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Comments on the Commission on Planning and Development Reform in Ontario's Draft Report

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1. Introduction

The Commission on Planning and Development Reform's recommendations are remarkable for their comprehensiveness and detail. The Institute is supportive of the overall direction taken by the Commission and the level of consideration that it has given to environmental and social factors in the planning process. The Institute's concerns are focussed on number of specific aspects of the Commission's proposals.

2. Mandate and Approach

The Commission should be congratulated on the manner in which it has approached its mandate. The Commission's deliberations have been remarkably open, and it has consistently provided clear indications to the public of the directions in which it intends to go with its recommendations. The Commission's employment of multistakeholder working groups to assist it in policy development

is particularly noteworthy. This has been a significant departure from the practices of some Commissions in the past.

3. The Proposed Policy Statements

The Commission's proposal that the Planning Act be amended to require that actions taken by any planning body or decision-maker "be consistent with" policy statements adopted under the Act, is critically important in the context of the proposed general reforms of the planning process. This step, if not the use of even stronger language, is essential if the provincial policy framework which the Commission proposes is to be taken seriously by planning authorities. The Commission's proposal that policy statements which contain absolute prohibitions on certain activities have priority over other statements in the event of a conflict is also critically important. The implications of this provision with respect to the existing policy statement regarding aggregate mineral resources need to be considered carefully.

The Commission's proposed policy statements are generally consistent with the draft goals presented in April 1992. However, some important aspects of the draft goals appear to have been weakened significantly. In particular, the proposed statements regarding the protection of agricultural land (B 7(e), B 8(d) and D) represent a departure from draft goal E 25 which proposed the absolute protection of Class 1-3 agricultural land and specialty crop land. The draft policy statements only provide clear

protection for specialty crop lands. Stronger protection for quality agricultural land, consistent with the Commission's earlier draft goals, must be included in any new policy statements made under the Planning Act.

With respect to the use of septic systems, the proposed policy statement related to their use (B 9(f)) seems even less concise than what was presented in the Commission's draft goals. In its earlier work the Commission identified serious environmental, and even human health, problems associated with the use of septic systems. Consequently, the Commission should go much further than it has in terms of defining the appropriate uses of septic systems in Ontario.

More broadly, the Commission's proposed policy statements regarding Community Development and Infrastructure Policies, of which the elements related to agricultural land protection and sewer and water infrastructure are part, generally weaken the thrust towards intensification which was present in the Commission's draft goals. Draft goals D 20-24 were particularly significant in this sense. The references to mixed use communities appear to have been removed altogether. This is a significant backward step.

The Commission's proposed conservation policies (E) are very good. Proposals E 3 and 4 are particularly noteworthy with respect

to automobile use and transportation. Adherence to these policy statements will be extremely important in the context of the Commission's proposals regarding approvals for municipal infrastructure projects. These goals may need to be articulated in a more detailed way to ensure municipal compliance with their purpose.

The inclusion in the Commission's draft policy statements of key elements of the Mineral Aggregate Resources Policy Statement in proposed statement F raises a number of important questions. It is not clear if this is to imply that the Commission endorses the existing policy statement, or simply to acknowledge its existence. This consideration is especially important in the context of the relationship between the aggregates statement and the Commission's recommendation that prohibitions on development in policy statements ought to have priority over all other considerations. In the event that the Commission does not support the contents of the existing statement, and is of the view that it should be modified, this should be stated clearly in the Commission's report, notwithstanding the government's indications regarding the statement.

4. The Provincial Role

The Commission's proposals for the formation of the Provincial Planning Advisory Committee (PPAC) to assist in the development of provincial planning policy has the potential to provide for a more

open policy development process than has been the case in the past. The proposed system involving the PPAC and the Interministerial Planning Committee (IPC) should be adequate to maintain and provide for the periodic modification of the new planning system, once established. However, it is not clear that this structure will be adequate to deal with the problems which are likely to arise during the introduction of the new system. This question will be addressed in more detail in the section of this submission addressing transitional issues.

With regard to the assignment of policy making and planning responsibility to one ministry, namely the Ministry of the Municipal Affairs and Planning (MAP), there are continuing concerns with respect to the capacity of this agency to articulate the provincial public interest in land-use planning. The Ministry of Municipal Affairs has traditionally understood its primary mandate in terms of the representation of municipal interests within the provincial government, rather than the provincial public interest in land-use. Indeed, it might be argued that this was one of the causes of the loss of public confidence in the planning process which led to the Commission's formation. The role which the Commission envisions for MAP will require a "cultural change" within the Ministry if it is to succeed.

The Commission proposes to reduce the powers available to the Minister of Municipal Affairs in a number of significant ways. In

particular, the Minister's capacity to declare "provincial interests" in particular areas would be removed. These powers are to be replaced with a capacity to impose 1-year interim holding orders, which are extendable for one year, pending the introduction of a provincial policy statement. This proposal may make it difficult for the Minister to intervene under special circumstances which are unique to a particular location.

The Commission also proposes that the Minister be granted the power to withdraw plan approval and lot-creation authority from a municipality or planning board in the event that the local planning process breaks down and becomes ineffective. The conditions under which such an intervention may occur need to be clearly defined. At the same time, consideration must be given to the concern that if an extensive "body of evidence" must be acquired prior to a provincial intervention, significant damage may occur in the interim. In addition, thought should be given to the possibility of a mechanism to reverse planning decisions made under circumstances which warrant a provincial intervention.

5. The Municipal Role

The Commission's recommendations regarding strategic planning by municipalities and the development of municipal plans are very important. The Commission's emphasis on environmental and social considerations and openness and public involvement in planning is particularly welcome. The suggestions regarding content of

municipal plans and environmentally oriented planning processes, are especially noteworthy in this sense.

The Commission's specific proposals regarding public involvement in the planning process are of great importance and deserve strong support. The Commission's general principles regarding access to information, openness, notification, and access to the decision-making process are essential in this sense and should be embodied in legislation in clear, direct and concise terms. Care should be taken to ensure that the minimum process set out by the Commission to be included in the Planning Act does not emerge as the only component written into law. The Commission's suggestions regarding the granting to municipalities of powers to control site alteration are also very good and deserve strong support.

The Commission's proposals regarding the explicit authorization of the use of design guidelines by municipalities through the Planning Act are very important. This is especially true in the context of the overall thrust of the Commission's report in the direction of intensification. The use of such guidelines will help to ensure that existing communities are not overwhelmed by new developments, and that a human scale is maintained in their design.

The process proposed by the Commission regarding the approval

of municipal infrastructure requires careful consideration. Essentially the Commission is proposing to replace the existing class environmental assessment process with a new procedure called the Class Environmental Review (Class ER). The environmental review of projects falling into this process would be limited to the consideration of "incremental" impacts and their mitigation. Questions of the need or alternatives to infrastructure undertakings would be dealt with through the planning process. Appeals regarding the applicability of the Class ER process and consistency with the requirements of a Class ER would be made to the Ontario Municipal Board. There would apparently be no means of moving projects from the Class ER process into the Environmental Assessment Process through a Ministerial or cabinet "bump-up."

The proposed system would make it impossible to challenge the rationale for undertakings which fall under the Class ER system. This may raise difficulties as the circumstances under which the justifications for a project were developed may change more quickly than municipal plans. In addition, it is not clear how the proposed system would deal with an undertaking which is shown to have serious and unmitigable environmental impacts. Is a "no-go" answer possible under the proposed Class ER process? Further, given that the Class ER document is to be approved under the Environmental Assessment Act, it is not clear why appeals regarding its applicability and consistency with its requirements should go to the OMB rather than the EAB.

The proposed process would also eliminate the possibility of individual undertakings being taken out of the Class ER process and "bumped-up" to a full assessment. This would significantly weaken the capacity of the Ministry of the Environment to ensure that environmental considerations are fully taken into account in the development of new infrastructure. It would be more appropriate, if the new process is introduced, to continue the existing structure of permitting bump-ups to the full assessment process by the Minister of the Environment or, alternatively, the full cabinet.

The scope of the application of the proposed Class ER process requires significant attention. The categories of projects which are considered recurring, similar in nature, limited in scale and have only a predictable range of environmental effects and are responsive to standard mitigation measures will have to be defined very clearly. This may prove to be a contentious undertaking, as there are already widespread concerns among environmental and community organizations that the existing Class environmental assessment process is being applied inappropriately as a means of exempting major undertakings from the full assessment process.

The problems of delay and uncertainty associated with the existing assessment process should be dealt with through significant procedural reforms to the process and the articulation of a clear provincial policy framework within which the Assessment Board can make its decisions, rather than expanding to scope of

exemptions and pseudo-exemptions. The addition of provisions to the Environmental Assessment Act making the Planning Act policy statements applicable to environmental assessments as well might be a useful possibility in this regard. The possibility of the introduction of a policy statement mechanism under the Environmental Assessment Act might also be considered as a means of providing policy guidance to proponents, the Ministry of the Environment and the Assessment Board.

6. Conflicts, Disputes and Appeals

The Commission makes a number of important recommendations regarding the role of the Ontario Municipal Board (OMB). The proposal to introduce pre-hearing procedural meetings may be particularly useful in the sense. These meetings may provide a forum for mediation and dispute resolution. At a minimum they will facilitate pre-hearing scoping.

The Commission's proposal that standing before the Board be expanded, by permitting unincorporated associations to file appeals and appear before the board, is very important and deserving of strong support. The suggestion that the Planning Act be amended to permit the Board to impose environmental terms and conditions in its decisions will go a long way toward ensuring that planning decisions are implemented in a manner consistent with the provincial policy framework.

The Commission's recommendations regarding the provision of intervenor funding are very important. Given the role that the OMB would play in the implementation of planning policy it is essential that community and public interest intervenors be able to make effective representations to the Board. Consideration should be given to the possibility of modifying the Board's procedures, beyond the proposed pre-hearing procedural meetings, to ensure that the hearing process remains accessible to members of the general public, and that it is possible for the bulk of intervenor funding grants to be spent on the development of the substantive content of submissions to the Board. The concerns which some citizens' and community groups have begun to raise regarding the impact of intervenor funding and procedural formality on the environmental assessment process should be considered carefully in this context.

The Institute has expressed its concerns regarding the complete removal of the possibility of cabinet appeals of OMB decisions in previous submissions, and it is therefore unnecessary to reproduce those concerns here. The decisions regarding the proposed planning process which the Board will be making will be of a fundamentally political nature, dealing with the character of the society in which we live. It is therefore essential that ultimate responsibility for these decisions rest with elected officials who are, in the end, accountable to the public for their actions. It should also be noted that the only precedent for such an absolute limitation on cabinet appeals from an administrative tribunal in

Canada is the recently established Alberta Natural Resources Conservation Board.

The recommendation that the Conservation Authorities Act be amended to provide for appeals to the Ontario Municipal Board rather than the Mining and Lands Commissioner warrants strong support. This is especially true in the context of the Commission's proposals that the role of Conservation Authorities as watershed-based ecosystem managers be emphasized. As the Commission notes, it would also ensure consistency with the overall provincial policy framework.

7. Sewage Treatment

During the early stages of its work the Commission devoted considerable attention to the question of the appropriate uses of septic systems in Ontario. Unfortunately, in the face of a very strong reaction from rural areas of the province the Commission has been retreating on the issue ever since. As noted earlier, the Commission's draft policy statements related to sewage treatment and septic systems are much weaker than those proposed in its draft goals. This is unfortunate. Given the extent of the environmental problems which have been identified with the use of septic systems, the Commission should go much further in terms of establishing appropriate parameters for the use of septic systems.

The Commission's recommendation that private and communal

septic systems be subject to regular inspections after installation represents an absolute minimum in this sense. The proposed inspection period of three years should be reduced and pump-out requirements tightened. Inspections on sale or installation should be considered in addition to regular inspections. The regulatory system of the oversight of septic systems should operate on a user-pay basis.

8. Transitional Matters

Given the nature of the overall proposals made by the Commission, the development of a completed provincial policy framework is essential before procedural changes to the planning process can be implemented. This is especially true regarding the removal of regular provincial oversight of municipal planning decisions. In this context, the Commission appears to underestimate the difficulties likely to be encountered in any attempt by the province to articulate a complete system of policy statements under the Planning Act. It should be remembered that it has taken more than a decade to develop the four policy statements which now exist under the Act.

Given these considerations, the Commission might propose the establishment of a interim organizational arrangement to oversee the development and articulation of the basic provincial planning framework. The establishment of a secretariat in the Cabinet Office for this purpose, with a clear mandate from the premier would seem

essential in this regard. The experience in British Columbia with the Environment and Land Use Secretariat in the earlier 1970's may provide some guidance. The Commission's proposals regarding the PPAC, IPC and MAP will provide for the operation and evolution of the planning system once the basic policy framework is in place.

9. Concluding Observations

The program of reforms which the Commission has articulated is remarkable for its comprehensiveness and attention to environmental and social considerations in planning. It provides a new vision, not only for the planning process, but also in terms of the goals of land-use planning and the shape of the society which it will produce. The implementation of the proposed changes will present a significant challenge to the Ontario government over the next few years.

If the Commission's work suffers from one significant oversight, it relates to the first element of the Commission's terms of reference, regarding the role of public and private interests in land-use development. This seemed to invite the giving of some attention to the question of municipal electoral finance. The narrow base of support upon which some members of municipal councils have relied over the years bears directly on the collapse of public confidence in the planning process which occurred in the late 1980's and led to the Commission's establishment.

Reform efforts in this regard could go a long way towards ensuring that municipal councils, whose role would be greatly enhanced by the Commission's proposals, reflect the range of interests present in the communities which they represent. Requirements that the identities of campaign donors be revealed prior to election days, and further reductions in the maximum allowable contribution for each supporter may be particularly useful steps in this sense.

