Canadian Environmental Law Association
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Dear Mr. Helfinger and Mr. Petersen:

RE: ENVIRONMENTAL REGISTRY NO. 013-4293 (*Restoring Ontario's Competitiveness Act, 2018*)
ENVIRONMENTAL REGISTRY NO. 013-4125 (Proposed Open-for-Business Planning Tool)
ENVIRONMENTAL REGISTRY NO. 013-4239 (New Regulation under the *Planning Act* for Open-for-Business Planning Tool)

On behalf of the Canadian Environmental Law Association (CELA), we are writing to provide comments on Schedule 10 of Bill 66 (*Restoring Ontario's Competitiveness Act, 2018*). These comments are being sent to you in accordance with the above-noted Registry notices.

For the reasons outlined below, CELA is gravely concerned by, and strongly opposed to, Schedule 10 of Bill 66 in its entirety.

In our view, there is no persuasive legal, jurisdictional or environmental rationale for revising the *Planning Act* in the manner proposed by Schedule 10 of Bill 66. In addition, CELA concludes that exempting open-for-business planning by-laws from important procedural and substantive protections under the *Planning Act* and other key provincial laws is wholly unnecessary, contrary to the public interest, and potentially threatens the environment and public health.

Accordingly, CELA recommends that Schedule 10 be wholly deleted from Bill 66 at the earliest opportunity in the forthcoming legislative process. Since Schedule 10 is fundamentally flawed, it cannot be salvaged or tweaked through piecemeal amendments which leave this "planning tool" intact and available for use by Ontario municipalities.

PART I – BACKGROUND

(a) CELA's Involvement in Drinking Water Safety and Land Use Planning

CELA is a non-profit public interest group established in 1970 to use and improve laws to protect the environment and ensure public health and safety. CELA represents low-income individuals and vulnerable communities in the courts and before administrative tribunals on a wide variety of environmental issues.

Since its inception, CELA has advocated the development of effective laws, regulations and policies to protect the quality and quantity of groundwater and surface water resources. For example, CELA represented the Concerned Walkerton Citizens at the Walkerton Inquiry, and was actively involved in the development of the *Safe Drinking Water Act, 2002*, the *Clean Water Act, 2006* (*CWA*), and regulations, policies, and technical rules thereunder.[1]

In addition, CELA's casework, law reform and public outreach activities have addressed land use planning matters throughout Ontario. For example, CELA lawyers represent clients involved in appeals under the *Planning Act* in relation to official plans, zoning by-laws, subdivision plans and other planning instruments.

Similarly, CELA participates in broader provincial planning initiatives, such as the periodic updates of the Provincial Policy Statement (PPS) issued under the *Planning Act*, and public consultations on provincial land use plans (e.g. Oak Ridges Moraine Conservation Plan, Greenbelt Plan, and Growth Plan for the Greater Golden Horseshoe).[2]

On the basis of our decades-long experience in drinking water safety and land use planning matters, CELA has carefully considered Schedule 10 of Bill 66 from the public interest perspective of our client communities. For the reasons outlined below in Part III of this submission, CELA's overall conclusion is that Schedule 10 should be deleted from Bill 66.

(b) The Unmeritorious "Red Tape" Rationale for Bill 66

Bill 66 was introduced for First Reading in the Ontario Legislature on December 6, 2018. When tabling the proposed legislation, the Minister of Economic Development, Job Creation and Trade indicated that Bill 66 was aimed at eliminating "red tape" and "burdensome regulations" in order to promote business growth and create employment:

> The legislation will, if passed, eliminate red tape and burdensome regulations so businesses can grow, create and protect good jobs for the people of Ontario. The amendments in the legislation will cut business costs, harmonize regulatory requirements with other

[1] CELA's briefs, submissions and backgrounders on drinking water safety in Ontario are available online: http://www.cela.ca/collections/water/safe-drinking-water-act and http://www.cela.ca/collections/water/source-water-protection.

[2] CELA's briefs, submissions and backgrounders on land use planning in Ontario are available online: http://www.cela.ca/collections/land/land-use-planning-ontario.

> jurisdictions, end duplication and reduce barriers to investment. It will create much-needed child care spaces in Ontario and drive down the cost of building important infrastructure in communities right across Ontario.[3]

This rationale has been repeatedly utilized by various ministries when attempting to explain the intended purpose of Bill 66.[4] Similarly, the current Minister of Education has previously opined that the drinking water regulations arising from the Walkerton Tragedy are "excessive" red tape.[5]

However, by any objective standard, the provincial laws, policies or plans excluded by Schedule 10 are neither "red tape" nor "burdensome regulations." To the contrary, the legislative framework being ousted by Schedule 10 was carefully developed by the province with considerable input from Ontarians, non-government organizations and other stakeholders. In addition, the various components of this framework have been in place for years (and, in some cases, decades) in order to safeguard public and private interests throughout Ontario.

In these circumstances, CELA submits that it is erroneous (if not misleading) for the Ontario government to now characterize its own provincial framework as mere "red tape" that unduly constrains economic development. Accordingly, we conclude that there is no merit to the underlying rationale being put forward by supporters of Bill 66.

PART II – OVERVIEW OF SCHEDULE 10 OF BILL 66

In general terms, Schedule 10 of Bill 66 proposes to amend the *Planning Act* by adding a new section 34.1 that:

- empowers municipalities to request provincial approval to pass "open-for-business planning by-laws" aimed at attracting major new development in order to create employment;

- excludes these by-laws from *Planning Act* requirements regarding public notice, comment and appeal; and

- exempts these by-laws from environmental protections and land use controls established under other provincial laws, plans and policies.

For example, Schedule 10 expressly states that section 39 of the *Clean Water Act, 2006* (*CWA*) does not apply to an open-for-business planning by-law. This key section of the *CWA* generally

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[3] https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2018-12-06/hansard#P541_79561.

[4] https://news.ontario.ca/medg/en/2018/12/ontarios-government-for-the-people-cutting-red-tape-to-help-create-jobs.html. See also https://news.ontario.ca/medg/en/2018/12/proposed-changes-to-create-jobs-and-reduce-regulatory-burden-in-specific-sectors.html.

[5] https://www.thestar.com/news/queenspark/2014/03/11/walkerton_water_tragedy_resulted_in_too_much_red_tape_says_tory_mpp_lisa_thompson.html.

requires provincial and municipal decisions to conform to policies in *CWA*-approved source protection plans that address significant drinking water threats.

Similarly, Schedule 10 provides that open-for-business by-laws do not have to comply with the protective policies in the PPS issued in 2014 under the *Planning Act*. Other important provisions in the *Planning Act* (e.g. official plan compliance, site plan control, holding by-laws, height/density bonusing, etc.) will not apply to open-for-business planning by-laws.

In addition, Schedule 10 stipulates that open-for-business by-laws do not have to comply with the operative provisions of the following statutes:

- *Great Lakes Protection Act, 2015;*
- *Greenbelt Act, 2005;*
- *Lake Simcoe Protection Act, 2008;*
- *Metrolinx Act, 2006;*
- *Oak Ridges Moraine Conservation Act, 2001;*
- *Ontario Planning and Development Act, 1994;*
- *Places to Grow Act, 2005;*
- *Resource Recovery and Circular Economy Act, 2016*; and
- any other prescribed provision in provincial legislation.[6]

The full text of all statutory provisions that will not apply to open-for-business planning by-laws is set out in CELA's annotated chart of the Schedule 10 exemptions, which is attached below as Appendix A.

It should be noted that the Schedule 10 amendments apply to <u>every</u> municipality in Ontario, not just those located in areas covered by the Oak Ridges Moraine Conservation Plan, Greenbelt Plan, or Growth Plan for the Greater Golden Horseshoe.

At the same time, CELA acknowledges that under Bill 66, it is optional – not mandatory – for a municipality to pass an open-for-business planning by-law. However, in the event that a municipality elects to do so and receives Ministerial approval to proceed with such a by-law, then the above-noted exemptions and exclusions (and truncated "planning" process) established in Schedule 10 are applicable.

[6] If Bill 66 is enacted, this open-ended basket clause permits the Ontario government to prescribe additional provincial or municipal laws, policies or plans that will not apply to open-for-business planning by-laws.

In summary, Schedule 10 of Bill 66 creates a streamlined process for passing municipal open-for-business planning by-laws in a manner that is not transparent, accountable, or participatory in nature. Moreover, Schedule 10 permits such by-laws to evade or sidestep the substantive protections that currently exist in law to safeguard residents, communities, agricultural lands and natural heritage features and functions across the province.

CELA's unresolved concerns about these and other problematic aspects of Schedule 10 of Bill 66 are discussed below.

PART III – CELA COMMENTS ON SCHEDULE 10 OF BILL 66

(a) No Demonstrable Need for Schedule 10

In principle, CELA is firmly opposed to Schedule 10's attempt to oust the application of critically important provincial laws, policies and plans on the ostensible grounds that open-for-business planning by-laws are needed in order to facilitate industrial development in Ontario.

On the question of the alleged "need" for such by-laws, CELA notes that the Ontario government has not presented any credible information, studies or analyses demonstrating that laws such as the *CWA*, *Greenbelt Act, 2005* or *Lake Simcoe Protection Act 2008* are inhibiting job creation. In addition, the Ontario government has failed to demonstrate that these statutes are preventing municipalities from establishing employment lands within their geographic boundaries.

Similarly, the Ontario government has not explained why the existing Ministerial zoning powers under section 47 of the *Planning Act* can no longer be used to attract and approve major new development. On this point, CELA notes that a number of municipalities have also questioned the alleged need for Schedule 10 of Bill 66 in light of the Minister's wide-ranging zoning powers.

In recent decades, Ministerial zoning orders have been issued to approve certain large-scale projects, and Schedule 10 leaves section 47 of *Planning Act* unchanged. Thus, it is beyond dispute that the Minister already has ample authority to issue orders that achieve the same stated purpose of open-for-business planning by-laws. In our view, it is unnecessary and duplicative to create a substantially similar "planning tool" at the local level under Schedule 10 of Bill 66.

In light of the foregoing factors, CELA concludes that there is no compelling evidence-based justification for the Schedule 10 "reforms" of the *Planning Act*.

(b) Inappropriate Exclusion of Section 39 of the CWA

One of the most alarming proposals in Schedule 10 is the ill-advised proposal that open-for-business planning by-laws do not have to conform to significant threat policies in source protection plans that have been approved under the *CWA*.

To our knowledge, after the first generation of drinking water source protection plans were approved under the *CWA* in 2015, there have been no Ministerial zoning orders that approve

industrial development at locations that are contrary to significant threat policies in these plans. This is because section 39 of the *CWA* legally (and correctly) prevents the issuance of *Planning Act* decisions which do not conform to significant threat policies in source protection plans, as discussed below. Accordingly, it is both unprecedented and unacceptable for Schedule 10 to now purport to exempt open-for-business planning by-laws from section 39 of the *CWA*.

The overall purpose of the *CWA* is to protect existing and future sources of drinking water against drinking water threats. To achieve this purpose, section 39 of the *CWA* provides that:

- municipal, provincial and tribunal decisions under the *Planning Act* "shall conform with" policies contained in source protection plans that prevent or stop activities that constitute significant drinking water threats, or that are designated Great Lakes policies;

- municipal, provincial and tribunal decisions under the *Planning Act* must "have regard to" other policies in source protection plans;

- in cases of conflict, the significant threat policies and designated Great Lakes policies in source protection plans prevail over official plans, by-laws, and provincial plans or policies;

- within source protection areas, no municipality or municipal planning authority shall undertake any public work, structural development or other undertaking that conflicts with a significant threat policy or designated Great Lakes policy in source protection plans;

- no municipality or municipal planning authority shall pass a by-law for any purpose that conflicts with significant threat policies or designated Great Lakes policies in source protection plans; and

- provincial decisions to issue "prescribed instruments" (e.g. environmental licences, permits or approvals) must conform with significant threat policies and designated Great Lakes policies in source protection plans, and must have regard to other policies in source protection plans.

The public interest justification, chronological evolution and current implementation of section 39 of the *CWA* is described in more detail in CELA's legal analysis attached below as Appendix B to this submission.

In summary, the requirements of section 39 of the *CWA* give overarching primacy and binding legal effect to source protection plans in relation to activities that constitute significant drinking water threats, as had been recommended by the Walkerton Inquiry and three provincial advisory committees.

To date, 38 source protection plans across Ontario have been approved under the *CWA* by the Environment Ministry, and the Environmental Commissioner of Ontario has recently concluded

that these plans are working well to protect groundwater and surface water resources that supply municipal drinking water systems.[7]

If enacted, however, Schedule 10 enables municipalities to pass open-for-business planning by-laws to approve large-scale projects that are contrary to source protection plan policies regarding significant threats to communities' drinking water supplies.

For example, open-for-business planning by-laws could be used to allow massive industrial projects to be constructed and operated in wellhead protection areas or surface water intake protection zones delineated by source protection plans, even if activities or facilities associated with the project (e.g. high-volume water-takings, on-site sewage works, waste disposal site, or the handling or storage of solvents, fuel, dense non-aqueous phase liquid, etc.) may constitute significant drinking water threats.

CELA submits that source protection plans under the *CWA* are not "red tape," and that significant threat policies in such plans should not be overridden by open-for-business planning by-laws. For this reason alone, Schedule 10 of Bill 66 should be deleted in order to safeguard the health and safety of the people of Ontario.

In addition, given that *CWA*-designated intake protection zones and wellhead protection areas only cover a very small percentage of the Ontario landscape, CELA sees no reason why new employment uses cannot be situated on serviced lands outside of these vulnerable areas.

(c) Improper Avoidance of Provincial Land Use Policies

Schedule 10 of Bill 66 inexplicably proposes that open-for-business planning by-laws should be exempted from the current province-wide legal requirement that all *Planning Act* decisions "shall be consistent" with the protective policies in the current PPS.[8]

In particular, the 2014 version of the PPS contains a number of provincial policies aimed at ensuring safe, healthy and liveable communities, preserving the agricultural land base, and protecting natural heritage features and functions. For example, the PPS stipulates that all *Planning Act* decisions must:

- avoid development and land use patterns which may cause environmental or public health and safety concerns;

- ensure that water services are provided in a manner that can be sustained on water resources on which they depend, and that complies with all regulatory requirements and protects public health and safety;

[7] https://docs.assets.eco.on.ca/reports/environmental-protection/2018/Back-to-Basics-Volume2-Ch1.pdf.
[8] *Planning Act*, subsection 3(5).

- protect, improve or restore the quality and quantity of surface water and groundwater resources;

- implement necessary restrictions on development and site alteration in order to protect all municipal drinking water supplies and designated vulnerable areas;

- restrict development and site alteration in or near sensitive surface water features and sensitive groundwater features such that these features and their related hydrologic function will be protected, improved or restored; and

- protect prime agricultural areas and specialty crop areas for long-term use.[9]

In addition, the PPS expressly directs municipalities to "promote economic development and competitiveness" by various means, including planning for, protecting and preserving "employment areas" for current and future uses.[10]

Accordingly, it appears to CELA that the job creation objective of Schedule 10 is already effectively addressed – and legally mandatory – under the *Planning Act*. Moreover, the Ontario government has presented no evidence demonstrating that municipalities are not satisfactorily discharging their PPS duty to identify and protect employment lands.

Given that the above-noted PPS policies are designed to safeguard important provincial interests, including the protection of water quality and quantity, it is unclear, from a public interest perspective, why Schedule 10 of Bill 66 now proposes to expressly exempt open-for-business planning by-laws from being consistent with the PPS. Simply put, the PPS is not "red tape," and all municipal and provincial decision-makers under the *Planning Act* must remain legally bound to comply with PPS policies.

(d) Patchwork Exemptions from Provincial Land Use Plans

Schedule 10 proposes that open-for-business planning by-laws do not have to comply with the legal requirements specified in provincial land use plans under *Greenbelt Act, 2005*, *Oak Ridges Moraine Conservation Act, 2001*, *Places to Grow Act, 2005* and other legislation.

All of these important higher-order plans were established by Ontario over a decade ago, and they contain purposes, policies, provisions and mapping intended to guide urban growth and development, protect the natural environment, preserve agricultural lands, and safeguard other provincial interests.

For example, the nature, scope and overall purpose of the Greenbelt Plan has focused on permanent protection of the ecologically significant resources and agricultural lands covered by the Plan:

[9] PPS, Policies 1.1, 1.6.6, 2.2 and 2.3.
[10] *Ibid*, Policy 1.3.

> The Greenbelt was introduced in 2005 to help shape the future of this region. The Greenbelt is the cornerstone of Ontario's Greater Golden Horseshoe Growth Plan (Growth Plan) which is an overarching strategy that provides clarity and certainty about urban structure, where and how future growth should be accommodated and what must be protected for current and future generations.
>
> The Greenbelt Plan, together with the ORMCP and the NEP, identifies where urbanization should not occur in order to provide permanent protection to the agricultural land base and the ecological and hydrological features, areas and functions occurring on this landscape.
>
> The Greenbelt Plan includes lands within, and builds upon the ecological protections provided by, the Niagara Escarpment Plan (NEP) and the Oak Ridges Moraine Conservation Plan (ORMCP)…
>
> The Greenbelt is a broad band of permanently protected land which:
>
> - protects against the loss and fragmentation of the agricultural land base and supports agriculture as the predominant land use;
>
> - gives permanent protection to the natural heritage and water resource systems that sustain ecological and human health and that form the environmental framework around which major urbanization in south-central Ontario will be organized;
>
> - provides for a diverse range of economic and social activities associated with rural communities, agriculture, tourism, recreation and resource uses; and
>
> - builds resilience to and mitigates climate change (emphasis added).[11]

In CELA's view, open-for-business planning by-laws that allow large-scale industrial development to be superimposed on "permanently protected" Greenbelt lands is clearly inconsistent with these stated provincial objectives.

In addition, by permitting open-for-business planning by-laws to trump the Greenbelt Plan or other provincial land use plans, Schedule 10 essentially creates an "opt-out" model that allows individual developments to sidestep the application of these plans on a lot-by-lot basis. Thus, the passage of open-for-business planning by-laws will likely result in an uneven and inconsistent patchwork of lands that are covered by provincial plans but are not actually subject to the protective policies within these plans.

In short, Schedule 10 effectively invites proponents to acquire properties in protective designations or zoned for non-industrial uses, and to then negotiate with municipal officials to pass open-for-business by-laws that remove or exclude applicable local, regional or provincial land use constraints.

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[11] Greenbelt Plan (2017), sections 1.1 and 1.2.1.

In our view, this skewed approach (or "let's make a deal" mindset) does not constitute good land use planning, particularly where provincial interests are at stake. To the contrary, the wholesale exemption from provincial plans under Schedule 10 is the antithesis of sound and sustainable planning.

In response to such concerns, the Ontario government has claimed that it still intends to safeguard the Greenbelt, Oak Ridges Moraine, and other lands subject to provincial plans. However, such assurances ring hollow since Schedule 10 does not establish a specific test for Ministerial approval of an open-for-business planning by-law. In addition, Schedule 10 gives the Minister virtually unfettered discretion to impose – or not impose – protective conditions when approving a municipal request to pass an open-for-business by-law, as discussed below.

Therefore, if the Ontario government truly intends to uphold the long-term protection of all areas currently covered by provincial land use plans, then the sweeping exemptions from these statutory plans cannot be justified and must be withdrawn from Schedule 10.

(e) Lack of Meaningful Public Participation in Decision-Making

Schedule 10 proposes that open-for-business planning by-laws will not be subject to any notice, comment or hearing requirements under the *Planning Act* prior to the passage of such by-laws. Thus, adjoining landowners, neighbouring municipalities and other stakeholders will have no say in whether the by-law should be passed at all, or what conditions should be imposed on the new major development in order to protect the environment and public health.

After the by-law is passed, municipalities are obliged to promptly notify the Minister, and to provide notice to any persons or public bodies that municipalities "consider proper" to receive notice after-the-fact. However, an open-for-business planning by-law cannot be appealed by interested persons to the Local Planning Appeal Tribunal (LPAT), which traditionally adjudicates various land use disputes under the *Planning Act*.

CELA strongly objects to Schedule 10's wholesale exclusion of the public from any meaningful role in the process for developing and approving open-for-business planning by-laws. As a matter of fairness, persons interested in, or potentially affected by, major industrial development proposed under an open-for-business planning by-law should receive reasonable notice and comment opportunities prior to the passage of the by-law.

Moreover, it is well-documented that public participation in land use planning helps strengthen the credibility, integrity and soundness of municipal decision-making. This is because the public can present relevant information, opinions and perspectives that differ from those being advanced by the developer. In turn, the receipt of public input will provide municipalities with an informed basis for deciding whether or not an open-for-business by-law should be passed.

Accordingly, the current public participation requirements under the *Planning Act* are not "red tape," as apparently suggested by the Ontario government when promoting Bill 66. To the contrary, meaningful public participation is the *sine qua non* of good land use planning.

CELA also objects to Schedule 10's failure to include an LPAT appeal right in relation to open-for-business planning by-laws. The LPAT (formerly known as the Ontario Municipal Board) has long been recognized as an important "safety valve" within the province's land use planning system, and *Planning Act* appeals help ensure transparency and accountability in municipal decision-making.

We therefore see no compelling justification for Schedule 10's attempt to exclude open-for-business planning by-laws from current *Planning Act* appeal rights. This is particularly true since the LPAT process itself has been recently streamlined to make appeals more focused, timely and efficient.

In addition, we fully anticipate that an unintended consequence of excluding public appeal rights under Schedule 10 will be an increase in the use of the courts by persons concerned about, or aggrieved by, industrial development authorized under the auspices of an open-for-business planning by-law. Without recourse to the LPAT, more civil litigation proceedings (e.g. actions or judicial review applications) seem likely (if not inevitable) if Schedule 10 is enacted.

(f) Regulatory Uncertainty under Schedule 10

Aside from the above-noted flaws within Schedule 10, CELA has identified a number of serious concerns about precisely how Schedule 10 will be interpreted and applied by provincial and municipal officials.

For example, the regulatory proposal that accompanies Schedule 10 suggests that open-for-business planning by-laws are intended to attract "new major employment uses," such as manufacturing plants or research/development facilities. The regulatory proposal also indicates that this planning tool cannot be used where residential, commercial or retail development is the "primary use."

However, until the actual regulation is promulgated by the provincial government, there is no certainty at the present time that the planning tool will indeed be restricted to industrial development, and there is no clarity on what permitted uses are allowed under the term "new major employment uses." Similarly, in the current absence of any implementing regulations, it is unclear whether – or to what extent – other forms of development will be permissible if they can be characterized as secondary (or ancillary) to the industrial land use.

On this point, we note that Schedule 10 enables municipalities to subsequently amend an open-for-business planning by-law through the passage of a regular zoning by-law under section 34 of the *Planning Act*. However, the nature, scope or extent of this amending power is not specified or limited in Schedule 10. Thus, it is uncertain whether this amending power can be used to change, expand or intensify the industrial land use approved under an open-for-business planning by-law.

Similarly, Schedule 10 does not indicate whether the zoning by-law can be used to allow additional land uses on the subject property (e.g. residential, commercial or retail) that were originally prohibited or restricted by the provincial laws, policies or plans ousted by Schedule 10. Thus,

CELA is mindful of potential "bait and switch" scenarios in which provincial or municipal land use controls are initially excluded by an open-for-business planning by-law, but if the proposed industrial development does not materialize or last long, then subsequent zoning by-laws may be passed to permit non-industrial land uses (e.g. subdivisions) on the same property. While these amending by-laws are presumably subject to the usual notice, comment and appeal provisions under the *Planning Act*, this kind of questionable zoning chronology is likely to result in more – not less – intense land use conflicts at the local level.

The Schedule 10 regulatory proposal further indicates that the municipality must file unspecified "evidence" demonstrating that the minimum job creation threshold for open-for-business planning by-laws will be satisfied (e.g. 50 jobs in smaller municipalities and 100 jobs in larger municipalities). However, there is a dearth of implementation detail that clearly explains what this job threshold entails, or what documentation is necessary to prove that this threshold will actually be met.

For example, does this job threshold mean full-time, part-time or casual employment? Does all of the employment have to occur on the subject-property, or can the developer count related jobs in its other corporate holdings? Is the job total restricted to the developer's own employees, or can the developer's estimates include predicted "spin-off" jobs in the community or in other municipalities, sectors or jurisdictions? Is there a binding deadline or timeframe in which the jobs must be created or maintained? Will the developer be required to post financial assurance, letters of credit or other forms of security to ensure fulfillment of its job creation commitments (or conditions imposed by the Minister)? Can the municipality designate large swaths of land for industrial development through an open-for-business planning by-law, and then shop it around to prospective developers? These and other unanswered questions leads CELA to conclude that many critical implementation details for the job creation threshold have not been fully worked out to date although Schedule 10 is now proceeding its way through the Ontario Legislature.

Finally, although open-for-business planning by-laws have to "involve the exercise of the municipality's powers under section 34" of the *Planning Act*, such by-laws are not, strictly speaking, zoning by-laws *per se*. Moreover, it appears that only "local municipalities" (e.g. single tier or lower-tier municipalities) can use this new planning tool. In CELA's view, this creates a recipe for considerable conflict between a local municipality wanting to pass an open-for-business by-law to allow industrial land use on a particular property, and an upper-tier municipality or regional government that prohibits or opposes the proposal for environmental and public health reasons. Similarly, we foresee intractable land use conflict where a local municipality wants to authorize a new industrial project that may impact the air, land or water in neighbouring local municipalities.

(g) No Effective or Enforceable Safeguards in Ministerial Approval Requirement

Schedule 10 proposes that a municipality cannot pass an open-for-business planning by-law unless it has requested and received written approval from the Minister of Municipal Affairs and Housing.

The only prerequisite in Schedule 10 for obtaining Ministerial approval is that the municipal request must be set out in a council resolution, and it must be accompanied by the "prescribed information." However, since draft regulations have not been made available for public review to date, it is unclear exactly what the "prescribed information" will entail.

Presumably, this Ministerial approval requirement is being relied upon by the Ontario government when it opines that the Greenbelt, drinking water safety and other provincial interests will not be impacted or jeopardized by open-for-business planning by-laws. For example, the Minister of Municipal Affairs and Housing has advised the Legislature that:

> We have been crystal clear in terms of saying to municipalities that have inquired that we will not put health and safety at risk. We will not put clean drinking water at risk. We will reject any request from a municipal government to put the greenbelt at risk. The Premier has made that commitment. The Minister of Environment, Conservation and Parks has made that commitment. I am making that commitment today. We will protect the greenbelt (emphasis added).[12]

Despite such claims, CELA concludes that the Ministerial approval requirement under Schedule 10 does not represent an effective or enforceable safeguard against inappropriate and risk-laden requests for open-for-business planning by-laws.

First, Schedule 10 fails to articulate any criteria, benchmarks or factors to consider when the Minister is deciding to approve a municipal request to pass an open-for-business planning by-law. This approach confers maximum flexibility and complete discretion upon the Minister, but does not provide any clarity, transparency or accountability on when the Minister will – or will not – approve open-for-business planning by-laws.

Second, when a municipality applies for Ministerial approval, Schedule 10 does not require the municipality to provide any notice to adjoining landowners, area residents, or neighbouring municipalities which may be impacted by transboundary effects arising from the proposed development that is the subject-matter of the municipal request. Similarly, the Minister is not required by Schedule 10 to provide notice to, or to solicit the views from, interested stakeholders (e.g. conservation authorities, source protection committees, members of the public, etc.) prior to making his/her approval decision. In light of this closed-door process, there is no certainty that the Minister will have an adequate evidentiary basis for making an informed decision on whether to approve a proposed open-for-business planning by-law.

Third, it is respectfully submitted that the Minister has no particular expertise in determining whether a proposed development will adversely affect the quality or quantity of groundwater or surface water, or potentially impact other ecological features and functions in the vicinity of the subject property. Given such concerns, it has been suggested by provincial officials that upon receipt of a municipal request, the Minister will consult with Ministry personnel as well as staff

[12] https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2018-12-20/hansard#P559_114863.

from other relevant ministries. However, CELA draws no comfort from this suggestion since inter-ministry consultation is not required as a matter of law under Schedule 10, and the Minister would still be free to reject the advice of technical staff in other Ministries in approving an open-for-business planning by-law.

Fourth, CELA acknowledges that the Minister "may" impose conditions on his/her approval of an open-for-business planning by-laws. It goes without saying that this provision is permissive rather than mandatory, and there is no guarantee that this open-ended discretion will be exercised adequately – or at all – by the Minister. Similarly, there is no appeal right under the *Planning Act* if the Minister refuses to impose any conditions at all or, alternatively, imposes conditions that are insufficient to safeguard provincial interests. The above-noted absence of an explicit approval test under Schedule 10 exacerbates CELA's concern that Ministerial conditions may not be used effectively in relation to industrial development contemplated by open-for-business planning by-laws.

Fifth, while the Minister may theoretically attach conditions to his/her approval of an open-for-business planning by-law, it is unlikely that these conditions will re-instate the application of significant threat policies from *CWA*-approved source protection plans (or the operative portions of provincial land use plans), especially since Schedule 10 expressly excludes the application of such policies and plans. Put another way, if it is open to the Minister, in his/her discretion, to re-impose some of the laws, policies and plans otherwise excluded by Schedule 10, then it is contrary to the public interest (and defies common sense) to exempt such matters in the first place under Bill 66.

Sixth, as a matter of statutory interpretation, it is our opinion that a municipality (or the Minister) is not free to "pick and choose" which exempted laws (if any) should be made applicable to the proposed by-law. While the Minister is generally empowered to impose "conditions," Bill 66 does not delegate to the Minister (or a municipality) any express legislative authority to exempt an open-for-business planning by-law from the numerous "non-application" provisions under Schedule 10.

For example, if an open-for-business planning by-law is passed but purports to require the proposed development to conform to significant threat policies in a source protection plan, then the proponent may seek judicial review on the grounds that the municipality and the Minister have acted unlawfully (or exceeded their jurisdiction) by requiring an exempted law, policy or plan to nevertheless apply to the development. Thus, it appears to CELA that any Ministerial attempt to carve out development-specific exceptions to the general exemptions under Schedule 10 seems unwieldy in law, unsupportable in policy, and unworkable in practice.

PART IV - CONCLUSIONS

For the foregoing reasons, CELA concludes that there is no legal justification or compelling public policy rationale for allowing open-for-business planning by-laws to bypass key *Planning Act* provisions, and to circumvent or override the provincial laws, policies and plans listed in Schedule 10 of Bill 66.

Accordingly, CELA maintains that Schedule 10 is a regressive, unwarranted and potentially risky proposal that is inconsistent with the public interest, and that does not adequately safeguard the health and safety of Ontarians.

In particular, CELA objects to Schedule 10's ill-conceived rollback of current legal requirements that were specifically enacted under the *CWA* to prevent a recurrence of the Walkerton Tragedy.

Accordingly, CELA strongly recommends that Schedule 10 be immediately abandoned or withdrawn by the Ontario government.

We trust that the above-noted concerns will be duly considered and acted upon by the Ontario government at its earliest opportunity. Please contact the undersigned if you have any questions arising from this submission.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Theresa A. McClenaghan
Executive Director and Counsel

Richard D. Lindgren
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cc. The Hon. Todd Smith, Minister of Economic Development, Job Creation and Trade
The Hon. Steve Clark, Minister of Municipal Affairs and Housing
The Hon. Rod Phillips, Minister of the Environment, Conservation and Parks
Dr. Dianne Saxe, Environmental Commissioner of Ontario

APPENDIX A

Annotated Excerpts – Schedule 10, Bill 66

An Act to restore Ontario's competitiveness by amending or repealing certain Acts

Version 1.0 - Subject to Revision
13 December 2018
Anastasia M Lintner and Theresa McClenaghan

OVERVIEW

Canadian Environmental Law Association has prepared this document to explain amendments to Ontario's *Planning Act* that are proposed in Schedule 10, Bill 66. If you have any questions or comments, please email Anastasia M Lintner (anastasia@cela.ca).

CELA's initial reaction to the introduction of Bill 66 "Deregulation Redux: Ontario's Environmental Laws under Attack (Again)" was posted on Dec 7, 2018.

The introduction of Bill 66 (particularly as relates to Schedule 10) was accompanied by three notices on the Environmental Registry of Ontario:

- Bill 66, Restoring Ontario's Competitiveness Act, 2018 (ERO Number 013-4293)
- Proposed open-for-business planning tool (ERO Number 013-4125)
- New Regulation under the Planning Act for open-for-business planning tool (ERO Number 013-4239)

The public comment period for all three notices runs until January 20, 2019.

Below, the Explanatory Note to Schedule 10, Bill 66 is reproduced without annotations. Then, the provisions (the proposed new section 34.1) in Schedule 10 are summarized. Finally, the "non-application of listed provisions" (proposed subsection 34.1(6)) are set out in a table that includes the specifics from the various impacted statutes and a plain language summary.

EXPLANATORY NOTE

[quoted directly from Bill 66 without annotation]

SCHEDULE 10
MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

Planning Act

The Schedule amends the *Planning Act* to add a new section 34.1, which allows local municipalities to pass open-for business planning by-laws. These by-laws involve the exercise of a municipality's powers under section 34 of the Act and allow municipalities to impose one or more specified conditions. A municipality may pass an open-for-business planning bylaw only if it has received approval to do so in writing by the Minister and if criteria as may be prescribed

are satisfied. Certain provisions of the Act and other Acts that would ordinarily apply to a by-law passed under section 34 do not apply to an open-for-business planning by-law.

SUMMARY OF PROPOSED SECTION 34.1

[CELA's brief description of the new provision to be added to the *Planning Act*, if Bill 66 passes]

The *Planning Act* is to be amended to add a new provision that enables a municipality to pass an "open-for-business planning by-law". The government's motivation is to create a "new economic development tool" that allows "municipalities to ensure that they can act quickly to attract businesses seeking development sites." (ERO Number 013-4125)

If Bill 66 is enacted, an open-for-business planning by-law will be an exercise of a municipality's zoning by-law powers. Before passing an open-for-business planning bylaw, the municipality must first seek the Minister of Municipal Affairs and Housing's approval, by way of a resolution and any "prescribed information". If the Minister gives the municipality approval in writing (with any conditions that the he or she "may provide"), the other prescribed criteria (if any) are met, and it only authorizes a "prescribed purpose" (related to the "use of land, buildings or structures"), then an open-for-business planning by-law can be passed. Anything "prescribed" must be set out in a regulation. The government has proposed that an accompanying regulation will require that a municipality seeking to make use of the open-for-business planning by-law (ERO Number 013-4239):

- provide "open-for-business information, including details about the proposed employment opportunity",
- demonstrate it will be for a "new major employment use" (minimum threshold of 50 jobs in municipalities with less than 250,000 population and 100 jobs for municipalities with more than 250,000 population), and
- identify the uses, which cannot have "residential, commercial or retail as the primary use".

No public notice or hearing is required prior to passing an open-for-business planning by-law. Once passed, an open-for-business planning by-law will come into force in 20 days (unless the Minister otherwise requires in writing a different, later date). Notice after the fact is required to given to the Minister (within 3 days after passing the open-for-business planning by-law) and "any persons or public bodies the municipality considers proper" and "in such manner as the municipality considers proper" (within 30 days of passing). A number of provisions within the *Planning Act* and other statutes will automatically not apply to an open-for-business planning by-law (see details in Table below). As well, there will be no site plan control application and no ability for appeal to the Local Planning Appeal Tribunal.

TABLE: NON-APPLICATION OF LISTED PROVISIONS
(Proposed subsection 34.1(6), Schedule 10, Bill 66)

[The first column names the specific legislation and associated provision(s) that will not apply to an open-for-business planning by-law. As well, the first column includes a plain language explanation of the specific provisions (currently and impact if Bill 66 passes as drafted). The second column reproduces the specific provisions from other legislation in full.]

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
Subsection 3 (5), Section 24, Subsections 34 (10.0.0.1) to (34), Section 36 and Section 37 of the *Planning Act* *Subsection 3(5) of the Planning Act requires that planning decisions shall be consistent with the Provincial Policy Statement (PPS). By not applying to an open-for-business planning by-law, for example, there would not need to be consistency with the policies that prohibit development in provincially significant wetlands. The PPS also contains policies related to (among other things) density, compatibility, affordable housing, active transportation, stormwater management and low impact development, green infrastructure, natural heritage and water features protection, climate resiliency, and natural or human-made hazards. All of these requirements of the PPS would no longer apply in an open for business by-law area.* *Section 24 of the Planning Act requires that public works and by-laws conform to the municipality's official plan. By not applying to an*	**<u>Subsection 3 (5)</u>** **Policy statements and provincial plans** (5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Tribunal, in respect of the exercise of any authority that affects a planning matter, (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. **<u>Section 24</u>** **Public works and by-laws to conform with plan** **24** (1) Despite any other general or special Act, where an official plan is in effect, no public work shall be undertaken and, except

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
open-for-business planning by-law, the community's interests as articulated in the requirements of the official plan can be ignored.	as provided in subsections (2) and (4), no by-law shall be passed for any purpose that does not conform therewith. **Pending amendments** (2) If a council or a planning board has adopted an amendment to an official plan, the council of any municipality or the planning board of any planning area to which the plan or any part of the plan applies may, before the amendment to the official plan comes into effect, pass a by-law that does not conform with the official plan but will conform with it if the amendment comes into effect. **Same** (2.1) A by-law referred to in subsection (2), (a) shall be conclusively deemed to have conformed with the official plan on and after the day the by-law was passed, if the amendment to the official plan comes into effect; and (b) is of no force and effect, if the amendment to the official plan does not come into effect. **Preliminary steps that may be taken where proposed public work would not conform with official plan** (3) Despite subsections (1) and (2), the council of a municipality may take into consideration the undertaking of a public work that does not conform with the official plan and for that purpose the council may apply for any approval that may be required for the work, carry out any investigations, obtain any reports or take other preliminary steps incidental to and reasonably necessary for the undertaking of the work, but nothing in this subsection authorizes the actual undertaking of any public work that does not conform with an official plan. **Deemed conformity** (4) If a by-law is passed under section 34 by the council of a municipality or a planning board in a planning area in which an official plan is in effect and, within the time limited for appeal no appeal is taken or an appeal is taken and the appeal is withdrawn or dismissed or the by-law is amended by the Tribunal or as directed by the Tribunal, the by-law shall be conclusively deemed to be in conformity with the official plan, except, if the by-law is passed in the circumstances mentioned in subsection (2), the by-law shall be conclusively deemed to be in conformity with the official plan on and after the day the by-law was passed, if the amendment to the official plan comes into effect.
Subsections 34 (10.0.0.1) to (34) of the Planning Act requires certain procedures, including public notice, consultation and opportunities to	**<u>Subsections 34 (10.0.0.1) to (34)</u>** Land Use Controls and Related Administration **Two-year period, no application for amendment** (10.0.0.1) If the council carries out the requirements of subsection 26 (9) by simultaneously repealing and replacing all

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
appeal to the Local Planning Appeal Tribunal, to be followed in order to amend a zoning by-law. By not applying to an open-for-business planning by-law, there will be no public engagement. In fact, Bill 66 expressly provides that no advance notice to the public of an open for business by-law is required.	the zoning by-laws in effect in the municipality, no person or public body shall submit an application for an amendment to any of the by-laws before the second anniversary of the day on which the council repeals and replaces them. **Exception** (10.0.0.2) Subsection (10.0.0.1) does not apply in respect of an application if the council has declared by resolution that such an application is permitted, which resolution may be made in respect of a specific application, a class of applications or in respect of such applications generally. **Consultation** (10.0.1) The council, (a) shall permit applicants to consult with the municipality before submitting applications to amend by-laws passed under this section; and (b) may, by by-law, require applicants to consult with the municipality as described in clause (a). **Prescribed information** (10.1) A person or public body that applies for an amendment to a by-law passed under this section or a predecessor of this section shall provide the prescribed information and material to the council. **Other information** (10.2) A council may require that a person or public body that applies for an amendment to a by-law passed under this section or a predecessor of this section provide any other information or material that the council considers it may need, but only if the official plan contains provisions relating to requirements under this subsection. **Refusal and timing** (10.3) Until the council has received the information and material required under subsections (10.1) and (10.2), if any, and any fee under section 69, (a) the council may refuse to accept or further consider the application for an amendment to the by-law; and (b) the time period referred to in subsection (11) does not begin. **Response re completeness of application** (10.4) Within 30 days after the person or public body that makes the application for an amendment to a by-law pays any fee under section 69, the council shall notify the person or public body that the information and material required under subsections (10.1) and (10.2), if any, have been provided, or that they have not been provided, as the case may be. **Motion re dispute**

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	(10.5) Within 30 days after a negative notice is given under subsection (10.4), the person or public body or the council may make a motion for directions to have the Tribunal determine, (a) whether the information and material have in fact been provided; or (b) whether a requirement made under subsection (10.2) is reasonable. **Same** (10.6) If the council does not give any notice under subsection (10.4), the person or public body may make a motion under subsection (10.5) at any time after the 30-day period described in subsection (10.4) has elapsed. **Notice of particulars and public access** (10.7) Within 15 days after the council gives an affirmative notice under subsection (10.4), or within 15 days after the Tribunal advises the clerk of its affirmative decision under subsection (10.5), as the case may be, the council shall, (a) give the prescribed persons and public bodies, in the prescribed manner, notice of the application for an amendment to a by-law, accompanied by the prescribed information; and (b) make the information and material provided under subsections (10.1) and (10.2) available to the public. **Final determination** (10.8) The Tribunal's determination under subsection (10.5) is not subject to appeal or review. **Notice of refusal** (10.9) When a council refuses an application to amend its by-law, it shall ensure that written notice of the refusal is given in the prescribed manner, no later than 15 days after the day of the refusal, (a) to the person or public body that made the application; (b) to each person and public body that filed a written request to be notified of a refusal; and (c) to any prescribed person or public body. . **Contents** (10.10) The notice under subsection (10.9) shall contain, (a) a brief explanation of the effect, if any, that the written and oral submissions mentioned in subsection (10.11) had on the decision; and (b) any other information that is prescribed. . **Written and oral submissions** (10.11) Clause (10.10) (a) applies to, (a) any written submissions relating to the application that were made to the council before its decision; and (b) any oral submissions relating to the application that were made at a public meeting.

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	Appeal to L.P.A.T. (11) Subject to subsection (11.0.0.0.1), where an application to the council for an amendment to a by-law passed under this section or a predecessor of this section is refused or the council fails to make a decision on it within 150 days after the receipt by the clerk of the application, any of the following may appeal to the Tribunal by filing with the clerk of the municipality a notice of appeal, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*: 1. The applicant. 2. The Minister. **Same, where amendment to official plan required** (11.0.0.0.1) If an amendment to a by-law passed under this section or a predecessor of this section in respect of which an application to the council is made would also require an amendment to the official plan of the local municipality and the application is made on the same day as the request to amend the official plan, an appeal to the Tribunal under subsection (11) may be made only if the application is refused or the council fails to make a decision on it within 210 days after the receipt by the clerk of the application. **Basis for appeal** (11.0.0.0.2) An appeal under subsection (11) may only be made on the basis that, (a) the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and (b) the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans. **Same** (11.0.0.0.3) For greater certainty, council does not refuse an application for an amendment to a by-law passed under this section or a predecessor of this section or fail to make a decision on the application if it amends the by-law in response to the application, even if the amendment that is passed differs from the amendment that is the subject of the application. **Notice of Appeal** (11.0.0.0.4) A notice of appeal under subsection (11) shall, (a) explain how the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and (b) explain how the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans. **Exception** (11.0.0.0.5) Subsections (11.0.0.0.2) and (11.0.0.0.4) do not apply to an appeal under subsection (11) that concerns the failure to make a decision on an application in respect of which the municipality was given an opportunity to make a new decision in accordance with subsection (26.3). **Use of dispute resolution techniques** (11.0.0.1) If an application for an amendment is refused as described in subsection (11) and a notice of appeal is filed under that subsection, the council may use mediation, conciliation or other dispute resolution techniques to attempt to resolve the dispute. **Notice and invitation** (11.0.0.2) If the council decides to act under subsection (11.0.0.1), (a) it shall give a notice of its intention to use dispute resolution techniques to all the appellants; and (b) it shall give an invitation to participate in the dispute resolution process to, (i) as many of the appellants as the council considers appropriate, (ii) the applicant, if the applicant is not an appellant, and (iii) any other persons or public bodies that the council considers appropriate. **Extension of time** (11.0.0.3) When the council gives a notice under clause (11.0.0.2) (a), the 15-day period mentioned in clause (23) (b) is extended to 75 days. **Participation voluntary** (11.0.0.4) Participation in the dispute resolution process by the persons and public bodies who receive invitations under clause (11.0.0.2) (b) is voluntary. ***Consolidated Hearings Act*** (11.0.1) Despite the *Consolidated Hearings Act*, the proponent of an undertaking shall not give notice to the Hearings Registrar under subsection 3 (1) of that Act in respect of an application for an amendment to a by-law unless the council has made a

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	decision on the application or the time period referred to in subsection (11) has expired. (11.0.2) REPEALED: 2017, c. 23, Sched. 3, s. 10 (2). **Time for filing certain appeals** (11.0.3) A notice of appeal under subsection (11) with respect to the refusal of an application shall be filed no later than 20 days after the day that the giving of notice under subsection (10.9) is completed. **Restricted appeals, areas of settlement** (11.0.4) Despite subsection (11), there is no appeal in respect of all or any part of an application for an amendment to a by-law if the amendment or part of the amendment proposes to implement, (a) an alteration to all or any part of the boundary of an area of settlement; or (b) a new area of settlement. **Restricted appeals, areas of employment** (11.0.5) Despite subsection (11), if the official plan contains policies dealing with the removal of land from areas of employment, there is no appeal in respect of all or any part of an application for an amendment to a by-law if the amendment or part of the amendment proposes to remove any land from an area of employment, even if other land is proposed to be added. . **No appeal re inclusionary zoning policies** (11.0.6) Despite subsection (11), there is no appeal in respect of all or any part of an application for an amendment to a by-law if the amendment or part of the amendment proposes to amend or repeal a part of the by-law that gives effect to policies described in subsection 16 (4). **Withdrawal of appeal** (11.1) If all appeals under subsection (11) are withdrawn, the Tribunal shall notify the clerk of the municipality and the decision of the council is final and binding or the council may proceed to give notice of the public meeting or pass or refuse to pass the by-law, as the case may be. **Information and public meeting; open house in certain circumstances** (12) Before passing a by-law under this section, except a by-law passed pursuant to an order of the Tribunal made under subsection (26), (a) the council shall ensure that, (i) sufficient information and material is made available to enable the public to understand generally the zoning proposal that is being considered by the council, and (ii) at least one public meeting is held for the purpose of giving the public an opportunity to

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	make representations in respect of the proposed by-law; and (b) in the case of a by-law that is required by subsection 26 (9) or is related to a development permit system, the council shall ensure that at least one open house is held for the purpose of giving the public an opportunity to review and ask questions about the information and material made available under subclause (a) (i). **Notice** (13) Notice of the public meeting required under subclause (12) (a) (ii) and of the open house, if any, required by clause (12) (b), (a) shall be given to the prescribed persons and public bodies, in the prescribed manner; and (b) shall be accompanied by the prescribed information. **Timing of open house** (14) The open house required by clause (12) (b) shall be held no later than seven days before the public meeting required under subclause (12) (a) (ii) is held. **Timing of public meeting** (14.1) The public meeting required under subclause (12) (a) (ii) shall be held no earlier than 20 days after the requirements for giving notice have been complied with. . **Participation in public meeting** (14.2) Every person who attends a public meeting required under subclause (12) (a) (ii) shall be given an opportunity to make representations in respect of the proposed by-law. **Alternative measures** (14.3) If an official plan sets out alternative measures for informing and obtaining the views of the public in respect of proposed zoning by-laws, and if the measures are complied with, clause (10.7) (a) and subsections (12) to (14.2) do not apply to the proposed by-laws, but subsection (14.6) does apply. **Same** (14.4) In the course of preparing the official plan, before including alternative measures described in subsection (14.3), the council shall consider whether it would be desirable for the measures to allow for notice of the proposed by-laws to the prescribed persons and public bodies mentioned in clause (13) (a). **Transition** (14.4.1) For greater certainty, subsection (14.4) does not apply with respect to alternative measures that were included in an official plan before the day subsection 26 (6) of the *Smart Growth for Our Communities Act, 2015* comes into force. **Information** (14.5) At a public meeting under subclause (12) (a) (ii), the council shall ensure that information is made available to the

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	public regarding who is entitled to appeal under subsections (11) and (19). **Where alternative procedures followed** (14.6) If subsection (14.3) applies, the information required under subsection (14.5) shall be made available to the public at a public meeting or in the manner set out in the official plan for informing and obtaining the views of the public in respect of proposed zoning by-laws. **Information to public bodies** (15) The council shall forward to such public bodies as the council considers may have an interest in the zoning proposal sufficient information to enable them to understand it generally and such information shall be forwarded not less than twenty days before passing a by-law implementing the proposal. **Conditions** (16) If the official plan in effect in a municipality contains policies relating to zoning with conditions, the council of the municipality may, in a by-law passed under this section, permit a use of land or the erection, location or use of buildings or structures and impose one or more prescribed conditions on the use, erection or location. **Same** (16.1) The prescribed conditions referred to in subsection (16) may be made subject to such limitations as may be prescribed. **Same** (16.2) When a prescribed condition is imposed under subsection (16), (a) the municipality may require an owner of land to which the by-law applies to enter into an agreement with the municipality relating to the condition; (b) the agreement may be registered against the land to which it applies; and (c) the municipality may enforce the agreement against the owner and, subject to the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the land. 2006, c. 23, s. 15 (7). **City of Toronto** (16.3) Subsections (16), (16.1) and (16.2) do not apply with respect to the City of Toronto. **Further notice** (17) Where a change is made in a proposed by-law after the holding of the public meeting mentioned in subclause (12) (a) (ii), the council shall determine whether any further notice is to be given in respect of the proposed by-law and the determination of the council as to the giving of further notice is final and not subject to review in any court irrespective of the extent of the change made in the proposed by-law.

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	Notice of passing of by-law (18) If the council passes a by-law under this section, except a by-law passed pursuant to an order of the Tribunal made under subsection (11.0.2) or (26), the council shall ensure that written notice of the passing of the by-law is given in the prescribed manner, no later than 15 days after the day the by-law is passed, (a) to the person or public body that made the application, if any; (b) to each person and public body that filed a written request to be notified of the decision; and (c) to any prescribed person or public body. **Contents** (18.1) The notice under subsection (18) shall contain, (a) a brief explanation of the effect, if any, that the written and oral submissions mentioned in subsection (18.2) had on the decision; and (b) any other information that is prescribed. **Written and oral submissions** (18.2) Clause (18.1) (a) applies to, (a) any written submissions relating to the by-law that were made to the council before its decision; and (b) any oral submissions relating to the by-law that were made at a public meeting. **Appeal to L.P.A.T.** (19) Not later than 20 days after the day that the giving of notice as required by subsection (18) is completed, any of the following may appeal to the Tribunal by filing with the clerk of the municipality a notice of appeal accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*: 1. The applicant. 2. A person or public body who, before the by-law was passed, made oral submissions at a public meeting or written submissions to the council. 3. The Minister. **Basis for appeal** (19.0.1) An appeal under subsection (19) may only be made on the basis that the by-law is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan. **Notice of Appeal** (19.0.2) A notice of appeal under subsection (19) shall explain how the by-law is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan. **No appeal re second unit policies**

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	(19.1) Despite subsection (19), there is no appeal in respect of the parts of a by-law that give effect to policies described in subsection 16 (3), including, for greater certainty, no appeal in respect of any requirement or standard relating to such policies. **Exception re Minister** (19.2) Subsection (19.1) does not apply to an appeal by the Minister. **No appeal re inclusionary zoning policies** (19.3) Despite subsection (19), there is no appeal in respect of the parts of a by-law that give effect to policies described in subsection 16 (4), including, for greater certainty, no appeal in respect of any condition, requirement or standard relating to such policies. **Matters referred to in s. 34 (1)** (19.3.1) Despite subsection (19.3), there is an appeal in respect of any matter referred to in subsection (1) even if such matter is included in the by-law as a measure or incentive in support of the policies described in subsection 16 (4). **Exception re Minister** (19.4) Subsection (19.3) does not apply to an appeal by the Minister. **No appeal re protected major transit station area – permitted uses, etc.** (19.5) Despite subsections (19) and (19.3.1), and subject to subsections (19.6) to (19.8), there is no appeal in respect of, (a) the parts of a by-law that establish permitted uses or the minimum or maximum densities with respect to buildings and structures on lands in a protected major transit station area that is identified in accordance with subsection 16 (15) or (16); or (b) the parts of a by-law that establish minimum or maximum heights with respect to buildings and structures on lands in a protected major transit station area that is identified in accordance with subsection 16 (15) or (16). **Same, by-law of a lower-tier municipality** (19.6) Subsection (19.5) applies to a by-law of a lower-tier municipality only if the municipality's official plan contains all of the policies described in subclauses 16 (16) (b) (i) and (ii) with respect to the protected major transit station area. **Exception** (19.7) Clause (19.5) (b) does not apply in circumstances where the maximum height that is permitted with respect to a building or structure on a particular parcel of land would result in the building or structure not satisfying the minimum density that is required in respect of that parcel. **Exception re Minister**

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	(19.8) Subsection (19.5) does not apply to an appeal by the Minister. **When giving of notice deemed completed** (20) For the purposes of subsections (11.0.3) and (19), the giving of written notice shall be deemed to be completed, (a) where notice is given by publication in a newspaper, on the day that such publication occurs; (a.1) where notice is given by e-mail, on the day that the sending by e-mail of all required notices is completed; (b) where notice is given by personal service, on the day that the serving of all required notices is completed; (c) where notice is given by mail, on the day that the mailing of all required notices is completed; and (d) where notice is given by telephone transmission of a facsimile of the notice, on the day that the transmission of all required notices is completed. **Use of dispute resolution techniques** (20.1) When a notice of appeal is filed under subsection (19), the council may use mediation, conciliation or other dispute resolution techniques to attempt to resolve the dispute. **Notice and invitation** (20.2) If the council decides to act under subsection (20.1), (a) it shall give a notice of its intention to use dispute resolution techniques to all the appellants; and (b) it shall give an invitation to participate in the dispute resolution process to, (i) as many of the appellants as the council considers appropriate, (ii) the applicant, if there is an applicant who is not an appellant, and (iii) any other persons or public bodies that the council considers appropriate. **Extension of time** (20.3) When the council gives a notice under clause (20.2) (a), the 15-day period mentioned in clause (23) (b) and subsections (23.2) and (23.3) is extended to 75 days. **Participation voluntary** (20.4) Participation in the dispute resolution process by the persons and public bodies who receive invitations under clause (20.2) (b) is voluntary. **When by-law deemed to have come into force** (21) When no notice of appeal is filed under subsection (19), the by-law shall be deemed to have come into force on the day it was passed except that where the by-law is passed under circumstances mentioned in subsection 24 (2) the by-law shall not be deemed to have come into force on the day it was passed until the amendment to the official plan comes into effect.

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	Affidavit re no appeal, etc. (22) An affidavit or declaration of an employee of the municipality that notice was given as required by subsection (18) or that no notice of appeal was filed under subsection (19) within the time allowed for appeal shall be conclusive evidence of the facts stated therein. **Record** (23) The clerk of a municipality who receives a notice of appeal under subsection (11) or (19) shall ensure that, (a) a record that includes the prescribed information and material is compiled; (b) the notice of appeal, record and fee are forwarded to the Tribunal, (i) within 15 days after the last day for filing a notice of appeal under subsection (11.0.3) or (19), as the case may be, or (ii) within 15 days after a notice of appeal is filed under subsection (11) with respect to the failure to make a decision; and (c) such other information or material as the Tribunal may require in respect of the appeal is forwarded to the Tribunal. **Withdrawal of appeals** (23.1) If all appeals to the Tribunal under subsection (19) are withdrawn and the time for appealing has expired, the Tribunal shall notify the clerk of the municipality and the decision of the council is final and binding. **Exception** (23.2) Despite clause (23) (b), if all appeals under subsection (19) are withdrawn within 15 days after the last day for filing a notice of appeal, the municipality is not required to forward the materials described under clauses (23) (b) and (c) to the Tribunal. **Decision final** (23.3) If all appeals to the Tribunal under subsection (19) are withdrawn within 15 days after the last day for filing a notice of appeal, the decision of the council is final and binding. **Hearing and notice thereof** (24) On an appeal to the Tribunal, the Tribunal shall hold a hearing of which notice shall be given to such persons or bodies and in such manner as the Tribunal may determine. **Restriction re adding parties** (24.1) Despite subsection (24), in the case of an appeal under subsection (11) that relates to all or part of an application for an amendment to a by-law that is refused, or in the case of an appeal under subsection (19), only the following may be added as parties:

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	1. A person or public body who satisfies one of the conditions set out in subsection (24.2). 2. The Minister. . **Same** (24.2) The conditions mentioned in paragraph 1 of subsection (24.1) are: 1. Before the by-law was passed, the person or public body made oral submissions at a public meeting or written submissions to the council. 2. The Tribunal is of the opinion that there are reasonable grounds to add the person or public body as a party. (24.3)-(24.6) REPEALED: 2017, c. 23, Sched. 3, s. 10 (9). **Conflict with *SPPA*** (24.7) Subsections (24.1) and (24.2) apply despite the *Statutory Powers Procedure Act*. **Dismissal without hearing** (25) Despite the *Statutory Powers Procedure Act* and subsection (24), the Tribunal shall dismiss all or part of an appeal without holding a hearing on its own initiative or on the motion of any party if any of the following apply: 1. The Tribunal is of the opinion that the explanations required by subsection (11.0.0.0.4) do not disclose both of the following: i. That the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan. ii. The amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans. 2. The Tribunal is of the opinion that the explanation required by subsection (19.0.2) does not disclose that the by-law is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan. 3. The Tribunal is of the opinion that, i. the appeal is not made in good faith or is frivolous or vexatious, ii. the appeal is made only for the purpose of delay, or

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	iii. the appellant has persistently and without reasonable grounds commenced before the Tribunal proceedings that constitute an abuse of process. 4. The appellant has not provided the explanation required by subsection (11.0.0.0.4) or (19.0.2), as applicable. 5. The appellant has not paid the fee charged under the *Local Planning Appeal Tribunal Act, 2017* and has not responded to a request by the Tribunal to pay the fee within the time specified by the Tribunal. 6. The appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal. **Representation** (25.1) Before dismissing all or part of an appeal, the Tribunal shall notify the appellant and give the appellant the opportunity to make representation on the proposed dismissal but this subsection does not apply if the appellant has not complied with a request made under paragraph 5 or 6 of subsection (25). **Same** (25.1.1) Despite the *Statutory Powers Procedure Act* and subsection (24), the Tribunal may, on its own initiative or on the motion of the municipality or the Minister, dismiss all or part of an appeal without holding a hearing if, in the Tribunal's opinion, the application to which the appeal relates is substantially different from the application that was before council at the time of its decision. **Dismissal** (25.2) Despite the *Statutory Powers Procedure Act*, the Tribunal may dismiss all or part of an appeal after holding a hearing or without holding a hearing on the motion under subsection (25) or (25.1.1), as it considers appropriate. **Powers of L.P.A.T.** (26) Subject to subsections (26.1) to (26.10) and (26.13), after holding a hearing on an appeal under subsection (11) or (19), the Tribunal shall dismiss the appeal. **Notice re opportunity to make new decision — appeal under subs. (11)** (26.1) Unless subsection (26.3), (26.6), (26.7) or (26.9) applies, on an appeal under subsection (11), the Tribunal shall notify the clerk of the municipality that it is being given an opportunity to make a new decision in respect of the matter, if the Tribunal determines that, (a) the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or

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	conflict with a provincial plan or fail to conform with an applicable official plan; and (b) the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans. **Same — appeal under subs. (19)** (26.2) Unless subsection (26.3), (26.8) or (26.9) applies, if, on an appeal under subsection (19), the Tribunal determines that a part of the by-law to which the notice of appeal relates is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan, (a) the Tribunal shall repeal that part of the by-law; and (b) the Tribunal shall notify the clerk of the municipality that it is being given an opportunity to make a new decision in respect of the matter. **Powers of L.P.A.T. — Draft by-law with consent of parties** (26.3) Unless subsection (26.9) applies, if a draft by-law is presented to the Tribunal with the consent of all of the parties specified in subsection (26.11), the Tribunal shall approve the draft by-law except for any part of it that is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan. **Notice to make new decision** (26.4) If subsection (26.3) applies and the Tribunal determines that any part of the draft by-law is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan, the Tribunal shall notify the clerk of the municipality that it is being given an opportunity to make a new decision in respect of the matter. **Rules that apply if notice received** (26.5) If the clerk has received notice under subsection (26.1), clause (26.2) (b) or subsection (26.4), the following rules apply: 1. The council of the municipality may prepare and pass another by-law in accordance with this section, except that clause (12) (b) does not apply. 2. The reference to "within 150 days after the receipt by the clerk of the application" in subsection (11) shall be read as "within 90 days after the day notice under subsection (26.1), clause (26.2) (b) or subsection (26.4) was received". **Second appeal, subs. (11) — failure to make decision**

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	(26.6) On an appeal under subsection (11) that concerns the failure to make a decision on an application in respect of which the municipality was given an opportunity to make a new decision in accordance with subsection (26.5), the Tribunal may amend the by-law in such manner as the Tribunal may determine or direct the council of the municipality to amend the by-law in accordance with the Tribunal's order. **Second appeal, subs. (11) — refusal** (26.7) Unless subsection (26.9) applies, on an appeal under subsection (11) that concerns the refusal of an application in respect of which the municipality was given an opportunity to make a new decision in accordance with subsection (26.5), the Tribunal may amend the by-law in such manner as the Tribunal may determine or direct the council of the municipality to amend the by-law in accordance with the Tribunal's order if the Tribunal determines that, (a) the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and (b) the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with all applicable official plans. **Second appeal — subs. (19)** (26.8) Unless subsection (26.9) applies, on an appeal under subsection (19) that concerns a new decision that the municipality was given an opportunity to make in accordance with subsection (26.5), the Tribunal may repeal the by-law in whole or in part or amend the by-law in such manner as the Tribunal may determine or direct the council of the municipality to repeal the by-law in whole or in part or to amend the by-law in accordance with the Tribunal's order, if the Tribunal determines that the decision is inconsistent with policy statements issued under subsection 3 (1), fails to conform with or conflicts with provincial plans or fails to conform with an applicable official plan. **Draft by-law with consent of the parties** (26.9) If, on an appeal referred to in subsection (26.7) or (26.8), a draft by-law is presented to the Tribunal with the consent of all of the parties specified in subsection (26.11), the Tribunal shall approve the draft by-law as a zoning by-law except for any part of it that is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a

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	provincial plan or fails to conform with an applicable official plan. **Same** (26.10) If subsection (26.9) applies and the Tribunal determines that any part of the draft by-law is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan, the Tribunal may refuse to amend the zoning by-law or amend the zoning by-law in such manner as the Tribunal may determine or direct the council of the municipality to amend the zoning by-law in accordance with the Tribunal's order. **Specified parties** (26.11) For the purposes of subsection (26.3) and (26.9), the specified parties are: 1. The municipality. 2. The Minister, if the Minister is a party. 3. If applicable, the applicant. 4. If applicable, all appellants of the decision which was the subject of the appeal. . **Effect on original by-law** (26.12) If subsection (26.3) or (26.9) applies in the case of an appeal under subsection (19), the by-law that was the subject of the notice of appeal shall be deemed to have been repealed. **Non-application of s. 24 (4)** (26.13) An appeal under subsection (11) shall not be dismissed on the basis that the by-law is deemed to be in conformity with an official plan under subsection 24 (4). **Matters of provincial interest** (27) Where an appeal is made to the Tribunal under subsection (11) or (19), the Minister, if he or she is of the opinion that a matter of provincial interest is, or is likely to be, adversely affected by the by-law, may so advise the Tribunal in writing not later than 30 days after the day the Tribunal gives notice under subsection (24) and the Minister shall identify, (a) the part or parts of the by-law by which the provincial interest is, or is likely to be, adversely affected; and (b) the general basis for the opinion that a matter of provincial interest is, or is likely to be, adversely affected. **No hearing or notice required** (28) The Minister is not required to give notice or to hold a hearing before taking any action under subsection (27). . **Applicable rules if notice under subs. (27) received** (29) If the Tribunal has received a notice from the Minister under subsection (27), the following rules apply: 1. Subsections (26) to (26.12) do not apply to the appeal.

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	2. The Tribunal may make a decision as to whether the appeal should be dismissed or the by-law should be repealed or amended in whole or in part or the council of the municipality should be directed to repeal or amend the by-law in whole or in part. 3. The Tribunal shall not make an order in respect of the part or parts of the by-law identified in the notice. **Action of L.G. in C.** (29.1) The Lieutenant Governor in Council may confirm, vary or rescind the decision of the Tribunal in respect of the part or parts of the by-law identified in the notice and in doing so may repeal the by-law in whole or in part or amend the by-law in such a manner as the Lieutenant Governor in Council may determine. **Coming into force** (30) If one or more appeals have been filed under subsection (19), the by-law does not come into force until all of such appeals have been withdrawn or finally disposed of, whereupon the by-law, except for those parts of it repealed under subsection (26.2) or (26.8) or amended under subsection (26.8) or as are repealed or amended by the Lieutenant Governor in Council under subsection (29.1), shall be deemed to have come into force on the day it was passed. **Unappealed portions** (31) Despite subsection (30), before all of the appeals have been finally disposed of, the Tribunal may make an order providing that any part of the by-law not in issue in the appeal shall be deemed to have come into force on the day the by-law was passed. **Method** (32) The Tribunal may make an order under subsection (31) on its own initiative or on the motion of any person or public body. **Notice and hearing** (33) The Tribunal may, (a) dispense with giving notice of a motion under subsection (32) or require the giving of such notice of the motion as it considers appropriate; and (b) make an order under subsection (31) after holding a hearing or without holding a hearing on the motion, as it considers appropriate. **Notice** (34) Despite clause (33) (a), the Tribunal shall give notice of a motion under subsection (32) to any person or public body who filed with the Tribunal a written request to be notified if a motion is made.
Section 36 of the Planning Act permits a municipality to create	**<u>Section 36</u>** **Holding provision by-law**

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
"holding" provisions, which could restrict the timing of development to some designated time in the future. This is often quite important for various reasons, including construction of infrastructure. By not applying to an open-for-business planning by-law, the municipality will not be able to control the timing of development.	**36** (1) The council of a local municipality may, in a by-law passed under section 34, by the use of the holding symbol "H" (or "h") in conjunction with any use designation, specify the use to which lands, buildings or structures may be put at such time in the future as the holding symbol is removed by amendment to the by-law. . **Condition** (2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the use of the holding symbol mentioned in subsection (1). **Appeal to L.P.A.T.** (3) Where an application to the council for an amendment to the by-law to remove the holding symbol is refused or the council fails to make a decision thereon within 150 days after receipt by the clerk of the application, the applicant may appeal to the Tribunal and the Tribunal shall hear the appeal and dismiss the same or amend the by-law to remove the holding symbol or direct that the by-law be amended in accordance with its order. **Matters of provincial interest** (3.1) Where an appeal is made to the Tribunal under subsection (3), the Minister, if he or she is of the opinion that a matter of provincial interest is, or is likely to be, adversely affected by the by-law, may so advise the Tribunal in writing not later than 30 days before the day fixed by the Tribunal for the hearing of the appeal and the Minister shall identify, (a) the part or parts of the by-law by which the provincial interest is, or is likely to be, adversely affected; and (b) the general basis for the opinion that a matter of provincial interest is, or is likely to be, adversely affected. **No hearing or notice required** (3.2) The Minister is not required to give notice or to hold a hearing before taking any action under subsection (3.1). **No order to be made** (3.3) If the Tribunal has received notice from the Minister under subsection (3.1) and has made a decision on the by-law, the Tribunal shall not make an order under subsection (3) in respect of the part or parts of the by-law identified in the notice.. **Action of L.G. in C.** (3.4) The Lieutenant Governor in Council may confirm, vary or rescind the decision of the Tribunal in respect of the part or parts of the by-law identified in the notice and in doing so may repeal the by-law in whole or in part or amend the by-law in such a manner as the Lieutenant Governor in Council may determine. **Application of subss. 34 (10.7, 10.9-20.4, 22-34)**

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	(4) Subsections 34 (10.7), (10.9) to (20.4) and (22) to (34) do not apply to an amending by-law passed by the council to remove the holding symbol, but the council shall, in the manner and to the persons and public bodies and containing the information prescribed, give notice of its intention to pass the amending by-law.
Section 37 of the Planning Act permits a municipality to impose "density bonusing" (eg, exchanging "community benefits" in situations when limits that would otherwise apply to height or density are to be relaxed). By not applying to an open-for-business planning by-law, the municipality will not be able to secure local benefits to offset the non-compliance with height or density limits.	**Section 37** **Increased density, etc., provision by-law** **37** (1) The council of a local municipality may, in a by-law passed under section 34, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law. **Condition** (2) A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development. **Agreements** (3) Where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services or matters. **Registration of agreement** (4) Any agreement entered into under subsection (3) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions thereof against the owner and, subject to the provisions of the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the land. **Special account** (5) All money received by the municipality under this section shall be paid into a special account and spent only for facilities, services and other matters specified in the by-law. 2015, c. 26, s. 27. **Investments** (6) The money in the special account may be invested in securities in which the municipality is permitted to invest under the *Municipal Act, 2001* or the *City of Toronto Act, 2006*, as the case may be, and the earnings derived from the investment of the money shall be paid into the special account, and the auditor in the auditor's annual report shall report on the activities and status of the account. **Treasurer's statement**

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	(7) The treasurer of the municipality shall each year, on or before the date specified by the council, give the council a financial statement relating to the special account. **Requirements** (8) The statement shall include, for the preceding year, (a) statements of the opening and closing balances of the special account and of the transactions relating to the account; (b) statements identifying, (i) any facilities, services or other matters specified in the by-law for which funds from the special account have been spent during the year, (ii) details of the amounts spent, and (iii) for each facility, service or other matter mentioned in subclause (i), the manner in which any capital cost not funded from the special account was or will be funded; and (c) any other information that is prescribed. **Copy to Minister** (9) The treasurer shall give a copy of the statement to the Minister on request. **Statement available to public** (10) The council shall ensure that the statement is made available to the public.
Section 39 of the *Clean Water Act, 2006* *Section 39 of the Clean Water Act, 2006 requires land use planning decisions made by municipal councils, the province and others to "conform" to the significant threat policies and designated Great Lakes policies that are adopted in approved source protection plans. In case of a conflict between the significant threat source protection policy and other land use planning documents, the source protection policy prevails. Public works and municipal by-laws must also be consistent with the approved significant threat policies in source protection plans. Specified*	**Effect of plan** **39** (1) A decision under the *Planning Act* or the *Condominium Act, 1998* made by a municipal council, municipal planning authority, planning board, other local board, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, that relates to the source protection area shall, (a) conform with significant threat policies and designated Great Lakes policies set out in the source protection plan; and (b) have regard to other policies set out in the source protection plan. **Conflicts re official plans, by-laws** (2) Despite any other Act, the source protection plan prevails in the case of conflict between a significant threat policy or designated Great Lakes policy set out in the source protection plan and, (a) an official plan; (b) a zoning by-law; or (c) subject to subsection (4), a policy statement issued under section 3 of the *Planning Act*. **Limitation**

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
provincial approvals such as pollution permits for discharges to water must also conform. *By not applying to an open-for-business planning by-law, these requirements for the municipal and provincial land use decisions, public works, municipal by-laws and provincial approvals to be consistent with the significant threat policies would be removed.*	(3) Subsection (1) does not apply to a policy statement issued under section 3 of the *Planning Act* or a minister's order under section 47 of the *Planning Act*. **Conflicts re provisions in plans, policies** (4) Despite any Act, but subject to a regulation made under clause 109 (1) (h), (i) or (j), if there is a conflict between a provision of a significant threat policy or designated Great Lakes policy set out in the source protection plan and a provision in a plan or policy that is mentioned in subsection (5), the provision that provides the greatest protection to the quality and quantity of any water that is or may be used as a source of drinking water prevails. **Plans or policies** (5) The plans and policies to which subsection (4) refers are, (a) a policy statement issued under section 3 of the *Planning Act*; (b) the Greenbelt Plan established under section 3 of the *Greenbelt Act, 2005* and any amendment to the Plan; (c) the Niagara Escarpment Plan established under section 3 of the *Niagara Escarpment Planning and Development Act* and any amendment to the Plan; (d) the Oak Ridges Moraine Conservation Plan established under section 3 of the *Oak Ridges Moraine Conservation Act, 2001* and any amendment to the Plan; (e) a growth plan approved under section 7 of the *Places to Grow Act, 2005* and any amendment to the plan; (f) a plan or policy made under a provision of an Act that is prescribed by the regulations; and (g) a plan or policy prescribed by the regulations, or provisions prescribed by the regulations of a plan or policy, that is made by the Lieutenant Governor in Council, a minister of the Crown, a ministry or a board, commission or agency of the Government of Ontario. **Actions to conform to plan** (6) Despite any other Act, no municipality or municipal planning authority shall, (a) undertake within the source protection area any public work, improvement of a structural nature or other undertaking that conflicts with a significant threat policy or designated Great Lakes policy set out in the source protection plan; or (b) pass a by-law for any purpose that conflicts with a significant threat policy or designated Great Lakes policy set out in the source protection plan. **Prescribed instruments**

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	(7) Subject to a regulation made under clause 109 (1) (k), (l) or (m), a decision to issue, otherwise create or amend a prescribed instrument shall, (a) conform with significant threat policies and designated Great Lakes policies set out in the source protection plan; and (b) have regard to other policies set out in the source protection plan. **No authority** (8) Subsection (7) does not permit or require a person or body, (a) to issue or otherwise create an instrument that it does not otherwise have authority to issue or otherwise create; or (b) to make amendments that it does not otherwise have authority to make.
Section 20 of the *Great Lakes Protection Act, 2015* *Section 20 of the Great Lakes Protection Act, 2015, requires that planning decisions conform with designated policies and have regard for other policies contained in any geographically focused initiative. Geographically focused initiatives are a tool that allows communities to solve complex issues related to protecting or restoring the ecological health of the Great Lakes - St Lawrence River Basin and ensure that land use decisions respect policies that are aimed at implementing such solutions (eg, a process akin to that which led to the Lake Simcoe Protection Plan could be completed by a willing community or communities). To date, no geographically focused initiatives have been created.* *By not applying to open-for-business planning by-laws, a community's*	**Effect of initiative** **Decisions under *Planning Act* or *Condominium Act, 1998*** 20. (1) A decision under the *Planning Act* or the *Condominium Act, 1998* made by a municipal council, municipal planning authority, planning board, other local board, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, that relates to the area to which an initiative applies shall, (a) conform with designated policies that are set out in the initiative; and (b) have regard to policies described in Schedule 1 that are set out in the initiative and that are not designated policies. **Limitation** (2) Subsection (1) does not apply to a policy statement issued under section 3 of the *Planning Act* or a minister's order under section 47 of the *Planning Act*. **Conflicts re official plans, by-laws** (3) Despite any other Act, an initiative prevails in the case of conflict between a designated policy set out in the initiative and, (a) an official plan; (b) a zoning by-law; or (c) subject to subsection (4), a policy statement issued under section 3 of the *Planning Act*. **Conflicts re provisions in plans, policies** (4) Despite any Act, but subject to a regulation made under clause 38 (1) (d), (e) or (f), if there is a conflict between a provision of a designated policy set out in an initiative and a provision in a plan or policy that is mentioned in subsection (5), the provision that provides the greatest protection to the ecological health of the Great Lakes-St. Lawrence River Basin prevails. **Plans or policies**

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
efforts to solve a complex freshwater challenge would be ignored.	(5) The plans and policies to which subsection (4) refers are, (a) a policy statement issued under section 3 of the *Planning Act*; (b) the Greenbelt Plan established under section 3 of the *Greenbelt Act, 2005* and any amendment to the Plan; (c) the Niagara Escarpment Plan continued under section 3 of the *Niagara Escarpment Planning and Development Act* and any amendment to the Plan; (d) the Oak Ridges Moraine Conservation Plan established under section 3 of the *Oak Ridges Moraine Conservation Act, 2001* and any amendment to the Plan; (e) a growth plan approved under the *Places to Grow Act, 2005* and any amendment to the Plan; (f) a plan or policy made under a provision of an Act, if the provision has been prescribed by the regulations; and (g) a plan or policy that has been prescribed by the regulations, or provisions of a plan or policy that have been prescribed by the regulations, that is made by the Lieutenant Governor in Council, a minister of the Crown, or a ministry, board, commission or agency of the Government of Ontario. **Actions to conform to initiative** (6) Despite any other Act, no municipality or municipal planning authority shall, (a) undertake, within the area to which an initiative applies, any public work, improvement of a structural nature or other undertaking that conflicts with a designated policy set out in the initiative; or (b) pass a by-law for any purpose that conflicts with a designated policy set out in the initiative. **Comments, advice** (7) If a public body provides comments, submissions or advice relating to a decision or matter described in subsection (8), the comments, submissions or advice shall, (a) conform with designated policies that are set out in an initiative; and (b) have regard to policies described in Schedule 1 that are set out in an initiative and that are not designated policies. **Same** (8) Subsection (7) applies to the following: 1. A decision under the *Planning Act* or the *Condominium Act, 1998* that relates to the area to which the initiative applies.

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	2. A decision to issue, otherwise create or amend a prescribed instrument that relates to the area to which the initiative applies. 3. Any other matter specified in the initiative. **Prescribed instruments** (9) Subject to a regulation made under clause 38 (1) (g), (h) or (i), a decision to issue, otherwise create or amend a prescribed instrument shall, (a) conform with designated policies that are set out in the initiative; and (b) have regard to policies described in Schedule 1 that are set out in the initiative and that are not designated policies. **No authority** (10) Subsection (9) does not permit or require a person or body, (a) to issue or otherwise create an instrument that it does not otherwise have authority to issue or otherwise create; or (b) to make amendments that it does not otherwise have authority to make.
Section 7 of the *Greenbelt Act, 2005* *Section 7 of the Greenbelt Act, 2005 requires that planning decisions conform to the Greenbelt Plan. Further, no by-laws can be passed which conflict with the Greenbelt Plan. The Greenbelt Plan protects 2 million acres of farmland and natural areas from development.* *By not applying to an open-for-business planning by-law, protections in the Greenbelt Plan, including those related to specialty crops in the Niagara Region and the Holland Marsh, would be overridden.*	**Decisions to conform to plan** **7** (1) A decision that is made under the *Ontario Planning and Development Act, 1994*, the *Planning Act* or the *Condominium Act, 1998* or in relation to a prescribed matter by a municipal council, local board, municipal planning authority, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, shall conform with the Greenbelt Plan. **Limitation** (2) Subsection (1) does not apply to a policy statement issued under section 3 of the *Planning Act*. **Actions to conform to plan** (3) Despite any other Act, no municipality or municipal planning authority shall, within the areas to which the Greenbelt Plan applies, (a) undertake any public work, improvement of a structural nature or other undertaking that conflicts with the Greenbelt Plan; or (b) pass a by-law for any purpose that conflicts with the Greenbelt Plan. **Comments, advice** (4) Comments, submissions or advice provided by a minister of the Crown, a ministry, board, commission or agency of the Government of Ontario or a conservation authority established under section 3 of the *Conservation Authorities Act* that affect a planning matter relating to lands to which the Greenbelt Plan applies shall conform with the Greenbelt Plan.

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
Section 6 of the *Lake Simcoe Protection Act, 2015* *Section 6 of the Lake Simcoe Protection Act, 2015 requires that planning decisions conform with designated policies and have regard to other policies that are set out the Lake Simcoe Protection Plan. Further, in the case of conflict between a by-law and a designated policy in Lake Simcoe Protection Plan, the Lake Simcoe Protection Plan prevails. As well, if there is a conflict between policies in other provincial plans or policies (eg, Provincial Policy Statement, Greenbelt Plan, Oak Ridges Moraine Conservation Plan, Growth Plan for the Greater Golden Horseshoe, etc.) and policies in the Lake Simcoe Protection Plan, whichever policy provides for "greatest protection to the ecological health of the Lake Simcoe watershed prevails." The Lake Simcoe Plan sets out policies that address long term environmental issues including the immediate threat of excessive phosphorus and emerging threats of invasive species, road salts, and climate change. By not applying to an open-for-business planning by-law, the community's interest and current legal requirements to prioritize freshwater and ecological health over other land uses will not be respected.*	**Effect of Plan** **6** (1) A decision under the *Planning Act* or the *Condominium Act, 1998* made by a municipal council, local board, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, that relates to the Lake Simcoe watershed shall, (a) conform with designated policies set out in the Lake Simcoe Protection Plan; and (b) have regard to other policies set out in the Lake Simcoe Protection Plan. **Limitation** (2) Subsection (1) does not apply to a policy statement issued under section 3 of the *Planning Act* or a minister's order under section 47 of the *Planning Act*. **Conflicts re official plans, by-laws** (3) Despite any other Act, the Lake Simcoe Protection Plan prevails in the case of conflict between a designated policy set out in the Plan and, (a) an official plan; (b) a zoning by-law; or (c) subject to subsection (4), a policy statement issued under section 3 of the *Planning Act*. **Conflicts re provisions in plans, policies** (4) Despite any Act, but subject to a policy described in paragraph 6 of subsection 5 (2), if there is a conflict between a provision of a designated policy set out in the Lake Simcoe Protection Plan and a provision in a plan or policy that is mentioned in subsection (5), the provision that provides the greatest protection to the ecological health of the Lake Simcoe watershed prevails. **Plans or policies** (5) The plans and policies to which subsection (4) refers are, (a) a policy statement issued under section 3 of the *Planning Act*; (b) the Greenbelt Plan established under section 3 of the *Greenbelt Act, 2005* and any amendment to the Plan; (c) the Oak Ridges Moraine Conservation Plan established under section 3 of the *Oak Ridges Moraine Conservation Act, 2001* and any amendment to the Plan; (d) the Growth Plan for the Greater Golden Horseshoe 2006 approved under section 7 of the *Places to Grow Act, 2005* and any amendment to the Plan; (e) a plan or policy made under a provision of an Act that is prescribed by the regulations; and (f) a plan or policy prescribed by the regulations, or provisions prescribed by the regulations of a plan or

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	policy, that is made by the Lieutenant Governor in Council, a minister of the Crown, or a ministry, board, commission or agency of the Government of Ontario. **Actions to conform to Plan** (6) Despite any other Act, no municipality shall, (a) undertake within the Lake Simcoe watershed any public work, improvement of a structural nature or other undertaking that conflicts with a designated policy set out in the Lake Simcoe Protection Plan; or (b) pass a by-law for any purpose that conflicts with a designated policy set out in the Lake Simcoe Protection Plan. **Comments, advice** (7) If a public body provides comments, submissions or advice relating to a decision or matter described in subsection (8), the comments, submissions or advice shall, (a) conform with designated policies set out in the Lake Simcoe Protection Plan; and (b) have regard to other policies set out in the Lake Simcoe Protection Plan. **Same** (8) Subsection (7) applies to the following: 1. A decision under the *Planning Act* or the *Condominium Act, 1998* made by a municipal council, local board, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, that relates to the Lake Simcoe watershed. 2. A decision to issue, otherwise create or amend a prescribed instrument that relates to the Lake Simcoe watershed or a prescribed outside area. 3. Any other matter specified by the Lake Simcoe Protection Plan. **Prescribed instruments** (9) Subject to a policy described in paragraph 9 of subsection 5 (2), a decision to issue, otherwise create or amend a prescribed instrument shall, (a) conform with designated policies set out in the Lake Simcoe Protection Plan; and (b) have regard to other policies set out in the Lake Simcoe Protection Plan. **No authority** (10) Subsection (9) does not permit or require a person or body, (a) to issue or otherwise create an instrument that it does not otherwise have authority to issue or otherwise create; or (b) to make amendments that it does not otherwise have authority to make.

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
Subsection 31.1 (4) of the *Metrolinx Act, 2006* *Subsection 31.1(4) of the Metrolinx Act, 2006 requires that planning decisions in the "regional transportation area" be consistent with "designated policies set out in a transportation planning policy statement". To date, no such transportation planning policy statement exists.* *By not applying to an open-for-business planning by-law, any efforts to develop effective regional transportation networks in the future will be ignored in the area of the open for business by-law.*	**Effect of designated policies** (4) A decision under the *Planning Act* or the *Condominium Act, 1998* made by a municipal council, local board, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, that applies in the regional transportation area shall be consistent with the designated policies set out in a transportation planning policy statement.
Section 7 of the *Oak Ridges Moraine Conservation Act, 2001* *Section 7 of the Oak Ridges Moraine Conservation Act, 2001 requires that planning decisions conform with the Oak Ridges Moraine Conservation Plan. Further, municipalities cannot pass a by-law that conflicts with the Oak Ridges Moraine Conservation Plan. The Oak Ridges Moraine Conservation Plan recognizes the importance of protecting the moraine as it is headwaters for 64 rivers or streams, biodiversity, and groundwaters.* *By not applying to open-for-business planning by-laws, the community's interest in and requirements that provide for prioritizing freshwater*	**Effect of Plan** **7** (1) A decision that is made under the *Planning Act* or the *Condominium Act, 1998* or in relation to a prescribed matter, by a municipal council, local board, municipal planning authority, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, shall conform with the Oak Ridges Moraine Conservation Plan. **Same** (2) Despite any other Act, no municipality or municipal planning authority shall, within the area to which the Plan applies, (a) undertake any public work, improvement of a structural nature or other undertaking that conflicts with the Plan; or (b) pass a by-law for any purpose that conflicts with the Plan.

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
and ecological health over other land uses will not be respected.	
Section 13 of the *Ontario Planning and Development Act, 1994* *Section 13 of the Ontario Planning and Development Act, 1994 requires that municipalities cannot undertake public projects that conflict with a development plan. Further, municipalities cannot pass by-laws that conflict with a development plan. One example of a development plan made under this legislation is the Parkway Belt West Plan created in 1978. This forward thinking plan designates and protects "land needed for linear regional infrastructure such as transit, utility and electric power facility corridors."* (Parkway Belt West Plan) *By not applying to an open-for-business planning by-law, any such protections would be ignored.*	**By-laws, etc., to conform to plan** **13** Despite any other Act, if a development plan is in effect, (a) no municipality or local board as defined in the *Municipal Affairs Act* having jurisdiction over the area covered by the plan or in any part of it and no ministry shall undertake any public work, any improvement of a structural nature or any other undertaking within the area covered by the development plan that conflicts with the plan; and (b) no municipality or planning board having jurisdiction in such area shall pass a by-law for any purpose that conflicts with the plan.
Subsection 14 (1) of the *Places to Grow Act, 2005* *Subsection 14(1) of the Places to Grow Act, 2005 requires that planning decisions conform with any growth plan that applies. Ontario currently has two growth plans under this legislation: the Growth Plan for the Greater Golden Horseshoe, 2017 and the Growth Plan for Northern Ontario, 2011. These plans were created, with extensive public*	**Effect of growth plan** **14** (1) A decision under the *Planning Act* or the *Condominium Act, 1998* or under such other Act or provision of an Act as may be prescribed, made by a municipal council, municipal planning authority, planning board, other local board, conservation authority, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, or made by such other persons or bodies as may be prescribed that relates to a growth plan area shall conform with a growth plan that applies to that growth plan area.

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
consultation, to provide a vision and framework for regional planning in the long-term. The Growth Plan for the Greater Golden Horseshoe, in particular, has policies which focus on integrated, compact, and complete communities. *By not applying to an open-for-business planning by-law, the overall long-term vision and framework for these regions will be ignored.*	
Section 12 of the *Resource Recovery and Circular Economy Act, 2016* *Section 12 of the Resource Recovery and Circular Economy Act, 2016 requires consistency with all applicable "resource recovery and waste reduction" policy statements when planning for and operating waste management systems, particularly when conducting resource recovery or waste reduction activities. This legislation is aimed at moving Ontario towards a "waste-free" economy. A current policy statement is the Food and Organic Waste Policy Statement, which is focused on "preventing, reducing, rescuing surplus food, and recovering food and organic waste" and thereby reducing greenhouse gas emissions* (Food and Organic Waste Policy Statement). *By not applying to an open-for-business by-law, these waste reduction and climate change goals will be ignored.*	**Consistency with policy statements** **12** (1) Subject to section 13, the following persons and entities shall, when doing the following things, ensure the things are done in a manner that is consistent with all applicable policy statements: 1. A person or entity when exercising a power or performing a duty under this Part or Part III, IV or V. 2. A person or entity when exercising a power or performing a duty under an Act mentioned in subsection (2) or a provision mentioned in subsection (3), if the exercise of the power or the performance of the duty relates to resource recovery or waste reduction. 3. A person or entity retained to provide services in relation to another person's responsibilities under section 67, 68, 69 or 70 when performing those services. 4. An owner or operator of a waste management system when engaging in waste management activities. 5. A prescribed person or entity when carrying out prescribed activities related to resource recovery or waste reduction. **List of Acts** (2) The following are the Acts referred to in paragraph 2 of subsection (1): 1. *City of Toronto Act, 2006*. 2. *Condominium Act, 1998*. 3. *Consumer Protection Act, 2002*. 4. *Environmental Assessment Act*. 5. *Environmental Protection Act*. 6. *Municipal Act, 2001*. 7. *Nutrient Management Act, 2002*. 8. *Ontario Water Resources Act*. 9. *Planning Act*. 10. Any prescribed Acts. **List of provisions**

Specific section numbers of legislation per s34.1(6), Schedule 10 (bolded) *Followed by CELA's plain language explanation of the affected statutory language (italicized)*	**Affected Provisions from other legislation (as Currently in Force) - statutory language column**
	(3) The following are the provisions referred to in paragraph 2 of subsection (1): 1. Section 11.6 of the *City of Greater Sudbury Act, 1999*. 2. Section 11.7 of the *City of Hamilton Act, 1999*. 3. Section 12.13 of the *City of Ottawa Act, 1999*. 4. Section 13.6 of the *Town of Haldimand Act, 1999*. 5. Section 13.6 of the *Town of Norfolk Act, 1999*. 6. A prescribed provision of a prescribed Act. **Interpretation** (4) For the purposes of paragraph 4 of subsection (1), "operator", "owner" and "waste management system" have the same meaning as in Part V of the *Environmental Protection Act*.
Any prescribed provision *This allows any other legislated provisions to be added to the "not apply to an open-for-business planning by-law" at any point in the future. Such a regulation would be made by Cabinet, not the Legislature.*	

APPENDIX B

"OPEN-FOR-BUSINESS" PLANNING BY-LAWS, DRINKING WATER SAFETY, AND THE LESSONS OF THE WALKERTON TRAGEDY: LEGAL ANALYSIS OF SCHEDULE 10 OF ONTARIO BILL 66

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ABSTRACT: *Schedule 10 of Ontario's Bill 66 proposes to enable municipalities to attract large-scale economic development by passing "open-for-business planning by-laws" under the Planning Act. If Bill 66 is enacted, these municipal by-laws will require the prior approval of the Minister of Municipal Affairs and Housing, but will not be subject to the mandatory public notice, comment or appeal provisions under the Planning Act. In addition, these by-laws will be exempt from the application of key parts of important provincial laws, plans and policies, including the Clean Water Act, 2006 that was enacted in response to the Walkerton Tragedy. Section 39 of this Act currently requires planning and approval decisions at the provincial and municipal levels to conform to policies in source protection plans that address significant drinking water threats and the Great Lakes. However, Schedule 10 of Bill 66 proposes to exempt open-for-business planning bylaws from section 39, which is one of the most critical provisions in the Clean Water Act, 2006. This analysis[13] reviews the evolution of, and public policy rationale for, section 39, and identifies various adverse legal consequences if this proposed exemption is enacted. In order to safeguard public health and safety, the authors conclude that Schedule 10 of Bill 66 should be immediately abandoned or withdrawn by the Ontario government.*

PART I – INTRODUCTION

On December 6, 2018, the Ontario government introduced Bill 66 (*Restoring Ontario's Competitiveness Act, 2018*) for First Reading.[14] If enacted, Bill 66 amends various provincial statutes, including the *Planning Act*.[15]

The proposed *Planning Act* changes in Schedule 10 of Bill 66 will empower municipalities to pass "open-for-business planning by-laws" aimed at facilitating major new development in order to create employment.[16] In addition, this Schedule specifically exempts these extraordinary by-laws from current *Planning Act* requirements that govern the passage of zoning by-laws.

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[13] This analysis provides general legal information about Schedule 10 of Bill 66, and should not be construed or relied upon as legal advice.
[14] Bill 66 is available at: https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-66.
[15] The *Planning Act* is available at: https://www.ontario.ca/laws/statute/90p13.
[16] See the Environmental Registry posting for this legislative "planning tool" proposal in Schedule 10 of Bill 66 (https://ero.ontario.ca/notice/013-4125). See also the Environmental Registry posting for related regulatory details on how open-for-business by-laws may be passed by municipalities (https://ero.ontario.ca/notice/013-4239).

Schedule 10 of Bill 66 further specifies that open-for-business planning by-laws do not have to comply with important environmental protections and land use controls established under other provincial laws, plans and policies.

For example, Schedule 10 expressly provides that section 39 of the *Clean Water Act, 2006* (*CWA*)[17] does not apply to an open-for-business planning by-law. This key section of the *CWA* was enacted by the Ontario Legislature over a decade ago, and it generally requires planning and approval decisions at the provincial and municipal levels to be consistent with policies in *CWA*-approved source protection plans that address significant drinking water threats and the Great Lakes.

The purpose of this analysis by CELA is to examine the adverse legal consequences and public health implications of exempting open-for-business planning by-laws from section 39 of the *CWA*. CELA's more detailed analysis of other contentious aspects of Bill 66 will be submitted shortly to the Ontario government during the public comment period on the proposed legislation.[18]

For the reasons outlined below, CELA concludes that Schedule 10 of Bill 66 is a regressive, unwarranted and potentially risky proposal that is inconsistent with the public interest, and that does not adequately safeguard the health and safety of the people of Ontario.

Moreover, Schedule 10's proposed exclusion of section 39 of the *CWA* is contrary to the recommendations from the Walkerton Inquiry and three specialized, multi-stakeholder advisory committees that were established by the Environment Ministry in relation to source protection planning.

Accordingly, CELA strongly recommends that Schedule 10 be immediately abandoned or withdrawn by the Ontario government.

PART II – THE PUBLIC INTEREST PURPOSE OF SECTION 39 OF THE *CWA*

In order to understand the nature, scope and significance of Schedule 10 of Bill 66, it is instructive to briefly review the historical and legislative context of section 39 of the *CWA*.

(a) The Walkerton Tragedy

In May 2000, seven persons died, and over 2,300 persons fell ill, after the municipal drinking water system in Walkerton, Ontario became contaminated with harmful bacteria (*E.coli* 0157:H7 and *Campylobacter jejuni*).

The source of contamination was cattle manure that had been spread in accordance with best management practices on agricultural lands in close proximity to a municipal well.

[17] The *CWA* is available at: https://www.ontario.ca/laws/statute/06c22.
[18] See the general Environmental Registry posting for Bill 66 (https://ero.ontario.ca/notice/013-4293).

In response to this tragedy, the Ontario government established an inquiry under the *Public Inquiries Act* to investigate the circumstances leading up to the outbreak, and to identify ways to better protect the safety of Ontario's drinking water.

This inquiry was headed up by Mr. Justice O'Connor, who held extensive public hearings, heard voluminous evidence and received detailed submissions on these matters from a large number of parties.[19]

(b) Findings and Recommendations of the Walkerton Inquiry

In 2002, Mr. Justice O'Connor published a two-volume report[20] which made a number of findings about the various factors that caused or contributed to the Walkerton Tragedy, including the following:

- the Town of Walkerton did not have the legal means to control land use in the vicinity of the affected well;[21]

- the regulatory culture created by the provincial government through the Red Tape Commission review process discouraged the passage of a new regulation that required prompt notification of adverse water quality test results;[22]

- despite warnings of increased risks to the environment and human health, the provincial government's budget cutbacks and staff reductions undermined the Environment Ministry's ability to proactively inspect municipal drinking water systems;[23] and

- land use planning can play an important role in the protection of surface water and groundwater.[24]

The Walkerton Inquiry report also contained a comprehensive set of recommendations aimed at preventing a recurrence of this public health catastrophe elsewhere in Ontario. On the basis of expert evidence, Mr. Justice O'Connor concluded that Ontario should implement a multi-barrier approach (including preventing the degradation of drinking water sources) in order to protect drinking water safety and human health.[25]

Accordingly, the Part Two Report of the Walkerton Inquiry made 93 recommendations, 22 of which involved drinking water source protection, such as:

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[19] CELA served as counsel for the Concerned Walkerton Citizens at the Walkerton Inquiry.
[20] The Walkerton Inquiry report is available at: http://www.archives.gov.on.ca/en/e_records/walkerton/
[21] Part One Report of the Walkerton Inquiry, page 20.
[22] *Ibid*, pages 33, and 235-36.
[23] *Ibid*, pages 34-35, and Chapter 10.
[24] Part Two Report of the Walkerton Inquiry, pages 52-53.
[25] Part One Report of the Walkerton Inquiry, pages 108-112, and Chapter 11. See also Part Two Report of the Walkerton Inquiry, Chapter 3.

- drinking water sources should be protected by developing watershed-based source protection plans, which should be required for all watersheds in Ontario;

- the Environment Ministry should ensure that draft source protection plans are prepared through an inclusive process of local consultation, which should be managed by conservation authorities where appropriate;

- draft source protection plans should be subject to review and approval by the Environment Ministry;

- provincial government decisions that affect the quality of drinking water sources must be consistent with approved source protection plans;

- where the potential exists for a significant direct threat to drinking water sources, municipal official plans and decisions must be consistent with the applicable source protection plan, and the plans should designate areas where consistency is required;

- for other matters, municipal official plans should have regard for the source protection plan;

- the regulation of other industries by the provincial government and by municipalities must be consistent with provincially approved source protection plans;

- given that the safety of drinking water is essential for public health, those who discharge oversight responsibilities of the municipality should be held to a statutory standard of care;

- the provincial government should enact a *Safe Drinking Water Act* to deal with matters related to the treatment and distribution of drinking water; and

- the provincial government should ensure that programs relating to the safety of drinking water are adequately funded (emphasis added).[26]

In response to the Walkerton Inquiry report, the Ontario government committed to implementing all of Mr. Justice O'Connor's recommendations, including those described above. Among other things, the provincial government enacted the *Nutrient Management Act, 2002* and the *Safe Drinking Water Act, 2002*, and undertook public consultations[27] on a White Paper[28] that eventually resulted in the passage of the *CWA*.

[26] Part Two Report of the Walkerton Inquiry, Recommendations 1-6, 17, 45, 67 and 78.
[27] CELA's submissions on the *CWA*, implementing regulations, technical rules and related matters are available at: http://www.cela.ca/collections/water/source-water-protection.
[28] See http://agrienvarchive.ca/download1/watshed-based_source_prot_planning2004.pdf.

(c) Findings and Recommendations of Provincial Advisory Committees

After the Walkerton Inquiry but prior to the passage of the *CWA*, the Environment Ministry established three multi-stakeholder advisory committees to provide expert input and assistance on how to structure and implement the source protection planning process in Ontario.

In 2003, for example, the report of the Advisory Committee on Watershed-Based Source Water Protection Planning[29] found that:

> Ontarians have made it clear that clean and safe drinking water is one of the most significant priorities in our province today. The extensive public hearings that occurred as part of the Walkerton Inquiry confirmed that Ontarians' confidence in their drinking water requires that the systems that deliver, govern and protect our water – from source to tap – meet the highest standards. Protecting human health is paramount (emphasis added).[30]

The Advisory Committee concluded that while municipalities play a key role in source protection planning, municipal authorities require additional statutory powers to control land use and development in order to protect drinking water safety:

> Municipalities will be key players in the development and implementation of watershed-based source protection plans, not only through their representation on conservation authorities, but also through their critical role in implementation in terms of controlling and influencing land uses and land use planning…
>
> Municipalities can influence the location of new high risk land uses, but only prior to their establishment… However, it must recognized that the *Planning Act* applies primarily during that limited period when a proposed development is proceeding through the approvals process and during initial construction. These existing mechanisms do not provide for long-term monitoring and enforcement.
>
> Municipality ability to regulate existing uses is even more limited (original emphasis).[31]

Accordingly, the Advisory Committee made a number of recommendations on the design and implementation of source protection planning legislation, including the following:

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[29] CELA served as a member of this Advisory Committee, as did members representing municipal, building, aggregates, agriculture and many other sectors. This Committee (like the ensuing Implementation Committee report noted below) arrived at consensus recommendations to the Ministers, and the recommendations from both reports formed the basis for the *CWA* when it was subsequently enacted.

[30] Advisory Committee Report (2003), page 1. This report is available at: http://agrienvarchive.ca/bioenergy/download/SWPA_Advisory_Committee_Report.pdf.

[31] *Ibid*, page 12.

- where risk to human health is the concern, source protection legislation should supersede other legislative provisions and considerations, and provincial decisions affecting water quality and quantity should be required to be consistent with source protection legislation;

- other provincial legislation (including the *Planning Act*) should be amended where necessary to be consistent with source protection legislation; and

- new powers should be developed for municipalities to better protect source water and implement watershed-based source protection plans (emphasis added).[32]

Similarly, the Implementation Committee[33] reported to the Environment Ministry in 2004 that:

> It is important that all provincial and municipal decisions affecting drinking water be consistent with approved source protection plans. In addition, source protection plans must prevail if conflicts with other instruments occur. A primary clause would help ensure effective implementation of source protection plans by providing the legal basis for decision-making in the event of conflicts...
>
> Legislative and jurisdictional reviews… indicate that gaps exist in current municipal authority to address threats to vulnerable drinking water sources in existing built-up areas and from existing activities…
>
> The Committee also examined the relationship between source protection plans and municipal official plans and zoning by-laws and recommends that municipal land-use planning decisions be required to "be consistent with" source protection plans from the time a source protection plan is approved by the province. Municipal official plans should be updated to include source protection data and policies, and the province should work with municipalities to ensure a timely update of municipal official plans.[34]

Accordingly, the Implementation Committee made numerous recommendations, including the following:

- source protection legislation should ensure that:

  (a) provincial government regulation and decisions that affect drinking water are consistent with provincially approved source protection plans; and

  (b) municipalities implement source water protection plans through their land-use planning systems where applicable and that municipal regulation of activities shall complement and implement, where applicable, provincially approved source protection plans;

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[32] *Ibid*, Recommendations 8, 9 and 11.
[33] CELA served as a member of the Implementation Committee.
[34] Implementation Committee Report (2004), pages xiii and xiv. The Committee's report is available at: http://sourcewaterinfo.on.ca/images/uploaded/uploadedDownloads/4938e.pdf.

- source protection legislation should ensure that if there is a conflict between an approved source protection plan as it pertains to a significant risk to drinking water and (1) a provincial law or instrument or (2) a municipal official plan or by-law, the approved source protection should prevail;

- approved source protection plans should be binding on the Crown;

- there must be consistency between source protection plans and decisions that the province makes related to a wide range of activities, including those related to: the province's own lands and activities; new and expanding operations; and existing activities which operate under provincial approvals (permits, licences, etc.); and

- to address the gap in municipal authority and support municipal implementation of source water protection plans, the Implementation Committee recommends that municipal land-use planning decisions be required to "be consistent with" source water protection plans from the time that the plans are approved by the province (emphasis added).[35]

In addition, the Technical Experts Committee[36] established by the Environment Ministry reported in 2004 that:

> Protection of drinking water sources is the first step in a multi-barrier approach to ensuring safe drinking water. The goal of source protection is to provide an additional safeguard for human health by ensuring that current and future sources of drinking water in Ontario's lakes, rivers and groundwater are protected from potential contamination or depletion. Protecting the quality and quantity of drinking water sources will also help maintain and enhance the ecological, recreational and commercial values of our water resources.[37]

The Technical Experts Committee report also contains detailed recommendations on how to implement a credible, science-based approach for identifying drinking water threats, analyzing source water vulnerability, and undertaking risk management. This Committee also recommended that source protection plans should prevail over other provincial or municipal decisions:

> Drinking water source protection must take priority over the *Nutrient Management Act*, farm water protection plans, and any other provincial or municipal legislation, policies or regulations that impact drinking water (emphasis added).[38]

The foregoing unanimous recommendations from the three provincial advisory committees were reflected in the *CWA* when it was passed by the Ontario Legislature in 2006 and proclaimed into

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[35] *Ibid*, Recommendations 15, 16, 18, 19 and 21.
[36] As an Implementation Committee member, CELA participated as an *ex officio* observer in the meetings of the Technical Experts Committee.
[37] Technical Experts Committee Report (2004), page vii. The Committee's report is available at: http://www.ontla.on.ca/library/repository/mon/9000/249006.pdf.
[38] *Ibid*, Guiding Principle 15.

force in 2007. In particular, the above-noted recommendations regarding the primacy of source protection plans were directly incorporated into section 39 of the *CWA*, as discussed below.

Given this extensive work by the provincial advisory committees, and given this history of broad multi-stakeholder support for the paramountcy of source protection plans, CELA questions why the Ontario government is now trying to evade or undermine the legal effect of source protection plans by ousting the application of section 39 of the *CWA* to open-for-business planning by-laws under Schedule 10 in Bill 66.

(d) Purpose and Provisions of the CWA

The overall purpose of the *CWA* is to protect existing and future sources of drinking water against "drinking water threats."[39]

"Drinking water threat" is defined under the *CWA* as "an activity or condition that adversely affects, or has the potential to adversely affect, the quality or quantity of any water that is or may be used as a source of drinking water, and includes an activity or condition that is prescribed by the regulations as a drinking water threat."[40]

For example, where a prescribed activity within a wellhead protection area or surface water intake protection zone may create significant risk to source water, the *CWA* makes it mandatory for source protection plans to include policies to ensure that the activity "never becomes a significant drinking water threat," or that the activity, if already underway, "ceases to be a significant drinking water threat."[41]

To date, *CWA* regulations have prescribed almost two dozen different agricultural, commercial or industrial activities as drinking water threats:

1. The establishment, operation or maintenance of a waste disposal site within the meaning of Part V of the *Environmental Protection Act*.
2. The establishment, operation or maintenance of a system that collects, stores, transmits, treats or disposes of sewage.
3. The application of agricultural source material to land.
4. The storage of agricultural source material.
5. The management of agricultural source material.
6. The application of non-agricultural source material to land.

[39] *CWA*, section 1.
[40] *CWA*, subsection 2(1).
[41] *CWA*, subsection 22(2), para 2.

7. The handling and storage of non-agricultural source material.

8. The application of commercial fertilizer to land.

9. The handling and storage of commercial fertilizer.

10. The application of pesticide to land.

11. The handling and storage of pesticide.

12. The application of road salt.

13. The handling and storage of road salt.

14. The storage of snow.

15. The handling and storage of fuel.

16. The handling and storage of a dense non-aqueous phase liquid.

17. The handling and storage of an organic solvent.

18. The management of runoff that contains chemicals used in the de-icing of aircraft.

19. An activity that takes water from an aquifer or a surface water body without returning the water taken to the same aquifer or surface water body.

20. An activity that reduces the recharge of an aquifer.

21. The use of land as livestock grazing or pasturing land, an outdoor confinement area or a farm-animal yard.

22. The establishment and operation of a liquid hydrocarbon pipeline.[42]

To ensure the effectiveness and enforceability of source protection plans in relation to significant drinking water threats and the Great Lakes, subsections 39(1) to (8) of the *CWA* currently stipulate that:

- municipal, provincial and tribunal decisions under the *Planning Act* "shall conform with" policies contained in source protection plans that prevent or stop activities that constitute significant drinking water threats, or that are designated Great Lakes policies;[43]

[42] O.Reg.287/07, section 1.1. Subject to the approval of the Environment Ministry, it is also open to Source Protection Committees under the *CWA* to identify and evaluate local threats that are not found on the provincial list of prescribed threats.

[43] This mandatory requirement does not apply to the issuance of the Provincial Policy Statement or Ministerial zoning orders under section 47 of the *Planning Act*: see *CWA*, subsection 39(3). Given that Ministerial zoning orders

- municipal, provincial and tribunal decisions under the *Planning Act* must "have regard to" other policies in source protection plans;

- in cases of conflict, the significant threat policies and designated Great Lakes policies in source protection plans prevail over official plans, by-laws, and provincial plans or policies;

- within source protection areas, no municipality or municipal planning authority shall undertake any public work, structural development or other undertaking that conflicts with a significant threat policy or designated Great Lakes policy in source protection plans;

- no municipality or municipal planning authority shall pass a by-law for any purpose that conflicts with significant threat policies or designated Great Lakes policies in source protection plans; and

- provincial decisions to issue "prescribed instruments"[44] (e.g. environmental licences, permits or approvals) must conform with significant threat policies and designated Great Lakes policies in source protection plans, and must have regard to other policies in source protection plans.

It should be noted that the application of subsections 39(1) to (8) to policies in source protection plan is further addressed by section 34 of O.Reg.287/07 under the *CWA*. In essence, this regulation indicates that in order for policies to have legal effect under the *CWA*, the source protection plan must specify which subsections under section 39 (or other Part III provisions) are applicable to which policies.[45]

In general, source protection plans can designate lands upon which prescribed activities are prohibited,[46] restricted,[47] or regulated through risk management plans.[48] Under the *CWA*, municipalities are required to amend their official plans and zoning by-laws under the *Planning*

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have been previously used to facilitate major manufacturing plants in Ontario, CELA concludes that it is duplicative for Schedule 10 of Bill 66 to create a substantially similar planning tool to be used by municipalities.

[44] To date, a lengthy list of instruments have been prescribed under the *CWA*, including: permits, licences and site plans under the *Aggregate Resources Act*; environmental compliance approvals for waste disposal sites and sewage works under the *Environmental Protection Act*; nutrient management plans and strategies under the *Nutrient Management Act, 2002*; water-taking permits under the *Ontario Water Resources Act*; pesticide permits under the *Pesticides Act*; and certain permits and licences under the *Safe Drinking Water Act, 2002*: see O.Reg.287/07, section 1.0.1.

[45] See, for example, Schedule C to the approved source protection plan for the Cataraqui Source Protection Area in southeastern Ontario: http://cleanwatercataraqui.ca/PDFs/Studies-and-Reports/AppendixC-Applicable-Legal-Provision-of-Policies.pdf.

[46] *CWA*, section 57.

[47] *CWA*, section 59.

[48] *CWA*, section 58.

Act in order to bring them into conformity with the significant threat policies contained in source protection plans.[49]

To develop significant threat policies and Great Lakes policies in source protection plans, the *CWA* established a locally-driven, science-based and participatory planning process to identify and protect the quality and quantity of drinking water sources (e.g. groundwater and surface water).

In 2007, for example, the Ontario government designated "Source Protection Authorities" (existing conservation authorities) in a large number of watershed-based areas or regions across Ontario.[50] Each of these Authorities, in turn, appointed its own Source Protection Committee consisting of persons representing municipal, industrial, agricultural, environmental, and public interests.[51]

These Source Protection Committees prepared and consulted upon assessment reports under the *CWA* that identified municipal drinking water sources, evaluated the vulnerability of these sources, and classified potential threats[52] to these sources arising from activities on nearby lands and waters.

The Committees then drafted and consulted upon source protection plans that, among other things, contained watershed-specific policies to mitigate significant drinking water threats, address Great Lakes issues where applicable, and enhance the protection of other sensitive areas (e.g. highly vulnerable aquifers and significant groundwater recharge areas).

The draft source protection plans were then submitted to the Environment Ministry for review and approval. By the end of 2015, 38 source protection plans had been approved by the Ministry, and all of the approved plans are currently being implemented by provincial, municipal and risk management officials across Ontario.

In the meantime, Source Protection Committees are now gearing up to update their original assessment reports to determine if their plan policies require any amendments in light of new information or changed circumstances at the local level.

CELA notes that the most recent Annual Report of the Environmental Commissioner of Ontario (ECO) independently reviewed the first generation of approved source protection plans.[53] After interviewing stakeholders and examining 500 plan policies from across the province, the ECO concluded that the *CWA* process has worked well to produce "individually tailored source protection plans that respond to the specific geography and local circumstances of each watershed," and that contain "policies that thoughtfully weighed the financial consequences of

[49] *CWA*, sections 40 to 42.
[50] See O.Reg.284/07.
[51] See O.Reg.288/07.
[52] Activities undertaken in or near wellhead protection areas and surface water intake protection zones were assessed under the *CWA* to determine whether they constituted low, moderate or significant threats to drinking water sources.
[53] ECO 2018 Annual Report, Volume 2, Chapter 1: https://eco.on.ca/reports/2018-back-to-basics/.

complying with more onerous policies without sacrificing the ultimate goal of drinking water safety."[54]

Similarly, the ECO found that *CWA* source protection plans have resulted in "thousands of on-the-ground actions to reduce drinking water threats," and these actions "should over time reduce the risk of spills and unsafe discharges to municipal drinking water sources, which supply water for about 80% of Ontarians."[55] The actions cited by the ECO include "ministries are updating pollution permits to incorporate source protection provisions," and "municipalities are amending their official plans to designate restricted areas for source protection."[56] CELA notes that these types of action are specifically mandated by Part III of the *CWA*, including section 39.

Given the ECO's findings, and given the considerable time, effort and resources that have gone into the source protection planning process to date, CELA is gravely concerned by the attempt in Schedule 10 of Bill 66 to allow open-for-business planning by-laws under the *Planning Act* to circumvent or override section 39 of the *CWA*, as described below.

CELA also shares the ECO's concern that provincial funding to continue the *CWA* source protection program beyond March 2019 has not yet been confirmed by the Ontario government,[57] despite Mr. Justice O'Connor's above-noted recommendation that this critically important program must be adequately funded. As correctly noted by the ECO, "the province should not squander the substantial investment it has made"[58] in source protection planning since the *CWA* was first enacted in 2006.

PART III – ANALYSIS OF EXEMPTING OPEN-FOR-BUSINESS PLANNING BY-LAWS FROM SECTION 39 OF THE *CWA*

(a) Purpose and Provisions of the Planning Act

The overall purpose of the *Planning Act* has been framed by the Ontario Legislature as follows:

- promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;
- provide for a land use planning system led by provincial policy;
- integrate matters of provincial interest in provincial and municipal planning decisions;
- provide for planning processes that are fair by making them open, accessible, timely and efficient;

[54] *Ibid*, page 5.
[55] *Ibid*.
[56] *Ibid*.
[57] *Ibid*, pages 47-50.
[58] *Ibid*, page 49.

- encourage co-operation and co-ordination among various interests; and
- recognize the decision-making authority and accountability of municipal councils in planning.[59]

The *Planning Act* also identifies a broad range of provincial interests that the Minister of Municipal Affairs and Housing, municipal councils and other decision-makers must have regard to when exercising their statutory powers under the Act. These matters include:

- the protection of ecological systems, including natural areas, features and functions;
- the protection of the agricultural resources of the province;
- the conservation and management of natural resources and the mineral resource base;
- the supply, efficient use and conservation of energy and water;
- the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;
- the orderly development of safe and healthy communities;
- the protection of public health and safety;
- the appropriate location of growth and development; and
- the mitigation of greenhouse gas emissions and adaptation to a changing climate.[60]

In general, Ontario's *Planning Act* enables municipalities to pass zoning by-laws which permit, restrict or prohibit land uses within their respective boundaries.[61] Municipal decisions on official plans and zoning by-laws are typically subject to public notice and comment opportunities,[62] and these decisions "shall be consistent"[63] with the directions set out in the Provincial Policy Statement (PPS) issued under the *Planning Act*. Land use planning disputes may be heard and decided in proceedings before the independent Local Planning Appeal Tribunal.

The 2014 PPS contains a number of provincial policies aimed at ensuring safe, healthy and liveable communities and protecting natural heritage features and functions. For example, the PPS stipulates that all *Planning Act* decisions must:

- avoid development and land use patterns which may cause environmental or public health and safety concerns;

- ensure that water services are provided in a manner that can be sustained on water resources on which they depend, and that complies with all regulatory requirements and protects public health and safety;

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[59] *Planning Act*, section 1.1.
[60] *Ibid*, section 2.
[61] *Ibid*, section 34.
[62] *Ibid*, sections 17 and 34.
[63] *Ibid*, subsection 3(5).

- protect, improve or restore the quality and quantity of surface water and groundwater resources;

- implement necessary restrictions on development and site alteration in order to protect all municipal drinking water supplies and designated vulnerable areas; and

- restrict development and site alteration in or near sensitive surface water features and sensitive groundwater features such that these features and their related hydrologic function will be protected, improved or restored.[64]

Given that these and other PPS policies are designed to safeguard the overarching provincial interest in protecting water quality and quantity, it is unclear, from a public interest perspective, why Schedule 10 of Bill 66 now proposes to expressly exempt open-for-business planning by-laws from being consistent with the PPS, as discussed below.

In addition, CELA notes that the PPS already expressly directs the municipalities to "promote economic development and competitiveness" by various means, including planning for, protecting and preserving "employment areas" for current and future uses.[65] Accordingly, it appears to CELA that Schedule 10's creation of the new "open-for-business" planning tool is both redundant and unnecessary.[66] Interestingly, the mayors of several large municipalities in southern Ontario have already publicly declared that their communities do not intend to use this new planning tool even if Schedule 10 of Bill 66 is enacted.

(b) Schedule 10's Proposed Amendments to the Planning Act

When Bill 66 was first introduced, the Ontario government rationalized the proposed legislation on the grounds that the Bill will eliminate "red tape and burdensome regulations," and will thereby enable businesses to create "good jobs."[67]

On this apparent basis, Schedule 10 of Bill 66 proposes to amend section 34 of the *Planning Act* by adding new provisions that allow municipalities to pass "open-for-business planning by-laws" in manner that circumvents key procedural requirements under the Act.

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[64] PPS, Policies 1.1, 1.6.6, and 2.2
[65] *Ibid*, Policy 1.3.
[66] The regulatory proposal (https://ero.ontario.ca/notice/013-4239) that accompanies Bill 66 indicates that "open-for-business" by-laws are intended to approve manufacturing plants, research/development facilities and other industrial developments that create 50 jobs in smaller municipalities and 100 jobs in larger municipalities. It appears that such developments may also include residential, commercial or retail components as long as they are not the "primary" land use.
[67] See https://news.ontario.ca/medg/en/2018/12/ontarios-government-for-the-people-cutting-red-tape-to-help-create-jobs.html

For example, if a municipality requests and obtains written permission from the Minister of Municipal Affairs and Housing[68] to pass an open-for-business planning by-law, then the by-law is not subject to the public notice, comment and appeal opportunities that routinely apply to zoning by-laws.[69]

Similarly, Schedule 10 provides that no notice or hearing is required prior to the passage of such by-laws.[70] However, after the by-laws are passed, municipalities are obliged to promptly notify the Minister, and to provide notice to any persons or public bodies that municipalities "consider proper" to receive *ex post facto* notice.[71]

If the people of Ontario are the presumed beneficiaries of making municipalities "open-for-business," it is unclear why interested or potentially affected members of the public are being excluded from any meaningful participation in developing open-for-business planning by-laws.

In our view, requiring discretionary public notification only after the by-laws are passed in a secretive manner (and excluding public rights of appeal under the *Planning Act*) does not ensure good land use planning, enhance accountability of decision-makers, guarantee source water protection, or otherwise safeguard the public interest.

Schedule 10 of Bill 66 goes to provide additional exemptions and/or preferential treatment under the *Planning Act* in relation to open-for-business planning by-laws. For example, Schedule 10 proposes that such by-laws:

- do not have to be consistent with the protective provincial policies in the PPS;[72]
- are not subject to the legal requirement that public works and municipal by-laws must conform with official plans;[73]
- are not subject to the holding by-law provisions under the Act;[74]
- do not allow "density bonus" agreements for the provision of municipal facilities or services from the developer in exchange for increased height or density in the development;[75]
- are not subject to traditional site plan controls;[76]

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[68] Schedule 10 contains no statutory criteria or environmental factors that the Minister must take account when deciding whether to approve or reject a municipal request to pass an open-for-business by-law.
[69] Schedule 10, proposed subsection 34.1(6), para 3.
[70] *Ibid*, proposed subsection 34.1(11).
[71] *Ibid*.
[72] *Ibid*, proposed subsection 34.1(6), para 1.
[73] *Ibid*, proposed subsection 34.1(6), para 2.
[74] *Ibid*, proposed subsection 34.1(6), para 4.
[75] *Ibid*, proposed section 34.1(6), para 5.
[76] *Ibid*, proposed subsection 34.1(7).

- can only be modified or revoked by the Minister before they come into force;[77] and

- take precedence over any previously passed zoning by-laws or interim control by-laws that conflict with the open-for-business planning by-law.[78]

In addition to the above-noted *Planning Act* exemptions, Schedule 10 of Bill 66 proposes that open-for-business by-laws will not be subject to a number of other environmental statutes and provincial land use plans.[79]

However, this analysis by CELA focuses on Schedule 10's controversial proposal to exempt open-for-business planning by-laws from section 39 of the *CWA*. In CELA's opinion, this proposed exemption has considerable potential to adversely affect drinking water sources and the health of millions of Ontarians who are served by municipal drinking water systems.

(c) Schedule 10's Proposed Exclusion of Section 39 of the CWA

As discussed above, section 39 of the *CWA* contains eight different subsections which collectively require provincial and municipal decisions under the *Planning Act* and other statutes to conform to significant threat policies and designated Great Lakes policies in approved source protection plans.

Thus, section 39 gives overarching primacy and binding legal effect to source protection plans in relation to activities that constitute significant drinking water threats, as had been recommended by Mr. Justice O'Connor and three different provincial advisory committees.

However, Schedule 10 of Bill 66 now proposes to wholly exclude subsections 39(1) to (8) from applying to major development projects that may be authorized by open-for-business planning by-laws. Therefore, as a matter of law, Schedule 10 enables municipalities to pass such by-laws pursuant to new section 34.1 of the *Planning Act* to approve large-scale development that is contrary to source protection plan policies regarding significant threats to communities' drinking water supplies.

For example, the exclusion of section 39 of the *CWA* means that open-for-business planning by-laws could allow massive industrial projects to be constructed and operated in wellhead protection areas or surface water intake protection zones delineated by source protection plans, even if certain activities or facilities associated with the project (e.g. high-volume water-takings, on-site sewage works, waste disposal site, or the handling or storage of solvents, fuel, dense non-aqueous phase liquid, etc.) may constitute significant drinking water threats.

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[77] *Ibid*, proposed subsection 34.1(13).
[78] *Ibid*, proposed subsection 34.1 (19).
[79] Aside from the *CWA* exemption, open-for-business by-laws will not be subject to certain provisions in the *Great Lakes Protection Act, 2015, Greenbelt Act, 2005, Lake Simcoe Protection Act, 2008, Metrolinx Act, 2006, Oak Ridges Moraine Conservation Act, 2001, Ontario Planning and Development Act, 1994, Places to Grow Act, 2005,* and *Resource Recovery and Circular Economy Act, 2016*.

Similarly, it is our view that ousting the application of section 39 of the *CWA* would enable provincial officials to issue prescribed instruments (e.g. environmental licences, permits, or approvals) for such activities or facilities, even if they would be contrary to the significant threat policies in an approved source protection plan.

On this point, we are aware that section 34 of O.Reg.287/07 prescribes how the subsections in section 39 are to be applied under the *CWA*. However, as a general principle of statutory interpretation, provisions in regulations do not trump or override the clear language used in legislation. In our view, the unambiguous wording of Schedule 10 in Bill 66 is that section 39 is excluded in its entirety from applying to open-for-business planning by-laws under the *Planning Act*, irrespective of what may be stated in O.Reg.287/07 under the *CWA*.

In addition, Schedule 10 appears to make it permissible for municipalities to undertake public works or structural development (e.g. infrastructure expansion) within or across a wellhead protection area or intake protection zone in order to service private development authorized under open-for-business planning by-laws, although such actions may facilitate land uses that conflict with significant threat policies in source protection plans.

In our view, there is no legal justification or compelling public policy rationale for allowing open-for-business planning by-laws to override significant threat policies (or designated Great Lakes policies) in source protection plans under the *CWA*.

This is particularly true since these policies have been carefully crafted on the basis of local field studies, technical investigations and scientific analysis, and the policies were subject to extensive public consultations by Source Protection Committees in watersheds across Ontario.

Moreover, the significant threat policies in current source protection plans were provincially approved over three years ago, and the implementation of these plans to date has successfully reduced threats to drinking water throughout the province, as recently reported by the ECO. In addition, the paramountcy of significant threat policies (as entrenched in section 39 of the *CWA*) is fully responsive to Mr. Justice O'Connor's recommendations, which the Ontario government has pledged to implement and maintain.

Furthermore, we are unaware of any cogent evidence that demonstrates that open-for-business planning by-laws (particularly those which conflict with source protection plans) are actually wanted by municipalities for employment creation purposes. We further note that the Ontario government has failed or refused to explain why new major development cannot be accommodated on employment lands already set aside beyond the boundaries of wellhead protection areas or intake protection zones.

Finally, CELA derives no comfort from the Schedule 10 proposal that open-for-business planning by-laws will be reviewed and approved by the Minister of Municipal Affairs and Housing. First, in our respectful view, this Ministry has no particular expertise under the *CWA* or drinking water safety in general, and therefore cannot be realistically expected to gather and assess the detailed

on-the-ground evidence needed to make an informed decision on whether or not a proposed development poses a significant drinking water threat.

Second, on its face, Schedule 10 only prescribes two statutory conditions for passing such by-laws at the municipal level: (a) Ministerial approval; and (b) prescribed criteria "if any."[80] Neither of these "conditions" have any built-in environmental or public health safeguards. This is also true for the illustrative criteria set out in the Environmental Registry posting for the proposed regulation that accompanies Bill 66. These suggested criteria address the type of development for which an open-for-business planning by-law may be passed (e.g. the job creation threshold), but they do not expressly include any environmental or public health factors that must be satisfied.

Third, while the Minister may impose unspecified conditions on his/her approval of an open-for-business planning by-law,[81] it is unlikely that these conditions can or will be used to cross-reference or re-impose significant threat policies from approved source protection plans, especially since Schedule 10 expressly excludes the application of such policies.

Put another way, if it is open to the Minister, in his/her discretion, to impose the key elements of relevant significant threat policies as conditions of approval for open-for-business planning by-laws, then it is contrary to the public interest (and defies common sense) to exempt such policies in the first place under Schedule 10. Assuming that such conditions can even be requested by a municipality or imposed by the Minister, it appears to CELA that crafting case-specific exemptions to the statutory exemptions under Schedule 10 seems unwieldy in law and unworkable in practice.

PART IV - CONCLUSIONS

For the foregoing reasons, CELA concludes that Schedule 10 of Bill 66 represents an unprecedented and unjustifiable rollback of current legal requirements that were specifically enacted under the *CWA* to prevent a recurrence of the Walkerton Tragedy.

By any objective standard, the well-founded requirements under section 39 of the *CWA* are not "red tape" or "burdensome regulations", as implicitly suggested by the provincial government. To the contrary, section 39 is a vitally important safeguard that must remain in full force and effect across Ontario in order to protect drinking water safety and human health.

Moreover, it is well-established that protecting drinking water sources against significant threats also makes considerable economic sense, particularly since source protection efforts help reduce the need for municipalities to add (or enhance) expensive treatment technologies, or attempt to restore or cleanup contaminated drinking water sources, or build (or expand) drinking water infrastructure in order to draw supplies from alternative sources.[82]

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[80] Schedule 10, proposed subsection 34.1(2).
[81] *Ibid*, subsection 34.1(4).
[82] See Cataraqui Source Protection Plan, Chapter 2, page 10: http://cleanwatercataraqui.ca/PDFs/Studies-and-Reports/Chapter2-Introduction.pdf.

The financial benefits of drinking water source protection was also amply demonstrated in the Walkerton Tragedy, where the aggregate costs of the public inquiry, remediation, compensation, healthcare and related matters have been estimated to be $200 million.[83]

In our view, the Ontario government should not sacrifice drinking water quality, or create needless public health risks, in the pursuit of economic development throughout the province. Accordingly, CELA strongly recommends that Schedule 10 be abandoned and withdrawn by the Ontario government before Bill 66 proceeds any further in the legislative process.

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[83] See https://www.thestar.com/news/queenspark/2018/12/09/tories-bill-66-would-undermine-clean-water-protections-that-followed-walkerton-tragedy-victims-and-advocates-warn.html.