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SUBMISSION TO THE COMMISSION ON PLANNING AND DEVELOPMENT REFORM IN ONTARIO

Comments in response to the Commission's proposals contained in the Draft Report, released on December 18, 1992.

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BACKGROUND ON THE LAND-USE CAUCUS

The Land-use Caucus of the Ontario Environment Network was formed in June of 1991 in response to a growing need for closer links among environmental organizations concerned about land-use issues. Since it was founded in 1991, the Land-Use Caucus has held several sessions at Ontario Environment Network general meetings and in March of 1992, with funding support from the Laidlaw Foundation, held a highly successful founding conference and Annual General Meeting. "Common Ground: Environmental Action for Land-Use in Ontario" drew together about seventy representatives of grassroots environmental and citizens groups involved in land-use issues.

The Caucus mandate covers municipal land-use planning issues, including protection and restoration of ecosystems, urban settlement patterns, and agricultural land preservation. The Caucus also addresses transportation and other infrastructure planning issues. Forests, wilderness, and provincial parks planning issues are dealt with by OEN's Forests Caucus.

Meetings have been organized on several occasions between members of the Caucus and the Commission on Planning and Development Reform and the Ministry of Municipal Affairs. To continue its activities, the Caucus recently successfully obtained funding support from the Ministry of Municipal Affairs. A part-time coordinator has been hired.

The Caucus functions as a network and not a coalition or umbrella organization. As such, the Caucus does not take positions on issues. Instead, the Caucus enables its members to share their experiences and expertise in order to prepare joint submissions. These positions are endorsed by member organizations at their discretion. This submission has been prepared by the Canadian Environmental Law Association in conjunction with various members of the Caucus.

1.0 INTRODUCTION

The environmental effects of land use decisions made throughout the history of settlement in Ontario have been profound. As with all other environmental problems, these effects have accelerated dramatically in recent decades. The cumulative effect has been extensive loss and/or damage to natural features and functions. Very strong public support exists for not only stopping this trend but also reversing it and restoring a good deal of what has been lost. The Commission on Planning and Development Reform in Ontario (the Commission) has an historic opportunity,

responsibility and mandate to recommend changes to a planning and development regime that, at the present time, does not deal adequately with matters involving environmental protection and resource conservation.

This submission is a response to the Draft Report of the Commission dated December 18, 1992. It continues the work contained in our two submissions dated August and November, 1992 which responded to the Commission's proposals in the April and September issues of New Planning News, respectively. Despite its length, this submission does not repeat all of the recommendations made in previous submissions and we wish to note that recommendations made in previous submissions remain important components of our response to the Commission's work.

In general, we find the draft report to be much better written and more coherent than the newsletters. Some significant improvements exist in the proposals which reflect some of our recommendations. However, weaknesses remain. The Commission's report contains many laudable sentiments and plausible recommendations. But will the Commission's avowed aims be accomplished? We are concerned that the report contains many "coulds", "shoulds", and "mays" with a corresponding heavy reliance on voluntary compliance. A closely related concern is an anticipated increase in the burden on citizen's groups to make the process work, including the enforcement of provincial policy through Ontario Municipal Board (OMB) appeals.

As described below, the Commission should place greater emphasis on up-front reforms to the planning system in order to avoid or resolve controversy in the early stages of planning rather than at the end of the process at the OMB. In this regard, the Commission's proposals for swift adoption of a comprehensive set of Policy Statements addressing matters of provincial interest will be a tremendous step forward. Improvements in public participation opportunities are also key.

Nevertheless, we submit that the Commission's proposals for increasing and improving public involvement in the planning process can be strengthened. As well, our concerns with the Commission's policy proposals are twofold: (1) the insufficient level of detail in the policies proposed by the Commission; and (2) the degree to which they will be enforced by provincial ministries and agencies.

However, we fully support the use of the Commission's time and proposals as satisfying the requirements for consultation on Policy Statements under Section 3 of the Planning Act. The intention of the 1983 reforms to the Act was to establish this

policy set on matters of provincial interest and it is high time the provincial government ensured it was done.

Our concern over the enforcement of provincial policy stems from our opposition to the Commission's basic model which proposes that the provincial role in approvals should be phased out. In essence, the Commission's proposals would result in the transferral of significant approval powers to the municipalities, leaving the province to speak only through policy. We strongly disagree with this approach and recommend that the provincial role be reformed, not replaced. We are encouraged that the Commission has recently decided to review the provincial commenting function in the approvals process with a view to suggesting reforms. Measures to improve this commenting function combined with clear responsibilities to uphold provincial policy are clearly necessary and long overdue. We believe that this work can augment the Commission's package of reforms and revise the model to one we could support.

We have set out detailed comments on the package of reforms proposed for planning at the municipal level. Setting out content requirements for municipal plans in the Planning Act is an important step forward and all municipalities should be required (i.e., it should not be optional at the lower-tier) to establish new plans in accordance with these content requirements and the new Policy Statements. Further, we have recommended that plans should be based on publicly-derived targets and standards for environmental indicators to provide a means of holding municipalities accountable for their plans. Our remarks on the Commission's recommendations for monitoring are relevant here.

The Commission's proposals for integrating environmental planning principles into the Planning Act at the plan and site-specific stage are steps in the right direction as are the recommendations for watershed planning and joint planning. We have made detailed comments on these proposals particularly with respect to the unanswered questions that remain or are raised by the proposals. In particular, crucial levels of detail still need to be worked out with respect to Environmental Impact Statements.

We are very disappointed with the Commission's proposals for pre-approval site alteration. We have recommended much more rigorous means of controlling this problem and pointed out the urgency of addressing it.

We have stated our very qualified support for the proposal for the transfer of the Class Environmental Assessment process for municipal infrastructure from the Environmental Assessment Act to the Planning Act. It is critical that the entire

package of reforms envisioned by the Commission occurs for the proposal to be successful. It is difficult not to be sceptical about the likelihood of this occurring.

A final overall concern with the Commission's report is the lack of any recommendations for the retraining, continuing education and professional development that will be necessary within all levels of government and at the OMB to implement the environmental planning measures that the policy and process reforms will require. This basic need will have to be addressed in a variety of ways and the Commission should recommend where, when and how such retraining should occur.

We have responded to the Commission's report by following the order of topics as they are listed in the table of contents and/or the relevant recommendations. This submission should be read in conjunction with the Commission's draft report.

2.0 THE PURPOSES OF PLANNING

We support the inclusion of a purpose section in the Planning Act. We further support the proposal that all planning authorities be subject to its provisions and suggest that they be listed as follows: the Council and planning committees (e.g., Committees of Adjustment, Planning Advisory Committees, etc.) of every Municipality, municipal planning departments, every local Board, every Minister of the Crown, and every Ministry, Board, Commission, Corporation or agency of the government including the Ontario Municipal Board.

We further support the Commission's proposed purposes of planning to be included in the Act. However, we suggest adding the words "and integrity" in the first part as follows:

> a) to protect and conserve the natural environment and foster the well-being and integrity of ecosystems for the benefit of present and future generations.

In addition, as proposed in our August 1992 submission, we suggest including the notion of environmental paramountcy. The Commission's proposed new purposes for the Planning Act would become a new Section 2(1)(a),(b),(c). We recommend adding Section 2(2) as follows:

> In the event of a conflict between Section 2(1)(a) and any other section of this Act, Section 2(1)(a) shall prevail.

The Commission's proposals for updating the matters of provincial interest to be listed under the current Section 2 of the Act are also an improvement. However, we would add the notion of identification as well as protection of ecosystems, agricultural resources, natural resources, and heritage features as noted in items (a) through (d). As we will discuss further below with respect to the development of, and monitoring the adherence to, new Official Plans, critical gaps exist in the identification of such features for protection and/or restoration. If protection of such features are matters of provincial interest but there is an inadequate database showing where they exist, their identification is also a matter of provincial interest and should be explicitly stated as such.

To reflect Canada's commitment to the International Declaration on Biodiversity we suggest expanding the first of the matters of provincial interest at point (a) as follows (additions are underlined):

> a) the identification and protection of ecosystems, including natural features and functions and the protection and restoration of biodiversity.

We would further expand the matter cited in the Commission's point (i) to embrace the notion of intensification as follows:

> (i) the development of safe, healthy, compact, diversified, human-scale communities.

We strongly advocate that the term "human-scale" be included here. Human-scale simply means planning streets, transportation systems and buildings according to the needs of the people who use and inhabit them instead of giving paramountcy to machines or architectural ambitions. It will also protect against the abuse of the word "intensification", which may otherwise be used to justify inappropriate heights and densities.

Finally, we would add the following point to reflect the importance of transportation as a matter of provincial interest:

> (p) the provision of an integrated, multi-modal transportation system, ensuring mobility for all members of the population, with priority given to public and no-motorized modes.

3.0 PROPOSED PROVINCIAL POLICY STATEMENTS

3.1 INTENTION

The Commission has stated on many occasions that there is a broad consensus that the province should speak through clear policy. We agree although we think the province has a greater role to play (see 4.0 The Provincial Role below). The 1983 Planning Act amendments put in place a mechanism for the province to establish policy on matters of provincial interest. The time is long overdue for the province to fulfil this objective. Successive provincial governments have either ignored this task or, in the case of wetlands and agricultural land, have allowed the process of policy development to proceed in a slow and tortuous manner. In the meantime, the province has chosen to provide provincial planning direction through the use of guidelines of uncertain status and through unevenly applied approval powers.

Much confusion exists over what constitutes government "policy" on land use matters. The public and practitioners in the land-use planning process face, at the provincial level, (either in the public domain or not and having variable legal status), a plethora of: guidelines, policies (some of which are under Section 3, some of which are not but which we are assured are, in fact, government "policy"), draft policies, policy guidelines, implementation guidelines to accompany policies, and the latest hybrid, implementation bulletins for policy guidelines.

The impression conveyed from this confusing array of provincial "direction" is of too much bureaucracy and very little certainty of what is actually required or optional and for how long before something changes or something else comes along. In addition, at the OMB, experience has been variable as to the legal status of "policies" that are not Policy Statements promulgated under Section 3 of the Act. These complaints provide a strong basis for the swift adoption of Section 3 Policy Statements to provide greater certainty and clear, binding direction regarding matters of provincial interest.

As we have noted above and have described in our previous submissions, we strongly support the Commission's current consultation efforts as satisfying the consultation requirements for developing Section 3 Policy Statements. However, we think we should be reviewing actual draft Policy Statements as opposed to a list of "policies" accompanying a general goal. We understand that upon completion of this current round of public hearings and written briefs (i.e., the end of March) the

Commission will be revising its draft policies and that there will be another opportunity to review draft Policy Statements. We strongly support this proposal and further submit that if the government then intends to alter substantively the recommendations for new Policy Statements that arise from these consultations, that a further public review of draft Policy Statements is in order. We would prefer, however, that this consultation result in the introduction, as soon as possible, of strong new Section 3 Policy Statements embodying the principles outlined in the Commission's report. Our comments on the form, status, implementation and content of these policy proposals are set out below.

3.2 FORM

In trying to find the "middle ground" between too much prescriptive detail and too little, we think the Commission's proposed policies are too abbreviated. We can appreciate the argument that too much detail regarding implementation can hinder necessary flexibility. However, the Commission's proposals are still too general. In our view, the Policy Statements must provide clear and concise direction to municipalities and developers. In particular, the Policy Statements must be sufficiently worded so as to constrain unsustainable development and provide meaningful benchmarks to assess non-compliance with the provisions of the Policy Statements. In short, it must be clear what is expected of municipalities and developers.

It is abundantly clear that many municipalities do not have the resources, the expertise or the inclination to apply anything more than the loosest possible interpretation of a set of policies as general as those proposed by the Commission. Undoubtably, there are some notable exceptions to this generalization; however, we submit that all municipalities (and developers and the public) should be told very clearly and in detail what is expected to be consistent with Policy Statements regarding matters of provincial interest. Municipalities require certainty concerning the implementation of Policy Statements. For these reasons, the Policy Statement provisions must be explicit concerning intent and applications.

Implementation guidelines are a related matter. The Commission neglects and downgrades implementation guidelines, stating that they "should be advisory only" (p.5). Yet implementation guidelines are essential to spell out the meaning of the policy and assist with implementation. The Transit Supportive Land Use Planning Guidelines are a good example, since they are absolutely necessary to give substance to the statements about transportation in the Growth and Settlement

Policy Guidelines. The Commission should also recommend that implementation guidelines shall not compromise or derogate the goals of any provincial Policy Statement.

3.3 STATUS

The Commission argues that, once established, a comprehensive set of provincial Policy Statements will contain conflicting provisions. This fact must be recognized when drafting amendments to the Planning Act to strengthen the status of Policy Statements to improve and/or ensure their application and/or enforcement. We agree that language such as "conform to" or "comply with" would create problems with policy enforcement where certain policy provisions conflict. As well, we believe the Commission's proposal to amend Section 3 of the Act to state that planning decisions shall "be consistent with" Policy Statements helps resolve this problem as well as provides an improvement over the current, unacceptably vague language of shall "have regard to". Accordingly, we recommend that Section 3 be amended as follows:

> All planning authorities and decision makers including the Council and planning committees of every Municipality, municipal planning departments, every local Board, every Minister of the Crown, and every Ministry, Board, Commission, Corporation or agency of the government including the Ontario Municipal Board shall take all reasonable steps to ensure that their planning decisions are consistent with the Policy Statements and the purposes of this Act.

Such language is preferable since it places a positive duty on all planning authorities to read, understand, and implement the provisions of the Policy Statements. In addition, by including the notion of "reasonableness", this language provides an objective test when planning decisions are contested to determine whether policies have been appropriately applied.

Given the enhanced value and function of Policy Statements in the Commission's proposed planning framework, it is our submission that they must be clear and of sufficient detail to permit practitioners to clearly understand and implement what is expected. In this regard, the Commission's proposal that implementation guidelines be "advisory" only should be reconsidered. If Policy Statements are to be flexible enough to accommodate variability under local circumstances (and especially if they

are to be as brief as the Commission is proposing), it is critical that they be accompanied by detailed implementation guidelines. In particular, implementation guidelines should illuminate Policy Statements and their status should be clear by direct reference in the Policy Statements and perhaps in the Act as well. For example, each Policy Statement could state that, in following the implementation guidelines, planning decisions shall be consistent with the provisions of this Policy Statement. This direct reference to implementation guidelines should occur in all Policy Statements to show that they are meant to be taken seriously and to indicate that Policy Statements should be read in conjunction with the implementation guidelines: see Re Township of Front of Yonge By-law 7-88 (1989), 23 O.M.B.R. 235 (OMB).

3.4 IMPLEMENTATION AND CONFLICT

Where conflict between Policy Statements does occur, we strongly agree with the Commission's 6th recommendation whereby, in every circumstance where a prohibition exists in a Policy Statement, it shall be observed. We strongly support this approach because it provides a recognition that the system is inherently development-driven and it is a good attempt to address policy conflicts in favour of development constraints. It speaks to the concern about erosion of environmental protection.

However, we suggest strengthening this provision to include those Policy Statements which provide prohibitions, restrictions or limitations on development as taking priority over other Policy Statement provisions. In the first instance, a clear prohibition in one Policy Statement would disallow development that might otherwise be allowed by another Policy Statement. In cases where Policy Statements apply restrictions or limitations on development for environmental reasons, an Environmental Impact Statement (EIS) should be undertaken to assess whether and how development can proceed without contravening the terms of Policy Statements. As we suggest below, with respect to Municipal Plans, the content requirements for an EIS should be contained in the Planning Act. The determination of when an EIS is required should be set out in the Policy Statements accompanied by clear criteria to guide this decision.

3.5 CONTENT

We support the notion of putting in place a comprehensive set of Policy Statements concerning matters of provincial interest. However, the policies must contain greater detail than the Commission has provided as to whether or not development will be able to occur, and under what constraints, where provincial interests are at stake. We have made comments below on the Commission's proposed policy statements as well as additional elements which we consider necessary in each.

The format for the Commission's proposed policies is very different from Policy Statements as they have been prepared since the 1983 Planning Act amendments. While some improvements may be worthwhile, we find the Commission' proposals inappropriately brief. For example, we would add to each of the Policy Statements an introductory preamble stating the historical reasons and justification for the declaration of provincial interest in the matter. As well, all Policy Statements should require joint planning with neighbouring jurisdictions and/or related government levels. The Policy Statements and their associated implementation guidelines should spell out how this requirement is to be interpreted and applied. It should also be much clearer in all of the proposed Policy Statements who is responsible for key tasks, such as the assessment of adverse effects on the environment, and how these tasks will be done.

3.5.1 Natural Heritage and Ecosystem Protection and Restoration Policies

The content of this policy proposal is extremely important and long overdue. Much of the criticism of the planning process stems from the lack of consideration for the environment and there is strong public support for the expression of a provincial interest in natural heritage and ecosystem protection and restoration. This notion of a natural heritage system composed of core areas, buffer zones and linkages is not sufficiently developed in the Commission's first goal or associated statements. We suggest that Goal A could be improved by reflecting more of a systems approach along the lines of the following changes (underlined):

> To protect the quality and integrity of ecosystems, including air, water, land, and biota within the context of a protected and restored natural heritage system; and where quality and integrity have been diminished, to restore or remediate to healthy conditions.

As we stated in our first submission, this policy statement ought to contain a

preamble which describes, in an historical context, the loss, damage and fragmentation to date of the province's natural heritage, including the loss of biodiversity, and the major ecological planning principles that can be used to integrate development within a protected and continually restored natural heritage system. This preamble should include a statement of why the protection of biodiversity is so critically important. This concept is not a radical one. Canada has signed the International Declaration on Biodiversity and Ontario has recently released a draft discussion paper on the development of a provincial policy framework to conserve biodiversity (MNR, 1992). Thus, within the context of the Planning Act, the province should declare the preservation and restoration of biodiversity as a matter of provincial interest (as noted above), and this Policy Statement should simply be the means of reflecting this commitment at the local level.

As well, the Policy Statement should recognize that such protection and restoration will require particular kinds of measurement and analysis so that ecological planning can occur in the future as the policy is implemented. The Commission does state, in several instances, that key elements of the natural heritage system will need to be identified and classified. Such information needs to be part of an overall systems approach to avoid the "islands of green" approach to protecting natural areas.

In those instances where natural areas are classified for potential development, (under items 4, 5, 6, and 7 but leaving aside the abbreviated version of the Wetlands Policy Statement under item 3), there is a good deal of qualifying language. It is unclear who will determine the classification and how. The classification of areas of prohibited and permitted (subject to the no "adverse effect" notion) development must be guided by clear criteria set out in the Policy Statement. For example, the current Wetlands Policy Statement depends upon an external wetlands evaluation/classification utilized by the MNR; however, it should be noted that this system has been criticized because of its limited coverage, subjectivity and other deficiencies.

This integrated approach will be necessary for the new categories of protected natural areas and features. For example, under item 5, the Natural Heritage Policy Statement should list the criteria which shall be applied in order to classify those "areas of natural and scientific interest", and "groundwater recharge areas" within which development may not occur and where it may occur subject, (we assume, although the Commission's policy recommendations are silent on the matter), to the preparation of an EIS showing that the development will not adversely affect the features and functions of the area or resource in question.

The challenge in establishing these criteria to assess the significance of natural heritage features will be to ensure an integrated approach that classifies areas both in terms of their own individual properties and their position and relative significance within the natural heritage system at the local, regional and provincial level. The Ministry of Natural Resources has a critical role to play in this regard. The Planning Act should probably explicitly require that the MNR maintain an integrated database system to coordinate this work; definitive timeframes and deadlines for this work should also be considered.
In addition, for those areas and features classified as environmentally sensitive in some manner but where development can occur so long as there are no "adverse effects", it is unclear what the Commission has in mind for the evaluation of "adverse effects". We can only assume from the model developed in the rest of the Commission's Draft Report that, for those areas where development will be allowed, "adverse effects" will be determined using the two levels of "environmental assessment" proposed by the Commission: the incorporation of environmental planning principles into the plan development process and the use of Environmental Impact Statements (EIS) for individual development applications.

If this is the case, we have made detailed comments on each of these areas in relevant sections below. However, in order for adverse effects to be determined within these two levels of "environmental assessment", the Planning Act amendments recommended by the Commission will need to be in place to complement the new Policy Statements. Otherwise, the current model, as contained in the Wetlands Policy Statement and Implementation Guidelines will have to be followed (i.e., the EIS procedure for assessing individual development applications is contained in the Implementation Guidelines). As noted below, we submit that the content requirements of the EIS should be clearly delineated within the Planning Act or regulations thereunder.

The Commission's abbreviated version of the existing Wetlands Policy Statement is a disappointment. We recognize the attempt to encompass all relevant issues under the single heading of natural heritage protection. However, we suggest that the opportunity be used to strengthen the Wetlands Policy Statement by expanding it to enhance protection of boreal wetlands, a significant shortcoming of the existing policy. We also hope that, once the new EIS process is in place, it will replace and improve upon the EIS process described in the Wetlands Policy Implementation Guidelines.

Finally, we do not see the need to separate the conservation concepts contained in the goal and the first two points of Section E: Conservation Policies. We suggest these concepts be added to the first policy proposal. The second two concepts, contained in points 3 and 4 under Section E, should be contained in the second policy regarding Community Development and Infrastructure, as noted in more detail below. Also, we concur with the more detailed analysis and critique of the Commission's Natural Heritage and Ecosystem Protection policies as set out in the brief prepared by the Federation of Ontario Naturalists and submitted to the Commission in March of 1993.

3.5.2 Community Development and Infrastructure Policies

Again, we think an historical preamble is needed in this Policy Statement outlining the damaging consequences of existing patterns of sprawl and splatter development on the environment, servicing, and municipal and provincial financing. We think the goal of growth management should be articulated as follows:

> to efficiently utilize all opportunities to accommodate growth and development in existing built-up areas with full services before permitting growth and development elsewhere with such development to be contiguous with existing built-up areas to maximize the efficiency of servicing and infrastructure.

We suggest that the Growth and Settlement Policy Guidelines (GSPG) developed by the Ministry of Municipal Affairs are a preferable draft policy statement than the goal and supporting statements set out in the Commission's draft report.

With respect to content, wording and organisation, the existing GSPG, especially Principles and Sections 1, 2, 3 and 6, should provide the framework for a provincial Policy Statement on Community Development and Infrastructure.

In the logic of its organization, the GSPG document places primary emphasis on directing growth to identified settlement areas, clearly discouraging sprawl and scattered rural development, and within settlement areas, directing growth to existing built-up areas first. The mandate to direct development first to existing built-up areas is very clear, as is the requirement to justify either the extension of settlement area designations, or proposals for development outside of these areas, according to specific criteria.

The specific steps required for justification, as set out in section 3 of the GSPG, should be retained. We believe these steps must be a mandatory part of the municipal planning process if the product of that process is ever to be changed - i.e. curtailing urban sprawl and creating compact, mixed-use, transit and pedestrian-oriented communities.

Section 6 of the GSPG should be similarly retained in its entirety. Although brief, it requires a comprehensive, integrated approach to transportation planning that is currently lacking and, at the same time, provides specific criteria for creating a transit and pedestrian-oriented community. We recommend retaining the exact wording of this section, with the option of expanding it, of course. We also recommend that the reference to the Transit-Supportive Land-Use Planning Guidelines be retained.

We suggest, therefore, that the 3rd and 4th "policies" contained under the Commission's Goal E: Conservation Policies, are more appropriately contained under the Community Development and Infrastructure Policies. Settlement patterns and transportation are mutually dependent variables that must be considered together. Placing transportation issues with Goal B recognizes their fundamental importance to growth and settlement whereas placing them with a hodge podge of conservation policies emphasizes only one aspect of the importance of automobile reduction.

We also note that the Commission's proposals in Section B do not make any mention of the need for Environmental Impact Statements on development proposals. Again, the GSPG are an improvement in this regard and provide an interim means of ensuring this assessment occurs prior to the establishment of requirements in the Planning Act.

The Commission proposals for Housing Policies are related to Community Development policies and we offer the following comments with respect to the goal of "providing for a full range of housing types in communities".

In order to increase the acceptability of this policy, we suggest emphasizing the concept of providing housing to meet the needs of residents at each stage of their lifecycle. While the residents of many existing communities with an inadequate range of choice may feel little interest in providing housing for people with different incomes, lifestyles and cultures, the logic is obvious for providing apartments and starter-housing for their own children and condominiums for themselves at retirement age. Thus, a balanced community is one in which a person can stay through each stage of their lifecycle and retain their community relationships, preserving - as Jane

Jacobs puts it - the "social capital" of the community.

Regarding the Commission's statement: "Existing and new households will be planned to include a full range of housing types...", we suggest that the word "neighbourhood" not be used here because it is too ambiguous and may imply that every block or residential area contain the whole range. Andres Duany has said that it is better to plan for a uniformity of building types within each block from both architectural and psychological standpoints. Jane Jacobs introduced the concept of the "district", stating that each district of a city should provide for the full range of needs of the population.

Thus, we would recommend that policy proposals make room for the ability of smaller communities to provide for the full range of housing types on a community-wide basis while larger urban areas do it on a district-wide basis. In order for people to accept change and diversity within their community, they need to feel some sense of security on a block or neighbourhood basis. Thus, placing high-income and low-income homes literally side-by-side may not be comfortable for either party because of lifestyle differences. Our comments with respect to public input to community-wide site-plan control policies (below at Section 8.10) are relevant here.

3.5.3 Agricultural Land Policies

As proposed above, an historical preamble for this Policy Statement is essential to provide the context for the policy requirements. It should include information about the extent of agricultural land in Ontario, the variety of agricultural districts, the degree of and reasons for pressures or losses in different areas (e.g., severances, conversion to other uses, etc.) and the need for protection. In the context of urban development pressure, quality agricultural land in Southern Ontario is essentially a non-renewable resource and deserves the same kind of definitive protection as set out under Policy F regarding non-renewable resources.

As we noted in our first submission to the Commission, the goal of agricultural land protection should be the protection and preservation of agricultural areas and their supporting communities on a long-term basis The Policy Statement should assert this goal as a priority over urban and other land uses proposed for those areas subject to strict proof of public need and compatibility with agricultural operations.

The principles guiding agricultural land protection should be that: 1) viable farmland

should be kept in production, regardless of soil type, crop type, etc.; 2) encroachment upon, or impairment of existing agricultural operations by incompatible uses or development should be prevented; and 3) the Policy should outline clear criteria by which severances and non-agricultural development would be assessed for approval in prime agricultural areas.

3.5.4 Non-renewable Resources Policies

We reiterate our concern, stated by members of the Land-Use Caucus at meetings with the Commission, that protection of non-renewable resources by this policy should not automatically guarantee access to those resources. As stated above with respect to the Wetlands Policy Statement, we urge the Commission to take this opportunity of overall policy review to propose improvements to existing policy as well as proposing additional policies.

We suggest therefore that the language of the goal under F: Non-renewable Resource Policies should be changed as follows (changes are underlined):

> To identify and protect existing non-renewable resource operations and significant known deposits of non-renewable resources (mineral aggregates, minerals, and petroleum resources) from incompatible uses; however, such protection of known but currently unexploited resources does not necessarily guarantee access to, or development or extraction of, such resources.

The rest of the Policy Statement should be altered accordingly.

4.0 THE PROVINCIAL ROLE

We strongly agree that the province should plan on both a strategic and geographic basis and that such planning should be clearly authorized and legitimized in the Planning Act. The Commission's suggestion that the Policy Statement approach be used as a means of implementation needs further elaboration and clarification. Is the Commission suggesting a separate Policy Statement or incorporating, into the proposed Policy Statements, the planning process details that the Commission has recommended as necessary, (i.e., "a review of alternatives, an outline of the specific choices that seem available, and then a recommended course of action", p. 34)? This point is unclear since such process details are specifically not contained in the Commission's current policy proposals and these are the environmental planning

elements that the Commission later recommends be included in the Planning Act via amendments that incorporate the environmental planning elements of the Environmental Assessment Act. As noted elsewhere in this submission with respect to the content of municipal plans, we think that strategic elements ought to be included in municipal plans and that joint planning ought to be required as a necessary requirement in all Policy Statements.

It is also a very good idea to include maps and other tools in these statements to illustrate precise boundary lines of designated areas. This point is further discussed below with respect to municipal plan development more generally. Such maps and boundaries, combined with the overall strategic and geographic elements of this exercise provide an excellent opportunity to assess the cumulative effects of development across large areas of the province.

4.1 MECHANICS OF POLICY-MAKING AND PLANNING

We support the Commission's recommendations 9 - 12 regarding the renaming (and reorientation) of the Ministry of Municipal Affairs and Planning, the choice of this Ministry to assume the lead provincial responsibility in planning matters, and the establishment of the Provincial Planning Advisory Committee and the Interministerial Planning Committee. We have comments on specific details with respect to each proposal.

4.2 MINISTRY OF MUNICIPAL AFFAIRS AND PLANNING

The Commission notes that some restructuring of the Ministry will be necessary to accommodate new responsibilities and priorities. We reiterate that considerable staff retraining will be necessary at the municipal and provincial level, including at the OMB, to be able to effectively administer a new environmental planning reality. Environmental planning is very different from urban planning in which most planners have been trained. This task should be a key priority for the new Ministry of Municipal Affairs and Planning with help from the consultative efforts of the proposed Provincial Planning Advisory Committee.

4.3 PROVINCIAL PLANNING ADVISORY COMMITTEE

Although we, of course, support the idea of public consultation on matters of provincial planning, many members of the Land-Use Caucus have very mixed feelings about multistakeholder advisory groups. Experience has resulted in very different results. There are several characteristics of such efforts which tend to result in satisfactory processes and outcomes. The following suggestions are compiled from discussion with people who have either participated on or had dealings with a variety of multistakeholder efforts including the Ministry of the Environment Advisory Committee on Environmental Standards, the federal Pesticide Registration Review process and others.

First, to ensure that members of public interest groups can participate on such a committee adequately, remuneration is essential including travel expenses and per diems for both meeting and preparation time. Further remuneration will be necessary for these members to consult adequately back with the members of other organizations and province-wide networks. Second, the primary function of this group should be to direct the public consultation on provincial planning efforts as opposed to acting as a peer review or expert review panel (more on this point below). Third, the Committee should be small (less than fifteen people) and be composed of diverse individuals who are known to work well in a group. The membership should also be gender balanced.

The model is of a small group of people who are well versed in the issues, good with group situations and able to act as the conduit for, and honourable distillers of, public input. If at all possible, it is preferable that members of PPAC do not have a vested interest in the outcome of the recommendations. Similarly, it is not a good idea for the Committee to be drawn together using a self-selection process where sectoral groups decide on who represents them at the table. Rather, consultation by members with their own sector should be built into the process, not assumed to be embodied in one individual on the Committee. Under this model, additional resources will be required for the non-profit public interest membership on the Committee to be able to consult back with its own membership.

We suggest also that the role of the PPAC be to initiate as well as comment on policy and planning proposals. It also seems unnecessary to wait until after the Commission's proposed Planning Act amendments are in place to establish it. The PPAC and sub-committees of it could contribute to the development of and consultation on implementation guidelines for the new Policy Statements. We suggest

that a body such as PPAC is the appropriate place to conduct public consultation on such guidelines rather than the government department that is the originator of the guidelines.

The recommendations of the Committee developed from the consultation should then be given directly to the Minister and to relevant Cabinet Committees as necessary for issues pertaining to several Ministries. As noted below, we do not think the proposed Interministerial Planning Committee should receive the PPAC recommendations for further "filtering" or revision when such recommendations were developed through broad public consultation.

Another area requiring urgent provincial action to which PPAC could turn its attention is the fulfilling of information-providing responsibilities by the province, including advising on research, mapping and definitions. A strong provincial role is essential to coordinate this activity and to help avoid duplication of effort and expense. Immediate attention to this matter might help prevent the kind of excessive waste and duplication that we have seen by consulting firms working within the Waste Management Master Planning Process. Consultants have taken in hundreds of thousands of dollars performing repetitive "research" for individual municipalities that could have been centralized in the province and provided free to everyone.

4.4 INTERMINISTERIAL PLANNING COMMITTEE (IPC)

The IPC proposal is important for helping to coordinate activities across government. We see the role of such a Committee as providing the coordinated staff level review of policy and planning proposals prior to their public review through PPAC. We disagree that the IPC should then be the body to "advise the Minister of Municipal Affairs and Planning and other ministers on policy and planning activities" (p.36). This role should be reserved for PPAC since, under the model we are proposing, it will be the body conducting public consultation and forming recommendations on the basis of that input. At the very least this advisory role should be a joint one for the two committees.

The IPC should have a coordinating and complementary role with the PPAC. The PPAC recommendations should go directly to the Minister and the Cabinet along with, not replaced by, the recommendations of the IPC. As well, these recommendations should be publicly available.

4.5 THE PROVINCE AS ADVISOR AND INFORMATION PROVIDER

We support the Commission's 13th recommendation that the province should provide planning advice to municipalities on the application of provincial policy and on technical matters. Unanswered questions that arise include: what happens if the province fails to provide this advice; is silence from the province to be considered acceptance of the proposal; and what happens if a municipality fails to request such advice?

We also submit that this recommendation be broadened such that the public and the OMB can benefit from provincial expertise on the application of Policy Statements and on technical matters. We suggest that, where two or more citizens make a request, the province should be obliged to comment on the application of provincial Policy Statements to municipal planning decisions including on matters of a technical nature.

Recommendation 14 is related to this collection and dissemination of information and it should proceed immediately with a view to ensuring, as much as possible, the linking of disparate exercises currently underway to make them compatible. For this recommendation to work it will need to be a legislatively based requirement with a corresponding commitment of staff and related resource allocations.

Although this advisory and information provision role is very important, we strongly disagree that the province should be limited to this role. Recommendations 8 and 13 are central to the Commission's basic model - that after a transition period, the provincial role in approvals of municipal plans would be transferred to municipalities after which the province would speak only through policy, provincial planning and the provision of research and information.

The Commission states that part of the provincial advisory role will be to review proposed municipal plans to ensure that provincial policy is upheld. This role is referred to as a "responsibility" of ministries at the plan preparation stage and when reviewing significant development applications. However, the Commission recommends absolutely no legal means of ensuring that this "responsibility" will be fulfilled. Rather, the statement is made that "with clear statements of provincial policy, there will be strong political pressures to ensure these mandates are adhered to" (p. 37). It is inappropriate to have to rely on political pressure for Policy Statements to be upheld particularly at the municipal level where serious concerns exist as to the influence of private development interests on the decisions of municipal councils.

Clear lines of responsibility and legal accountability are necessary. We recommend that, in addition to revising Section 3 of the Act as noted above, those sections of the Planning Act having to do with the roles of commenting agencies should be amended accordingly so that a positive duty exists on the part of these agencies to take all reasonable steps to ensure that all planning decisions are consistent with the Policy Statements and the purposes of the Act (i.e., Sections 17(9), 22(3), and 34(15)).

As we have frequently stated, we are disappointed that the Commission has only just recently considered the alternative of a more efficient provincial approvals process. We think the Commission should have reviewed the provincial role in approvals, particularly the commenting agency function, with a view to reforming it. This reform is necessary whether the Commission's proposals are adopted or not since the existing arrangements of provincial review and comment will continue during the proposed transition period. One of the most frequently cited causes of delay in the planning process is the provincial commenting process. It needs to be reformed, not removed. Key among these reforms is the consolidation of plan and development commenting along the lines of the recommendations recently made by Dale Martin with respect to a number of site-specific initiatives.

There are many examples where the concerns of individual agencies may not be sufficiently high enough to warrant recommending changes or appealing the matter to the OMB. However, the sum total of impacts from the perspective of conserving natural areas, agricultural land, protecting water quantity and quality, etc., taken together, would warrant changes or an OMB appeal. A joint review by several agencies fulfilling their commenting role should take a more integrated approach such that the outcome of the overall review is "greater than the sum of the parts". Timelines for all commenting functions should be recommended as well.

4.6 MINISTER'S POWERS

We support the Commission's recommendation 19(b) regarding the Minister's power to impose an interim holding order for up to two years where a matter of provincial interest not addressed by existing policy is at stake. It is appropriate that the holding order be used to enact policy and that the order be rescinded when the policy is in place. We suggest however that, under such circumstances, there be an actual obligation to enact the Policy Statement. There would otherwise be the potential for a

two year delay followed by no policy to guide the decision at a point when the Minister would have no further power to intervene.

We further support Recommendation 19(d) to remove approval authority from municipalities under extraordinary circumstances to ensure that provincial policy can be upheld. It should perhaps be clarified that the circumstances causing this removal would be "in the Minister's opinion" in the same way that the Commission recommends that the Minister should set out under what conditions the approval powers would be reinstated. In the alternative, the Commission might want to consider recommending more objective criteria which would be applied to the circumstances of both removing and reinstating approval authority.

By removing the Cabinet's ability to issue declarations of provincial interest, Recommendation 20 furthers the Commission's overall model (which we dispute) that the province should speak only through policy. We consider the ability to declare a provincial interest to be an important safeguard for unique or unanticipated situations. The interim holding order proposal will provide, subject to our suggested change noted above, an additional tool for the province to get involved in matters of provincial interest to ensure they are covered by policy. However, we feel that there will be site-specific cases where the Cabinet should reserve its ability to vary, modify or rescind an OMB decision but the power should be explicitly limited to situations where Cabinet intervention may be necessary to protect, conserve or restore the natural environment. Given the MMA's recent track record regarding declarations of provincial interest, it is unlikely that this power will be used in anything but the most exceptional circumstances (e.g., the Oak Ridges Moraine). Nevertheless, we view this power as a useful safeguard and a necessary adjunct to the interim holding order recommendation. Accordingly, we strongly advise the Commission to recommend the retention of this power, as amended above.

4.7 PERMITS AND LICENSES

We fully support Recommendation 15 that the Ministry of Municipal Affairs and Planning should consider publication of a manual on required provincial permits and licences. This work should be conducted in consultation with PPAC, IPC and other agencies. As well, a similar guide is necessary, and plans for its preparation are apparently being considered, to bring together copies of all guidelines that are used by commenting agencies when they review plans, plan amendments and significant development applications.

4.8 DEVELOPMENT STANDARDS

Historically, development standards have been viewed as purely technical in nature and the exclusive domain of engineers; hence, they have reflected an "engineering" approach. The Commission is recommending a positive step forward by bringing in other sectors, including environmentalists, to advise on these standards and in prescribing that "standards that rely on natural processes to resolve potential problems are preferred over technical intervention" (p.40). However, to ensure conformity to provincial policies and a coherent, comprehensive approach, the setting of development standards should not be done separately; it should be integrated with policy implementation generally.

For example, development standards for setback, parking arrangements, road, and sidewalk design should flow, at least in part, out of the implementation of transit-supportive land use. Presumably, they would be the mandatory component of implementation "guidelines" that should also include the province's suggestions for appropriate site-plan controls. A similar model would apply to infrastructure planning for stormwater management, which must be driven by an environmental concern to reduce run-off, rather than the conventional engineering approach of maximizing and channelling run-off.

We suggest, therefore, that a Development Standards Committee (Recommendation 16) be closely associated with the work of the PPAC and the IPC. As proposed, it appears to be a quite separate process. We suggest that this committee be established as one aspect of the PPAC process and the same criteria for public involvement and consultation be applied, as noted above with respect to the PPAC.

4.9 GRANTS AND SUBSIDIES

We are very supportive of Recommendation 17 regarding provincial grants for the three priorities specified. For Recommendation 18 we fully agree that provincial subsidies and grants should be reviewed and made consistent with the new policies. The review should also recommend changes to development charges so they no longer encourage sprawl.

5.0 PLANNING AND ABORIGINAL COMMUNITIES

On the basis of limited discussion with representatives of aboriginal communities and organizations, we offer the following comments on the Commission's recommendations. Recommendation 21 requiring notice provisions to specifically include Aboriginal communities is a step forward. However, in a government-to-government relationship as has been recognized in the Provincial Statement of Political Relationship between the Ontario government and First Nations, notice of activities is not enough. First Nations are not "stakeholders" in the same way as are other recipients of such notices. For development of lands on which they hold either Treaty or Aboriginal Rights or have an outstanding land claim, or both, they should be engaged as joint decision-makers rather than as "consultees". This issue is also relevant to the proposal in Recommendation 24 with respect to Aboriginal representation on planning boards.

It should also be recognized that notice to adjacent Aboriginal communities may not be adequate because the lands which are affected could very well be part of a much larger tract of lands which are the subject of Treaty Rights and/or traditional use. Hence, notice would need to go to the relevant Band Council, Tribal Council, Regional Group of Chiefs or Treaty Group or to the broader political organization such as the Chiefs of Ontario. The same issues arise for the provincial proposal contained in Recommendation 23.

In Recommendation 22, the intention of stating that development agreements should not prejudice outstanding land claims is laudable. However, a reaction of healthy scepticism to "without prejudice" clauses should be expected. Such clauses often have not been worth the paper they were written on so to see the same approach in the Commission's recommendations does not instill confidence that progressive reforms are being contemplated.

6.0 THE MUNICIPAL ROLE

We support Recommendations 25 - 28 regarding the authority and requirements to undertake municipal planning, including strategic planning, at the upper and lower tier. We suggest adding to Recommendation 26 a clear recognition that the plan should be developed with public involvement. Again, we are concerned that the Commission proposes removing any clear responsibility for the province to ensure

adherence to provincial policy as these new plans are developed. In addition, we tend to question the wisdom and utility of a second, separate strategic planning exercise when municipal resources are limited. At a minimum, the more pressing task of developing new plans that are consistent with provincial policy should take priority and the plan should include strategic elements.

The Commission proposes in Recommendation 29 that once a new plan for an upper-tier municipality, consistent with a comprehensive set of provincial policy statements, has been approved by the province and the municipality has a qualified planner on staff, authority to approve plans, plan amendments, and lot creation will be transferred to the upper-tier. The recommendation further proposes that once a lower-tier plan conforming to an approved upper-tier plan has been approved by the upper-tier, authority to approve plans and plan amendments will be transferred to the lower-tier municipality.

We certainly would not agree to any weakening of this requirement to ensure the consistency of these plans to new policy. However, as we stated in our November submission, if the Commission's model is adopted, we think that Ministerial approvals should remain at least until a plan has also been approved for the lower-tier municipality (which could be a simple resolution to adopt the upper-tier plan, assuming it is sufficiently detailed). We consider such a requirement necessary to avoid the existence of many non-conforming lower-tier plans. Adding this requirement will put additional pressure on lower-tier municipalities to undertake the necessary work to prepare new plans.

Otherwise, it appears as if the Commission is saying that the lower-tiers should be free of Ministerial approvals once the upper-tier has an approved plan regardless of whether the lower-tier has developed a new plan. Although the Commission has proposed that the upper-tier would take over approvals of lower-tier plans, it is unclear if lower-tiers would, in the meantime, approve their own amendments and other approvals before they have developed a new plan consistent with the upper-tier. This confusion would be cleared up if, under the Commission's model, the lower-tiers were required (not merely encouraged) to either prepare their own plans or adopt the upper-tier plans as their own. This requirement would make the Commission's approach more consistent as well. It is surprising that the Commission is recommending the transfer of plan-making and approval powers from the province down to more local levels but at the most local level, the lower-tier, plan preparation would be optional.

We are also very concerned with the assumption that having a "qualified planner" on staff will ensure the proper implementation of provincial policy. We refer the Commission to an example of the opinion's on environmental and agricultural land preservation expressed by the Director of Planning for Whitby. In the July 6, 1992 Planning Director's Report to the Planning and Development Committee regarding the Technically Preferred Route Alternative for the Pickering/Ajax/Whitby Freeway Link Route Planning Environmental Assessment Study of the Ministry of Transportation (the Highway 401-407 link), the following comments are made with respect to the evaluation of environmental and agricultural resources:

> ...the EA process requires that emphasis be given to the existing environment and not the environment predicted 30 years hence. Nonetheless, as an observation, staff feel that the weighting given to the Natural Environmental and Agricultural factors should attempt to determine whether realistically, such impacts are of a permanent or transitory nature. That is, unlike the more permanent social environmental impacts on communities and noise, will certain identified natural environmental or agricultural features exist, and hence be potentially adversely affected by the time the freeway link is actually constructed, and particularly after other planned north-south arterial road widenings have occurred?

The "logic" apparent in this analysis would seem to be that if you plan to destroy the environment in the future you should not have to consider it in planning decisions now. The natural environment in question in this case apparently includes three wetlands, Carruthers Creek, and several woodlots.

As noted elsewhere, considerable retraining is necessary at all levels of government to accommodate the new policy reality. Traditional urban planning training is not adequate for application of the ecological planning principles and methods that will be necessary.

7.0 PLANNING IN THE NORTH

On the basis of discussions with member groups of the Land-Use Caucus based in Northern Ontario, and our own observations, we offer the following comments on the Commission's proposals.

Unfortunately, the omissions, in both the Commission's discussion and recommendations regarding planning in the north, provoked more comment than the

actual content. It was felt that the general tone of the Commission's comments and recommendations were unlikely to stand the test of practice. Assumptions are made about financial and technical resources that simply do not exist. An overarching concern is the lack of recognition of the serious financial crunch and shrinking tax base which northern municipalities are facing. The recommendation for the establishment of Planning Boards, accompanied by full-time planners, glosses over the enormous difficulty of how these Planning Boards are to be created in the first place.

Instead, the Commission recommends the establishment of stakeholder groups in the Northeast and the Northwest to work out issues that the Commission did not, including parameters for the establishment of Planning Boards. The impression that is left is that the Commission clearly has not done any realistic costing of how to put this new structure in place. The difficulties include issues of cost, distance, expertise and interest.

The Planning Board proposal is put forward as only being legitimate if there is a full-time planner on staff. In an attempt to address the cost issue, the Commission recommends that such a planner could be "shared" by one or more Boards. This proposal is likely unrealistic from the perspective of the potentially enormous distances involved. It is also felt that it is unrealistic to suggest that municipalities, especially smaller ones with a shrinking tax base and rising costs, can put money into an umbrella process that would bring unorganized areas, very reluctantly, into a process they do not want to join. The mechanisms by which unorganized areas are going to provide representation and financial support to that same process are weakly thought out. Our comments regarding what constitutes a "qualified planner" (noted in Section 6.0 above) are also relevant here.

Nor does the Commission discuss the issue of annexation which is extremely important in the context of activities occurring in some northern communities. If the issue of annexation is to be determined by the new Planning Boards, concerns are expressed about the degree of impartiality that would exist when the Boards will be made up of people appointed by municipalities keen on certain annexation proposals.

As well, there are planning processes already in place in the north, for example the MNR Strategic Land Use Guidelines and the District Land Use Guidelines process, which, though not without fault, have a current role. The Commission's report and recommendations do not, at any point, address this issue or address the future fit

between current processes and their new proposals.

An overall comment that has been expressed is the sense that the Commission's proposals are overly influenced by the problems that its proposals intend to address in the South. There is a recognition in the north that, while there are some commonalities between municipal planning issues in the north and planning in the south, the Commission has glossed over the differences and the problems that arise from applying similar approaches in the north as in the south.

With respect to specific recommendations made by the Commission, we have the following comments. If Planning Boards are to be created, we are supportive of the proposal to establish them on the basis of watershed-based boundaries.

In addition, on the issue of notification of activities within or adjacent to Crown land (Recommendation 37), we recommend that "adjacent lands" be defined to mean those lands which, by reason of their proximity, ecosystem function, etc. can reasonably be expected to be affected directly or indirectly by a development proposal. Our comments regarding "Planning and Aboriginal Communities" are also relevant here.

These comments and concerns are conveyed from Northern groups. It might be useful for the Commission to further pursue the discussion of these underlying issues or to refer them to a more northern-focused initiative within the provincial government.

8.0 MUNICIPAL PLANS

We strongly support Recommendation 38 that the Planning Act should be amended to include a comprehensive list of matters that must be addressed in preparing upper-tier plans. We have a number of comments (in this section below) on the details of these matters, as set out in Chapter 8 of the Commission's report.

The proposed principles underlying municipal plans (p. 55) that ought to be reflected in the Planning Act are also laudable. We suggest modifying the third principle regarding lower-tier planning to require, rather than simply authorize, plan preparation and adoption at the lower-tier (or adoption of the upper-tier plan if it is of sufficient detail) as noted above with respect to upper- and lower-tier planning.

The sixth principle proposed by the Commission is excellent. However, the distinction that is made between watershed and ecosystem planning implies that watershed planning only considers the flow of water and does not include consideration of the ecosystem through which the water flows. The existing situation and any changes to the ecosystem included in the watershed dramatically affect both surface and subsurface flow of water and are integral to any consideration of planning on a watershed basis. We find the Commission's related recommendations about watershed planning (elsewhere in the report) to be similarly and unnecessarily limiting of the concept of watershed planning.

The proposed plan content requirements are crucial amendments to the Act. We are pleased to see the Commission's recommendation for plan content requirements in the Planning Act that include "goals for the future" and studies of future projections (p. 55) which reflects our previous recommendation regarding the need to incorporate "strategic elements" into the plan. But we repeat our previous recommendation that the establishment of goals "based on studies of existing conditions and future projections" (p. 55) must include the setting, through a public process, of measurable targets and standards for each of the goal areas. The intention should be to hold municipalities accountable for their performance in meeting planning objectives in the same way that they are now held accountable for their financial performance.

We note that the Commission makes the same comparison when it states that municipal plans should function in the same way as municipal budgets (p.60). We agree but point out that the Commission should carry through with the analogy. The setting of a budget is built upon targets (or estimates) for the anticipated cost of each of the line items. Without clear targets in each area, and a systematic means of establishing them, there is no means of holding a municipality accountable to the overall budget. Similarly, in the municipal plan, without clear targets, accountability cannot be ensured. Vague and noncommittal statements of intent are virtually useless; it must be possible to state with some degree of certainty whether the goals have been met.

We reiterate, therefore, the need to establish targets, limits, and thresholds for protection and restoration of ecological values and ecologically significant lands and waters based on criteria for representation of ecosystem types, protection for rare, threatened and endangered species and areas of critical wildlife habitat, etc., all of which should be publicly determined within the context of protecting and restoring a natural heritage system. Some targets will not be measurable; but, to the largest

extent possible, they should be measurable in order to track progress in meeting them.

Further, we repeat part of a related recommendation calling for a provincial role in developing standardized definitions of environmental indicators so that measurable targets and standards can easily be defined, and so they can have some common currency throughout the province. For example, a municipality may discover it has 100 hectares of provincially significant wetlands. The goal that it could set for itself could be: 1) to protect that 100 hectares against further loss of area or function; and 2) to restore previously lost or degraded provincially significant wetlands (i.e., a quantitative target could be set for restoration of a certain number of hectares over a ten to twenty year period. Both goals can be assessed to see if they are being fulfilled.

Another example is the use of targets for gross urban density to attain compact urban form. While there is no universally applicable number, the province could provide, through Policy Statements, a general density standard as one indicator to determine whether expansion beyond the existing built-up area is justified. A reasonable and defensible figure is 4000 persons per square kilometre. Kenworth and Newman's study of 32 international cities, published in Cities and Automobile Dependence, shows that cities with densities of 42.1 persons per hectare demonstrate moderate automobile dependence, moderate gasoline use and an important role for public transport, walking and cycling. Such a target should be proposed, not as an ideal, but as a minimum density required for the provision of good public transportation services and support of local shops and services distributed within walking distance throughout the community. This figure would be acceptable and achievable because it represents the density of the traditional town core of Ontario communities. Although falling short of the City of Toronto's 6000 persons per square kilometre, it is far better than densities averaging 1000 to 2000 persons per square kilometre in areas such as Brantford, Markham or York Region.

Under the Commission's matters for which plans should contain policies, item 2(e) (p. 55) should specify the natural features listed as well as an explicit need to plan development so that these natural areas and corridors can either remain linked, or more likely, eventually become linked as much as possible into a natural heritage system. The establishment of a natural heritage system via the linking of, existing and new, natural areas and corridors is an example of one broad, long-term goal that a municipality could set for itself and monitor its progress. In this regard, and following on the discussion above, the monitoring exercise proposed in item 2(l) should

specifically measure progress made by the municipality in achieving the publicly determined goals and targets.

8.1 ENVIRONMENTALLY ORIENTED PLANNING

We support the Commission's Recommendations 40 and 41 to incorporate the elements of environmental assessment into the plan preparation and plan amendment process. It will be crucial to have strong environmental policies at the provincial level for this approach to be effective in protecting the environment. As well, with respect to the "do nothing" option, it should be clearer that this option should not be "no plan" or "no amendment" but, "do nothing", (which will generally mean do not allow development), in certain areas governed by the plan or plan amendment as one of the alternatives to be considered. Again, this option will be very dependent upon the policy-driven identification and classification of environmental features and functions within a framework of a protected and restored natural heritage system.

On the last point in recommendation 41 regarding monitoring and contingency approaches, our comments, noted below with respect to monitoring and the role that should be given to municipal councils, should apply. As well, our comments with respect to Environmental Impact Statements, below, are relevant to this discussion. In particular, even though the "do-nothing" alternative arises under the broad question of need at the plan level, we do not think that this alternative should be precluded from discussion at the site-specific level.

8.2 PLANNING ON A WATERSHED BASIS

As noted above, we are very supportive of the requirement in Recommendation 42 for planning on a watershed basis. We suggest however that the Commission's view of watershed planning is unnecessarily limited to the flow of water. The Commission should not distinguish watershed planning from ecosystem planning or, to limit the concept slightly, planning for the area through which the water flows, both above and below the surface. The intention of planning on a watershed basis is to plan for the ecosystem, the limits of which are defined by the watershed's natural boundaries. The Recommendation should be redrafted to exclude the words in the first sentence: "regarding development and changes affecting water". The requirement should simply be to establish policies based on watershed studies when preparing plans.

The Commission points out that one of the enormous costs of not basing policies on watershed studies is a decline in biota. This concern is crucial but it is not adequately reflected in the list of matters which the Commission states should be addressed in watershed policies and studies. The need to protect and restore biodiversity should be the central focus of the environmental reforms that the Commission is recommending including those with respect to watershed planning.

A definition of watershed planning would help too. The Commission uses the phrase "policies based on studies done on a watershed basis" rather than beginning from a definition of watershed planning. We suggest the following definition:

> the development of plans for a watershed that will provide the necessary information to the land-use planning process by establishing constraints, opportunities and approaches for the use and management of surface and sub-surface water and land that compatibly integrate natural systems with changing land uses. (adapted from Subwatershed Planning, An Interim Guidance Document on Preparing and Implementing Water and Related Integrated Resource Management Plans at a Subwatershed Level, The Subwatershed Guideline Working Group, January, 1992).

Beginning with such a definition the Commission should expand a set of criteria for how watershed planning should occur. We support the matters currently listed (p. 58) by the Commission as those needing to be addressed with the addition of the terrestrial habitat and ecosystems of the watershed biota.

Uniform criteria for conducting watershed planning are necessary. With the new provincial policy direction, these criteria should ensure that water-taking and drainage plans of all kinds, consider the effects of development on a protected and restored natural heritage system. Criteria should include: stormwater management to maximize detention and infiltration; terrestrial and aquatic habitat restoration; protection of the ecological integrity of natural areas, buffer zones, and linking corridors; and similar matters.

8.3 JOINT PLANNING

We are pleased to see our recommendations for joint planning incorporated into the Draft Report. The Commission recommends that the Planning Act should incorporate the principle that joint planning is necessary (p. 55). As well, the Commission

recommends that the Act should specify that upper-tier planning should occur on a geographic basis appropriate to the issue (p. 56). We suggest that examples should be cited such as watersheds, commutersheds, sewersheds, etc. However, we reiterate our recommendation that this requirement should be spelled out in all policy statements so there can be no doubt about how it is to be interpreted and applied. We also support the Commission's Recommendation 43 regarding the use of mediation to ensure joint planning and an OMB-arranged settlement in the absence of a mediated one.

8.4 MONITORING

It is crucially important that monitoring occurs as a means of assessing municipal accountability in implementing its plan. As noted elsewhere in this submission, this process should be a more rigorous one than the Commission has proposed. While State of the Environment reports are a good idea, we think that they should be directly linked to the review of the municipal plan. Targets and standards contained in the municipal plan can be measured against this reporting.

The Commission's recommendations for cumulative effects assessment would be more proactive if it were to adopt our recommendation for incorporating clear targets and standards for environmental indicators in the plan development and review process.

With respect to the Commission's proposal for an EIS on a site-specific proposal where there is no plan amendment (p. 63), the Commission recommends that the EIS is to include mitigation measures. Unfortunately, experience with environmental assessment has shown that there is often no follow-up on such assurances that problems will be resolved through mitigative measures. We recommend that, as part of the EIS process, a municipal Council should be able to set standards for site-specific developments and have the right to require effective mitigative measures and should monitor development situations or, more appropriately, require that monitoring be conducted, in order to ensure that these standards are met. This recommendation is similar to the one made by the Commission elsewhere in the report with respect to the OMB.

We support the recommendation (#80) that the OMB should have the power to "impose monitoring and other terms and conditions to protect the environment". It seems logical that municipalities should exercise similar powers. Also, the data that

accumulates from such monitoring exercises should be compatible with and a part of the State of the Environment reporting exercise that municipalities should be engaged in.

8.5 PLAN AMENDMENTS

We agree that plan amendments should be approved much less frequently than is currently the case. Plans should, in the Commission's words, "be able to accommodate desired change without plan amendments" (p. 60). The three kinds of plan amendments that the Commission proposes be permitted are supportable with the exception of 3(c)(iii). This proposal provides far too large a loophole in the restriction and should be deleted.

Comprehensive Zoning By-laws must be consolidated as needed to be concise and accessible, and adopted by Council to be enforceable in a court of law. Following plan review, the Comprehensive Zoning By-law must be amended and consolidated by Council in a reasonable period of time.

8.6 PUBLIC INVOLVEMENT

The Commission's proposals for public involvement are not particularly well developed. The emphasis is almost entirely on the bare minimum requirements with encouragement to municipalities to develop further procedures beyond what is specified in the Act. If the diverse experiences of members of the Land-Use Caucus are a guide, such additional procedures will not occur precisely in those municipalities where they will be needed most. Indeed, current requirements for notice and public input are not always provided adequately. For instance, tenants are rarely, if ever, given notice of development proposals yet they can be crucially affected by them.

The notion of a Public Registry is a good one (Recommendation 72) and we suggest that it provide information through municipal offices, public libraries, community centres, schools, etc.

Notice requirements should include the following: 1) on-site signage; 2) flyer distribution to neighbouring residences and businesses; 3) posting of notices in community facilities (libraries, recreational facilities, etc.); 4) notification of known

residential or ratepayer associations and community groups (who have registered with the municipality); and 5) several notices in local newspapers. Groups or individuals who have registered with the municipality should only have to register once a year indicating their interest in planning proposals in the community.

Notice requirements ought to also contain simpler language (including drawings and maps - a sample could be contained in the Act) and the notice should apprise the public of what its rights are in the particular process. As well, step one in the Commission's proposed minimum process for plan creation and amendment (p. 61) needs more detail. The steps should not merely be publication of intent, process and public involvement. It is also very important to provide the scope of the issues to be addressed, in plain language, with maps and drawings if necessary, so the average citizen can determine what is included and what is not, and dispute these points if need be. The notice should also provide information of what, if any, background information is available at this stage.

The Commission's two recommendations (47 and 48) concerning public involvement can be strengthened. For example, the suggestion that the public "be given an opportunity to be heard at appropriate points in the process" can be strengthened to state that the public should have the right to be heard at council meetings, etc., not just before the OMB.

In Recommendation 47(c) we suggest expanding those who receive notice to "those affected by or interested in" the matter at hand. In Recommendation 48(f), the notification of the decision should include information as to what appeal rights exist (including the right to ask for a designation or bump-up under the Environmental Assessment Act) and the deadlines involved.

We suggest that criteria be established to state under what circumstances enhanced notice should occur. Where such criteria are fulfilled, there should be two or more opportunities for public input. Criteria should include: the extent of public concern; the potential for significant adverse environmental effects; consideration of the public interest in the development; and the potential for cumulative environmental effects. To address the concern that additional public consultation may delay approval of a development, we might also suggest the use of the additional criterion of considerations of urgency. We suggest that this kind of criterion should only be used if such considerations have to do exclusively with matters of public health and safety.

On the matter of Environmental Advisory Committees, (Recommendation 49), we

recommend that their establishment be required, not optional, and that they have an explicit role to play including commenting upon any proposals which may involve natural heritage policies before approval is given. Remuneration for public interest group involvement on such committees will need to be considered.

Many members of the Land-Use Caucus have expressed interest in a provincially-sponsored conference on public participation in the planning process. The Commission should consider such a recommendation.

Finally, it is unclear, in the plan amendment process, in cases where there is a private proponent, who will be responsible for public consultation steps in the process. The Commission should clarify this point.

8.7 LOT CREATION

We agree that there should be one system of lot creation and that it is appropriately lodged at the upper-tier (Recommendations 52 and 53). However, we reiterate our concern about the Commission's proposal to delegate approval powers such as this one to the lower-tier on the basis of there being a "qualified" planner on staff. This situation is exactly the type where scientific qualifications to assess impacts on hydrology for example will be necessary and may not reside in existing planning staff.

8.8 ENVIRONMENTAL IMPACT STATEMENTS

Recommendation 54 regarding the need for an environmental impact statement for significant development is laudable but raises several questions. It is unclear who will determine which applications merit the preparation of an EIS, on what criteria this decision will be based and who will be responsible for conducting the EIS. In the case of applications for lot creation, we recommend that the upper-tier decide on whether an EIS should be prepared. In the case of other development applications, the determination of whether an EIS is required will likely be made at the lower-tier. In all cases, the decision should be based on the following criteria: the public need (not just the developer's private desire to make a profit) for the proposal; the extent of public concern; the potential for environmental effects including cumulative effects; and consideration of the public interest in the development. As noted above, with respect to enhanced notice provisions, the criterion of "considerations of urgency"

should only be used if such considerations have to do exclusively with matters of public health and safety.

The public should be able to have input to the decision on whether an EIS is required; and if a municipality improperly dispenses with the EIS requirement, then this should constitute grounds for an appeal to the OMB once the municipality has made its Planning Act decision. We also recommend that a proponent should be responsible for conducting the EIS. Determination of the adequacy of the EIS is critical. As noted elsewhere in this submission, the qualifications of the municipal planning staff will need to be equal to the task. Where the municipality is the proponent, it may be necessary to establish an external, impartial peer review procedure. The expertise within the Ministry of the Environment and other ministries and agencies should be brought to bear on significant situations as well.

A central issue not included in the Commission's report is what content requirements will exist to guide the preparation of the EIS. As noted above with respect to Policy Statements, it is unclear what the Commission has in mind. We use the content requirements of Section 5(3) of the Environmental Assessment Act as a guide in framing our recommendations. We accept the notion that incorporation of the environmental planning principles from Section 5(3) into the plan preparation stage provides the opportunity to consider the issue of need and alternatives for different areas governed by the plan. At the site-specific level, the Environmental Impact Statement should consider these issues only in terms of the alternatives possible for the particular site. We do however think that the null alternative or the "do nothing" option should remain an alternative for consideration at the site-specific stage. Although this alternative will, to a certain extent, readdress the issue of need, it is an important safeguard and the public should be able to advance such an alternative at this stage in the process.

It would be helpful, to municipalities and private proponents, for a guideline to be prepared similar to the Ministry of the Environment Guideline for the Preparation of Environmental Assessments. The EA Branch could be involved in drafting such a guideline or perhaps a model guideline which could be tailored to the needs of different municipalities.

Additional issues regarding the EIS include clarification of the proponent's responsibility and accountability for mitigation measures. As noted above, with respect to monitoring, experience with environmental assessment has shown that conditions on approval are meaningless if monitoring requirements and mitigative

measures, as necessary, are not ensured through effective follow-up activities (i.e., to assess compliance and to evaluate environmental effects/effectiveness). Public access to reports of monitoring should be ensured. Municipal councils should also be able to require financial assurances from developers to ensure that they meet performance requirements set out under all relevant statutory obligations.

8.9 DEVELOPMENT CONTROL

The Commission states that "no suggestions for major changes to zoning powers have been made to the Commission, or are proposed" (p.63). While our first submission may not have made suggestions for "major" changes in zoning, we did point out that it is important for zoning to reflect more than traditionally urban-based development categories and everything else as "rural". Also, zoning of "hazard" lands only on the basis of the potential danger a steep slope or a floodplain poses for people, tends to ignore the environmental sensitivity of these lands. The corresponding changes to such lands allowed by planning decisions with the intention of protecting people from natural hazards, such as flooding, can then wreak havoc on the natural system (e.g., stormwater management techniques that control flooding by destroying the natural hydrological system rather than augmenting it with, for example, the re-establishment of wetlands).

8.10 STREETSCAPE AND PHYSICAL DESIGN GUIDELINES AND SITE-PLAN CONTROLS

We support Recommendation 55 regarding design guidelines. The provision for full public consultation in their development and inclusion in the municipal plan is particularly noteworthy. In contrast, we are concerned that the Commission has stepped back from its earlier position of municipality-wide site-plan control policies.

The Commission recommends (Recommendation #44) that lower-tier municipalities should be responsible for site-plan controls. We believe that this responsibility should be included in content requirements for lower-tier plans such that lower-tier municipalities are required to develop, with public involvement, site-plan policies. Recommendation 44 would also seem to suggest that, in the absence of such a publicly-derived policy, municipal staff would make recommendations for site-plan control in the absence of <u>any</u> public input. We recommend, below, that the public should have some means of appealing such site-plan controls but, to avoid

adversarial confrontations late in the process, should more appropriately be consulted on the municipal policy as it is developed.

The province could also publish site-plan guidelines reflecting various policies (the PPAC could have a role in their development) to assist municipalities in developing their own policies. Upper-tiers could develop similar policies or guidelines to help ensure that site-plan approvals by the lower-tier do not impact excessively on infrastructure provided and maintained by the upper-tier. This concern is especially relevant to intensification proposals (see our comments regarding Recommendation 56(f) below).

We suggest that a similar exercise for developing design guidelines for parts of a municipality (as recommended by the Commission) be done to develop a municipality-wide site-plan policy for the municipal plan. Similar attention should be paid to full public consultation.

At the point of individual site-plan controls, we have concerns about the Commission's Recommendation 56. The Commission states that colour, texture, type of materials, etc. should not be the subject of site-plan controls with the exception of heritage areas. This proposal is problematic. Examples exist in various municipalities where planning departments have negotiated substantial improvements in the look of buildings of enormous importance to neighbours. Such concerns are apt to rate high in conflicts over intensification projects. It seems appropriate to include them in the overall site-plan policy in order to provide protection against inappropriate controls at the site-specific stage. Everyone, developers, the public, etc. can have some input at the policy level. The range of permissible requirements could be provincially established, as in the as-of-right accessory apartment legislation, or at the upper-tier.

Our concerns about the proposals in Recommendation 56(b) and (c) for public input and appeals are related. We disagree with the Commission's proposal to leave the question of public involvement in site-plan controls to individual councils and we further suggest that public notice be required. This notice should be given to those individuals or groups which indicated an interest in the development proposal by letter or through other action points in the required approval process. The issue is one of public planning. Therefore, we also suggest that it is valid for the public to appeal site-plan questions as well as the applicant or the upper-tier.

The provision in 56(d)(iii) for widening authority for site-plan agreements to include conditions necessary for environmental protection and improvement, etc., ought to

also enable municipalities to set standards, require monitoring, and impose mitigation measures as suggested above with respect to environmental impact statements.

The proposal contained in 56(f), regarding restricting upper-tiers from exercising site-plan control, is only appropriate if some form of assurance exists for the upper-tier that site-plan decisions made by the lower-tier do not impact excessively on upper-tier responsibilities, such as infrastructure.

8.11 SEWAGE AND WATER CAPACITY

We are pleased to see our suggestion included in Recommendation 59 that anyone should have the right to appeal sewage and water allocations to the OMB.

8.12 SITE ALTERATIONS

We are very disappointed with the Commission's Recommendation 63 regarding pre-approval site alteration, wherein various discretionary powers are suggested for municipalities. We strongly submit that simply enabling municipalities to pass by-laws to prevent site alteration is not enough. In our view, there should be a provision in the Planning Act prohibiting site alteration in advance of approvals or in contravention with terms and conditions attached to approvals.

With respect to Recommendation 63(f), we submit that the court, upon its own initiative or upon motion by the prosecutor (including private prosecutors), should be empowered to issue injunctive relief restraining the contravention. Stop order powers should also be available to the province and municipalities. The court should also be specifically empowered to order the remediation of a site that has been altered without proper planning approvals or in contravention of a planning decision by council or the OMB.

This matter is one of considerable urgency and such provisions need to be incorporated into the Planning Act as soon as possible and provided in the interim by some other means if possible (such as clear direction to Ministries to use their full range of prosecutorial powers if provincial statutes or federal statutes are contravened, and encouragement to municipalities to undertake more prosecutions under the existing provisions of the Planning Act).

8.13 MUNICIPAL INFRASTRUCTURE

The Commission has greatly improved and clarified the proposal for transferring the municipal infrastructure Class Environmental Assessments from the Environmental Assessment Act to the Planning Act. We offer very qualified support for this proposal. We are concerned that it must occur with all of the safeguards that the Commission has outlined including: incorporating sound environmental planning procedures into the development of municipal plans under the Planning Act; a broad definition of the "environment"; maintenance of the Environmental Assessment Act as the legislation to approve the parent Class ER documents; the definition of "class", as the Commission has proposed, to be included in the Planning Act; and full public participation rights including, the ability to appeal bump-up requests to the OMB. Without this entire package of safeguards to accompany the transfer, the proposal will be worse than Project X, the infamous Liberal Cabinet document (leaked in 1989) that sought to streamline the environmental assessment component of the development approvals process by gutting the Environmental Assessment Act.

We remain concerned about the role of the province, specifically the Ministry of the Environment, in this new process. As we have stated in previous submissions, currently the public has benefitted from the role played by both the EA Branch of the Ministry and the work of the Environmental Assessment Advisory Committee when it has been called upon to conduct public meetings and advise upon bump-up requests. Staff in the EA Branch have acquired infrastructure planning expertise, and have been available to the public to address whether a municipality is satisfying the terms of a particular Class EA and, if not, in helping to ensure that the situation is rectified. This "policing" role has provided an important means to ensure that: 1) the environment is more adequately protected than would have otherwise occurred; and 2) that bump-up requests can be minimized. In such cases, the provincial role has helped the normal process work better.

It would be unfortunate if the Commission's model (which we have opposed for the same reason with respect to other planning approvals) would prevent or deter the province from continuing what essentially amounts to a commenting role. We consider it necessary to explicitly state that a continued commenting role for the EA Branch should exist under the new regime so that the public, others interested in a particular undertaking within a class, and ultimately, the environment, could benefit from this involvement.

We have two concerns about the OMB appeal proposal. First, it will be necessary for

the OMB to make decisions on whether the environmental impacts of a proposal are significant enough to justify a bump-up. This decision will require, in some cases, expertise that does not currently reside in the OMB. This retraining of OMB members is important for this and other reasons. In the interim, cross-appointments from the Environmental Assessment Board or Joint Boards should be considered as the avenue for approval.

As well, there is an important timing issue that arises over bump-up requests that the Commission's proposals have not recognized. We agree that it is valuable to have the right to appeal to the OMB for a bump-up and for the appeal to be considered in a timely fashion. The problem however is described very well in the Environmental Assessment Advisory Committee's most recent bi-annual report. As the situation is handled now,

> "...bump-up requests that are received prior to completion of an Environmental Study Report are, as a matter of course, treated as "premature". While this is appropriate for the majority of requests received early on in the municipal class EA planning process, it is important that particularly contentious and significant projects be identified early, and, where warranted, bumped-up, rather than waiting for the proponent to complete the class process and then be required to begin again under the individual EA process" (EAAC Bi-annual report 1990-92, p. 15)

The Commission's proposal for amending the Planning Act to clearly define a "class" will help with this problem but there will still be proponents who will try and put inappropriate projects through the Class process. In the Commission's proposal, the bump-up request appears to be possible only after the studies required by the Class ER are completed and Council has considered them. The time and expense of producing the Class ER environmental study report may be largely wasted if the bump-up request is granted, thereby providing a built-in bias against granting bump-up appeals at the OMB.

The problem identified in the EAAC Bi-annual Report is not resolved by the Commission's otherwise supportable proposal for OMB involvement. It could perhaps be resolved by including some means of enforcing the appropriate use of the definition of what projects fall within a class. Perhaps a screening process could occur at the EA Branch of the Ministry of the Environment or the proponent could be required to publish written reasons for including a project within a class. These kinds of measures would help ensure that careful thought is given early in the process on the suitability of using the class process or not.

A further timing issue arises with the Commission's proposal for notification of the Class ER process. The proposal is for a minimum of two public meetings, one at the beginning of the process and one at the end when final reports are being considered. This proposal is inadequate. It does not include any recognition of the iterative process of public consultation, including the review of draft documents and the ability to submit comments and know how and why those comments are received. The opportunity for this kind of process is desirable for all projects within a class but is particularly necessary for the contentious proposals which may be the subject of bump-up requests.

While the Class ER document itself may set out further consultation opportunities during the report preparation stages, we think the Commission should recognize that public meetings must be combined with full access to information to allow for meaningful public input to, and feedback from, the document preparation process.

Finally, we are very supportive of the fact that the Commission's proposal would expand the purview of the Class process to include private infrastructure projects.

9.0 PUBLIC MEETINGS, NOTIFICATION, AND APPEAL PERIODS

We generally support the Commission's proposals contained in this section of the report, however, specific comments on issues of public meetings, notice, and appeals have been made elsewhere in this submission and need not be repeated here.

10.0 CONFLICTS, DISPUTES AND APPEALS

10.1 THE ONTARIO MUNICIPAL BOARD (OMB)

The Commission's recommendations place a very heavy load on the OMB to enforce the province's tough new policies. In addition, the Commission would load some new tasks on the OMB, such as appeals arising out of the new Class ER process. Since full and complete compliance by all municipalities with all new policies is, in our opinion, a fanciful prospect, the efforts of citizens (and ministries?) to ensure

compliance will likely result in additional appeals to the OMB. The potential for additional workload contradicts the Commission's assertion that more Board members will not necessarily be required (p. 76). It also makes the setting of deadlines for OMB action on appeal requests seem implausible.

The Commission expresses hope that public participation and notification will help to reduce conflict - and reliance on the OMB. While we share this hope, it is not at all certain that the Commission's package of reforms will produce this outcome. Rather, a diminished provincial role in the approvals process will result in a greater burden on the already limited resources of public interest groups. Nor will the goal of improved environmental protection be assured, largely because, without a clear responsibility to ensure policy is upheld, we anticipate that provincial agencies (subject to their own limited resources and not benefiting, so far, from recommendations for streamlining their commenting role) will appeal only the most egregious cases to the OMB. We submit, therefore, that the Commission's model will amount to offloading of enforcement from the province to citizens groups.

We have several comments on Recommendation #80. We agree that the Planning Act should be amended to provide unincorporated associations with status before the OMB and that the OMB should be authorized to impose monitoring and other terms and conditions to protect the environment. We would also submit that, to resolve conflicts before it and in light of the information it has heard, the OMB should be authorized not only to grant or dismiss appeals, but also to identify what the current Official Plan designation or zoning is in respect of the property in question. On the issue of appeals to Cabinet of OMB decisions, we can agree with the proposal to eliminate Cabinet consideration of appeals with the exception of appeals on cost awards made under the Ontario Municipal Board Act. Similarly, in Recommendation #81, legislation providing for intervenor funding should include proposals for the liberalization of OMB cost powers. As noted above, we disagree with the removal of the Cabinet's ability to declare a provincial interest.

Retraining of OMB Board members to adapt to the new environmental planning reality is critically important. Cross appointments from the Environmental Assessment Board to the OMB would be helpful in the interim.

Finally, the Ministry of Municipal Affairs, through Dale Martin's endeavours, is conducting a pilot program on Alternative Dispute Resolution (ADR). CELA has participated in this work in the hope that it will provide a new model for satisfying party concerns in a manner which will represent significant cost savings for the

province. We urge the Commission to review this pilot project with a view to recommending its permanent implementation. While ADR may not be appropriate in all circumstances, it is to be supported for a significant number of matters which go before the OMB and are resolved through negotiation after the hearing has commenced.

10.2 INTERVENOR FUNDING

We strongly support Recommendation #81 regarding a legislated intervenor funding program for OMB hearings for the many reasons set out in this and previous submissions, to the Commission and the Province. The amount of $500,000 annually for the interim time period before the legislation is established may prove to be inadequate for the anticipated needs, but it represents a step in the right direction.

11.0 TRANSITIONAL MATTERS

In response to the section in the Commission's report on transitional matters and further correspondence from the Commission (letter dated February 15, 1993), we offer the following comments.

The statement on page 85, that the Commission's policy proposals would replace the "Foodland" guidelines and "Growth and Settlement" guidelines, is very problematic if the Commission's policy proposals remain as abbreviated as they currently stand. The related statement that "implementation guidelines will remain for information purposes" is also problematic since, in the case of "Growth and Settlement", they relate directly to the existing guidelines and not to the Commission's proposals.

We are also concerned that, with respect to the development of new plans, in accordance with the new Policy Statements, the plans should be "consistent with" not merely "have regard to" the new Policy Statements. As well, we are concerned that the new plans adhere to the content requirements to be set out in amendments to the Planning Act and to the new environmental planning requirements, also to be established by amendments to the Act. As well, unanswered questions about decisions around, and content requirements of, Environmental Impact Statements need to be resolved. It therefore seems unrealistic for the new plans to be established prior to the proposed legislative reforms. These reforms should proceed

as soon as possible.

However, we do fully agree with the Commission's proposal (contained in the February 13th correspondence) that the new Policy Statements contain in their preamble a statement to the effect that, regardless of what an existing municipal plan may say, the provincial Policy Statements apply to all decisions by planning authorities.