

Canadian Environmental Law Association  
L'Association canadienne du droit de l'environnement

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VIA FAX 613-548-6908

Dear Mr. Ward,

**RE: MINISTRY OF ENVIRONMENT AND ENERGY'S ENVIRONMENTAL  
PLANNING PROGRAM: LAND USE PLANNING PROGRAM REVIEW (EBR  
REGISTRY NUMBER: PA6E0002.P)**

The Canadian Environmental Law Association (CELA), founded in 1970, is a non-profit, public interest organization specializing in environmental law and policy. CELA's casework and law reform activities in land use planning and resource conservation matters extends back more than fifteen years in Ontario.

We have reviewed the Ministry of Environment and Energy's Environmental Planning Program (EPP): "Land Use Planning Program Review" document released in January of 1996 and have a number of comments. The overall impression given by this document (and this consultation) is of a Ministry program that is dismissive of public involvement in the land use planning process. Specific areas of the EPP document where this matter is apparent are noted in the section by section comments below.

We also find it very difficult to be asked to consult on this important matter for a brief 30 day consultation period at exactly the same time as the Ministry of Municipal Affairs is consulting on its revised Provincial Policy Statement and during the same time as the public hearing process for Bill 20, the proposed changes to the Planning Act. As well, this consultation period coincides with consultation on changes to the Building Code. Such overlap is far more likely to prevent public involvement in consultation rather than encourage it.

Moreover, in all three of these related areas (Bill 20, the draft Provincial Policy Statement and the Building Code) the public is being given the opportunity for public review of a set of perspectives and proposals for change that serve the exclusive interests of the development

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industry often to the exclusion of other points of view. We therefore take particular exception to the comment in your EBR Registry posting about the EPP consultation, that "the principles within the EPP reflect a public perception which was first articulated by the Sewell Commission on Planning and Development Reform, and further enhanced with the provisions of Bill 20 regarding the role of the provincial government in local land use planning matters". In fact, as detailed in our submissions regarding Bill 20 and the proposed Provincial Policy Statement, the government's changes to the planning system effectively strip out most of the environmental planning measures that briefly existed in Ontario as a result of the Sewell Commission process and recommendations.

## **Section by Section Comments**

### **1. Background (p.1)**

The third paragraph of this section refers to MOEE having "documented and released to the public its standards, policies, and guidelines on protecting water quality and quantity, and on land use compatibility as these relate to land use planning". To be more helpful, the EPP should include a list of these documents. As well, this list should indicate the availability and cost, if any, of these documents. An annotated list with a short description of each document would be even more useful. Such a list is also important to clear up any confusion between what standards, policies and guidelines are in place now vs. those that were in place when the previous government's planning reform package was promulgated in March of 1995.

For example, in several instances, the EPP refers to implementation guidelines that accompany the Provincial Policy Statement. We are not aware of any announcement or public release of any revised implementation guidelines for the proposed Provincial Policy Statement. It is quite unclear whether the EPP is referring to the implementation guidelines published in March of 1995 or to some as-yet released revision of these guidelines.

### **MOEE's SEV and the Environmental Planning Program (p.3)**

This section contains a lot of very nice language, confusion about what "related Implementation Guidelines" exist and is essentially environmental "doublespeak". The MOEE can wax poetic about its SEV and "guiding principles" and "encouraging municipalities" to apply an ecosystem approach and watershed-based planning but the fact remains that the planning tools to implement such worthy goals have been stripped away by Bill 20 and by the gutting of the Section 3 policies.

### **Planning Reform (p.3)**

We take issue with the statement that "provincial and municipal roles have become more clearly defined" under planning reform. In fact, as far as public involvement is concerned, the role of the province, especially the MOEE and MNR is unclear once again and the EPP does

not serve to clarify that role. Public interest intervention in the planning process will continue because public concern for environmental protection remains consistently high. Members of the public will look to provincial ministries for assistance with the application of the meagre environmental policy tools that remain in the proposed Provincial Policy Statement. With limited resources, reduced timeframes for decision-making, the ability of municipalities and developers to ignore provincial policy, and no intervenor funding at the Ontario Municipal Board, the public will need to seek the advice and assistance of ministry officials more than ever.

However, under the EPP, the provincial role in responding to public concerns is rarely mentioned. Rather, the legislative and policy changes will allow the province to abdicate its responsibility to ensure that policy is implemented. Instead of achieving the goal of up-front planning, (and thereby incorporating ecosystem and watershed planning), this lack of clarity in the provincial role, especially with respect to working with and responding to public interest concerns, will mean a return to protracted disputes culminating in OMB appeals at all stages of the planning process.

We also take issue with the statement that "environmental protection will be achieved through the introduction of the Provincial Policy Statement (PPS) and the related Implementation Guidelines". As noted above, and detailed in submissions regarding both Bill 20 and the proposed Provincial Policy Statement, environmental protection tools have been stripped out of the planning system. The related goal of "streamlining" will not occur with the reversion to the vague language of "shall have regard for" in Section 3 of the Planning Act. And, contrary to the EPP footnote #3, the PPS is not "accompanied by several Implementation Guidelines".

#### **The Redefined Municipal Role (Municipal Empowerment) (p.4)**

The notion of clarifying the provincial role as one of establishing policy will not be achieved when the provincial "voice" is vague (as it is in the proposed PPS) and can be ignored (under the "shall have regard for" standard). Without this clarity in the provincial role, the goal of municipal empowerment will be undermined.

The new government can decide, in its wisdom, to take away the tools to protect the environment. However, they cannot as easily take away the public's concern for environmental protection and the shape of their communities. With such vagueness in the provincial role (both in the policy "voice" and in the ability to ignore that voice) the goal of municipal empowerment will be lost at all stages of the planning process. The public will try to use ineffective tools to protect the environment with the province, at best, hamstrung in its ability to act or, at worst, hostile to the notion of ensuring the public interest, as expressed through its policies, is served.

This concern is not allayed in the EPP. The statement that "under the Planning Act, various county and regional governments (upper tiers) will be called upon to update their official plans in light of the Provincial Policy Statement" is quite misleading. There is no requirement

in the revised Planning Act for these counties and regional governments to update their official plans or any quality control over the contents of those plans. Nor is there any longer a requirement for them to follow provincial policy. The fact that these municipalities "have been targeted for the assignment of approval authority for lower tier official plans and plans of subdivision" could very well mean that they will be granted this authority without updating their official plans and without placing any further requirements on their respective lower tier plans or plans of subdivision.

The EPP description of the "challenge for MOEE... to incorporate the environmental and energy policies and principles espoused in the provincial policy statement... into local and upper tier official plans" illustrates how vague the provincial role in ensuring policy implementation has become. With ineffective tools to ensure that official plans are revised to reflect matters of provincial interest, the public wants to know what level of involvement the province will play, with them and on their behalf, as guardians of the broader public interest. The EPP skips very quickly to the assumption that "up-to-date official plan policies and schedules" will soon be in place so the Ministry can "eliminate duplication" and get out of the business of reviewing local development applications.

Under this rosy scenario, gone are the perennial (and worsening) problems at the local level of lack of resources and expertise to adequately address the matters of broad public interest expressed (albeit now very vaguely) in provincial policy. And, also ignored is the more difficult and just as frequent problem of both perceived and actual conflicts of interest over local development proposals. Under the planning regime enabled by Bill 20, the public will once again face official plans that are easily amended and for which there is no quality control over their contents. And without clarity in the official plan as to what environmental features and areas are protected and how development in and near such areas is to be evaluated, the real problems will arise at the development application stage when the EPP envisions the MOEE to be long gone. Regardless of how much the provincial government cuts back its operations, the public will still turn to it when matters of broad public, i.e., provincial, interest, are at stake. The public needs to rely upon both the impartiality and the integrity of provincial expertise on matters of provincial interest. Despite claims in the EPP about the provincial role having been made clearer, as far as the public is concerned, the provincial role at various stages of the planning process, including at the Ontario Municipal Board, will become quite unclear.

### **Streamlining (p.5)**

Once again, in this discussion, the public is not mentioned. This omission is striking coming from the MOEE and reinforces the impression that this government is more interested in subverting public involvement rather than encouraging or enabling it. Ontario government departments, especially the MOEE, have experienced more than twenty-five years of dealing with the public on environmental issues. Numerous reports and guidelines have been written, again, especially by the MOEE, about the need and value of early public consultation to improve decision-making and to avoid protracted disputes, i.e., to assist with "streamlining" of

decision-making. "Streamlining" in the EPP, and in the revised planning system generally, seems to be simply a matter of obtaining planning approval in the fastest possible way regardless of public views or concerns. It does not appear to be a means of obtaining the best decision in the time frames available. In the absence of reasonable opportunities for public involvement in the planning process, and in recognition of the value of pre-submission consultation with the public as well as with proponents and municipalities, the MOEE EPP should at least suggest that public involvement in the pre-submission consultation stage is both useful and advisable.

## **II. Environmental Planning Program: A New Approach to Land Use Planning in the Ministry**

The "refocused MOEE planning program" will likely be undermined by the problems noted above, i.e., the lack of clarity in provincial policy and the renewed ability to ignore it. For example, the description of the "Provincial (MOEE) Interest" on pages 8 and 9 is excellent. However, the revised planning system has stripped the MOEE of the tools to see these provincial interests adopted into planning decisions.

As well, we are concerned that the EPP description in this section of the provincial role appears to exclude any allocation of time or resources for dealing with the public. For the reasons noted above, this oversight is a mistake. The numerous reductions in public involvement that have been made throughout the revised planning process will likely contribute to increased calls from the public for Ministry assistance. The EPP appears designed to avoid such involvement. The result could very well be costly delay and more OMB hearings than would otherwise occur with opportunities for meaningful involvement at both the provincial and local level.

The notion of identifying regional interests through "Regional Environmental Profiles" is laudable. However, it is unclear under what authority the MOEE would use such an identification tool. It is therefore also unclear how much difficulty would be experienced in trying to apply it, including deployment of the associated increase in regional staff involvement, in order to implement it. And, again, this section does not provide any indication of whether or how the public would be involved in any discussions or decisions around the establishment of REPs.

The discussion of the third "Category of Environmental Interest", the "Local/Municipal Interest", provides another rosy (and often fictional) picture of local bliss about the environmental protection intentions of municipalities. It also includes the first mention of public involvement. Once again, the provincial blinkers are firmly in place and the lessons of recent history are lost. The newly revised planning process substantially reinstates the planning system that gave rise to some of the most controversial environmental land use disputes of the late 1980s. Such disputes are going to recur in spades and when matters of provincial interest arise, members of the public are going to frequently and understandably turn to the province for help. It is therefore inappropriate and doomed to failure to thus

"clarify MOEE's role in land use planning" by excluding MOEE from dealing with the public.

### **The Seven Components of MOEE's Environmental Planning Program (p. 10)**

In all seven of these components reference is made to the manner in which the MOEE will conduct its "consultation" on the matters in question. The public role in these consultations is *never* mentioned (aside from posting the EPP on the EBR Registry). But, public involvement should occur in each of the seven components. For example, with respect to OP/OPA Review, the EPP states that "where the Ministry's interests are not being given due consideration in the approval of these documents, MOEE may pursue appeal of these plans to the OMB through MMAH, as the provincial appeal body". In addition to public concerns about this MMAH screen on environmentally-related appeals, the public will want to know how the MOEE, through its EPP, will deal with public concerns about official plans and official plan amendments. Similarly, when provincial interests arise in a particular planning application such as through REP identification or at the discretion of the Regional Director, the public will want to know how to appeal for Ministry involvement under similar circumstances when there are matters of provincial interest at stake.

This acceptance of public involvement and ability to interact in a reasonable manner with the MOEE will be especially important when local municipalities dispute the environmental significance of a situation and/or are hostile to concerns expressed by the public. The final paragraph (about "Limited Site-Specific Reviews) refers to situations where "the Ministry is asked in writing to assist a municipality by providing technical support on a site-specific planning act application". It is unclear as to whether this request can come only from the municipality. What about the public? There could very well be situations where the public alerts the MOEE to situations where such technical support is needed, where the public wants such support to occur to properly inform a decision, and where a municipality is not interested in the MOEE involvement.

Finally, the monitoring function "to determine overall compliance with the PPS" is crucially important. Again, the public role in this work should be included. What opportunities will members of the public have to input their own information to this monitoring exercise? Public input should be sought on the matter of performance indicators and the protocol for gathering information. As well, the data and any analyses should be fully accessible to the public.

### **III. Making It Work: Implementation Plan for the EPP (p.14)**

The first bullet point in the list on page 14 should be the updating of official plans in accordance with the PPS. Perhaps it is not listed because there is no longer any authority in the Planning Act to require it (and policy can and will be ignored anyway).

Regarding "Regional and District Municipalities", the reference to "exceptional cases" in the second bullet is too vague. Who decides? The Regional Director? On what basis is this decision made? The public should be able to appeal to the Regional Director for MOEE

involvement and the Regional Director should have a responsibility to investigate the concerns and act upon them. Similarly, in the fourth bullet, the public may need "technical advice and assistance for the purposes of informal consultation". This advice appears to be offered only to Regional and District Municipalities. However, the ability of the public to obtain information about technical issues of concern to them is equally important and early involvement and free flow of information can help to avoid costly disputes and delays later in the process.

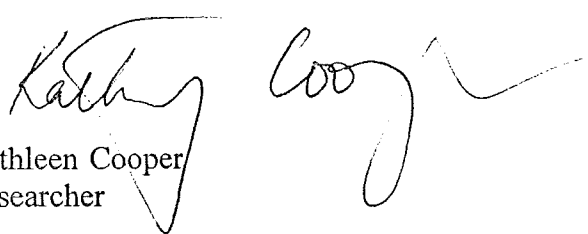
Finally, the third bullet under the sub-section entitled "All Other Areas of the Province" refers to the MOEE sharing available environmental information with municipalities, the development industry and the public. This offer should exist for all three levels of government jurisdiction discussed in this section.

This draft EPP illustrates many of the problems that will occur with the implementation of Bill 20 and the proposed Provincial Policy Statement, both of which should be withdrawn. We will forward under separate cover copies of our submissions to the Resources Development Committee reviewing Bill 20 and our response to the consultation on the proposed Provincial Policy Statement.

All of which is respectfully submitted. Please keep us informed of the progress of the EPP and any revisions that are made in light of this consultation.

Yours truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**

  
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