Federation of South Toronto RESIDENTS' ASSOCIATIONS

Submission on Bill 23

To the Ontario Standing Committee on Heritage,

Infrastructure and Cultural Policy

Submitted by Richard Green, Chair
Federation of South Toronto Residents' Associations
309-525 Richmond St W, Toronto, Ontario, M5V1Y5
November 16, 2022

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SUBMISSION

By

**The Federation of South Toronto Residents Associations (FoSTRA)
to the Ontario Standing Committee on Heritage, Infrastructure and Cultural Policy for its Hearing on the omnibus bill, Bill 23, More Homes Built Faster 2022
on 16 November 2022**

Introduction

The Federation of South Toronto Residents Associations (FoSTRA) represents 24 residents associations (RAs) in Toronto's five downtown wards (Wards 4, 9, 10, 11 and 13) and thousands of residents. FoSTRA is committed to a livable and affordable Toronto and its members are very concerned about the consequences of this legislation.

FoSTRA requests consideration of the effects of this Bill on our RAs and their members, as well as the neighborhoods they represent in a City we love. We are proposing changes to the Bill and those of its Schedules that reflect our concerns. Our aim is to improve Bill 23, and to build appropriate and affordable homes faster.

Bill 23 Will Not Deliver the Housing We Need

Bill 23 proposes to address housing affordability in Toronto and elsewhere. Its goals are commendable and some of its initiatives are good:

1. Allowing up to three housing units on every residential property.
2. Reducing the costs for developers of appropriate rental and 'affordable' housing.
3. Reducing the delays and red tape for needed housing, and
4. Encouraging development in Mass Transit Station Areas (MTSAs).

But these initiatives don't go far enough and place burdens and restrictions on agencies and lower levels of government, as well as sacrificing our heritage and environment. We believe the Bill's rationale and methods are faulty. While not adequately addressing the real affordability issues, Bill 23 represents a threat to the livability and quality of life for Ontarians in general, and Toronto residents in particular, in the following areas:

1. Undermining local planning processes and public consultation.
2. Restricting or penalizing the right to appeal bad development.
3. Accelerating the loss of current stocks of low-cost rental housing
4. Sidelining environmental and heritage concerns, leading to a loss of important and critical provincial cultural and natural features forever.
5. Downloading significant additional costs to municipalities, resulting in either inadequate infrastructure and low service levels, or increased property taxes.
6. Focusing solely on the supply side of the market, claiming that an oversupply will lead to a drop in prices, which ignores the reluctance of developers to build when prices fall.

Executive Summary

The Provincial Government is hoping to solve a market-created problem with a market-based solution. The market has had two decades to address our current shortage of appropriate affordable housing and it has failed. The Bill's gentle nudging of developers in better directions may lead to building more of the same, to some modest improvements, or nowhere. It is relying heavily on the trickle-down theory to provide housing to a significantly under-housed segment of the market, instead of publicly funding truly affordable housing of appropriate size. The financial costs resulting from this legislation will be downloaded to municipalities and their control of development will be further reduced. Environmental and heritage protections will be sacrificed for development of primarily expensive private sector housing. ***The Province will contribute nothing.***

This Act will not build housing for those most in need. The market will never provide housing for those currently living in Toronto Community Housing or other social housing, where family incomes average $16,000 annually, or the hundreds of thousands on waiting lists for subsidized housing across the province. It does nothing for the homeless or those in need of supportive housing, where money is drying up and people are being turned out onto the streets. Nor do we believe that developers will build housing for lower- and middle-income families, who need much lower prices or rents in order to live in Toronto. ***The market needs a government-supported base upon which homes for everyone can be built.***

Below please find our questions, conclusions, and recommendations.

Schedule 1: The City of Toronto Act

Bill 23 will impose 'limits and conditions' on the City's ability to require developers to replace affordable housing units that are demolished or re-developed. The Minister has been given the authority to remove barriers to development. This provision will reduce – not increase – the current stock of affordable housing, adding to the number of families in dire need, leading to ***less*** – ***not more – affordable housing***.

It will also limit the City's site plan controls. They will be eliminated entirely on buildings of 10 units or less. The City will no longer have any influence on the external design of a building, save for elements related to health, safety, accessibility, and protections of adjoining lands.

Recommendations:

1) Limiting of or setting conditions for the implementation of Toronto's *rental replacement policy* can only reduce the amount of affordable housing that already exists. *This provision should be removed from Bill 23.*
2) The *limitations on the City's site plan controls* will give rise to problems with garbage collection, encroachments on laneways and sidewalks, wind tunnels, blocked views, lack of light, unsustainability, loss of green standards and a raft of other poor decisions. *This provision should also be removed.*

Schedule 2: Conservation Authority Act

The weakening of conservation authorities (CAs) continues with this legislation. CAs' powers have been restricted to reviewing and commenting only on natural hazards like floods, erosion, droughts, unstable soil and bedrock. Expressing concerns about endangered species or loss of habitat is no longer possible and their right to appeal has been severely limited. Their ability to comment on potential pollution and the need for land conservation has been completely removed. The health and safety of people will be endangered. CAs are forbidden from touching on matters dealt with under a long list of prescribed legislation, as well as other provisions that affect planning and development.

For example: CAs can no longer prohibit certain activities concerning the taking of water, interference with rivers, creeks, streams, watercourses and wetlands, or controlling flooding and erosion if a project has been approved under the Planning Act. CAs will no longer be able to protect the long-term stability and viability of wetlands because they can no longer regulate or refuse permits based on pollution mitigation and land conservation. Also, the obligation of the Minister to consider those matters in appeals has been removed. Furthermore, CAs are prohibited from providing municipalities with the information they need to start protecting lands and waters themselves.

The Minister can order CAs to approve permits and otherwise prohibited activities if a Ministerial Zoning Order (MZO) is issued or if a municipality has requested an MZO. CAs can no longer attach conditions to permits except for those pertaining to flooding, erosion, and dynamic beaches (beaches that continually change). CAs will have to make decisions within 90 days; otherwise, the applicant can appeal to the Ontario Land Tribunal (OLT). This gutting of the CAs' powers significantly reduces environmental protections in the province. Warehouses may begin to cover wetlands, Toronto's ravines may be compromised, and the TRCA's flood plan for the Don River and the Villiers Island development may be affected.

Plans are afoot to merge all 36 CAs, starting with merging all practices and policies. Bill 23 allows the Minister to freeze and prevent CAs from raising their fees. Many of their responsibilities and rights to charge fees have been removed. However, they have been given permission to sever and sell land they own, simply by notifying the Minister. There is also indication that the Government may direct CAs to identify lands they own that are suitable for housing developments.

At a time of extreme climate change, environmental concerns should not be disregarded for any short-term benefit. It is unethical to encourage suburban sprawl over farms and natural areas, including the Green Belt, when plenty of land for housing development exists within city boundaries and elsewhere. This is NO time to remove environmental protections.

For more information on the deleterious effects of Bill 23 on CAs, please refer to: https://cela.ca/wp-content/uploads/2022/11/Draft_Bill_23_Sch_2_11NOV2022.pdf

Recommendations:

1) Until the provincial government enacts environmentally progressive legislation, any additional weakening of the powers of Conservation Authorities to husband and protect sensitive conservation areas and wetlands should be removed from Bill 23.
2) The Province should provide funding that will ensure CAs have the resources to perform comprehensive reviews of development proposals in areas of concern or the Province should assume the responsibility and bear the blame for failures.
3) The CAs should have their mandate restored to comment and take action on potential pollution and land conservation, or we will be left with wastelands and cesspools.
4) The provision of Schedule 2 that forbids CAs from even commenting on matters dealt with by the Planning Act and other specified Acts should either be deleted or revised to include environmental concerns in all these various Acts. And the Ministers in charge of these Acts should be made responsible for any disasters that may occur on their watch.

Schedule 3: Development Charges Act

Owners have been given as-of-right permission to build up to three units of housing on each residential property. One of the three can be a laneway or garden suite. Why only three? Toronto has proposed four units in its new Official Plan, as did this Government's own Housing Affordability Task Force. This schedule exempts the 2nd and 3rd units from development fees paid to the City.

It also exempts "affordable housing" and "attainable housing" units from development charges (DCs), community benefit charges (CBCs) and parkland dedications (PDs) – "attainable" means 'affordable' units for purchase under prescribed programs like rent-to-own. These units must remain 'affordable' for at least 25 years. Why not the life of the building? The Ford government has defined affordable housing as units rented at 80% of average market rents or sold for 80% of average market prices.

What good is 80% in an overpriced market? Almost half the residents of Toronto are renters. Half of them pay more than 30% of their gross family income for housing, and 23% pay more than 50%. Amongst owners, 27% pay more than 30%. (City of Toronto, Official Plan Amendment on Updating the Definition of Affordable Rental and Ownership Housing Report, 15 October 2021). Only 44% of renting households can afford to rent a newly built bachelor unit at current prices. They certainly can't afford to buy. (City of Toronto, Inclusionary Zoning Assessment Report, August 2021).

The Bill's 80% even conflicts with the Government's own Provincial Policy Statement, which bases affordability on 30% of gross income. CMHC's and Toronto's definition of affordable housing is 30% of household income or a reasonable ability to pay based on percentiles of median income. This represents years of research and consultation. A group of developers is currently challenging the City policy on this matter by appealing to the Ontario Land Tribunal. Not surprisingly, the developers are asking for a return to the definition of median market rents or prices of properties sold, which has been proven to be unaffordable for many Torontonians. The Province's 80% definition may give developers hope that

they can rent and sell 'affordable housing' at a reasonable discount, but it won't be to the people who really need it.

Non-profit and co-op housing developments designated under the Inclusionary Zoning (IZ) provisions in the very few so-called "Protected Mass Transit Station Areas (PMTSAs)" are also exempt from DCs, CBCs and PDs. But, without government support, how many will be built? Why not have IZs in all the over 180 MTSAs in Toronto? And why limit affordable housing in these areas to only 5%? Toronto has proposed 15%. Is 5% based on the assumption that only 5% of the population is in need of affordable housing? Because in Toronto, it is more like 24%.

The Schedule also reduces charges for purpose-built rentals with deeper discounts for larger units. In addition, it will freeze charges and narrow the list of capital costs that are included in the calculation of charges. In some cases, it reverses increases in charges already approved and budgeted for by municipalities. Where is the compensation from the Province for this significant reduction in revenues for municipalities, which still have to provide infrastructure and services?

Services will either be cut or property taxes will have to be raised. *This is taxation without representation!* Other provisions will have a further impact on municipalities. Development charge increases can no longer be based on a 10-year average but, rather, a 15-year average, which would include the 2008 recession; hence revenue from DCs will be reduced universally. Delayed payments will also be permitted, with cities only able to ask for 80% of the charge in year one and 5% in the following five years, for a total of 100%. Interest rates on outstanding fees are limited to prime plus 1%. And 60% of the municipal reserves for roads, water, sewage and waste removal have to be spent every year. The City won't be able to reserve for expected future developments or big projects like parks.

Parkland designations (PDs) in higher density residential developments will be reduced by 50%. PDs will be capped at 10% of the land or land value for fewer than five hectares, and at 15% over that. PDs will now need to be calculated as early as possible, not when development is underway and land values have increased. The City of Toronto is already starved of parkland. Its 2022 Official Plan proposes a fairer system of PD calculation, which will now be scrapped. We can expect more 80-storey towers in concrete deserts, which will then become our future slums.

Recommendations:

1) Redefine affordable housing according to residents' ability to pay – 30% of gross family income.
2) Increase the number of Inclusionary Zoning areas and the required percentage of affordable housing in them.
3) Commit to financially support affordable and social housing for lower-to-middle income Torontonians.
4) Designate that affordable housing units remain so for the life of the building. With current building standards, that should be about 50 years.
5) Create a housing corporation to fund and build more rental housing.
6) Compensate cities for loss of revenue from reduced or eliminated DCs, CBCs and PDs. In Toronto, this loss will reduce annual revenues by an estimated $200 million per year. These costs will be downloaded on top of Toronto's current shortfall of over $800 million.

7) Extend rent controls to newly constructed buildings and have rental controls carry over to new tenants. Empirical studies continue to prove that rent controls do not discourage development. (**Barron's Weekly**, J.W.Mason, 4 November 2022)
8) Tax all vacant dwellings, lots, and land zoned for redevelopment but not developed because the developer is "waiting" for more profitable times. Housing developments are already being put on hold and fewer homes are being built because of high interest rates, the rising costs related to construction and falling prices, especially for condos.
9) Develop mixed-income, complete communities like Toronto's St. Lawrence Market Neighbourhood. This should serve as one of Ontario's models for development.

Schedule 4: The Municipal Act
Like the City of Toronto Act, the Municipal Act imposes conditions and limitations on rental replacement bylaws for all municipalities in Ontario.

Rental replacement bylaws ensure that when rental apartments are demolished to make way for new development, the tenants are entitled to a replacement unit there of roughly the same size, type, and at the same rent as before, as well as temporary accommodation in the interim. Schedule 4 will toss them out on the open market and reduce the amount of affordable housing.

Recommendation:
Delete Ministerial limitations and conditions on municipal rental replacement bylaws.

Schedule 6: The Ontario Heritage Act

Heritage properties are preserved for their historic, cultural, aesthetic and ecological value. They are currently registered or 'listed' to preserve them until they can be designated. With Schedule 6, city clerks must ensure that information on listed properties is accessible to the public on city websites, including the criteria for listing and designating. Owners of all listed properties would have the right to file a notice of objection. All registered properties will have to be unlisted after two years, unless owners are notified before then that the listed properties will be designated. After the Bill comes into force, municipal councils must designate properties within two years, or the properties will be removed from the registry. In Toronto, this will have to be done for over 4,000 properties within two years. If a property is removed, it cannot be re-designated for five years. And then properties must be listed again before being designated.

Qualifying for designated heritage status has been made harder: Two criteria will now be required instead of only one. Modest buildings important to Indigenous, Black, LGBTQ2S+ and other minorities will, unless designated, be stripped of heritage protection. When a heritage building is threatened with demolition, cities now will have only 30 days, rather than 60, to designate a building – not enough time for city councils to even meet.

The Minister can review and set heritage standards and guidelines for provincially owned or occupied properties. With its majority, the Government can also legislate the exemption of any property from a heritage designation if it advances provincial priorities – i.e., transit, housing, health, long-term care, important infrastructure, and other things that may be prioritized. Future projects similar to the Dominion Foundry will no longer be protected. Who knows what will happen with Osgoode Hall and its gardens?

The Minister can also prescribe criteria for 'heritage conservation areas' and remove designations of those areas already in place, like downtown Toronto's Queen Street.

Given the very short deadline to designate or abandon heritage properties, as well as the Ministerial and Lt-Governor-in-Council powers assigned by Schedule 6 to remove designations, many of Toronto's important and famous landmarks will be put in danger or lost forever unless changes are made.

Recommendations:

1) The Province must either assume legal and moral responsibility for the potential historical and cultural damage that may result from Schedule 6 or delete its risk-increasing provisions.
2) If the risky provisions remain:
    a) consultation with the Toronto Preservation Board should be required if and when a property is to be removed from the registry and,
    b) at the very least, Toronto must be given four or five years to process its entire backlogged list. Many other municipalities are probably in a similar position.

Schedule 9: The Planning Act

Upper-tier municipalities will no longer have control of land-use planning, but they will still have to provide the infrastructure to serve the developments now approved by lower-tier municipalities that are more susceptible to development pressures. This will lead to urban sprawl over farms and wetlands.

Amendments to the Planning Act would allow the Government to directly impose sprawl on municipalities like Hamilton and Guelph, without any opportunity for them to accommodate housing and workplaces in their own way. Bill 23 will eliminate coordinated regional planning in the Golden Horseshoe, where the upper-tier municipalities have been co-operating to prevent the squandering of farmland and wildlife habitat, patchwork sprawl, wasted resources and inefficient infrastructure. Lower-tier municipalities lack experienced land-use planning staff and the funds to appeal. They can be easily pressured to expand settlement boundaries into farmland and natural habitat, or sites where they can never be serviced effectively.

The Bill promotes "gentle density" rather than a comprehensive "Expansion of Housing Options in Neighbourhoods," as Toronto would have it. Does this mean that Toronto will have to abandon its plans? The Bill simply gives "as-of-right" to three units of housing on every residential property with no right to appeal. The Minister can prescribe the standards for these units. The existing zoning related to heights and floor areas will still apply, but municipalities cannot specify minimum floor space for the

extra units. How small could they go? This is not a well-thought-out plan and ignores its own Task Force's recommendations, as well as the City of Toronto's excellent densification policies and plans.

Now, only "specified persons" like utilities, railways, indigenous organizations, etc., will be able to appeal official plans, zoning bylaws, minor variances, subdivisions, etc. Community associations and RAs will no longer have any right to appeal bad developments.

Gowling's law firm, which specializes in development issues, suspects this will result in municipalities turning down more applications to support their constituents, hence slowing down projects. Why prevent local RAs from working with developers to improve their developments, and integrate them into their neighbourhoods?

Projects can only benefit from cooperation between all the players. If RAs are willing to raise funds to challenge deep-pocketed developers at the OLT, they should be allowed to do so without being driven into bankruptcy. If Bill 23 takes away appeals, site plan controls, and municipalities' influence on the exterior of buildings, developers will be free to do anything they want. They won't have to listen to anyone.

Bill 23 not only limits those who can appeal to the OLT; the tribunal reserves the right to assign costs to an unsuccessful party, which will only serve to intimidate municipalities and "specified persons" that consider challenging a development, no matter how egregious.

Ministers always had the right to approve official plans, but now they can directly amend official plans (OPs) – at any time – if they believe the OP is likely to adversely affect a matter of provincial interest. Again, Schedule 9 exempts many properties from DCs, CBCs and PDs, without any compensation for municipalities.

Bill 23 will remove the authority of the Toronto Green Standard, which has guided development in the City towards a greener, more sustainable future. By narrowing the Standard's application, especially removing the City's ability to affect the exterior and landscaping of developments, the Bill may make it impossible for the City of Toronto to meet its building emissions targets, compromising its plans to deal with climate change.

Recommendations:

1) Restore upper-tier municipalities' rights to land-use planning.
2) Allow municipalities to determine how they will meet the provincial housing targets within strict but realistic deadlines.
3) Allow municipalities more flexibility in how to implement the Province's "gentle density" strategy.
4) Restore the rights of third parties to appeal to the OLT, but reform the process to moderate third-party participation by using education, pre-hearing mediation, higher but not prohibitive fees, and establish set costs for delays and lost appeals.

5) Create clearer planning ground rules to educate residents groups about the Government's development goals.

Conclusions

Why is this faulty and dangerous legislation being rushed through, before the newly elected municipal councils even get a chance to meet for the first time? Why are no hearings scheduled outside the GTA? Why has such a massive Bill been allotted only two days of hearings? In preparing Bill 23, were only developers and pro-development factions consulted?

And what is the justification for Bill 23's sacrificing of heritage and the environment, for neutering the Conservation Authorities, for forcing cities to pay to reduce developers' costs, for facilitating more tall buildings in cities and sprawl in the countryside, for discouraging consultation and eliminating the appeal rights of citizens that have existed for over 70 years? The justification is the need to build 1.5 million homes in the next ten years. This is a faulty assumption made by the Province's own developer-led Housing Affordability Task Force.

The Task Force itself admitted that 250,000 new homes and apartments that were approved in 2019 or earlier have still not been built, and that the GTHA already has enough land designated for development within existing city boundaries to last for the next 30 years. According to the 2021 Census, in the last 30 years, the number of occupied dwellings in the province has consistently exceeded population growth. The City of Ottawa has determined that the Task Force's estimation of its need for future dwellings exceeds their estimates by 70%.

Even if the need for housing is exaggerated, FoSTRA does not believe that more "homes" for everyone will be built faster with Bill 23. It may mean more housing for the affluent or for investors, but it won't be affordable for most Torontonians. Ministerial authority has been enhanced throughout the Bill, giving the sitting provincial government the final say on development policy and practice. Developers are being set free to build whatever, wherever and whenever they wish. If changes are not made, Bill 23 may lead either to tracks of zoned but undeveloped land or, alternatively, runaway development, an escalation of homelessness, environmental degradation, inadequate parkland, poorer infrastructure, faulty services, less sustainability, and poorer built forms.

Positive initiatives do exist in Bill 23, but they do not go nearly far enough, and will NOT lead to housing affordability for all – unless backed financially by the Ontario government. The Province should be supporting healthy, safe, and sustainable cities where people want to live. It should not attempt to make housing more 'affordable' on the backs of municipalities, which will be forced to raise property taxes or cut services. Rather than leave it to the speculators and developers, whose only motive is profit, the Province must establish a government-supported base for truly affordable housing. Only then will housing affordability for everyone become a realistic and achievable outcome.

> "Government support—whether through direct ownership or subsidies—is critical for affordable housing, which markets won't deliver even with relaxed land-use rules. But government's role needn't be limited to the low-income segment. The public sector, with its long-time horizons, low borrowing costs, and ability to internalize externalities, has major advantages in building and financing middle-class housing as well… Rent control won't boost the supply of housing. But it can limit the rise in prices until new supply comes on-line." (**Barron's**, 4 November 2022)

FoSTRA requests that the Committee consider our questions, comments, and recommendations to improve Bill 23.