TURAN LAW OFFICE P.C.

March 21, 2024

Honourable Minister Paul Calandra
Ministry of Municipal Affairs and Housing
777 Bay Street, 17th Floor
Toronto ON M7A 2J3
Via E-mail: mmahofficialplans@ontario.ca

Re: *Get It Done Act, 2024,* ERO 019-8273 2023

Dear Honourable Minister Calandra,

I am writing on behalf of my clients Williams Treaties First Nations in response to Bill 162, *Get it Done Act, 2024*. While Williams Treaties First Nations have identified several concerns with Bill 162 summarized in these submissions, as communicated to Ms. Laurie Miller, they require further consultation on various schedules of Bill 162 to comprehend how the Ontario government took into consideration the implications of Bill 162 on their Aboriginal and treaty rights.

Schedule 1 - Environmental Assessment Act

Schedule 1 of Bill 162 proposes to amend Section 1 of the *Environmental Assessment Act* ("*EA Act*") to provide that, a reference to acquiring property or rights in property in the *EA Act* is a reference to doing so by purchase, lease, expropriation or otherwise. This amendment would affect all types of projects, regardless of their environmental impact, including class, comprehensive, and streamlined environmental assessments.

First, the ERO notice does not provide any rationale as to why properties can be expropriated prior to the completion of the requisite Environmental Assessment ("EA"). Williams Treaties First Nations submit that allowing property expropriation before the completion of the requisite EAs undermines the integrity of the EA process and the Crown's constitutional duty to consult and accommodate.

Particularly alarming is the potential use of these expropriation powers in the context of significant developments, such as Highway 413 and the Bradford Bypass. The EA process is the only process through which environmental impacts are assessed, the concerns of right holders and stakeholders directly impacted by the project are addressed and alternatives are evaluated. By allowing for land expropriation before the EA process is completed, the amendment would fundamentally compromise the purpose and impartiality of the EA process.

The proposal is contrary to the requirements of the constitutional duty to consult and accommodate. Consultation with Indigenous communities as part of the EA process is the avenue through which the Crown often fulfills its constitutional duty to consult and accommodate. The

Constitution Act, 1982 requires Indigenous consultation to be meaningful and not merely a formality. The Supreme Court of Canada has made it clear that meaningful consultation entails genuinely considering concerns raised by Aboriginal parties, and where possible, adapting actions to address these concerns.[1] The proposed amendment, in contrast, suggests a predetermined disregard for the consultation process, thereby failing to fulfill the Crown's duty to consult and accommodate.

Additionally, the amendment poses significant concerns for landowners, subjecting their property rights to premature expropriation decisions. Expropriation of property should only be considered after the EA process has thoroughly evaluated all alternatives. The current proposal disregards landowners' interests and their role in the EA process and undermines the public trust in the expropriation process. These changes will weaken and potentially eliminate landowners' right to have a hearing before their lands are expropriated and could impact Williams Treaties First Nations' proprietary interests as well.

Furthermore, Williams Treaties First Nations are troubled by the ambiguity surrounding the term "otherwise" in the context of property acquisition. This lack of clarity hinders my clients' ability to fully understand and respond to the implications of the legislation.

For the foregoing reasons, Williams Treaties First Nations oppose Schedule 1 of Bill 162 and ask that it be removed from Bill 160.

Schedule 3 – Official Plan Adjustments Act, 2023

Williams Treaties First Nations also oppose Schedule 3 of Bill 162 which reinstates numerous urban boundary expansions that were made by *Bill 150* that were central to the controversies involving land speculation during the tenure of Minister Clark and ask that Schedule 3 also be removed from Bill 160. These expansions have previously been met with rejection from regional governments, primarily due to the existence of ample undeveloped rural land already designated for development within these municipalities.

My clients note with concern the proposal to revert the previously reversed urban boundary expansions for Barrie, Belleville, Guelph, Peterborough, Wellington Country and the regions of Halton, Peel, Waterloo, and York. Your initial reversal was positively received by both Indigenous communities and regional governments, as it was seen as a prudent and responsible approach to development. This approach was appreciated for recognizing the sufficient availability of existing land resources, which should be utilized before considering the expansion of urban boundaries.

Williams Treaties First Nations have repeatedly[2] expressed their concern to the Ontario government about the implications of urban boundary expansions. Urban boundary expansions encroach upon natural areas and farmlands, exacerbate urban sprawl and lead to the further loss of natural habitats within Williams Treaties First Nations' traditional territories where they exercise their harvesting rights. The anticipated environmental impacts of sprawl encouraged by Bill 162,

[1] *Mikisew Cree First Nation v. Canada*, 2005 SCC 69

[2] Williams Treaties First Nations submissions regarding ERO Number 019-6813 dated August 4, 2023; Williams Treaties First Nations submissions regarding ERO Number 019-6162 dated November 17, 2022.

seemingly to benefit specific developers' interests who buy rural lands adjacent to urban boundaries and then lobby the government for urban boundary expansions, would compromise Williams Treaties First Nations' ability to meaningfully exercise their treaty harvesting rights.

Expansion of urban boundaries without proper consultation with my clients including obtaining their free, prior and informed consent also constitutes an infringement of Williams Treaties First Nations' pre-confederation treaties. The essence of treaty rights is their meaningful exercise, which must not be rendered meaningless by excessive taking up of lands.[3] While Williams Treaties First Nations do not accept that their pre-confederation treaties included any taking-up clauses, they say that the cumulative environmental impact from the urban sprawl that Bill 162 will continue to promote will adversely impact their ability to meaningfully exercise their treaty rights and constitute an infringement of their treaties with the Crown that promised the continued exercise and facilitation of the exercise of their harvesting rights.

Schedule 5 – Protecting Against Carbon Taxes Act, 2024

Bill 162 also includes a schedule to enact a new legislation titled *Protecting Against Carbon Taxes Act, 2024 ("PACTA")* to establish new rules with respect to carbon pricing programs. Notably, the proposed legislation stipulates that any new carbon pricing initiative, whether under current or future statutes and regulations would require a referendum.

Williams Treaties First Nations oppose Schedule 5 of Bill 162 and ask that it be removed from Bill 160. While a subsequent government could revoke this legislation, Williams Treaties First Nations are concerned by the government's approach which appears to obstruct progressive measures to combat climate change, an issue of critical importance to Wiliams Treaties First Nations. The requirement for a referendum to authorize carbon pricing would hamper urgent climate action, which is necessary for the preservation of Indigenous lands, resources, and the exercise of constitutionally protected Aboriginal and treaty rights.

Williams Treaties First Nations have been advocating for policies that are designed to curb sprawl, protect agricultural lands, natural heritage resources and address climate change; policies that mandate the utilization of existing settlement areas and the built environment through mandating densification and minimize the disruption to critical, scarce and sensitive lands including agricultural lands and wetlands. Regrettably, Bill 162 not only fails to align with any of these objectives but actively contradicts them.

For the foregoing reasons Williams Treaties First Nations ask that Schedules 1, 3 and 5 of Bill 162 be removed from Bill 162. While these submissions summarize Williams Treaties First Nations' immediate concerns with Bill 162, my clients require meaningful consultation on Bill 162 which would significantly impact their Aboriginal and treaty rights.

Kind regards,

Ceyda Turan

Ceyda Turan
Legal Counsel for Williams Treaties First Nations

[3] *Mikisew Cree First Nation v. Canada*, 2005 SCC 69.