning by-law.

FOCA notes that the ERO notice offers no compelling land use planning rationale for expanding the scope of MZO's to address site plan matters or inclusionary zoning. The notice only briefly describes the legal effect of Schedule 17 amendments but does not justify why it is now deemed necessary to allow MZO's to dictate site plan matters or prescribe inclusionary zoning. The notice does not explain the perceived barriers, any alleged delays, or provide any persuasive evidence that explains how and why enhanced MZO's – rather than other planning reform options – are now needed across Ontario. In our view, the Ministry's speculative comments about what enhanced MZO's "could" achieve are unsubstantiated.

Accordingly, prior to the commencement of the extended public comment period recommended above, FOCA requests that the Ministry should disclose all studies, reports or other evidence upon which it relies to substantiate the alleged need for the Schedule 17 amendments to the Planning Act. In the absence of such evidence to date, we must conclude that Schedule 17 is a solution in search of a problem.

FOCA believes that a further Planning Act amendment is needed to expressly prohibit the issuance of MZO's which authorize land use or development that is inconsistent with:

- protective policies of the Provincial Policy Statement (PPS) that safeguard agricultural lands and significant natural heritage (e.g., wetlands, woodlots, water resources, habitat for wildlife and species at risk, etc.).
- drinking water source protection plans approved under the Clean Water Act; and
- provincial land use plans.

We recognize that some of the orders MZO's issued in 2019-20 were preceded by a municipal council resolution or request to the Minister in support of the issuance of the zoning order. However, MZO's are not subject to the usual public notice, comment and appeal rights under the Planning Act. In some recent cases, MZO's were issued despite the fact that the proposed development was already under appeal to the LPAT. We also note that if a MZO is issued under the Schedule 17 changes, then the Minister can amend the order without providing notice.

We believe that this closed-door approach unduly circumvents long-standing public participation rights in relation to re-zoning proposals under the Planning Act. Accordingly, FOCA submits that further statutory amendments are necessary to ensure that:

- public notice of a proposed MZO is provided through the Registry and other appropriate means (i.e., signage, mailouts to neighbours of the subject lands, etc.) for at least a 30-day comment period;
- persons who provide comments on the proposed MZO are entitled to the right of appeal of the MZO to the LPAT within 20 days of its issuance; and
- any subsequent amendments to the MZO proposed by the Minister are subject to public notice, comment and appeal.

FOCA also believes that to meet the original intent and scope of using MZO's in Ontario, section 47 of the Planning Act requires further changes to ensure that the Minister can only issue MZO's for unorganized areas of the province that lack planning controls or authorities, or in situations where proposed development may adversely affect matters of provincial interest, as articulated in the PPS.

In summary:

FOCA finds that Schedule 17's enhancement of Ministerial zoning powers is problematic, environmentally risky, and wholly unacceptable from a public interest perspective.

FOCA recommends that new subsections 47(4.1) to 47(4.16) and 47(9.1) of the Planning Act should be repealed by the Ontario Legislature. In addition, section 47 should be further amended to prohibit the issuance of MZOs that are inconsistent with the PPS, source protection plans, or provincial land use plans.

We believe legislative amendments are needed to ensure that public notice, comment and appeal rights are available in relation to MZOs, and, that the Planning Act should be amended to restrict the use of MZOs to lands in unorganized areas of Ontario, and to cases where a development proposal may threaten matters of provincial interest identified in the PPS.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Rees". The signature is fluid and cursive, with a large initial "T" and "R".

Terry Rees, Executive Director
On behalf of
Federation of Ontario Cottagers' Associations, Inc.
#201 – 159 King St.
Peterborough, ON K9J 2R8 info@foca.on.ca