

November 10, 2022

File No. 575208-19

SUBMITTED VIA EMAIL AND THE ENVIRONMENTAL REGISTRY OF ONTARIO

Honourable Steve Clark
Minister of Municipal Affairs and Housing
777 Bay Street, 17th Floor
Toronto, ON M7A 2J3

Dear Minister Clark,

**Re: Bill 23, *More Homes Built Faster Act, 2022* (“Bill 23”)
Submissions of Canada Apartment Properties REIT (“CAPREIT”)**

We are counsel for CAPREIT, Canada’s largest publicly-traded provider of quality rental housing. CAPREIT currently owns and manages significant residential apartment suites, townhomes, and land lease sites in Ontario and many parts of Canada.

CAPREIT supports the Provincial government’s legislative efforts to address Ontario’s housing crisis. We commend your efforts, and thank you. We appreciate the opportunity to file submissions with respect to this important legislative change. CAPREIT is supportive of the Province’s direction with respect to major transit station areas and protected major transit station areas (“**PMTSAs**”), and the proposal to require municipalities to update their zoning by-laws to conform with official plan policies relating to PMTSAs.

We write on behalf of CAPREIT to express concerns with what may be an unintended consequence of the Bill 23 proposed revisions. While we see the need for the proposed changes to the planning framework that expedite land use planning, streamline the process, and limit third party appeals, CAPREIT is concerned that the proposed revisions appear to also eliminate rights of appeal for municipally-initiated official plans, official plan amendments, zoning by-laws, and zoning by-law amendments.

In particular, the omnibus bill proposes to eliminate “third-party” appeal rights of municipally-initiated planning instruments by landowners whose lands are included within and impacted by those same planning instruments (the “**Proposed Revisions**”). Specifically, proposed amendments to Sections 17 and 34 of the *Planning Act* will give municipalities the power to change the planning permissions for a parcel of land through municipally-initiated official plan amendments or zoning by-law amendments, with no opportunity for the landowners that are affected by those amendments to appeal the municipality’s decision to the Ontario Land Tribunal (the “**Tribunal**”). Accordingly, municipal councils would be able to implement policies and by-laws that may restrict development, on the basis of political whims and preferences, without the concern that such decisions will be appealed and scrutinized on the basis of good land use planning principles and provincial direction. This is especially problematic given existing sections of the *Planning Act*

Fernanda Lopes & Associados ► Guevara & Gutierrez ► Paz Horowitz Abogados ► Sirote ► Adepetun Caxton-Martins Agbor & Segun ► Davis Brown ► East African Law Chambers ► Eric Silwamba, Jalasi and Linyama ► Durham Jones & Pinegar ► LEAD Advogados ► Rattagan Macchiavello Arocena ► Jiménez de Aréchaga, Viana & Brause ► Lee International ► Kensington Swan ► Bingham Greenebaum ► Cohen & Grigsby ► Sayarh & Menjra ► For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

which prohibit privately-initiated official plan amendments within two years of a new official plan or secondary plan coming into effect (similar sections apply a two year moratorium on variance applications from the time a zoning by-law is approved). In other words, landowners and developers that are seeking to construct new homes could be slowed down for years as a result of municipal policies that are not subject to scrutiny or challenge. Accordingly, eliminating rights of appeal for municipally-initiated planning decisions could impede, as opposed to facilitate, the Province's stated goal of increasing the housing supply by incentivizing the construction of 1.5 million new homes.

The right of appeal for landowners impacted by a proposed planning instrument is an important check on the decisions of municipal councils. We respectfully ask that you reconsider the Proposed Revisions as they impact appeal rights of landowners affected by municipally-initiated official plan amendments, zoning by-laws, and zoning by-law amendments. Rights of appeal for municipally-initiated planning decisions are an integral component of the land use planning regime in Ontario. They facilitate accountability. CAPREIT, like other real estate firms across the Province, relies upon these rights to protect the development potential of its landholdings, and enhance its ability to provide high-quality homes for Ontarians. At present, CAPREIT is party to an appeal of the City of Toronto's approval of Official Plan Amendment 615 ("**OPA 615**"), a municipally-initiated planning instrument. The policies of OPA 615 could negatively impact the future development of lands owned by CAPREIT in the Steeles-Yonge PMTSA, an area that is to be prioritized for intensification and higher densities.

The Proposed Revisions would invalidate existing appeals that are with the Tribunal awaiting scheduling, including CAPREIT's appeal of OPA 615. These Proposed Revisions, as they apply to appeals of municipally-initiated planning instruments, would create a scenario in which the planning instrument would no longer be under appeal if the Proposed Revisions were approved, as proposed. We, at the very least, respectfully ask that the Province implement transition provisions that would allow for these appeals to continue to be heard by the Tribunal.

We respectfully ask that the Proposed Revisions be removed from the Bill 23 amendments to the *Planning Act*, and that the right to appeal municipally-initiated planning instruments remain.

Thank you for the opportunity to make this submission.

Yours truly,

Dentons Canada LLP



Katarzyna Sliwa
Partner

Copy: Mr. Ryan Amato, Chief of Staff, Ministry of Municipal Affairs and Housing
Ms. Kirstin Jensen, Deputy Chief of Staff, Ministry of Municipal Affairs and Housing
Mr. Jae Truesdell, Director of Housing Policy, Office of the Premier of Ontario