#246

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LAND USE PLANNING REFORM

Submission to the Standing Committee on the Administration of Justice

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Re: Bill 163, An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes related to planning and municipal matters.

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Executive Summary

This submission is the culmination of three years of extensive joint activity on land use planning reform by public interest, environmental and citizens groups from across Ontario. The Canadian Environmental Law Association has worked extensively with these groups both as legal counsel and in advocating reforms during the Sewell Commission consultation. The recommendations made herein reflect the concerns of citizens who have had considerable experience with the land use planning process.

We support the overall intent of the land use planning reform initiative. Concerns with Bill 163 fall into two key areas: insufficient attention to environmental protection; and insufficient attention to issues of process integrity. Thirty recommendations are made to address these two areas. If implemented, our recommendations would better reflect the broad consensus developed during the Sewell Commission consultation. As well, our proposed changes would improve the Bill in a manner that would preserve the intent of the Legislature in its approval of the Bill on Second Reading.

In the area of environmental protection, Bill 163 does not adequately reflect the consensus built among the many stakeholders who participated in the Sewell Commission consultation. Recommendations are made that would more effectively weave critically needed environmental protection measures throughout the Bill. Beginning with the purposes of the Act, environmental protection must be included as one of the purposes of planning. Environmental protection must then be incorporated into both the content requirements and associated procedures for developing Official Plans and major plan amendments. Recommendations are made to incorporate essential elements of environmental planning into the Planning Act and to ensure that these elements are amplified by regulations.

An additional recommendation is made to ensure that the new provisions for setting by-laws to restrict the use of lands provide the tools necessary to support the intent of the Policy Statement on Natural Heritage protection. And, on the long-discussed matter of pre-approval site alteration we recommend that the Planning Act be amended to prohibit site alteration prior to the granting of planning approvals. This prohibition should include the removal of vegetation and fill. In the alternative, the proposed Municipal Act amendments to set by-laws on this matter should be mandatory, not optional and the matters to be controlled prior to the granting of approvals must be expanded to include removal of vegetation and fill.

In the broad area of process integrity, recommendations are made to ensure provincial and municipal responsibility for implementing the new planning system.

Provincial responsibility for ensuring that policy is upheld derives from Sub-Section 3(5) of the Planning Act. In its review of Bill 163, the Standing Committee on the Administration of Justice must remember that the Province of Ontario has the responsibility, through the Planning Act, for ensuring that land use planning reflects the provincial interest. The Planning Act enables the province to express matters of provincial interest and provides a

mechanism for ensuring that policies expressing these interests are upheld. A key criticism that this reform effort is intended to address is that the Province has been very slow in exercising its responsibility in expressing matters of provincial interest and the mechanism for ensuring these interests are respected has been widely criticized as inadequate.

The proposed change in Sub-Section 3(5) to the stronger language of "shall be consistent with" received very broad support during the Sewell Commission consultation. Unfortunately, the stronger language is considerably weakened by the restricted application of the Sub-Section - a move that was not raised or debated during the last three years of consultation. We recommend that the application of Sub-Section 3(5) be broadened to include all provincial ministries, the Environmental Assessment Board, the Ontario Energy Board and Ontario Hydro.

In the laudable effort of reforming the planning process, particularly in the desire to increase local autonomy of decision-making, provincial responsibility for ensuring the provincial interest is reflected in land use decisions must be recognized and ensured.

Two important recommendations are made to ensure the timely implementation of the new planning system. We recommend that, when new Policy Statements are issued under the Planning Act, municipalities be required to initiate an official plan review without undue delay and submit for approval revised plans within three years to be followed by revised plans at the lower tier within two years. The Act should also give municipalities the power to defer, until a general plan review, major plan amendments that significantly change the overall intent of the official plan.

Many recommendations are made in this submission to address the matter of citizen access to the planning process. The new requirement to pay Ontario Municipal Board fees when planning applications are forwarded to the Board may, under some circumstances, amount to an important financial barrier to citizens and should be deleted. The new list of grounds for dismissal of Ontario Municipal Board referrals and appeals contains serious flaws. We recommend that the notion of "valid land use planning grounds" be deleted or, in the alternative, that it be specifically linked to the purposes of planning (as set out in the Act), to the matters of provincial interest noted in Section 2 and to the Policy Statements issued under Section 3.

The ability to dismiss referral and appeal requests on the basis of citizens not having made oral or written submissions at appropriate public meetings is a denial of basic democratic rights and should be deleted. If it is not deleted, it must be accompanied by changes to the notice requirements so that notices of public meetings explicitly include information as to these grounds for dismissal of referrals and appeals. A related recommendation is the need for municipalities to ensure full access to information (in advance and in appropriate locations in the community so it can be reviewed during non-business hours) so that citizens can effectively understand the implications of planning proposals. Additional recommendations are made to ensure that adequate public notice occurs of planning

decisions, that decisions that ought be made in public are indeed done so, that the public have adequate access to information, that unincorporated groups have access to the Ontario Municipal Board and that the province extend the Intervenor Funding Project Act to official plans and major plan amendments before the Ontario Municipal Board.

Finally, on the matter of minor variances, we note that the problem of too many minor variance appeals going to the Ontario Municipal Board is, in many cases, a reflection of the misuse of the provision. The solution to this problem is not to remove the right of appeal but to address this misuse. We recommend that the ability to appeal such decisions to the Ontario Municipal Board be retained and that the problem of misuse of this provision be handled by clarifying the definition of "minor variance".

LAND USE PLANNING REFORM

I. Introduction

The Canadian Environmental Law Association (CELA) is a non-profit, public interest organization, established in 1970, that has as its mandate the use of existing laws and policies to protect the environment and advocacy on environmental law reforms. In recent years, CELA has represented many individuals and citizens groups on land use matters before the Ontario Municipal Board and in the courts. As well, we have been very active with these and many other citizens and environmental groups (ENGOs for short) from across the province in advocating land use reform through the efforts of the Land Use Caucus, a non-advocacy sub-network of the Ontario Environment Network. This submission has benefited from and been informed by that collective effort.

We participated extensively in the Sewell Commission consultation including the December 1993 follow-up consultation on the new Policy Statements. Despite the fact that our previous Executive Director was one of the Commissioners, we did not hesitate in criticizing the work of the Commission where we found fault with its iterative series of recommendations. We supported the overall intent of the package of reforms in the Commission's Final Report and in the Comprehensive Set of Policy Statements.

We agreed, in the Spring of 1994, to participate in the Advisory Task Force on Implementation and agree with the Government's decision to close the debate on the policies. Although we have concerns with the overall brevity of the policies as well as some of the content, we agree that they represent a broad consensus and should not be reopened. Rather, through the work of the Implementation Task Force, we are very active in advising on the drafting of Implementation Guidelines for the Policy Statements, Regulations to accompany Bill 163 and an educational and training package for all practitioners and participants in the new planning process.

The Government is to be highly commended for its leadership and resolve in reforming land use planning. The integrated package of legislative and regulatory changes, policies and associated guidelines, and the educational and training proposals is an enormous, historic step forward. Our commentary on Bill 163 and recommendations for amendment is offered in the context of overall support for these long-awaited and urgently needed reforms.

This submission offers a more detailed section on the background to this reform effort, a stand-alone list of recommendations and a detailed appendix that provides a discussion and rationale for each of our recommendations.

II. Background

The need to bring environmental integrity to the land use planning system in Ontario is captured succinctly by the following words of the Ontario Ministry of Natural Resources:

> The natural landscapes of southern Ontario have been altered and fragmented since settlement to meet the need for economic and social development of the province. In many areas, the natural features of the landscape are now reduced to - and below - the threshold levels needed to sustain themselves....
>
> A present imperative is to exercise more ecologically-sound land-use planning. This requires a more sympathetic understanding of the ecological processes and components of the native landscape...
>
> Studies in landscape ecology, conservation biology and restoration ecology have had a special focus on disturbed ecosystems and fragmented landscapes typical of those dominating southern Ontario. Basic strategies for conserving natural landscapes in [the] settled south include landscape retention, landscape restoration, and ecosystem replacement. Key to these strategies is the identification and protection of core conservation lands, natural corridors and countryside, and restored connecting links, at scales ranging from individual species to whole landscapes.
>
> As is the case on such landscapes around the world, public environmental concern is with issues like biodiversity, sustainable use and natural heritage, which individually express different facets of economically-responsible environmental protection of the natural ecosystems of the world's landscapes.
>
> Biodiversity is a concept expressing the diversity of reproductive life on the planet, and the diversity of ecological processes and dependencies that endow ecosystems with their infinite and evolving forms. Biodiversity expresses a key problem of science as a whole, to chart and portray the full texture of genetic, species, ecosystem and landscape diversity.
>
> There are numerous challenges in landscape-level planning, if we are to ensure that the indigenous biodiversity of a region is maintained and, where degraded, restored.[1]

These statements provide context for the concerns expressed by public interest, non-governmental, environmental and citizens groups (ENGOs, for short) from across Ontario about the land use planning process. These groups have, for many years, advocated the need for land use planning

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1 Ontario Ministry of Natural Resources, 1994. The Natural Heritage of Southern Ontario's Settled Landscapes - A Review of Conservation and Restoration Ecology for Land-Use and Landscape Planning. pp. 66-67.

reforms to bring both environmental and "process" integrity to the land use planning system. Their efforts at the local, regional and provincial level have been instrumental in bringing public attention to these issues.

Concerns over the planning process were brought into sharp focus in two reports of the Environmental Assessment Advisory Committee[2], in the reports of the Royal Commission on the Future of the Toronto Waterfront[3], and in Ron Kanter's report on a Greenlands Strategy for the Greater Toronto Area[4]. Recommendations made in these reports echoed the concerns of ENGOs about lack of environmental integrity and lack of fairness and public access in the planning process.

For many years ENGOs from across Ontario have worked very hard on formulating proposals for reform of Ontario's land use planning process. During the last three years, these activities have been coordinated through the Land Use Caucus, a non-advocacy sub-network of the Ontario Environment Network. Together, these groups draw upon diverse experiences with the planning process from the time of public notice through to Ontario Municipal Board hearings.

ENGOs welcomed the establishment of the Sewell Commission and strongly supported its mandate to restore confidence in the integrity of the planning process, to protect public interests, to better define roles and relationships, to focus more closely on protecting the natural environment and to make the planning process more timely and efficient.

Although frustrating at times, the Sewell Commission's consultation was, in retrospect, an extremely effective exercise. In contrast to many government consultations, people really believed they were being heard. All stakeholders saw their ideas discussed and reflected in the Commission's newsletters and iterative series of recommendations. Broad consensus was achieved on many of the Commission's final set of recommendations. The Comprehensive Set of Policy Statements is broadly supported by many ENGOs. Many concerns remain regarding the level of detail in the policies and effective means of implementation. Still, the policies do represent a crucially important step forward and are a reflection of broad consensus and compromise among the many stakeholders who participated in the Sewell consultation. The same cannot be said for Bill 163. The Bill

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2 Environmental Assessment Advisory Committee:
1989. The Adequacy of the Existing Environmental and Planning Approval Process for the Ganaraska Watershed - Report # 38 to the Minister of the Environment. 44 pp.;
and
1990. Environmental Planning and Approvals in Grey County - Report # 41 to the Minister of the Environment. 51 pp.

3 Royal Commission on the Future of the Toronto Waterfront:
1990. Watershed, 207 pp.;
1991. Planning for Sustainability: Towards Integrating Environmental Protection into Land-Use Planning, 101 pp.;
and
1992. Regeneration. 530 pp.

4 Kanter, R. 1990. Overview - Options for a Greater Toronto Area Greenlands Strategy. 28 pp.

inadequately reflects the consensus represented in the Sewell Commission's final set of recommendations. This submission makes recommendations for amendments to the Bill that would more appropriately reflect that consensus in order to achieve the stated purpose of the reform effort[5]: "to integrate environmental concerns into land use planning". It makes additional recommendations concerning democratic access to the process to ensure the restoration of public confidence in the planning system.

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5 as stated in the document "Understanding Ontario's Planning Reform Effort" released with Bill 163 on May 18, 1994.

III. List of Recommendations

NOTE: Unless otherwise indicated, the numbers below refer to the added or replacement sections as they will appear in the Planning Act, not to Sections of Bill 163. And, for each of the Sections of the Planning Act that are discussed, the relevant section and page numbers in Bill 163 are provided in parentheses. The one exception is the discussion of Sub-Section 223 of the Municipal Act. Recommendations are arranged according to the Sections of the Act to which they refer and are numbered sequentially.

List of Planning Act Sections (or Municipal Act Sections if indicated) and additional matters for which recommendations follow:

(a) Sub-Section 1.1
The Purposes of the Act

(b) Sub-Section 3(5)
Decisions Consistent With Policy Statements

(c) Section 16
Contents of Official Plans

(d) Sub-Section 16.1
Prescribed Process for Plan Preparation

(e) Sub-Sections 17(24) 17(34), 34(19), 47(8.2), 47(10.1), 51(36), 53(23)
New Requirement for Payment of Ontario Municipal Board Fees

(f) Sub-Sections 17(29), 34(25), 47(11), 51(41), and 53(27)
Grounds for Dismissal of Appeals

(g) Sub-Sections 17(9), 51(14), and 53(4)
Procedural Fairness

(h) Section 22
Drafting Error

(i) Sections 21 and 22
Power to Defer Plan Amendments

(j) Section 26
Revision of Official Plans

(k) Sub-Section 34(1)
Restricting Use of Lands

(l) Section 45
Minor Variances

(m) Sub-Section 223(1) (Municipal Act)
Pre-Approval Site Alteration

(n) Additional Matters Related to Citizen Access
Public Registry, Public Meetings, Access to Information, Access to the OMB for Unicorporated Groups and Intervenor Funding

(a) Sub-Section 1.1 The Purposes of the Act

(Bill 163 - Part III, Section 4. page 3)

Recommendations:

1. In keeping with the more comprehensive and integrated approach contained in the remainder of the purposes section and in the Policy Statements, and to ensure that the Planning Act has as one of its purposes, the protection of the environment, we recommend that Section 1.1(a) of the Planning Act contain the language proposed by the Sewell Commission as follows:

> 1.1 The purposes of this Act are,
>
> **1.1 (a) to guide land use change in a manner that fosters economic, environmental, cultural, physical, and social well-being;**
>
> **1.1 (b) to guide land use change in a manner that protects and conserves the natural environment and conserves and manages natural resources for the benefit of present and future generations.**

2. In the alternative, drop "economic" from Section 1.1(a).

(b) Sub-Section 3(5) Decisions Consistent With Policy Statements

(Bill 163 - Part III, Section 6(2), page 5)

Recommendations:

3. That section 3(5) of the Planning Act be amended to read:

> A decision of the council of a municipality, local board, planning board, the Minister and the Municipal Board under this Act and any other Act as may be prescribed **and a decision by every Ministry of the Crown, the Joint Board, Environmental Assessment Board, the Energy Board and Ontario Hydro affecting land use matters under this Act** shall be consistent with policy statements issued under subsection one.

4. That the Standing Committee on the Administration of Justice not repeal Section 62 of the Planning Act, regarding application of the Act to Ontario Hydro.

(Bill 163 - Part III, Section 34(1) and 34(2), page 56)

5. That Bill 163 be amended at Section 51(17)(a) by adding at the end of the fourth line:

> **and any applicable Policy Statements issued under Section 3.**

(Bill 163 - Part III, Section 28, page 39-40)

(c) Section 16 - Contents of Official Plans

(Bill 163 - Part III, Section 9, page 9 - 10)

Recommendations:

6. That Bill 163 be amended by replacing the proposed Section 16 and 16(a) of the Planning Act with the following:

> 16. An official plan **and major plan amendment,** shall contain the prescribed contents and,
> (a) shall contain goals, objectives and policies **established on an ecosystem basis** primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality or part of it, or an area that is without municipal organization;

7. That the Standing Committee on the Administration of Justice formally request that the Cabinet ensure that the prescribed contents of Official Plans explicitly include requirements for a full range of official plan policies necessary to ensure ecosystem health, as directed by the purposes of the Act and Goal A and associated policies in the Comprehensive Set of Policy Statements.

(d) Sub-Section 16.1 - Prescribed Process for Plan Preparation

(Bill 163 - Part III, Section 9, page 10)

Recommendations:

8. That Bill 163 be amended by replacing the proposed Section 16.1 of the Planning Act with the following:

> new marginal note to state: **prescribed process for alternatives assessment and joint planning**
>
> **16.1 The council of a municipality shall follow the alternatives assessment and joint planning processes prescribed and develop the materials prescribed for the preparation of an official plan and any processes followed or materials developed may be considered under the Environmental Assessment Act with respect to any requirement that it must meet under that Act.**

9. That the Standing Committee on the Administration of Justice formally request that the Cabinet ensure that the prescribed processes for alternatives assessment and joint planning include requirements to review land use (in addition to infrastructure) alternatives in the preparation (and review) of official plans (and major plan amendments) and that the processes of plan preparation (including plan review and amendment) require that municipalities consult with all neighbouring municipalities and jurisdictions to ensure that their plans are logically integrated and will not conflict with or otherwise unreasonably interfere with the plans of neighbouring jurisdictions.

(e) Sub-Sections 17(24) 17(34), 34(19), 47(8.2), 47(10.1), 51(36), 53(23) - New Requirement for Payment of Ontario Municipal Board Fees

(Bill 163, Part III: Section 10, page 14, page 16; Section 20(7), page 24; Section 26(4), page 33; Section 26(6), page 33; Section 28, page 44; Section 30, page 51)

Recommendation:

10. That Sections 17(24), 17(34), 34(19), 47(8.2), 47(10.1), 51(36), 53(23) of the Planning Act be amended by deleting the requirement to pay Ontario Municipal Board Act fees from the two requirements for referral and/or appeal requests.

(f) Sub-Sections 17(29), 34(25), 47(11), 51(41), and 53(27) - Grounds for Dismissal of Appeals

(Bill 163 - Part III, Section 10, page 15; Section 20(10), page 24-25; Section 26(7), page 33; Section 28, page 45; and Section 30, page 52.)

Recommendations:

11. That the grounds for dismissal of referrals and appeals that occur in proposed Sections 17(29)(a)(i), 17(38)(a)(i), 34(25)(a)(i), 47(12.1)(a)(i), 51(41)(a)(i) and 53(23)(a)(i) of the Planning Act be deleted.

12. In the alternative, that the phrase "land use planning ground" where it occurs in sections 17(29)(a)(i), 17(38)(a)(i), 34(25)(a)(i), 47(12.1)(a)(i), 51(41)(a)(i) and 53(23)(a)(i) amended to read:

> **land use planning ground as provided in sections 1.1 and 2 of this Act and as described in the provincial policy statements under section 3**

13. That the Legislative Committee reviewing Bill 163 reject any proposal to waive the 30 day separation between the public meeting provided for under Section 17(9) and the adoption of a plan.

(g) Sub-Sections 17(9), 51(14), and 53(4) - Procedural Fairness

(Bill 163 - Part III, Section 10, page 11, Section 28, page 39 and Section 30, page 48)

Recommendations:

14. That section 17(9) of the Planning Act be revised to read:

> The council shall ensure that in the course of the preparation of the plan adequate information, including a copy of the plan, is made available to the public, and, for this purpose, shall hold at least one public meeting, notice of which shall be given in the manner and to the persons and public bodies and containing the information prescribed, **including information regarding the power of the approval authority to refuse to refer a proposed decision under subsection (29) and the power of the Municipal Board to dismiss an appeal of a referral request under subsection (38) if a person requesting a referral or an appellant has not provided the council with oral submissions at a public meeting or written submissions before a plan is adopted.**

15. That section 51(14) of the Planning Act be revised to read:

At least 30 days before a decision is made by an approval authority under subsection (20), the approval authority shall ensure that,

(a) notice of the application is given in the manner and to the persons and public bodies and containing the information prescribed, **including information regarding the power of the Municipal Board to dismiss an appeal of a referral request under subsection (41) if an appellant has not provided the approval authority with oral submissions at a public meeting or written submissions before it gave or refused to give approval to the plan of subdivision.**

16. That section 53(4) of the Planning Act be revised to read:

At least 30 days before a decision is made by the council or the Minister, the council or the Minister shall ensure that,

(a) notice of the application is given in the manner and to the persons and public bodies and containing the information prescribed, **including information regarding the power of the Municipal Board to dismiss an appeal of a referral request under subsection (27) if an appellant has not provided the council or the Minister with oral submissions at a public meeting or written submissions before a provisional consent was given or refused.**

(h) Section 22 - Drafting Error

(Bill 163 - Part III, Section 14, page 21-22)

Recommendation:

17. That Section 22(3) be amended by replacing the final word "approval" with the following:

its consideration persuant to the provisions of Section 17 of this Act.

(i) Sections 21 and 22 - Power to Defer Plan Amendments

(Bill 163 - Part III, Section 13, page 19, Section 14, page 19-20)

Recommendations:

18. That Bill 163 be amended by adding the following to Sub-Sections 21 and 22 of the Planning Act:

21.1 (marginal note - **power to defer consideration of plan amendment)**

Except where required under Section 26(4), the approval authority has the power to defer, until the time of a general plan review as provided for under Section 26(1), consideration of an official plan amendment that substantially alters the official plan of the municipality.

22.1 (marginal note - **power to defer consideration of plan amendment)**

Except where required under Section 26(4), the approval authority has the power to defer, until the time of a general plan review as provided under Section 26(1), consideration of an official plan

amendment that substantially alters the official plan of the municipality.

(j) Section 26 - Revision of Official Plans

(Bill 163 - Part III, Section 17, page 22)

Recommendation:

19. That Bill 163 be amended by adding the following subsections to Section 26 of the Planning Act:

> **26(4) Despite subsections (1) and (3), when the Province issues new Policy Statements under Section 3, the council of every municipality that has adopted and approved an official plan shall, without undue delay, undertake a review of its plan to ensure that the plan is consistent with Policy Statements issued under Section 3;**
>
> **26(5) Where Section 26(4) applies, each municipality that is the approval authority in respect of the approval of an official plan of a local municipality within its jurisdiction shall submit to the Minister a revised official plan no later than three years of the issuing of new Section 3 Policy Statements and ensure thereafter, and within no more than two years, that a review of any official plan of a local municipality is undertaken to ensure that the plan is consistent with the revised plan of the approval authority.**

(k) Sub-Section 34(1) - Restricting Use of Lands

(Bill 163 - Part III, Section 20, page 22-23)

Recommendation:

20. That subsection 34(1)(3.2) of the Planning Act be amended as follows:

> 34(1)(3.2) For prohibiting **or restricting all or any use of land and** the erecting, locating or using of all or any class or classes of buildings or structures within any defined area or areas,...

(l) Section 45 - Minor Variances

(Bill 163 - Part III, Section 25, page 28)

Recommendations:

21. That the right to appeal decisions on minor variances to the Ontario Municipal Board be retained in the Planning Act.

22. That a new definition be included in Bill 163 to define "**minor variance**" as follows:

> **"minor variance" means development or use of land, a building, or a structure that, while not in conformity with the by-law pertaining to the land, building or structure, does not deviate significantly from the use or development permitted by the by-law.**

23. That the new section 45(2) of the Planning Act be replaced with the following:

(2) The council may, despite any other Act, authorize minor variances from by-law requirements.

(m) Sub-Section 223 (Municipal Act) - Pre-Approval Site Alteration

(Bill 163 - Part IV, Section 52, page 66-67)

Recommendations:

24. That Part VII of the Planning Act be amended by adding a new section that would a) prohibit site alteration by an applicant prior to the issuance of any necessary approvals under this Act; b) prohibit any site alteration that does not comply with any terms and conditions attached to any approval issued under this Act or any other Act; and c) provide private citizens with the ability to apply to the courts for injunctive relief in cases of unauthorized site alterations.

25. In the alternative, that Subsection 223.1(1) of the Municipal Act be amended as follows:

1. change "may" to "**shall**" in the second line of subection 223.1(1)

2. rewrite subsection 223.1(1)(a) as follows: **"prohibiting or regulating the placing, dumping or removal of fill or the removal of peat in any defined area or on any class of land;**

3. insert a new subsection 223.1(1)(c) to state: **"prohibiting or regulating the cutting of trees or clearing of vegetation on any defined area or on any class of land";**
4. amend subsection 223.1(1)(c) through (f) to become 223.1(1)(d) through (g)

5. rewrite subsection 223.1(1)(c), now subsection 223.1(1)(d), to state: **"requiring that a permit be obtained for the placing, dumping or removal of fill, the removal of peat, the alteration of the grade of land and the cutting or clearing of vegetation in any defined area or on any class of land and prescribing fees for the permits".**

6. rewrite subsection 223.1(1)(d), now subsection 223.1(1)(e) as follows: **"requiring plans for the placing, dumping, or removal of fill, the grading of land, the removal of peat, and the cutting or clearing of vegetation acceptable to the municipality as a condition of issuing a permit".**

7. rewrite subsection 223.1(1)(e), now subsection 223.1(1)(f) as follows: **"prescribing conditions under which the placing, dumping or removal of fill, the removal of peat, the grading of land, and the cutting or clearing of vegetation may be carried out under a permit".**

8. rewrite subsection 223.1(1)(f), now subsection 223.1(1)(g) as follows: **"requiring that where the placing, dumping or removal of fill, the removal of peat, the grading of land and the cutting or removal of vegetation is carried out contrary to a by-law passed or permit issued under this section, that the material be removed and or the site restored, as appropriate, by the person who caused or permitted the violation of the by-law to occur.**

(n) Additional Matters Related to Citizen Access - Public Registry, Public Meetings, Access to Information and Access to the OMB for Unincorporated Groups

Recommendations:

26. That the Planning Act be amended to require municipalities to establish a Public Registry to notify interested members of the public of planning matters, that the list of names on the Registry be updated annually, that it be the responsibility of those on the list to indicate their desire to stay on the list and that the Registry be maintained on a modest, fee-for-service basis.

27. That the Standing Committee on the Adminstration of Justice ensure that the provisions for open, local government contained in Bill 163 ensure that all planning decisions for which a public meeting is required occur under full public scrutiny.

28. That the Standing Committee on the Adminstration of Justice, in recognition of the volunteer effort required to effectively participate in community decision-making, ensure that Bill 163 and associated regulations provide for access to public meetings and related information during non-business hours and at locations in the community convenient to it citizens.

29. That Bill 163 be amended to require that the Ontario Municipal Board recognize unincorporated organizations.

30. That the Standing Committee on the Administration of Justice recommend that the Intervenor Funding Project Act be extended to official plans and major plan amendments before the Ontario Municipal Board.

Appendix A

Detailed Discussion and Rationale for Recommendations

NOTE: Unless otherwise indicated, the numbers below refer to the added or replacement sections as they will appear in the Planning Act, not to Sections of Bill 163. And, for each of the Sections of the Planning Act that are discussed, the relevant section and page numbers in Bill 163 are provided in parentheses. The one exception is the discussion of Sub-Section 223 of the Municipal Act. Recommendations are arranged according to the Sections of the Act to which they refer and are numbered sequentially.

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(c) Section 16
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(d) Sub-Section 16.1
Prescribed Process for Plan Preparation

(e) Sub-Sections 17(24) 17(34), 34(19), 47(8.2), 47(10.1), 51(36), 53(23)
New Requirement for Payment of Ontario Municipal Board Fees

(f) Sub-Sections 17(29), 34(25), 47(11), 51(41), and 53(27)
Grounds for Dismissal of Appeals

(g) Sub-Sections 17(9), 51(14), and 53(4)
Procedural Fairness

(h) Section 22
Drafting Error

(i) Sections 21 and 22
Power to Defer Plan Amendments

(j) Section 26
Revision of Official Plans

(k) Sub-Section 34(1)
Restricting Use of Lands

(l) Section 45
Minor Variances

(m) Sub-Section 223(1) (Municipal Act)
Pre-Approval Site Alteration

(n) Additional Matters Related to Citizen Access
Public Registry, Public Meetings, Access to Information, Access to the OMB for Unicorporated Groups and Intervenor Funding

(a) Sub-Section 1.1 The Purposes of the Act

(Bill 163 - Part III, Section 4. page 3)

Bill 163 adds a much-needed "purposes" section to the Planning Act. The Sewell Commission consulted extensively on this subject and proposed language for this section that embraced the notion of "sustainable development" (as originally coined by the Brundtland Commission) but without using these words. The Sewell Commission recognized that the term "sustainable development" has come to mean different things to different people including being labelled an oxymoron. However, consensus was achieved during the Sewell Commission consultation that the purpose of the Act must embrace the need for land use planning to ensure the protection of the environment.

The Sewell Commission avoided the vague and contentious words "sustainable development" in favour of more explanatory language to capture the multi-dimensional nature of the issues involved. Rather than use the words that arose from the Sewell Commission's consultation, the proposed Section 1.1(a) of Bill 163 (Part III, Section 4, page 3) is a confusing grab bag of words. The most serious flaw is the use of the phrase "sustainable economic development"; a phrase the Brundtland Commission specifically avoided in order to embrace broader notions of environmental, social, cultural and community development in addition to economic development. Not only is the inclusion of the word "economic" inappropriate within the phrase "sustainable development", the approach of the Sewell Commission is preferable since it avoids the vague and contentious term "sustainable development" altogether. Rather, the Sewell Commission recommended more comprehensive and descriptive language to encompass economic, environmental, social, cultural, and physical well-being.

Recommendation:

1. In keeping with the more comprehensive and integrated approach contained in the remainder of the purposes section and in the Policy Statements, and to ensure that the Planning Act has as one of its purposes, the protection of the environment, we recommend that Section 1.1(a) of the Planning Act contain the language proposed by the Sewell Commission as follows:

> 1.1 The purposes of this Act are,
>
> **1.1 (a) to guide land use change in a manner that fosters economic, environmental, cultural, physical, and social well-being;**
>
> **1.1 (b) to guide land use change in a manner that protects and conserves the natural environment and conserves and manages natural resources for the benefit of present and future generations.**

2. In the alternative, drop "economic" from Section 1.1(a).

(b) Sub-Section 3(5) Decisions Consistent With Policy Statements

(Bill 163 - Part III, Section 6(2), page 5)

Under the current Planning Act, all Ministries of the Crown, agencies, boards and commissions, as well as municipal decision-makers, must "have regard to" policy statements under section 3. At the provincial level, this directive functions to limit inter-ministerial and inter-agency inconsistency in decision-making that has an impact on land use.

The proposed revision of the statutory language to "shall be consistent with" increases, rather than diminishes, the importance of consistency of inter-ministerial and inter-agency decision-making. But, by limiting the directive to only the Ministry of Municipal Affairs, municipalities, local boards, planning boards and the Ontario Municipal Board, the new provision requires other Crown Ministries and agencies to have no regard whatsoever to provincial policy (with the exception of a new provision for Ontario Hydro - discussed below).

Exclusion of all Ministries but the Ministry of Municipal Affairs and of all other provincial agencies from the requirement of Section 3(5) was never recommended by the Sewell Commission; nor was it proposed by the government when it consulted on the proposed policy statements and the change to Section 3(5) in December of 1993. In an exhaustive review of the written submissions of stakeholders made to the Sewell Commission, we found widespread support for the stronger language of Section 3(5). Concerns, reservations or opposition had to do with limiting flexibility at the local level and the effect on existing Policy Statements, not with the application of the section to the Province beyond the Ministry of Municipal Affairs or to the breadth of decision-making functions that arise during the planning process.

In their written submissions to the Sewell Commission, other Provincial Ministries, Boards and agencies did not propose limiting the application of Section 3(5) as is proposed in Bill 163. This change has occurred after two extensive consultations on this matter and is retrogressive and unjustified. As ENGOs noted repeatedly during the last two years, reforms to the planning process must not give rise to an abdication of provincial responsibility to ensure that provincial policy is upheld.

When Ministries and administrative tribunals like the Joint Board, the Environmental Assessment Board and the Ontario Energy Bard, and Ontario Hydro, make decisions that have an impact on land use, their decisions must be consistent with provincial policy. As these decisions also include plans of subdivision, we note further that Bill 163 (Part III, Section 28, page 36-47) removes the Province as the approval authority from decisions regarding plans of subdivision and directs decision makers that "regard shall be had to" a

series of matters including matters of provincial interest as referred to in Section 2. To avoid any confusion, this section should be amended by adding explicit reference to the application of Section 3 Policy Statements.

Recommendations:

3. That section 3(5) of the Planning Act be amended to read:

> A decision of the council of a municipality, local board, planning board, the Minister and the Municipal Board under this Act and any other Act as may be prescribed **and a decision by every Ministry of the Crown, the Joint Board, Environmental Assessment Board, the Energy Board and Ontario Hydro affecting land use matters under this Act** shall be consistent with policy statements issued under subsection one.

4. That the Standing Committee on the Administration of Justice not repeal Section 62 of the Planning Act, regarding application of the Act to Ontario Hydro.

(Bill 163 - Part III, Section 34(1) and 34(2), page 56)

5. That Bill 163 be amended at Section 51(17)(a) by adding at the end of the fourth line:

> **and any applicable Policy Statements issued under Section 3.**

(Bill 163 - Part III, Section 28, page 39-40)

(c) Section 16 - Contents of Official Plans

(Bill 163 - Part III, Section 9, page 9 - 10)

The Sewell Commission responded to the widely expressed need for quality control and consistency in the content of Official Plans. It did so by consulting upon and then revising lists of content requirements for upper and lower tier plans. It also recommended that municipal plans include maps or descriptions of matters noted in provincial policies.

The Commission's proposals for mandatory content requirements for upper and lower tier official plans were widely supported and where reservations were expressed they were largely addressed in the Commission's final recommendations. The exception was the Association of Municipalities of Ontario although many of its members supported the recommendations for legislating plan content requirements. The recommendation for the inclusion of maps was strongly supported by the Ministry of Natural Resources and by many other stakeholders.

Bill 163 amends Section 16 of the Planning Act such that Official Plan content requirements will be contained in a yet-to-be-written regulation. From our involvement with the Implementation Task Force, it is our preliminary understanding that the issue of content requirements (for plans and plan amendments) will be jointly addressed in both the prescribed contents arising from Section 16 and the "complete application" regulation (for official plans and major plan amendments). Provided that compliance with these two regulations is mandatory, and provided they address at least the matters raised by the Sewell Commission (and it appears at this point that they will), the key outstanding matter that ought to be incorporated into Section 16 is explicit reference to planning for ecosystem health.

Extensive discussion and debate on this matter of ecosystem or watershed planning occurred during the Sewell Commission consultation. Widespread support for the need to incorporate watershed planning principles and policies into the municipal planning process exists among a broad range of stakeholders. Important considerations were raised during the Sewell Commission consultation by stakeholders regarding cost, time, expertise, appropriate roles of different agencies, relationship to municipal plans, procedural clarity and logistics of the Commission's watershed planning recommendations. Despite these concerns, broad support for and suggested improvements to the Commission's approach justify action by the Province.

In keeping with the new purposes of the Act (as revised above) and Goal A of the Comprehensive Set of Policy Statements and its associated implementation guidelines, the proposal to amend Section 16 of the Act should be expanded to embrace the notion of planning for ecosystem health during the preparation of Official Plans. In addition, the section needs to apply to major plan amendments as well as official plans.

Recommendations:

6. That Bill 163 be amended by replacing the proposed Section 16 and 16(a) of the Planning Act with the following:

> 16. An official plan **and major plan amendment**, shall contain the prescribed contents and,
> (a) shall contain goals, objectives and policies **established on an ecosystem basis** primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality or part of it, or an area that is without municipal organization;

7. That the Standing Committee on the Administration of Justice formally request that the Cabinet ensure that the prescribed contents of Official Plans explicitly include requirements for a full range of official plan policies necessary to ensure ecosystem health, as directed by the purposes of the Act and Goal A and associated policies in the Comprehensive Set of Policy Statements.

(d) Sub-Section 16.1 - Prescribed Process for Plan Preparation

(Bill 163 - Part III, Section 9, page 10)

Many commentators, including the Sewell Commission have described the problem of Ontario's two different "environmental" planning processes under two statutes: the Planning Act and the Environmental Assessment Act. The processes do not fit well together and they need to be much better coordinated. The inter-relationship between these two statutes needs to be sorted out to eliminate confusion, unwarranted delays, duplication, gaps, inconsistencies, etc. The Sewell Commission sensibly recommended that, instead of trying to extend the Environmental Assessment Act into land use planning issues, the planning process should be adjusted to incorporate principles of environmental assessment.

The Sewell Commission recommended (Final Report Recommendations 46 and 47) that the plan development and amendment process incorporate (from environmental assessment principles) an identification of problems, priorities, needs, opportunities and objectives, a public discussion and evaluation, according to publicly-derived criteria, of reasonable land use planning alternatives leading to a choice of options that best meet the needs, objectives, etc. initially identified. It further recommended (Final Report, Recommendation 48) that the legislation be amended to allow the comprehensive planning procedures to satisfy provisions of the Environmental Assessment Act where that Act applied to planning matters.

Many stakeholders responded favourably to these recommendations although many others objected to the additional time and expense that they expected would be involved. Many who raised these latter concerns suggested that the requirements apply only to Official Plans and major plan amendments and not to minor plan amendments. (In fact, the Commission also recommended that the proposal be limited to Official Plans and major plan amendments.) Still others supported the proposal but suggested it be optional.

Bill 163 falls far short of the Commission's proposals and the responses of stakeholders. The Bill addresses the matter within the context of official plan content requirements. It prescribes an optional process in a yet-to-be-written regulation. As well, it
appears that infrastructure alone will be the subject of the alternatives assessment to be prescribed (although, this provision is ineffective since the "regulation" will be optional). It is difficult to comment on an unwritten regulation. However, in making our recommendations, several points can be stated.

First, contrary to criticisms made during the Sewell Commission consultation, consideration of alternatives often saves time and money. It is also the essence of planning - or it should be. Second, the proposal in Bill 163 for an optional process for conducting alternatives assessment of infrastructure does not resolve the EA/Planning Act problem. Most planning involves planning for infrastructure, which is subject to various Class Environmental Assessments under the Environmental Assessment Act, and therefore to a mandatory process of considering alternatives. Since the alternatives assessment is already mandatory,

it might as well be required under the Planning Act so that it can be explicitly integrated into the planning process for the development which it is intended to serve. These two planning exercises must be combined so that consideration of infrastructure alternatives happens during the land use planning process before key alternatives are foreclosed.

Moreover, the expansion of this notion of weighing alternatives during the preparation of official plans and major plan amendments should be a standard part of any planning worthy of the name. An additional requirement should be to "plan in context". Such a requirement would ensure that municipalities consider matters that extend beyond their boundaries when plans are formulated. Such matters can include watershed considerations, integration with provincial and federal protected areas, transportation planning, growth and settlement patterns, population projections, etc. It simply means that municipalities will need to consult with neighbouring municipalities, the provincial, federal and aboriginal governments, to ensure coordination, as appropriate, on matters of joint planning and provincial policies.

Recommendations:

8. That Bill 163 be amended by replacing the proposed Section 16.1 of the Planning Act with the following:

> new marginal note to state: **prescribed process for alternatives assessment and joint planning**
>
> **16.1 The council of a municipality shall follow the alternatives assessment and joint planning processes prescribed and develop the materials prescribed for the preparation of an official plan and any processes followed or materials developed may be considered under the Environmental Assessment Act with respect to any requirement that it must meet under that Act.**

9. That the Standing Committee on the Administration of Justice formally request that the Cabinet ensure that the prescribed processes for alternatives assessment and joint planning include requirements to review land use (in addition to infrastructure) alternatives in the preparation (and review) of official plans (and major plan amendments) and that the processes of plan preparation (including plan review and amendment) require that municipalities consult with all neighbouring municipalities and jurisdictions to ensure that their plans are logically integrated and will not conflict with or otherwise unreasonably interfere with the plans of neighbouring jurisdictions.

(e) Sub-Sections 17(24) 17(34), 34(19), 47(8.2), 47(10.1), 51(36), 53(23) - New Requirement for Payment of Ontario Municipal Board Fees

(Bill 163, Part III: Section 10, page 14, page 16; Section 20(7), page 24; Section 26(4), page 33; Section 26(6), page 33; Section 28, page 44; Section 30, page 51)

In these sections, the new Act provides that appeals to the Ontario Municipal Board must be directed to the Minister or the relevant council and be accompanied by a notice of appeal setting out the reasons for the appeal (or the prescribed information, depending on the section) and the fee prescribed under the Ontario Municipal Board Act.

This fee requirement represents a significant departure from the current regime, where appellants can file by-law appeals or official plan referral requests without charge. We are concerned that the ability to prescribe (or increase) fees under the Ontario Municipal Board Act may create undesirable financial barriers to citizen access to the Ontario Municipal Board. Large fees should not become a barrier to referral requests and appeals. It should be noted that such fee barriers do not exist for the Environmental Assessment Board (i.e. it does not cost a citizen to request an Environmental Assessment Act hearing or a Part V Environmental Protection Act hearing).

It should be noted here as well that, on the basis of broad public consultation, the Sewell Commission recommended an automatic right of appeal to the Ontario Municipal Board in order to address problems of discretionary decision-making in the referral process. More specifically, the Sewell Commission did not recommend the imposition of fees on appellants. The matter has been handled in Bill 163 by expanding the list of grounds for referrals and appeals, (matters which require careful revision as discussed below), and by adding this potential financial barrier.

Recommendation:

> 10. That Sub-Sections 17(24), 17(34), 34(19), 47(8.2), 47(10.1), 51(36), 53(23) of the Planning Act be amended by deleting the requirement to pay Ontario Municipal Board Act fees from the two requirements for referral and/or appeal requests.

(f) Sub-Sections 17(29), 34(25), 47(11), 51(41), and 53(27) - Grounds for Dismissal of Appeals

(Bill 163 - Part III, Section 10, page 15; Section 20(10), page 24-25; Section 26(7), page 33; Section 28, page 45; and Section 30, page 52.)

In these sections, the new Act provides that various referrals and appeals to approval authorities may be dismissed on the ground that they "do not disclose any apparent land use

planning ground" that (among other things, depending on the section) "could be approved or refused by the Municipal Board." In other words, the matter that forms the basis of the appeal or referral must be a matter within which the Board has jurisdiction to decide or make an order. As well, the new Act would provide that referrals and appeals could be dismissed on the ground that a person requesting a referral or an appeal "did not make oral submissions at a public meeting or written submissions ... before the plan [or other matter, depending on the section] was adopted". Each of these new grounds for dismissal is discussed below.

The phrase, "land use planning grounds" is of such indeterminate meaning that the purpose of the provision is difficult to distinguish from the purpose of the following provision, which allows that requests may be dismissed on the grounds that they are frivolous and vexatious. As the provisions are indistinguishable as presently written, they do not both need to be in the Act. Indeed, if the new grounds are included, as distinct from the "frivolous and vexatious" grounds, then it would be understood that the new grounds would be open to different interpretation from the existing case law on "frivolous and vexatious". The amendment should be deleted from the Bill.

In the alternative, if the new grounds remain, in order to clarify what are "land use planning grounds", for the benefit of those who wish to request a referral or make an appeal, and for the benefit of the approval authority considering referral or appeal applications, the section should refer to the purpose of the Act, the matters of provincial interest under the Act, and the provincial policies under the Act, which, in total, describe "land use planning grounds" as they will exist in Ontario under the new Act. Without the "content" provided by sections 1.1, 2, and the provincial policy statements, the term "land use planning grounds" is too vague.

The new ability to dismiss referrals or appeals on the grounds that oral or written submissions were not made at relevant public meetings is not acceptable. This proposal was not raised by any stakeholders in the over 2000 submissions made to the Sewell Commission, the Sewell Commission never recommended it and it does not appear in the paper prepared by the Office of the Provincial Facilitator reviewing the "frivolous or vexatious" provision.[1] At the August, 1994 meeting of the Implementation Task Force, Dale Martin, the Provincial Facilitator, noted that the proposal arose from his private discussions with some municipalities.

This proposal is a denial of basic democratic rights. It is blind to the problems that members of the public face, as volunteers, in being able to attend meetings, in obtaining information, and in having time to assess the implications of information once it is received. These grounds for dismissal of referrals and appeals must be deleted. In the alternative, the

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1 Final Report of the Working Group Reviewing the Use of the "Frivolous or Vexatious" Provisions of the Planning Act. Submitted to The Steering Committee for Anniversary Reforms, April, 1994. Office of the Provincial Facilitator, Ministry of Municipal Affairs.

recommendations made in the next section concerning improved notice requirements and full access to information are essential to ensuring fairness in the planning system. .

For the same reasons noted above, any proposal to waive the 30 day separation between the public meeting provided for under Section 17(9) and the adoption of an Official Plan, should be rejected.

Recommendations:

11. That the grounds for dismissal of referrals and appeals that occur in proposed Sections 17(29)(a)(i), 17(38)(a)(i), 34(25)(a)(i), 47(12.1)(a)(i), 51(41)(a)(i) and 53(23)(a)(i) of the Planning Act be deleted.

12. In the alternative, that the phrase "land use planning ground" where it occurs in sections 17(29)(a)(i), 17(38)(a)(i), 34(25)(a)(i), 47(12.1)(a)(i), 51(41)(a)(i) and 53(23)(a)(i) amended to read:

> **land use planning ground as provided in sections 1.1 and 2 of this Act and as described in the provincial policy statements under section 3**

4. That the Legislative Committee reviewing Bill 163 reject any proposal to waive the 30 day separation between the public meeting provided for under Section 17(9) and the adoption of a plan.

(g) Sub-Sections 17(9), 51(14), and 53(4) - Procedural Fairness

(Bill 163 - Part III, Section 10, page 11, Section 28, page 39 and Section 30, page 48)

The following discussion and recommendation is made in the event that the Legislative Committee reviewing Bill 163 decides not to heed the recommendation made above to delete the grounds for dismissal of referrals and appeals on the basis of a person not having made an oral or written submission at a public meeting. Should those grounds for dismissal remain, the principles of procedural fairness require clear and timely notification of what action or inaction will result in the loss of the right to refer or appeal a matter to an approval authority, council or the Municipal Board. The Act should include provision that this information be supplied at first notice of the public hearing.

Recommendations:

14. That section 17(9) of the Planning Act be revised to read:

> The council shall ensure that in the course of the preparation of the plan adequate information, including a copy of the plan, is made available to the

public, and, for this purpose, shall hold at least one public meeting, notice of which shall be given in the manner and to the persons and public bodies and containing the information prescribed, **including information regarding the power of the approval authority to refuse to refer a proposed decision under subsection (29) and the power of the Municipal Board to dismiss an appeal of a referral request under subsection (38) if a person requesting a referral or an appellant has not provided the council with oral submissions at a public meeting or written submissions before a plan is adopted.**

15. That section 51(14) of the Planning Act be revised to read:

At least 30 days before a decision is made by an approval authority under subsection (20), the approval authority shall ensure that,

(a) notice of the application is given in the manner and to the persons and public bodies and containing the information prescribed, **including information regarding the power of the Municipal Board to dismiss an appeal of a referral request under subsection (41) if an appellant has not provided the approval authority with oral submissions at a public meeting or written submissions before it gave or refused to give approval to the plan of subdivision.**

16. That section 53(4) of the Planning Act be revised to read:

At least 30 days before a decision is made by the council or the Minister, the council or the Minister shall ensure that,

(a) notice of the application is given in the manner and to the persons and public bodies and containing the information prescribed, **including information regarding the power of the Municipal Board to dismiss an appeal of a referral request under subsection (27) if an appellant has not provided the council or the Minister with oral submissions at a public meeting or written submissions before a provisional consent was given or refused.**

(h) Section 22 - Drafting Error

(Bill 163 - Part III, Section 14, page 21-22)

The proposal in Bill 163 to amend Section 22 of the Planning Act contains an error in section 22(3) which has the effect of denying the public the procedural rights, including a public meeting, that are provided by Section 17 of the Act.

Recommendation:

17. That Section 22(3) be amended by replacing the final word "approval" with the following:

its consideration pursuant to the provisions of Section 17 of this Act.

(i) Sections 21 and 22 - Power to Defer Plan Amendments

(Bill 163 - Part III, Section 13, page 19, Section 14, page 19-20)

There is a widely held criticism of the planning process that a municipal Official Plan is neither "official" nor a "plan" since so much of "planning" occurs by plan amendment. The Sewell Commission's Final Report Recommendation #49 proposes that the Planning Act be amended to provide that municipalities may reject any major plan amendment which substantially alters the Official Plan or the municipality may defer consideration of the amendment until a general plan review. This important recommendation has been ignored in Bill 163. It should be incorporated into the Bill to assist the Province in achieving the stated objective of both the Sewell Commission and the overall reform package: to restore integrity to the planning process.

Recommendations:

18. That Bill 163 be amended by adding the following to Sections 21 and 22 of the Planning Act:

21.1 (marginal note - **power to defer consideration of plan amendment)**

Except where required under Section 26(4), the approval authority has the power to defer, until the time of a general plan review as provided for under Section 26(1), consideration of an official plan amendment that substantially alters the official plan of the municipality.

22.1 (marginal note - **power to defer consideration of plan amendment)**

Except where required under Section 26(4), the approval authority has the power to defer, until the time of a general plan review as provided under Section 26(1), consideration of an official plan amendment that substantially alters the official plan of the municipality.

(j) Section 26 - Revision of Official Plans

(Bill 163 - Part III, Section 17, page 22)

Bill 163 does not provide for any requirement that municipalities review their plans for consistency with Provincial Policy Statements. Given the breadth of the comprehensive set of Policy Statements and the fact that they are establishing, in many cases, long-awaited policy on matters of provincial interest, Bill 163 should be amended accordingly. Section 26 of the Planning Act provides for the revision of Official Plans where a municipality determines there is a need or a revision upon direction of the Minister. Timeframes are needed in Bill 163 for municipalities (upper- and lower-tier) to ensure that their Official Plans are consistent with any new Provincial Policies.

Recommendation:

19. That Bill 163 be amended by adding the following subsections to Section 26 of the Planning Act:

> **26(4) Despite subsections (1) and (3), when the Province issues new Policy Statements under Section 3, the council of every municipality that has adopted and approved an official plan shall, without undue delay, undertake a review of its plan to ensure that the plan is consistent with Policy Statements issued under Section 3;**
>
> **26(5) Where Section 26(4) applies, each municipality that is the approval authority in respect of the approval of an official plan of a local municipality within its jurisdiction shall submit to the Minister a revised official plan no later than three years of the issuing of new Section 3 Policy Statements and ensure thereafter, and within no more than two years, that a review of any official plan of a local municipality is undertaken to ensure that the plan is consistent with the revised plan of the approval authority.**

(k) Sub-Section 34(1) - Restricting Use of Lands

(Bill 163 - Part III, Section 20, page 22-23)

Bill 163 proposes changes to Section 34(1)(3.1) and 34(1)(3.2) of the Planning Act to enable municipalities to pass by-laws restricting land uses in the range of areas that arise in the new Comprehensive Set of Policy Statements. However, the different treatment of lands described in Section 34(1)(3.1) and 34(1)(3.2) will not enable the kind of protection of natural heritage areas that is provided by the Natural Heritage Policy Statement. The natural heritage features and areas listed in section 34(1)(3.2) are potential areas for the development prohibition afforded by Policy A-1.2. Municipalities therefore need the stronger

power to prohibit all development provided by the language used in Section 34(1)(3.1). The matter can be corrected easily by using the same language in section 33(1)(3.2) as is used in 34(1)(3.1).

Recommendation:

20. That subsection 34(1)(3.2) of the Planning Act be amended as follows:

> 34(1)(3.2) For prohibiting **or restricting all or any use of land and** the erecting, locating or using of all or any class or classes of buildings or structures within any defined area or areas,...

(l) Section 45 - Minor Variances

(Bill 163 - Part III, Section 25, page 28)

The Sewell Commission recommended that decisions regarding minor variances were within the capacity of council, or some other approval authority mandated by council. These decisions should be final. However, there have been in the past abuses of the "minor variance" provisions where substantial changes have been permitted, changes that more properly should have occurred under an amendment to the by-law. The abuses have arisen in part because of the subjective nature of the term "minor" (the dictionary definition of which is "unimportant" or "insignificant"), and the subjective nature of the interpretive clause "desirable for the appropriate development or use of the land, building or structure and the general intent and purpose of the by-law and of the official plan, if any, are maintained."

It should be recognized that the recommendation to limit appeals of minor variances to the Ontario Municipal Board has been made by various commentators, including the Sewell Commission, to deal with the fact that a very large proportion of Board appeals are minor variance appeals. It seems prudent to assume that if there are a very large number of minor variance appeals to the Board, then the provision is being abused. The solution is not to remove the right of appeal but to deal with the source of the problem. Misuse of the provision can be dealt with by limiting its use to matters that are truly "minor". If abuse of this provision continues and no appeal right is available, basic aspects of fairness are denied.

By defining "minor variance" and by eliminating the subjective interpretive clause, the potential for abuse will be constrained.

Recommendations:

21. That the right to appeal decisions on minor variances to the Ontario Municipal Board be retained in the Planning Act.

22. That a new definition be included in Bill 163 to define "**minor variance**" as follows:

> **"minor variance" means development or use of land, a building, or a structure that, while not in conformity with the by-law pertaining to the land, building or structure, does not deviate significantly from the use or development permitted by the by-law.**

23. That the new section 45(2) of the Planning Act be amended to read:

> **(2) The council may, despite any other Act, authorize minor variances from by-law requirements.**

(m) Sub-Section 223 (Municipal Act) - Pre-Approval Site Alteration

(Bill 163 - Part IV, Section 52, page 66-67)

Municipalities and ENGOs across the Province have frequently objected to the environmental degradation that has occurred in environmentally sensitive lands in their communities as a result of site alterations made prior to the obtaining of development approvals. Sensitive ecosystems have been degraded or destroyed, groundwater quantity and quality has been impaired and the planning process has no means of preventing damage or ensuring restoration. Even if pre-approval site alteration is not an issue, the process has provided little or no protection for environmentally sensitive features and functions. However, the new set of Policy Statements will require greater environmental protection and the need to ensure that pre-approval site alteration does not damage environmental features and functions that fall within matters of provincial interest under the policies.

The Sewell Commission received extensive comments on its recommendations for controlling pre-approval site alteration. Widespread support was expressed for the recommendations including the desire to see tree-cutting and vegetation removal controlled.[2]

Bill 163 only minimally addresses the Sewell Commission's recommendations on this matter. In submissions to the Commission, ENGOs recommended that a prohibition on pre-approval site alteration be a legislative requirement with injunctive relief available for violation of the prohibition. Instead, the Commission recommended that provincial legislation enable municipalities to pass by-laws if they saw fit. This approach is inadequate since pre-approval site alteration is more likely to be a problem in municipalities that are disinclined to pass by-laws to control it.

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[2] It is worth noting that Ron Kanter recommended in his "Greenlands Strategy" Report that the Planning Act be amended to prohibit pre-approval site alteration, including the removal of vegetation and fill.

Bill 163 is even less useful however, since it enables municipalities to pass by-laws for the placing or dumping of fill and the alteration or grading of land and ignores the many environmental concerns that formed much of the debate on this matter. It would be preferable to amend the Planning Act to prohibit pre-approval site alteration altogether. In the alternative, changes to the Municipal Act amendments proposed in Bill 163 are necessary to make the passage of by-laws mandatory and to expand the range of matters to which they would apply.

Recommendations:

24. That Part VII of the Planning Act be amended by adding a new section that would a) prohibit site alteration by an applicant prior to the issuance of any necessary approvals under this Act; b) prohibit any site alteration that does not comply with any terms and conditions attached to any approval issued under this Act or any other Act; and c) provide private citizens with the ability to apply to the courts for injunctive relief in cases of unauthorized site alterations.

25. In the alternative, that Subsection 223.1(1) of the Municipal Act be amended as follows:

1. change "may" to "**shall**" in the second line of subsection 223.1(1)

2. rewrite subsection 223.1(1)(a) as follows: "**prohibiting or regulating the placing, dumping or removal of fill or the removal of peat in any defined area or on any class of land**";

3. insert a new subsection 223.1(1)(c) to state: "**prohibiting or regulating the cutting of trees or clearing of vegetation on any defined area or on any class of land**";

4. amend subsection 223.1(1)(c) through (f) to become 223.1(1)(d) through (g);

5. rewrite subsection 223.1(1)(c), now subsection 223.1(1)(d), to state: "**requiring that a permit be obtained for the placing, dumping or removal of fill, the removal of peat, the alteration of the grade of land and the cutting or clearing of vegetation in any defined area or on any class of land and prescribing fees for the permits**";

6. rewrite subsection 223.1(1)(d), now subsection 223.1(1)(e) as follows: "**requiring plans for the placing, dumping, or removal of fill, the grading of land, the removal of peat, and the cutting or clearing of vegetation acceptable to the municipality as a condition of issuing a permit**";

7. rewrite subsection 223.1(1)(e), now subsection 223.1(1)(f) as follows: **"prescribing conditions under which the placing, dumping or removal of fill, the removal of peat, the grading of land, and the cutting or clearing of vegetation may be carried out under a permit"**;

8. rewrite subsection 223.1(1)(f), now subsection 223.1(1)(g) as follows: **"requiring that where the placing, dumping or removal of fill, the removal of peat, the grading of land and the cutting or removal of vegetation is carried out contrary to a by-law passed or permit issued under this section, that the material be removed and or the site restored, as appropriate, by the person who caused or permitted the violation of the by-law to occur".**

(n) Additional Matters Related to Citizen Access - Public Registry, Public Meetings, Access to Information, Access to the OMB for Unincorporated Groups and Intervenor Funding

Several matters that come up for citizens time and again during the planning process include: adequate notice about planning decisions affecting their communities; public meetings as distinct from additional non-public "meetings" of elected officials and municipal staff; access to both information and meetings during non-business hours; denial of access to the Ontario Municipal Board by unincorporated groups; and intervenor funding for Ontario Municipal Board hearings.

The Sewell Commission made recommendations to address a number of these issues and Bill 163 does not address them adequately. First, the Sewell Commission recommended that the Planning Act require that each municipality be required to establish a Public Registry to notify the public of planning matters. The Registry would be updated annually and those on the list would be responsible for ensuring their names stayed on the list. This proposal would address many concerns about lack of notice and would not be too financially onerous if it were operated on a modest fee for service basis.

We have not had time for a detailed review of the provisions in Bill 163 having to do with open, local government. The general intent of these provisions, particularly disclosure of financial information, is laudable. We would hope that the open, local government provisions ensure that planning decisions for which public meetings are required occur under full public scrutiny without councils arbitrarily using alternative "sessions" or "sub-committees" to make in camera decisions which ought to be made publicly.

Another matter of public access to both meetings and information is timing. Reform to the planning system must include requirements for public meetings to be held during non-business hours. While such a requirement ought to be self-evident, it will ensure that the practices of some municipalities are appropriately reformed. In addition, access to information is essential during non-business hours, preferably at a number of community

locations such as libraries, community and resource centres, etc. These measures can be achieved through provisions in Bill 163 and be complemented by related regulations.

As recommended by the Sewell Commission, unincorporated organizations should be recognized by the Ontario Municipal Board. This is a simple measure to implement and would remove an unnecessary barrier to citizen participation in the planning process.

Finally, for the new planning system to be truly fair, intervenor funding is essential for public interest groups faced with Ontario Municipal Board hearings. As the Sewell Commission recommended, the Intervenor Funding Project Act should be extended for matters of Official Plans and major plan amendments.

Recommendations:

26. That the Planning Act be amended to require municipalities to establish a Public Registry to notify interested members of the public of planning matters, that the list of names on the Registry be updated annually, that it be the responsibility of those on the list to indicate their desire to stay on the list and that the Registry be maintained on a modest, fee-for-service basis.

27. That the Standing Committee on the Adminstration of Justice ensure that the provisions for open, local government contained in Bill 163 ensure that all planning decisions for which a public meeting is required occur under full public scrutiny.

28. That the Standing Committee on the Adminstration of Justice, in recognition of the volunteer effort required to effectively participate in community decision-making, ensure that Bill 163 and associated regulations provide for access to public meetings and related information during non-business hours and at locations in the community convenient to it citizens.

29. That Bill 163 be amended to require that the Ontario Municipal Board recognize unincorporated organizations.

30. That the Standing Committee on the Administration of Justice recommend that the Intervenor Funding Project Act be extended to official plans and major plan amendments before the Ontario Municipal Board.