



Ontario Professional Planners Institute Submission to the Ministry of Municipal Affairs and Housing Comments on Planning Reform Discussion Papers August 30, 2004

Introduction

OPPI commends the Province for undertaking this ambitious review of the planning system and we would like to thank the government for the opportunity to give input. Please find attached our comments on the planning reform consultation documents with a focus on the Draft PPS (PPS) and reforms to the Ontario Municipal Board (OMB), as these most significantly influence professional planning in the Province. We have also included more specific commentary on the Draft PPS in Appendix A.

OPPI is aware of recent and forthcoming planning and planning-related initiatives. We have provided input to the Province on many of these issues and we intend to provide additional comments, where appropriate. In particular, we would like to highlight our March 2004 submission on Bill 26 and Bill 27 and our February 2002 submission on the OMB. Copies of these reports are attached and are also available on our website at: www.ontarioplanners.on.ca.

Overall Comments on Draft Planning Reform Papers

Volume and Timing

The Province has undertaken an ambitious program and schedule of reform of the Ontario planning system with several initiatives simultaneously taking place within a number of ministries. There is concern about the need to undertake these reforms in a coordinated and thoughtful manner and to ensure there is sufficient time for review and comment.

Interconnectedness

Some of the planning reform issues are on 'their own track' but many others are complicated and interconnected. The PPS and the Planning Act should, for example, move forward together.

It is key that these initiatives are clearly understood within the Ministry of Municipal Affairs' areas of responsibility and also within the broader framework of planning reform underway at the Ministry of the Environment and the Ministry of Public Infrastructure Renewal. Growth management issues are an example as these are intertwined with planning initiatives. Many issues are also highly technical and complicated in nature and it is difficult, for example, to ascertain the structural relationship between watershed planning and planning reform.

Interconnectedness is not only at the provincial level. These reforms impact many local planning processes and documents. More time is needed to properly assess the implications of these changes.

Balancing priorities

Greater transparency and direction are required as to how the Province will balance the variety of initiatives, the competing nature of some objectives, and the administrative changes required for their implementation. This comment is applicable to the entirety of the set of planning reform initiatives but specifically applies to the Draft PPS.

If the public is to have confidence in the process, the Planning Reform documents should make clear that the appropriate Minister within the Ontario Government is the 'broker' when conflicts occur.

Local Autonomy

The government's intent is to provide a broad policy framework to empower local municipalities however several elements of the proposed reforms may result in reduced local autonomy and less decision-making ability. More specifically, these include: the provision for the Minister of Municipal Affairs and Housing to declare a Provincial Interest in matters before the OMB; prescription in the Draft PPS of the content of Official Plans; the requirement to update the Official Plan every 5 years; and the need to have the Official Plans aligned with amendments to PPS. It may not, for example, be realistic to require five-year reviews. These reviews take a considerable amount of time and effort on the part of the municipality. Further consideration should be given to this matter.

OPPI believes that providing adequate time to obtain input and resolve disputes promotes good planning, particularly for complex proposals. OPPI supports this approach, provided that time is allowed for parties to undertake the statutory actions required of them and for the public to be involved in the establishment, review, or amendment of public policy.

Resources to Implement

We are pleased the Ontario Government is committed to improving the land use planning system in Ontario, however, the substantive and comprehensive nature of many of the proposed amendments will place a significant burden on municipalities as these jurisdictions endeavour to apply the new provisions. New components

such as watershed based plans, performance monitoring and indicators are welcome but need to be accompanied with sufficient provincial direction and supporting resource to make them possible.

Implementation Tools

Further consideration needs to be given regarding additional tools than those proposed in currently available documentation since no new implementation tools are identified. Transferable development rights, incentives, and other implementation tools need to be considered.

Province-Wide Relevance

The consultation papers, the Draft PPS in particular, appear to use the context of the Greater Golden Horseshoe Area as a basis for policies. Even though the southern end of the Province struggles with urban sprawl issues, it must be remembered that other parts of the Province strive to deal with no growth and negative growth issues.

The Ontario Government needs to articulate a Province-wide policy framework for what is envisaged as good community planning. Yet, this presents a challenge as a 'one-size-fits-all' policy approach may not always be appropriate. Earlier versions of the PPS could have this approach as there was less detail and the documents didn't have a 'shall be consistent' clause. There is the potential to have two to three different sets of PPSs (northern, southern and Greater Golden Horseshoe) to increase the relevance to the specific contexts. This concept should be explored.

Effective Date of Policies

OPPI does not support applying the new policies to applications that are in process for which a final decision has not been made. Many of these applications are in an advanced state and significant investments have already been made on the part of applicants and municipalities.

Definitions and Editing

All three consultation discussion documents and the Draft PPS in particular, require editing for consistency, elimination of repetition, and greater clarity.

There are missing and inconsistent definitions attached to planning reform documents. To clarify the intent of the legislation, the Province should ensure that identical definitions are included in the planning reform initiatives. We are particularly concerned that a working definition of "be consistent with" be clearly established, so that municipalities understand what is intended by the phrase and how it is to be applied, recognizing that the application will vary from circumstance to circumstance.

The lack of clear and defined terms has far reaching implications. Interpretation may be difficult and the reading of Sections could be unclear and problematic.

Additional Comments on the Draft Provincial Policy Statement

The Draft PPS provides a more substantial policy framework to guide planning in the Province. The policies regarding efficient settlement patterns are significantly stronger in support of growth management and introduce a greater emphasis on intensification and redevelopment. However, given the focus on smart growth/growth management within the provincial objective, some additional consideration should be given to the reinforcement of these policies. This could be achieved through policy statements that clearly articulate the primacy of these objectives, innovation in the means of determining land supply, agricultural definitions, greater innovation related to brownfields policy, and the identification of additional supportive growth management tools.

'Be Consistent With'

One area of implementation that must be addressed is how to ensure that planning decisions are consistent with the PPS. Although the wording "be consistent with" is apparently intended to result in decisions that more closely reflect the intent of the PPS, there needs to be clear guidance on how competing interests might be balanced. One of the essential elements of planning is balancing social, economic, and environmental interests. Planning involves a comprehensive analysis of all resources and application of all pertinent policies. If planning decisions are required to "be consistent with" the PPS, it must be made clear that there is room for practical planning decisions to protect one resource interest at the expense of another. Without clear direction on the Province's priorities for environmental protection and community growth, and on what to do when conflict occurs, the new wording provides continued challenges.

Again, if the public is to have confidence in the process, the Planning Reform documents should make clear that the appropriate Minister within the Ontario Government is the 'broker' when conflicts occur.

Matters of Provincial Interest

OPPI has concerns regarding declaration of provincial interest. We believe that the PPS should clearly and concisely state the criteria used to identify a matter of provincial interest. The Province should also declare a provincial interest much earlier than the minimum 30 days before an OMB hearing. Matters of appeal that involve a provincial interest are major policy decisions and all parties need to prepare properly before making arguments at a hearing. The process must be transparent, timely, and give the community reassurance that its concerns are being properly addressed. Strengthening the PPS would be a more effective way to address or even avoid situations in which Cabinet has the final decision on planning matters.

The PPS review provides an excellent opportunity to have a coordinated framework through which the Ontario Government sets an overall direction for growth in the Province. In particular, the framework should include guidance on regional-scale planning issues such as transportation and infrastructure development, which need to be established on a Province-wide basis. Within such a framework for growth, the PPS can allow for flexibility so that individual communities – rural areas, small cities, northern Ontario, the Greater Toronto Area – can make decisions that respond to local needs. This flexibility must also address the need for some municipalities to go beyond the minimum standards in the PPS and still “be consistent with” provincial policy.

OPPI has a number of additional detailed comments on the Draft PPS. These are included in Appendix A.

Additional Comments on Planning Act Reform and Implementation Tools

Many of our comments with regards to Planning Act Reform are covered earlier in this submission in our overall comments and in our March 2004 submission. In addition, we would have the following comments regarding the Development Permit System.

Development Permit System

OPPI supports the concept of the Development Permit System but it remains a limited pilot project with little evidence of success. OPPI encourages a review of the approach to the Development Permit System and the need for refinements to the current regulations that will encourage and facilitate its use.

OPPI has additional concerns about the amount and type of public participation contemplated by the Province when the principle of use has already been well established by way of Official Plan policy, zoning-bylaw regulations and site plan controls.

Additional Comments on Ontario Municipal Board Reform

OPPI initiated its own review of the OMB in 2001 and provided the Ontario Government with our observations and recommendations in February 2002 (*Comments from the Ontario Professional Planners Institute on the Role and Function of the Ontario Municipal Board*). The 2002 Report identified several of the same key areas for review and discussion, as set out in the current Provincial Discussion Paper #3, namely:

- *‘Independence of the OMB’*, including OMB member recruitment; terms of appointment; and, compensation.
- *‘Competence and Accessibility of the OMB’*, including performance appraisals, member education and training; case management; decision-writing

processes; alternative dispute resolution/mediation procedures; accessibility; and, administrative effectiveness.

Through this submission, and the mutual discussions with the OMB that followed, OPPI acknowledges many of the positive changes that have been implemented by the OMB in recent years (including, more importantly, improvements to the Board's accessibility to the public-at-large through such means as hearing guidebooks, promoting mediation, web-site improvements and user exit surveys). OPPI would encourage the Board to continue to advance improvements in these areas as set out in our previous commentary.

Given this earlier submission, OPPI will limit the following comments to the additional significant issues raised in the Ontario Government's Consultation Discussion Paper #3.

Appeal Mechanisms for Land Use Planning Decisions:

Through the extensive experience of its members who serve in the public, private and not-for-profit planning sectors, OPPI recognizes that not all municipal planning decisions are reflective of Provincial, regional or local 'good planning' principles. Municipal Councils possibly will defer difficult planning decisions when faced with unpopular or contentious local issues. Municipal Councils may, in error, ignore the professional planning advice of their own staff and occasionally, are influenced by minor stakeholder opinions, as contrasted with the broader public interest.

Accordingly, OPPI supports the principle of maintaining an appeal mechanism for municipal land use planning decisions.

Generally, all land use planning decisions are within the control of elected Council representatives (except where delegated to professional planning staff, such as site plan approval, or to Committees of Adjustment). The current practice of all appeals of planning decisions being heard by the OMB provides for a consistent, Province-wide approach to the review of municipal planning decisions, regardless of whether the municipality is large or small, urban or rural, or has numerous or few appeals of its decisions.

An alternative model of a municipal appeal body has been raised, which could provide a secondary review of municipal decisions prior to (or potentially, in lieu of) an appeal to the OMB. The constitution and operation of a local appeal body as a substitute for the OMB could merely replicate, at a local level, perceptions regarding the objectivity, competency and political partiality of such a local appeal body. This approach could also be onerous in terms of the municipal resources that would have to be devoted to the establishment and maintenance of such a function. Therefore, the establishment of such a municipal responsibility would not likely be warranted at a local level. In addition, in certain regions of the Province, there may be a lack of community expertise for a proposed 'municipal appeal body'.

OPPI supports the current practice of all land use planning matters being subject to appeals conducted by the OMB.

Hearings de Novo:

The principle of a 'hearing de novo' is that the OMB considers each matter that comes before it 'from the beginning'. Thus, each and every party in a hearing must present their evidence, analysis and rationale in full detail and the Board is afforded as complete a 'context and understanding of an application' on which to base its decision as possible and without preconception to any particular stakeholder's view. The Board's conduct of a 'hearing de novo' is only required for minor variance appeals, but for all other applications (i.e. Official Plan, Zoning By-law, site plan and plan of subdivision) the framework for the hearing is the test of 'good planning' and the 'public interest'.

Placing limitations on appeals and hearings to only those matters where there has been an 'error in law', municipal 'bad faith' or similar concept, would potentially transform the Board into a 'court' where the debate would focus on matters of law, as opposed to the protection of the public interest, application of high-quality planning principles, implementation of the PPS and the ultimate attainment of 'good planning'. As an administrative tribunal, the OMB can, within certain parameters, conduct hearings in a more inclusive environment, accessible to a broad range of stakeholders. While it is acknowledged that certain stakeholders continue to express concerns regarding the user-friendliness of the Board, ultimately the OMB, with its extensive experience and trained members, continues to provide an appropriate and accessible venue for considering land use planning appeals.

With the application of its case management procedures, the OMB can assure that hearings are not commenced prematurely where administrative matters remain outstanding (such as the completeness of an application, or processing requirements). Again, with other proposed modifications to the *Planning Act* suggested by the current Discussion Papers, such as increased application time-frames and complete application requirements, hearings will only proceed where the local decision-making process has had a fair opportunity to be completed. Inappropriate appeals, or appeals undertaken in 'bad faith', can similarly be scrutinized through the Board's case management, mediation and/or motion procedures.

OPPI therefore supports the current practice of all land use planning matters being subject to consideration of the full planning merits being conducted by the OMB, in order that all stakeholders have access to a fair and comprehensive review process.

Conclusion

As the recognized voice of the Province of Ontario's planning profession, OPPI represents over 2,600 practicing planners and 400 student members. OPPI broadens public awareness of planning and the role of planners. The Institute is a key stakeholder on planning and related issues. Our members work for government, private industry, agencies and academic institutions and are committed to improving the quality of Ontario's environments and communities. We provide leadership and vision on key issues of policy related to planning, development and other important socio-economic issues.

Our members' interests and the diversity of their experience provide OPPI with a unique perspective from which to continue to contribute to planning reform. OPPI is dedicated in its support of good community planning in this Province. We urge the Ministry to draw upon OPPI as a professional resource on matters relating to planning in Ontario and we would welcome the opportunity to make representatives available to work with Ministry staff on this review and other planning reform initiatives.

Appendix A

Detailed Comments on Draft Provincial Policy Statement

Part III - Balancing Competing Objectives

Greater clarity is required with regards to the means of balancing competing objectives in application of the PPS. There appears to be inconsistency in wording that states that all policies need to be considered and in some instances specific policies are referenced as having a priority. The reference on the bottom of page 14, for example, is unclear and confusing - "The Policy Statement is intended to be cumulative and integrative... each individual policy which applies". It appears to contradict Section 4.4, the current understood principle for the PPS, and the last sentence of Part III.

Part V – Policies

Section 1

The challenge of sprawl relates as much to commercial and industrial use as residential use. This should be reflected in policy statements.

It appears to be status quo for Crown Lands. The relationship between the PPS and Crown Lands is unclear. The possibility of a formulation which gives municipalities that are surrounded by Crown Land some ability to shape the land should be explored. Consideration should be given to having the Ministry of Natural Resources' legislation consistent with the PPS.

1.1.3 – Areas without Municipal Organization

This applies by definition only to northern Ontario. This is an example of how the PPS could be structured with distinct policies for specific context.

1.2 – Efficient Development and Land Use Pattern for Employment, Residential and Other Uses

There does not appear to be a focus on innovation. The support of smart growth/growth management principles should be more strongly stated. The policy framework does not encourage 'thinking outside of the box'.

1.2.1 - Financial Well-Being

This reference may need to be expanded. It should be made clear if financial testing is to take place. Consideration should be given to permitting alternate means of determining boundaries other than land supply such as carrying capacity.

1.2.3 b – Densities and Mix of Land Uses

Targets and rewards for innovation are missing in this Section. It is unclear as to how this relates to #10 on page 33 which deals with implementation. The Section does not make it clear how to accommodate and nurture 'green technology' such

as green roofs. Section 1.2.3 is descriptive but still needs additional detail to support such initiatives.

1.2.4 – Major Facilities and Sensitive Land Uses

This relies on 1970s Land Use Compatibility Guidelines which are out of date. There needs to be a more refined way to deal with odour, dust, noise, and indoor air quality.

1.3 – Single-Tier Cities

The treatment of single-tier cities is unclear. The Draft PPS does not make it clear as to how to account for single-tier cities such as Barrie and Orillia which are rapidly growing. Cross-boundary relationships and areas where there is natural applicability need to be clearly spelled out.

1.4 – Housing

The document implies that 'one-size-fits-all'. Municipalities have diverse and wide-ranging housing needs and issues. The PPS must apply to large and small municipalities and respond to urban and rural housing needs.

1.4.4b The reference to, and definition of, 'special needs' is unclear.

1.5.1 – Infrastructure

A definition is required for priority growth areas.

1.5.5 – Transportation Systems

There need to be policies in support of the development and maintenance of regional transportation systems as this relates to the sustainability of healthy communities.

2.1 – Natural Heritage

Ontario Government should be commended for inclusion of a natural systems approach as defined in 2.1.1

2.1.2.3 a

OPPI suggests an amendment to the proposed line: French and Mattawa, or French and northern boundary of Algonquin Park, plus absolute protection for all Great Lakes coastal wetlands.

2.2 - Water

It is unclear as to how this relates to source water protection plans or how a watershed approach will be implemented. Guidance is needed in this area.

2.3 - Agricultural Lands

Ontario is still losing thousands of hectares to sprawl. The relationship to Section 1.1.2 is unclear. The issue of land-banking agricultural sites for future residential use needs to be addressed.

2.5.2.1 & 2.5.2.2 – Mineral Aggregates – Protection of Long-Term Supply

The management of mineral aggregates within the context of other land use planning concerns needs to be addressed. OPPI supports consideration for aggregates at the comprehensive planning stages of local municipalities.

It is unclear as to what is meant by 'notwithstanding' and 'minimizing costs'. There should be reference to the real costs to the producer, the economy and society as a whole.

2.5.2.3 – Rehabilitation

There needs to be an emphasis on recycling, conservation and recovery.

2.6 – Cultural Heritage and Archaeology

This Section needs to be enhanced if it is to be effective. The relationship to the Ministry of Culture and the Ontario Heritage Act needs to be made clear.

3.1.4 – Natural Hazards – Two-Zone Concept

OPPI would like to offer its support for the two-zone concept.

3.2 – Human-Made Hazards

This Section does very little to advance the brownfields agenda. The remediation and redevelopment of brownfield sites are potential key pieces for urban renewal. More detail is required in this area. 'Contaminated sites' requires a definition.

In addition to the redevelopment issues identified in the Planning Act Reform document regarding noise, references should also be added for light, odour, dust and air quality. These issues are often key in the redevelopment of sites.

4.0 – Implementation and Interpretation

A policy reference in support of innovation in implementation tools with reference to some specific tools such as Transferable Development Rights, DPS, financial tools, etc. needs to be included.

4.5 – PPS and Minimum Standards

The standards are unclear.

4.6 – PPS and Official Plans

Planning Act amendment proposes that local planning policies will be "consistent with" the PPS. There must be a separation of the policy roles between those of the Province in Section 3 of the Planning Act and those for communities under Section 16 in the Planning Act. The Draft PPS requirement that the municipal Official Plans integrate all provincial policies is perhaps excessive.

4.8 - Legislation and Regulation

The list of related regulations and legislations is a long one (including, but not limited to, Species at Risk, Fisheries Act, Public Lands Act, Source Water Protection Act and Nutrient Management Act). Greater guidance needs to be provided as to how implementation of the PPS corresponds to these Acts and Regulations.

4.10 – Performance Indicators

Better direction is needed regarding performance indicators, along with training and support.

Redevelopment, Infilling, Intensification and Compact Form

In addition to the list of considerations, references should also be added for light, odour, dust and air quality. These issues are often key in the redevelopment of sites.