

Brief

to the

Ministry of Municipal Affairs and Housing

on

Planning Reform

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- *Planning Act* Reform and Implementation Tools
- The Provincial Policy Statement
- Ontario Municipal Board Reform

Submitted by:

Ontario Catholic School Trustees' Association

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L'Association franco-ontarienne des conseils scolaires catholiques

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The Ontario Catholic School Trustees' Association, the Ontario Public School Boards' Association, L'Association franco-ontarienne des conseils scolaires catholiques, and L'Association des conseillères et des conseillers des écoles publiques de l'Ontario, have joined together in preparing this brief to the Ministry of Municipal Affairs and Housing.

The Associations are pleased to provide our submissions on the three Consultation Discussion Papers issued by the Ministry of Municipal Affairs and Housing. For convenience, we have responded to all three Consultation Discussion Papers in this one brief.

The Associations have had a long and abiding concern about planning law. They made submissions, for example, on the draft Report of the Commission on Planning and Development Reform in Ontario (1993), on the *Land Use Planning and Protection Act* (Bill 20) (1996), and on the Discussion Paper on the Proposed Development Permit System in Ontario (1998). In addition, the Associations have frequently commented in passing on planning issues in other briefs.

We applaud the Government's goal of building "strong communities where all Ontarians can thrive".

ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION

Founded in 1930, the Ontario Catholic School Trustees' Association (OCSTA) represents 29 English-language Catholic district school boards and five English-language Catholic school authorities. Collectively, these school boards educate over 600,000 students from Junior Kindergarten to Grade 12.

The Mission of all Catholic school boards and their schools is to create a faith community where religious instruction, religious practice, value formation and faith development are integral to every area of the curriculum. This is in addition to providing a complete curriculum as defined by the Ministry of Education.

ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

The Ontario Public School Boards' Association (OPSBA) represents public district school boards and public school authorities across Ontario, which together serve more than 1.2 million public elementary and secondary students and more than a half-million adult learners. The Association advocates on behalf of the best interests and needs of the public school system in Ontario.

ASSOCIATION FRANCO-ONTARIENNE DES CONSEILS SCOLAIRES CATHOLIQUES

Association franco-ontarienne des conseils scolaires catholiques ("AFOCSC") is the association representing the eight French-language Catholic district school boards in Ontario. AFOCSC represents the school board trustees elected by the Catholic linguistic minority of the province of Ontario, being the class of persons who have the rights given by section 23 of the *Canadian Charter of Rights and Freedoms* (the "Charter") and by section 93 (1) of the *Constitution Act, 1867*.

ASSOCIATION DES CONSEILLÈRES ET DES CONSEILLERS DES ÉCOLES PUBLIQUES DE L'ONTARIO

L'Association des conseillères et des conseillers des écoles publiques de l'Ontario ("ACÉPO") is the association representing the trustees of the four Public French-language school boards in Ontario. Together the school boards represented by ACÉPO provide French-language education to 20,000 elementary and secondary students who hold section 23 *Charter* rights.

Together, AFOCSC and ACÉPO represent the entire French-language minority in Ontario having education rights protected by section 23 of the *Charter*. Together the school boards represented by these Associations provide French-language education to over 67,000 elementary and over 25,000 secondary students in the province of Ontario.

1. The Importance of Schools in Building Strong Communities

The Associations believe that schools are an integral and important part of any strong community. They are the places where young people gather to learn and to absorb the values of the broader community. Schools are places of community activity. They provide valuable green space, particularly in urban areas. They provide recreational facilities for community use. Schools are significant users of land and essential to planned communities.

The importance of schools to communities has been recognized by the Ontario government and particularly by the Premier and by the Minister of Education.

In recent years school boards have increased in size and sophistication. Many, particularly those of larger size, have dedicated substantial resources to land use planning and have departments or service units dedicated to school planning, employing professional planners who work closely with the *Planning Act* and various public bodies. School boards also have ready access to land use planners and demographers in the private sector.

Despite their considerable expertise, school boards are too often the forgotten siblings in the municipal planning and zoning process. The existing provisions of the *Planning Act* do not sufficiently recognize the importance of schools in the planning process. Municipalities have often disregarded the needs of school boards. The Ontario Municipal Board has on some occasions failed to defend the interests of education in the planning process, seeming to treat school boards as an annoyance.

It is time for the Province of Ontario and for municipalities to recognize and respect the valuable expertise that school boards bring to the table in planning strong communities.

The numerous recommendations put forward by the Associations in this brief are aimed at a reasonable rebalancing of responsibilities among the public bodies involved in the land use planning process.

School boards know that the siting of schools is critical to the long-term success of the schools and their local communities. It is in the function of siting schools that school boards most frequently engage with municipalities and developers under the aegis of the *Planning Act*.

The Responsibility of School Boards for Schools

School boards are obliged under s. 170 of the *Education Act* to provide schools:

170. (1) Every board shall,

6. provide instruction and adequate accommodation during each school year for the pupils who have a right to attend a school under the jurisdiction of the board.

They are given authority to locate schools. Section 171(1) of the *Education Act* provides:

171. (1) A board may,

7. determine the number and kind of schools to be established and maintained and the attendance area for each school, and close schools in accordance with policies established by the board from guidelines issued by the Minister.

This legislation has existed, in almost the same words, since before Confederation. It is interesting to note that school boards may, as well:

s. 171(1) 10. operate the school ground as a park or playground and rink during the school year or in vacation or both, and provide and maintain such equipment as it considers advisable, and provide such supervision as it considers proper, provided the proper conduct of the school is not interfered with.

24. permit the school buildings and premises and school buses owned by the board to be used for any educational or other lawful purpose.

The *Education Act* understands schools to be community resources under the ownership and administrative responsibility of school boards. School boards share this view.

The capital construction costs of schools are paid through pupil accommodation grants under the Student-Focused Funding Model. School sites, however, are not paid for by government grants. School boards experiencing residential growth in their jurisdictions requiring new schools to be built have only one practical source of funds to buy new school sites, that being education development charges (EDCs). EDCs are imposed under the authority of Part IX, Division E of the *Education Act*.

The size of school sites that can be purchased through EDCs is set by O. Reg. 20/98 as follows:

Elementary Schools	
Number of pupils	Maximum area (acres)
1 to 400	4
401 to 500	5
501 to 600	6
601 to 700	7
701 or more	8
Secondary Schools	
Number of pupils	Maximum area (acres)
1 to 1000	12
1001 to 1100	13
1101 to 1200	14
1201 to 1300	15
1301 to 1400	16
1401 to 1500	17
1501 or more	18

As can be seen, school sites can occupy a considerable amount of land in a local subdivision. This has quite naturally led to ongoing discussions with municipalities and developers over the size of school sites and their appropriate location in a development area.

The objective of school boards is to build the right sized school buildings on the right sized sites in the right location in relation to the student population. History has shown the folly of overbuilding.

In order to ensure appropriate planning, school boards are obliged to file long-term accommodation plans with the Ministry of Education that outline their plans for school accommodation over the long term. These plans must consider the need to close schools and the need to build new ones.

In general terms, the Associations believe that neither the *Planning Act* nor the Provincial Policy Statement in its current or proposed draft give due respect to the role of schools in building strong communities and to the role of school boards in planning and operating schools. The *Planning Act* currently makes a scant reference to schools in s. 2, with reference to the “adequate provision and distribution of educational, health, social, cultural and recreational facilities...” and in s. 51(24)(j) of the *Planning Act* concerning draft plans of subdivision,

which refers to “the adequacy of school sites”. The *Planning Act* is otherwise silent. The Provincial Policy Statement (1997) refers here and there to “public service facilities” which are meant to include “educational programs”. Included in the definition of “institutional uses” is a reference to “day care and schools”. In s. 1.1.2. the Provincial Policy Statement calls for “land use requirements and land use patterns” to be based on:

“(a) The provision of sufficient land for industrial, commercial, residential, recreational, open space and institutional uses...”

The Associations believe that this relative lack of reference to schools in the *Planning Act* and in the Provincial Policy Statement reflects a certain lack of understanding about the role of schools in creating strong communities.

2. Planning Act Reform and Implementation Tools

In this section of our brief, the Associations comment both on the current *Planning Act* and on the proposed amendments to be made by Bill 26, the *Strong Communities (Planning Amendment) Act* 2004.

The task of planning reform that the Ontario government has undertaken is an important opportunity to recognize and give more prominence to the importance of schools in building strong communities and to the role of school boards in planning for and operating schools.

(a) The Changes Proposed by Bill 26

The Associations are generally in support of the Bill 26 proposals. We support particularly the increase in the time period for making decisions before appeals may be made to the Ontario Municipal Board in respect of official plan amendments, zoning by-laws and subdivision approvals. The additional time will provide for more orderly municipal decision making and consideration of the concerns raised by commenting agencies such as school boards.

School boards have been frustrated by the tendency of municipalities not to release planning reports on proposed official plan amendments, zoning by-laws or plans of subdivision until the day before the public meetings required under the *Planning Act*. This may be a symptom of timelines that are now too short under the *Planning Act* and which Bill 26 will remedy. This puts real pressure on commenting agencies like school boards to come to the public meeting and express their views if they wish to retain appeal rights. Just as it is inappropriate for municipalities to be squeezed by unreasonable time constraints, so is it inappropriate for commenting agencies such as school boards to be squeezed by untimely reports from municipalities.

The Associations recommend that an obligation be inserted into the *Planning Act* requiring municipalities to make the report of planning staff in respect of the planning related decision available on the date that notice of the public meeting is provided.

Official Plans

Section 17 contains certain provisions respecting official plans:

- (15) In the course of the preparation of a plan, the council shall ensure that,
 - (a) the appropriate approval authority, whether or not the plan is exempt from approval, is consulted on the preparation of the plan;
 - (b) adequate information, including a copy of the current proposed plan, is made available to the public; and

(c) at least one public meeting is held, notice of which shall be given in the manner and to the persons and public bodies and containing the information prescribed.

(16) A copy of the current proposed plan referred to in subsection (15) shall be made available to the public at least 20 days before the public meeting is held.

The recommendation could be implemented by adding the following language to subsection (16). Alternatively, similar language could be inserted in subsection 17(15).

(16) A copy of the current proposed plan referred to in subsection (15) together with reports by municipal staff or by consultants retained by the municipality concerning the proposed plan shall be made available to the public at least 20 days before the public meeting is held.

Amendments to Official Plans are dealt with under s. 22 of the *Planning Act* and are required to follow the process set out in s. 17. No additional changes would be required to accommodate amendments.

Zoning By-Laws

Section 34 of the *Planning Act* concerns zoning by-laws.

Section 34(12) provides:

(12) Before passing a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (26), the council shall ensure that sufficient information is made available to enable the public to understand generally the zoning proposal that is being considered by the council and, for this purpose, shall hold at least one public meeting, notice of which shall be given in the manner and to the persons and public bodies prescribed.

The recommendation could be implemented if the following words were added to subsection 12:

(12) Before passing a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (26), the council shall ensure that sufficient information is made available to enable the public to understand generally the zoning proposal that is being considered by the council and, for this purpose, shall hold at least one public meeting, notice of which shall be given in the manner and to the persons and public bodies prescribed. The council shall ensure that reports by planning staff or by consultants retained by the municipality on the proposed by-law are made available to the public on the date that notice of the public meeting is given.

Subdivision Control

Section 51 of the *Planning Act* addresses the subdivision of land. Subsection 51(20) provides:

(20) At least 14 days before a decision is made by an approval authority under subsection (31), the approval authority shall ensure that,

(a) notice of the application is given, if required by regulation, in the manner and to the persons and public bodies and containing the information prescribed; and

(b) a public meeting is held, if required by regulation, notice of which shall be given in the manner and to the persons and public bodies and containing the information prescribed.

The recommendation would be implemented if the following amendment were made:

(20) At least 14 days before a decision is made by an approval authority under subsection (31), the approval authority shall ensure that,

(a) notice of the application is given, if required by regulation, in the manner and to the persons and public bodies and containing the information prescribed; and

(b) a public meeting is held, if required by regulation, notice of which shall be given in the manner and to the persons and public bodies and containing the information prescribed. The council shall ensure that reports by planning staff or by consultants retained by the municipality on the application are made available to the public on the date that notice of the public meeting is given.

These changes will generally provide commenting agencies such as school boards with twenty-one days notice of the position to be taken by municipal planning staff. If it is felt that this additional obligation reduces the time for municipal review too much, then the Associations would support the addition of twenty days to the time limits proposed by Bill 26 to accommodate this new obligation on municipal planning staff.

The Associations also support the change in language proposed that would require planning decisions to be consistent with the Provincial Policy Statement and not only to have regard to it. There is, however, a small word of caution. As a statement of policy, the Provincial Policy Statement is not as definite and clear as a piece of legislation. Some interpretation is therefore required, and there will be honest differences of opinion. The Associations are confident that these conflicts of opinion can be resolved by the Ontario Municipal Board on appeals where there is local disagreement.

The Associations propose a number of amendments to the *Planning Act* to reflect our convictions that the role of school boards is not well defined or respected by the Act.

These amendments are important not only for the *Planning Act* itself, but also for the Provincial Policy Statement which depends on the definitions in the Act. This can be seen by considering the proposed changes that we discuss in the section of this brief concerning the Provincial Policy Statement.

(b) Definition Section

Section 1(1) of the *Planning Act* provides:

“1(1) In this Act, ...

‘local board’ means any school board...established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes of a municipality or two or more municipalities or portions thereof”

School boards are not, in fact, “established or exercising any power...with respect to any of the affairs or purposes of a municipality” under the *Planning Act*. The definition of “local board” also tends to lump school boards in with a number of other entities with more limited responsibilities, and therefore tends to downplay their role.

The Associations propose that the reference to “any school board” be removed from the definition of “local board” in s. 1(1) of the *Planning Act* and instead be added specifically to the definition of “public body”, so that the latter would provide:

“1(1) In this Act... “public body” means a municipality, a school board, a local board, a ministry, department, board, commission, agency or official of a provincial or federal government or a First Nation”.
(emphasis added)

This change should also be made in sections of the *Planning Act* that refer to “local board” including particularly s. 3(5) and (6) as proposed to be amended by Bill 26.

The specific reference to school boards will be of assistance in ensuring that they are recognized as public bodies with weight and significance in addressing matters of provincial interest under s. 2 and in making planning control decisions under s. 3 of the *Planning Act*.

(c) Site Plan Control

Section 41 of the *Planning Act* deals with site plan control. The experience of school boards over time has been that many municipalities routinely ask for more than they are entitled to get under s. 41 in exchange for site plan approval. Since school boards often find themselves on tight time lines, they are forced to accede to municipal requirements that are, in fact, illegal, time consuming and costly. One school board reports, for example, that it was recently obliged to construct municipal transit bus lay bys within the municipal road allowance, sidewalks outside the school's property limits in addition to the sidewalk along the school frontage that was provided by the developer, left-hand turning lane painting on the municipal roadway, and a number of traffic signs located on municipal property. These are not properly included as elements of a site plan agreement and there is no funding source for school boards, which are themselves supposed to be exempt from municipal development charges.

While an appeal to the Ontario Municipal Board is theoretically possible under s. 41, the delay that such an appeal would bring about often makes this remedy useless.

The Associations recommend that a right to appeal and build be added to the *Planning Act*, with the requirement that the municipality reimburse the school board for requirements imposed that the OMB determines ought not to have been imposed under s. 41.

The Associations propose the following amendment to s. 41 of the *Planning Act*:

(12.1.1) The owner may execute the agreement and perform the obligations under the agreement without prejudice to the appeal referred to in ss. (12). An agreement to waive the right to appeal is void.

(12.2) The Municipal Board may require the municipality to reimburse the owner for expenditures made under an agreement that the Municipal Board has determined that the municipality was not entitled to require under ss. (7) or (8).

The intention here is to give a school board the ability to protest municipal requirements without holding up the processing of the site plan agreement. The language concerning waiver is necessary because some municipalities, for example, the City of Barrie, have a provision in site plan agreements that prevents an owner from appealing. The existence of this provision would discourage municipalities from asking for more than they are entitled to under the *Planning Act* and this result is only fair.

The Placement of Portables

The construction of schools poses a dilemma for school boards. If the school is built so that it is too large for the long term sustainable enrolment in the community, eventually the school will be under utilized and in some cases may actually have to be closed. This has been the experience of school boards throughout Ontario since most schools were built to serve a much larger “baby boom” population.

The Student Focused Funding Model, which provides grants for the construction of new schools, requires that schools be built for the sustainable 25 year planning horizon. It also discourages overbuilding by requiring that excess pupil places throughout the jurisdiction of the Board be utilized before funding for new schools is available.

Boards therefore now plan and build schools for the long term sustainable enrolment of the community. This means, however, that the school will not be able to accommodate all of the students during the peak enrolment years, particularly in the early years of an area. The Ministry of Education recommends that portables be used to accommodate students during the peak period. As the enrolment settles down to the long-term sustainable level, portables can then be withdrawn. Over the life cycle of a school, it can be expected that there will be times when portables will be needed and times when they will not.

Traditionally, local residents dislike portables. They understandably want to have their children attend school in permanent facilities that they see as superior to portable facilities. Others in the community who do not have children attending school see them as an eyesore. Local politicians on municipal councils are often resistant to the placement of portables on local school sites because of community pressure.

In recent times, municipalities have made it more and more difficult for school boards to place portables. They have insisted on site plan agreements and site plan approval to locate portables. The delay in obtaining site plan approval and building permits can cause real hardship in the local school community and neighbouring schools and impose additional transportation and other costs on school boards. It can encourage boards to leave empty portables on a site to avoid predicted future problems in placing them there again.

In most cases, it is doubtful that the municipality has the legal authority to require a site plan agreement for the placement of a portable under s. 41 of the *Planning Act*. That section applies to “development” which “means the construction, erection or placing of one or more buildings or structures on land ... that has the effect of substantially increasing the size or usability thereof...”. The placement of one or two portables on a school site would not usually have such an effect. But municipalities will refuse to issue building permits to allow the placement of portables in the absence of site plan agreements. School boards are left with the difficult choice of whether to cooperate in the site plan

agreement process or to initial legal proceedings against the municipality. They usually choose to do the former.

The Associations recognize the concern that municipalities have about the placement of portables as an appropriate issue to be considered in the processing of the site plan approval for a school site. In that exercise, an area of the school property should be identified as eligible for portable placement without further municipal approval.

Accordingly, the Associations recommend the addition of the following subsection to s. 41 of the *Planning Act*:

“s. 41(4.4) Site plan approval of a school site under ss. (4) shall designate an area of the site for the placement of portable classrooms. The school board may install portable classrooms in the designated area without the need for additional site plan approval.”

This additional language would relieve school boards of the obligation of entering into new site plan agreements every time they ask for a new portable on a specific site, provided that the portable is in the area on the site designated for the placement of portables. School sites acquired in the last 25 years have been designed with the possible future placement of portables in mind.

(d) Subdivision Control

Section 51 of the *Planning Act* deals with subdivision control. Subsection 51 (24) provides:

s. 51(24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

(a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;

(b) whether the proposed subdivision is premature or in the public interest;

(j) the adequacy of school sites.

As noted at the beginning of this brief, school boards have a statutory obligation, which they cannot escape, to provide education to students. If housing is built before schools are available, then the burden of transportation is borne by school boards. The cost of temporary accommodation and transportation is, over a relatively short period of time, equivalent to the cost of new school buildings.

Even though the current funding model provides pupil accommodation grants for new school construction and the *Education Act* allows eligible school boards

to levy education development charges to pay for school sites, there is often some delay in the acquisition of school sites and the provision of schools. This relates fundamentally to the issue of prematurity referred to in paragraph (b) of subsection 51(24).

The decision of the Ontario Municipal Board in *Berlen Development Corporation et al. v. Dufferin-Peel Roman Catholic Separate School Board* (1995), 31 O.M.B.R. 151 is a case in point. In those proceedings the school board appealed a number of zoning by-laws associated with the approval of residential plans of subdivision. The school board argued, among other things, that the developments were premature on the ground that schools were not available to accommodate the students that the developments would generate. The Municipal Board dismissed the school board's appeals on a summary basis without holding a full hearing. The presiding member ruled that a school board's involvement in the planning process is limited to the identification and reservation of school sites. The availability of educational facilities to serve the students of a proposed development was not a factor to be taken into account in the development approval process.

As noted below in the next section on the reservation of school sites, the Ontario Municipal Board has recognized that the continued availability of school sites reserved in a plan of subdivision is part of the concept of adequacy.

Problematic, as well, is a decision of the Ontario Municipal Board in *Westnor Limited and Anndale Properties Limited and Crestview Investment Corporation v. Metropolitan Separate School Board*, OMB (unreported) September 29, 1997 (D.L. Santo). The member held that the question of "adequacy of school sites" in the *Planning Act* should be considered with respect to all of the school sites in the immediate area, not just those available to the school board requiring a site.

The evidence was that the Board of Education for the City of North York had a number of school sites that were closed and in use by other tenants. The OMB refused the request for a reservation of a school site by the Metropolitan Separate School Board on the basis that these other sites should be used, even though the OMB recognized that Metropolitan Separate School Board had no legal ability to obtain these school sites from the Board of Education.

The member refused to reserve a school site in the plan and stated:

In addition, from all of the evidence proffered by the professional witnesses for Westnor and M.S.S.B., I find that not only is there an adequate supply of schools and sites in public ownership in the area, there is an abundance of sites. I agree with Ms. Lyons' argument that N.Y.B.E. is acting unfairly towards M.S.S.B. in this matter. One public school body should not force out another publicly funded school board and cause it to expend additional moneys when it is clear that N.Y.B.E. has a great deal of choice and a selection of sites to fulfil its educational needs. This kind of behaviour provides a glimpse into reason behind the current school board reform and is clearly unreasonable."

The decision was appealed to the Divisional Court and the appeal was dismissed. The Divisional Court held:

“There was no error in law in considering public school facilities. *Planning Act* s. 51(24)(j) refers to the adequacy of school sites generically, not to separate school sites as distinct from public school sites. The argument of the appellant and the North York Board requires that a watertight distinction be read into the *Planning Act* between the availability of separate school sites and public school sites. Important as that distinction is to the individual school boards, nothing in s. 51 (24)(j) requires the OMB, from a planning point of view, to ignore excess school capacity in anyone’s hands. The Board was entitled from a planning point of view to consider that it is open to publicly funded bodies such as school boards, in the pursuit of their individual mandates, to co-operate sensibly in the public interest.

The decision left a school board without an available option for a school site in an active development area. Although there were other school sites in the area, they were not available. The result in this case must be addressed.

To address the question of prematurity and the availability of school sites, the Associations propose that paragraph (j) of ss 51(24) of the *Planning Act* to be amended to provide:

“(j) the adequacy and availability of school sites and facilities.”

The addition of the underlined words would require approval authorities to address the staging of residential development to ensure that an undue burden is not cast on school boards.

This approach would be consistent with the decision of the Divisional Court in *City of Mississauga et al. v. Britannia North Holdings Inc. et al.* (2000), 40 O.M.B.R. 506. In that case the school boards sought the imposition of a condition of subdivision approval requiring a number of developers to phase the development of their residential plans of subdivision in accordance with the availability of educational facilities. The developers appealed the condition to the Ontario Municipal Board which ruled that it did not have the jurisdiction to impose such a condition. The Divisional Court allowed the appeal of the school boards and confirmed the imposition of the condition. The following quote from the Divisional Court’s reasons for judgment is instructive:

(11) As a practical matter, if all four plans of subdivision were to proceed at the same time, this would result in some 3,300 residential units, many of which would have living in them students who would attend local schools. The School Boards have indicated to the City that they have little or no room to accommodate more students in existing schools in the area. There will not be funding available to build schools until the students are in actual attendance and until such

schools are built those students would have to be accommodated temporarily either in portables or some other temporary accommodation. It is self-evident that it would be a far easier task to accommodate a smaller rather than a larger number of students in any given year; some measure of order rather than complete chaos.

(12) There is nothing in Condition 8 that relates to the funding formula set out in other legislation and in relation to which the appellants conceded the City has no jurisdiction. All this condition does is phase the proposed developments over time; it does not say there will be no development, it says only development will take place gradually.

(13) In our view, the provisions of the *Planning Act* clearly give the City the jurisdiction to impose the condition.

School boards agree.

Fundamentally, school boards see themselves as providers of a form of infrastructure. There is no significant difference, in terms of the timing of development, between the provision of water services, roads and sewers and the provision of educational services.

(e) The Reservation of School Sites

It has become customary in Ontario for school boards to enter into option agreements with developers under which the obligation to buy a school site that is designated in a plan of subdivision exists for a number of years. More recently with the strong market activity in housing, developers have been anxious to complete a plan of subdivision and move on and are not as receptive to the concept of option agreements as they have been in the past. Some believe that the ability of school boards to purchase sites with EDCs means that a board can buy the school site and later sell it again if it turns out that the school site is not needed.

The experience of school boards is that it takes a reasonable time during which development and subsequent student yield from new development can be monitored to determine whether a school site is needed in a particular area. In addition, the ethnic mix of the area can sometimes have a dramatic impact on the pupil yield of a particular school board. For example, the development of a mosque or a synagogue in a particular area often will attract people from specific religious groups and would impact the need for a Catholic school. That cannot be immediately known, however, at the time that the official plan is proceeding.

As a result, if a school board signs an option agreement that is too short, it is sometimes forced to give up the site or to buy it prematurely.

The Ontario Municipal Board has recognized the problem. The case of *Fieldgate Development and Construction v. Town of Richmond Hill* (1996), 34 O.M.B.R. 33 (B.W. Krushelnicki) concerned the appropriate length of time for the reservation of a school site.

“In the present instance we are not met with a condition that compels a developer to sell a site for an agreed deflated price. Nor, for that matter, is the owner compelled to accept any specific terms of sale that would be offensive to *Highbury*. Instead we are faced with a condition requiring that a site be reserved for a period of time. No one objects to such a condition inasmuch as it simply requires that a site identified on a plan for school purposes be reserved in order to ensure that proper regard has been had to “the adequacy of school sites”. Neither, therefore, can one dispute logically that some reasonable period of time is acceptable in order that the development plans for the subdivision can be realized before school sites are acquired; this is what it means to “reserve” a site. And so, in this respect, all parties have cited and agreed with the principle that “the continuing availability of such sites contributes to their adequacy.” In these words, quoted from *711284 Ontario Ltd. v. Town of Richmond Hill* (unreported) March 2, 1990 (Members Wilkes and Cole, OMB File Nos. S880001 et al.), we find agreement that a reasonable condition can include a prescribed period of time of site reservation. In that case the time was 7 years, a length of time that was agreed to by all and which has remained the prevailing practice of the School Board. The Board concludes therefore that a reasonable condition can include the reservation of a site for a specific period of time. The question now is whether the period of time in question should be extended to 10 years rather than seven or eight...The question that the Board must answer is “what period of time is reasonable to ensure that the school sites in this subdivision will be adequate?” This is the public interest question posed by a fair reading of the *Act*. Frankly, I have little doubt that the public interest will be adequately served irrespective of whether the site is reserved for eight or ten years. However, the risk that a site may not be available when it is needed, and when it is feasible to build, is greater if the period for which it is reserved is less. This is the potential prejudice to the public interest that the School Board asserts, and it is one for which the Municipal Board must have serious regard. While I have no doubt that the expense and inconvenience to the landowner of two or three additional years of reserve is significant, it is no match when balanced against the challenges facing the school boards in these times. The finding of the Board is that upon consideration of the provisions of the Planning Act and the relevant case law and practice associated with this issue, ten years is a reasonable length of time to reserve sites for school acquisitions. The Board will therefore not alter the condition of subdivision.”

It would be better for the orderly planning of the community for option periods to be standardized. Generally speaking, it can take up to five years to determine the need for an elementary school site from the date of registration of that phase

of the subdivision containing the school site and up to ten years to determine the need for a secondary school site.

The Associations propose an initial school site reservation period of five years with a subsequent reservation period of five years, renewable at the instance of the school board.

Accordingly, the Associations propose the following amendment to s. 51(25) of the *Planning Act*:

(25) The approval authority may impose such conditions to the approval of a plan of subdivision as in the opinion of the approval authority are reasonable, having regard to the nature of the development proposed for the subdivision, including a requirement,

(a) that land be dedicated or other requirements met for park or other public recreational purposes under section 51.1;

(a.1) that land be reserved for use as a school site to provide pupil accommodation by a school board;

In order to deal with the length of the reservation period, the Associations propose that s. 51(25.1) of the *Planning Act* be repealed and replaced with the following subsections:

(25.1) In respect of a condition imposed under clause (25) (a.1), the school board may:

1. Enter into an agreement with the owner for the conveyance of the land to the school board;
2. Enter into an agreement with the owner under which the school board has the option, for a period of five years from the date of registration of the plan of subdivision, to purchase the land. The option period may, at any time during the five year period, be extended by the school board for a further period of up to five years; or
3. Waive the condition;

and shall advise the approval authority accordingly.

These amendments represent a reasonable and balanced way to address the concerns raised in this section of the brief. They are consistent with the goals of planning reform.

(f) Parkland Dedication

Parkland dedication is addressed in s. 42 and again in 51.1 of the *Planning Act*. Traditionally these sections have been interpreted by approval authorities in such a way that school boards were not obliged to provide either land or cash-in-lieu of land for parkland purposes. However, the City of Hamilton recently charged cash-in-lieu in the amount of \$87,000 to the Hamilton-Wentworth Catholic District School Board in respect of St. Therese Lisieux Catholic Elementary School. This is not a small amount of money, and was diverted from the other capital purposes of the school board.

The Associations recommend that school boards be exempt from the requirement to contribute land for park purposes or to contribute cash-in-lieu for park purposes, and proposes that the following subsection be added to s. 42 and s. 51.1 of the *Planning Act*:

“(1.1) The calculation referred to in ss. (1) shall exclude land designated to be conveyed to a school board for use as a school site.”

In other words, if a plan of subdivision includes a school block, the parkland charge under both s. 42 and s. 51.1 would not include the school block. If the school block is subsequently released by the school board, then the obligation to dedicate parkland would rise again in processing the subsequent plan of subdivision.

The Questions in the Consultation Discussion Paper on Planning Act Reform and Implementation Tools

The Associations wish to respond to those questions in the *Consultation Discussion Paper on Planning Act Reform and Implementation Tools* set out below.

1. *Do you believe any additional revisions are required to any existing provisions in the Planning Act to make the planning system more effective?*

A number of proposed changes to the *Planning Act* are set out in this brief. These are collected in the table at the end of the brief.

2. *Are changes needed to the Planning Act to meet the objectives of compact urban form, intensification, re-use of brownfield lands, and effective environmental protection which would assist in strengthening Ontario's economy?*

The Associations do not believe that changes are needed to the *Planning Act* itself. However, good economies can be achieved for school boards and municipalities in combining school sites and parks in order to minimize the amount of land required for each. This is part of urban intensification. The experience of school boards, however, is that municipalities are often not

interested in pursuing such co-operative arrangements. The issue, however, is probably best addressed under the Provincial Policy Statement.

3. *Do you believe any changes are required to Bill 26, Strong Communities (Planning Amendment) Act, 2004 to make it more effective?*

The Associations have proposed a few changes to Bill 26 in this brief.

4. *Do you have any other suggestions for improving the land-use planning system in Ontario?*

The Associations endorse the need to build strong communities in Ontario and believes that schools are an integral part of every successful community.

If the changes proposed in this brief are accepted, then the Associations believe that the land-use planning system in Ontario will be improved.

3. The Proposed Provincial Policy Statement

As noted above, the Provincial Policy Statement (1997) refers here and there to “public services facilities” which are defined to include “educational programs”. Included in the definition of “institutional uses” is a reference to “day care and schools”. Under the provisions of s. 1.1 ie. “developing strong communities”, “public services” are referred to at various points, but the particular role of school boards is not recognized.

This basic lack of acknowledgement and respect for the role of school boards is reflected in the proposed revisions to the Provincial Policy Statement. Although “public service facilities” are given a higher profile, school boards are not mentioned as decision makers with influence on the planning process. There is, for example, no specific direction to co-ordinate official plans and the long term accommodation plans of school boards required under the *Education Act*. Since both these documents require a similar time frame, the absence of an express link should be rectified.

The Associations support the Provincial Policy Statement and has relatively few, but important, changes to propose.

(a) Combining Public Service Facilities

The Associations support s. 1.2 of the proposed Provincial Policy Statement which refers explicitly in s. 1.2.2. the need to accommodate an appropriate range and mix of institutional uses. This goal would be furthered by a slight amendment to s. 1.2.3. which provides:

“1.2.3. Land requirements and land use patterns will be based on:

b) Densities and a mix of land uses which:

1. Efficiently use land, resources, *infrastructure* and *public service facilities*;

The experience of the Associations have been that municipalities will not always utilize opportunities to coordinate public land uses. A good example is the location of schools beside parks that allows for a minimum use of land and a maximum use of public facilities. **The Associations propose an amendment to s. 1.2.3. of the Provincial Policy Statement to provide:**

“1.2.3. Land requirements and land use patterns will be based on:

b) Densities and a mix of land uses which:

1. Efficiently use land, resources, *infrastructure* and *public service facilities*, and maximize the opportunity for combining public service facilities;

The proposed Provincial Policy Statement will be strengthened by the changes that the Associations propose to the *Planning Act*.

(b) Recognizing the Role of Public Bodies

The Provincial Policy Statement tends to focus too much on municipalities. While it is clear that municipalities have important responsibilities under the *Planning Act*, it is equally clear that other public bodies have different and important roles to play in making decisions that impact on land use in a municipality.

This concern is best illustrated in considering s. 1.3 of the Provincial Policy Statement entitled “Co-ordination Within and Between Municipalities”. Section 1.3.1 provides:

“1.3.1 A coordinated, integrated and comprehensive approach should be achieved when dealing with land use planning matters which cross municipal boundaries including:

a) Managing and/or promoting growth and development;

...

c) *Infrastructure, public service facilities and waste management systems;*

...

1.3.2. A comprehensive, integrated and long-term approach to planning will be achieved within municipal boundaries when dealing with the matters identified in policy 1.3.1.

School boards generally have areas of jurisdiction that go beyond municipal boundaries. They allocate their resources, operate their programs, build schools and run transportation systems largely without regard to municipal boundaries. In siting schools, they are obliged to deal both with lower tier and upper tier municipalities.

Section 1.3 of the Provincial Policy Statement implies that municipalities coordinate the provision of “public service facilities” but that is not the case in a number of important areas including the provision of schools and hospitals, for example.

The Associations therefore recommend that the title to s. 1.3 of the Provincial Policy Statement be changed to “Coordination Within and Among Public Bodies.”

(c) Existing Public Service Facilities

Section 1.5.2 of the proposed Provincial Policy Statement provides:

1.5.2 Existing *infrastructure* and *public service facilities* within *settlement areas* will be utilized to accommodate growth, where feasible, before developing new *infrastructure* ordinary and *public service facilities*.

Developers and municipalities sometimes take the view that students should be bussed from their homes to existing facilities in order to avoid the need to build new schools. The EDC process does require a school board to take account of existing capacity in review areas that are reasonably accessible, but as a general principle, s.1.5.2 would be problematic without additional interpretation.

The Associations therefore recommend that s. 1.5.2. of the Provincial Policy Statement be amended to provide:

1.5.2 Existing *infrastructure* and *public service facilities* within *settlement areas* will be utilized to accommodate growth, where reasonably feasible and cost effective, before developing new *infrastructure* ordinary and *public service facilities*.

These words are added to indicate to decision makers that there are limits on the use of existing public service facilities.

(d) Implementation and Interpretation

Section 4 of the proposed Provincial Policy Statement deals with implementation and interpretation. Paragraph 6 provides:

“Since the policies in the Provincial Policy Statement focus on end results, the official plan is the most important vehicle for its implementation.

Municipal official plans provide an appropriate mechanism through which: comprehensive, integrated and long-term planning is achieved; provincial interests are identified for protection; and cross-boundary matters are coordinated so that the actions of one planning authority complement the actions of another planning authority and promote mutually beneficial solutions.

Municipal official plans will integrate all applicable provincial policies, identify provincial land use planning interest, and apply appropriate land use designations and policies. Municipal official plans will provide clear, reasonable and attainable policies for protecting provincial interests, and for development and site alteration in suitable areas.

In order to best protect provincial interests, planning authorities will keep their official plans up-to-date with the Provincial Policy Statement.”

This section makes important statements about the official plan and the need for official plans to coordinate. The focus is, however, too narrowly on planning authorities. The Associations believe that the section should address public bodies more generally.

The Associations recommend the following changes to s. 4 of the proposed Provincial Policy Statement:

“Since the policies in the Provincial Policy Statement focus on end results, the official plan is the most important vehicle for its implementation.

Municipal official plans provide an appropriate mechanism through which: comprehensive, integrated and long-term planning is achieved; provincial interests are identified for protection; the interests of public bodies are considered and taken into account and cross-boundary matters are coordinated so that the actions of one planning authority complement the actions of another planning authority and promote mutually beneficial solutions.

Municipal official plans will integrate all applicable provincial policies, identify provincial land use planning interest, and apply appropriate land use designations and policies. Municipal official plans will take into account the long-term accommodation plans of school boards operating in the municipality. Municipal official plans will provide clear, reasonable and attainable policies for protecting provincial interests, and for development and site alteration in suitable areas.

In order to best protect provincial interests, planning authorities will keep their official plans up-to-date with the Provincial Policy Statement.”

Paragraph 10 of s. 4 of the proposed Provincial Policy Statement provides:

“10. The Province, in consultation with municipalities, will identify performance indicators for measuring the effectiveness of some or all of the policies, and will monitor their implementation, including review performance indicators concurrent with any review of the Provincial Policy Statement.”

Again, the Associations believe that the focus of this section is too narrow and that the interests of public bodies should be included.

Accordingly, the Associations propose the following amendment to paragraph 10 of s. 4 of the Proposed Provincial Policy Statement:

“10. The Province, in consultation with municipalities and other public bodies, will identify performance indicators for measuring the effectiveness of some or all of the policies, and will monitor their implementation, including review performance indicators concurrent with any review of the Provincial Policy Statement.”

(e) Definitions

Section 6 of the proposed Provincial Policy Statement contains a set of definitions. It would leave out a definition of “institutional uses” although these are referred to in the Statement itself.

The Associations recommend that a slightly re-worked definition of institutional uses be salvaged from the 1997 Provincial Policy Statement and inserted in the proposed Provincial Policy Statement as follows:

“institutional uses” means those uses associated with hospitals, nursing homes, pre-school, school nurseries, daycare facilities and schools, and other similar institutions.

The Questions in the Consultation Discussion Paper on the *Provincial Policy Statement*

The Associations wish to respond to those questions in the *Consultation Discussion Paper on the Provincial Policy Statement* set out below.

1. *Do the draft policies provide sufficient direction to effectively protect provincial interests in land-use planning?*

If the amendments proposed to the *Planning Act* and to the Proposed Provincial Policy Statement recommended by the Associations are adopted, then the Associations believe that the draft policies will provide sufficient direction to effectively protect provincial interests in land use planning.

2. *Do the draft policies achieve the right balance among different policy interests, such as building strong communities, protecting the environment and resources, and supporting a strong economy?*

The Associations believe that the proposed policy statement tends to overemphasize the role of municipalities and to underemphasize the role of public bodies such as school boards. The Associations believe that schools and other institutions such as hospitals, which are beyond the purview of municipalities, are essential to the primary goal of the Provincial Policy Statement which is “building strong communities”.

4. Ontario Municipal Board Reform

The Associations are generally in support of the roles and responsibilities of the Ontario Municipal Board and would not want to see the elimination of a right to appeal planning decisions from municipal councils to the Ontario Municipal Board. We say this even though there have been a number of comments in this brief that have been critical of some decisions of the Ontario Municipal Board.

The Associations believe that a form of appellate body is necessary to ensure that parties coming before municipalities with development proposals have a venue to seek redress if proper planning principles have not been observed by the municipality or if they have been unfairly treated by the municipality.

It must be recognized that a vast number of planning decisions are made every day by municipalities across Ontario. Only some of these are appealed to the Ontario Municipal Board. Appeals, in short, are the exception and not the rule. This is the perspective from which the frustrations of municipal councils about the OMB must be assessed.

The Questions in the Consultation Discussion Paper on Ontario Municipal Board Reform

The Associations wish to respond to those questions in the *Consultation Discussion Paper on Ontario Municipal Board Reform* set out below.

1. *Should there be some appeal mechanism for land-use planning decisions?*

The Associations believe that an appeal mechanism for land-use planning decisions must continue to exist as part of the land-use planning system in Ontario. While municipalities and commenting agencies generally perform their tasks responsibly and well, there will always be exceptional cases in which the planning merits have not been properly considered or in which there has been some unfairness in the process. An appeal mechanism that is neutral and fair is required.

2. *Should the courts be used as the appeal body for land-use planning decisions?*

The Associations believe that an appropriate appeal body is the Ontario Municipal Board. The OMB has developed, over many years, a measure of expertise that could not be matched by a court. OMB proceedings are quicker and relatively less formal than court proceedings. They are also more open to members of the community and are certainly more accessible.

3. *Should the OMB's ability to substitute its decision for that of an elected council be modified?*

The Associations believe, subject to the concerns discussed in respect of the next question, that the Ontario Municipal Board should continue to have the same remedial jurisdiction that it has at the present time. The prospect

that a municipal decision might be subject to review acts as a form of discipline on municipalities and other commenting agencies. Any significant erosion in the OMB's powers will, unfortunately, give rise to the prospect of abuse.

4. *Should the OMB continue to conduct "de novo" hearings looking at the full merits of a planning matter?*

In general terms, and subject to the concerns raised in this brief, the Associations support the OMB's current "de novo" jurisdiction. The problem with anything less than a full "de novo" hearing is that a party will not feel that it has been heard. Although the *Planning Act* calls for public meetings at various points, such meetings tend to be somewhat pro forma. While there is an ability to challenge the recommendations of planning staff of a municipality, for example, there is not the possibility of questioning planning staff in public to expose weaknesses in the analysis. Public meetings before municipal council are not the best vehicle for dealing with matters of detail that are sometimes critical to a particular development. A municipal council remains a political forum even when it is conducting quasi-judicial or administrative hearings under the *Planning Act*.

Under the *Education Act* school boards are obliged to hold public meetings before passing EDC by-laws. In this respect, they resemble municipal councils.

There is one area in which there should be further review of the authority of the OMB. This is in respect of policy decisions made by municipal council or a school board.

The issue concerns the degree of deference to be paid by the Ontario Municipal Board to policy decisions made by a municipal council and by a school board. There are two approaches. The first is for the Ontario Municipal Board to consider the matter "de novo" without any regard for the decision of municipal council or the school board. The other approach is that of the Association of Municipalities of Ontario who, according to the Consultation Discussion Paper, argue that the appeal should only be allowed when "the appellant could show that there was an error of fact or law...[or] bad faith so serious that council made a wrong decision as a result of it".

The Associations believe that both of these perspectives are unacceptable and that the right balance is to be found between the two. It would be wrong for the OMB to completely ignore the policy decisions of municipal council or a school board, but it would also be wrong to place on the appellant an obligation to show that there was an error of fact or law or an instance of bad faith. The standard is too high and would permit bad planning decisions to go unreviewed.

The right approach is reflected in the Ontario Municipal Board decisions. The essential principle should be that where the municipal council or school board has acted fairly and reasonably and within its powers in making a policy decision, and where there is no error in principle in its basic approach, the decision should stand. This can be seen in two OMB decisions.

In a decision concerning a municipal development charge in the *Guelph (City) Development Charges By-Law*, unreported DC990003 (November 4, 1999) member D.Y. Perlin said:

15. It is important to remember that the matter in front of the Board is an appeal. The DCA allows for appeals of development charge by-laws; it does not require that the Board approve development charge by-laws.

The Board, therefore, does not undertake the scope of enquiry provided for under Section 63 of the Ontario Municipal Board Act which is the approach the Board must use before approving a by-law. In the case where the Board must approve a by-law and undertakes an enquiry under Section 63 of the Ontario Municipal Board Act, the Board essentially decides what it would do as a result of that enquiry and determines that that is what municipality should do or should have done if it wishes Board approval.

Under the DCA (old and new) the matter is one of appeal. The DCA comes into effect the day it is passed or on the day provided for in the DCB for it to come into effect (Section 8, DCA).

What the Board looks for on appeals, in such cases, is whether the municipality has acted fairly and reasonably, within its powers, in accordance with the process set out in the legislation.

When dealing with appeals, the Board should not substitute its policy choices for City Council's policy choices where the Board finds, based on the evidence, that City Council has acted fairly, reasonably, within its powers and in accordance with the process set out in the Act. If Council has done so, then the Board should dismiss any appeal and leave the City Council's policy choices in place even if they are not the policy choices that the Board itself would have made.

Similarly, in a case involving education development charges in respect of the *Peterborough Victoria Northumberland and Clarington Catholic District School Board* [2001] O.M.B.D. No. 774, member M.F.V. Eger dismissed an appeal by the developer that the by-law should have a differential rate for adult retirement lifestyle communities which do not, except in very unusual circumstances, produce a demand for schools. The school board had a jurisdiction-wide charge that did not differentiate among unit types. In the course of her decision, the member noted:

14. There's a broader tenet of public education in play here as alluded to by Mr. Code. It's the idea that whether you or your family directly use the public education system or not there is a broad public benefit from having an educated population – so everyone should contribute in some way to the cost of that public system of education. New homebuyers in Wilmot Creek are no different from any other retired adults who will purchase new accommodation outside a planned retirement community. Then there are other homebuyers who will not have children and not

create a demand, or families with more children who will utilize public education resources to a greater extent than other families. Yet in all these situations, equivalent residential education development charges will apply. The background studies to the two by-laws before the Board also demonstrate the variability in demand generated by different types of dwelling types but the proposed charges are the same regardless of the type of residential unit being purchased. Wilmot Creek's position only seems more inequitable because a specific cluster of new homebuyers who are unlikely to create increased demand for education land costs has been isolated from all other new homebuyers. The Board prefers the evidence of the school boards' witness that there are many variables, too many to administer individually. The fairest approach then, and the approach consistent with the Act, is to apply one residential charge as the school boards have proposed.

She went on and agreed with the decision of Member Perlin in the *Guelph* case and concluded as follows:

16. In the subject case there is no complaint regarding the overall process used by the school boards in developing the new by-laws. The Board finds that the school boards have acted fairly and reasonably, and within its powers pursuant to the *Education Act*. On this basis, the Board orders that the appeals by Ridge Pine Park are dismissed.

By contrast, in the case of the *London Development Institute v. London District Catholic School Board* (OMB Decisions May 28, 2002 and January 23, 2003, unreported, file DC000031), the OMB imposed an exemption from EDCs for the core of the City of London. This relief had not been requested by the appellant or by the City of London. The OMB imposed the exemption of its own motion. The Divisional Court (Decision released February 5, 2004, unreported) held that the imposition of an exemption without hearing from the parties was a jurisdictional error. The Court observed, rather critically, "One must infer that the tribunal felt it was exercising a municipal planning function rather than undertaking an appeal pursuant to the *Education Act*".

Some legislative guidance is necessary because the issue of how the OMB should approach appeals is not entirely clear. For example, in *Cherry Hill G.P. Limited v. The Town of Lincoln* [2000] O.M.B.D. 624, the OMB considered an appeal under the *Development Charges Act* filed by the developer of an adult lifestyle community. Like the *Peterborough Victoria Northumberland Clarington* case referred to earlier, the developer argued that there should be differential charges based on unit types. The Town resisted on the basis that it had no control over the way in which properties built as lifestyle communities would ultimately be used. The Town was concerned that families might move in and the infrastructure demands of the development would increase, and therefore imposed a uniform charge.

Member B.W. Krushelnicki cited the decision of Mr. Perlin in the case quoted above. He held:

“19. In the end the Town has made a reasonable policy choice and the Board sees no reason why it should interfere to arrive at some other arrangement. By intervening the Board is also concerned that it would invite any number of special pleadings by various sectors of the development industry claiming that their special project or niche is not adequately addressed by the development charges categories.”

The Divisional Court, however, heard an appeal and dismissed it. The appeal was on the basis that “the Board applied the wrong test, deferred to the local council and therefore failed to exercise its statutory jurisdiction to consider afresh by way of a hearing *de novo* the issues raised.

The Court accepted the premise that the Board must consider the evidence before it and exercise its own independent jurisdiction. It held that “the Board did not merely defer to the decision of council but rather, after considering the evidence before it, came to the same conclusion as the council had.”

As can be seen, members of the OMB do want to exercise a certain degree of deference when it comes to policy choices made by municipal councils and school boards. The Associations support this basic approach. The jurisprudence, however, favours an approach under which the OMB must effectively start over.

The Associations recommend that further consideration be given to defining a standard of review for the Ontario Municipal Board to apply to policy decisions of municipal councils and school boards under the *Planning Act*, the *Development Charges Act*, and the *Education Act*.

5. *Should the OMB have the authority to require parties to mediate?*

The Associations believe that it would be helpful for the OMB to have authority to require mandatory mediation. In addition, the OMB has in recent years been requiring experts to meet together to narrow issues in dispute. While this approach is sometimes quite helpful, on other occasions it is a waste of time. As part of its mediation function, it would be helpful for the Ontario Municipal Board to have a member of the board or a member of staff present to help guide the experts through the effort to narrow the issues in dispute, if not to reach consensus on the issues of fact for the Ontario Municipal Board.

5. Conclusions

The Associations are grateful for the opportunity to provide their submissions on the three Consultation Discussion Papers issued the Ministry of Municipal Affairs and Housing.

We applaud the Government's goal of building "strong communities where all Ontarians can thrive". We believe that achieving this goal will require the full engagement of the school boards of Ontario. Schools are an integral and important part of any strong community.

It is the Associations' belief, based on the experience of our member boards, that there is often an unnecessary degree of friction between municipalities and school boards on land use planning issues.

Recognition by the Province of Ontario and by municipalities of the considerable and valuable expertise that school boards bring to the table in planning strong communities would better serve the public interest.

The Associations believe strongly that it is time to rethink, in planning terms, the relationship between the provincial government and school boards, and between school boards and local municipalities in land use planning for schools.

The numerous recommendations put forward by the Associations in this brief are aimed at a reasonable rebalancing of responsibilities among public bodies involved in the land use planning process. The measures that the Associations proposals are modest and balanced, and continue to recognize the necessary pre-eminent role of municipalities.

The task of planning reform that the Ontario government has undertaken is an important opportunity to recognize and give more prominence to the importance of schools in building strong communities and the role of school boards in planning for and operating schools.

6. Table of Recommendations

Recommendations relating to the *Planning Act*

Recommendation 1

The Associations are generally in support of the Bill 26 proposals, particularly the increase in the time period for making decisions before appeals may be made to the Ontario Municipal Board in respect of official plan amendments, zoning by-laws and subdivision approvals.

Recommendation 2

The Associations recommend that an obligation be inserted into the *Planning Act* to require municipalities to make available the report of planning staff in respect of a particular decision being called for on the date that notice of the related public meeting is provided.

This recommendation could be implemented by:

- a. adding the following language to S.17 (16). Alternatively, similar language could be inserted in subsection 17(15).

(16) A copy of the current proposed plan referred to in subsection (15) together with reports by municipal staff or by consultants retained by the municipality concerning the proposed plan shall be made available to the public at least 20 days before the public meeting is held;

- b. adding the following words to S.34(12):

(12) Before passing a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (26), the council shall ensure that sufficient information is made available to enable the public to understand generally the zoning proposal that is being considered by the council and, for this purpose, shall hold at least one public meeting, notice of which shall be given in the manner and to the persons and public bodies prescribed. The council shall ensure that reports by planning staff or by consultants retained by the municipality on the proposed by-law are made available to the public on the date that notice of the public meeting is given;

- c. by making the following amendment to S.51(20):

(20) At least 14 days before a decision is made by an approval authority under subsection (31), the approval authority shall ensure that,

(a) notice of the application is given, if required by regulation, in the manner and to the persons and public bodies and containing the information prescribed; and

(b) a public meeting is held, if required by regulation, notice of which shall be given in the manner and to the persons and public bodies and containing the information prescribed. The council shall ensure that reports by planning staff or by consultants retained by the municipality on the application are made available to the public on the date that notice of the public meeting is given.

Recommendation 3

The Associations support the change in language proposed that would require planning decisions to be consistent with the Provincial Policy Statement and not only to have regard to it.

Recommendation 4

The Associations propose that the reference to “any school board” be removed from the definition of “local board” in s. 1(1) of the *Planning Act* and instead be added specifically to the definition of “public body”, so that the latter would provide:

“1(1) In this Act... “public body” means a municipality, a school board, a local board, a ministry, department, board, commission, agency or official of a provincial or federal government or a First Nation”.
(emphasis added)

This change should also be made in sections of the *Planning Act* that refer to “local board” including particularly s. 3(5) and (6) as proposed to be amended by Bill 26.

Recommendation 5

The Associations recommend that a right to appeal and build be added to the *Planning Act*, with the requirement that the municipality reimburse the school board for requirements imposed that the OMB determines ought not to have been imposed under s. 41. The Associations propose the following amendment to s. 41 of the *Planning Act*:

(12.1.1) The owner may execute the agreement and perform the obligations under the agreement without prejudice to the appeal referred to in ss. (12). An agreement to waive the right to appeal is void.

(12.2) The Municipal Board may require the municipality to reimburse the owner for expenditures made under an agreement that the Municipal Board has determined that the municipality was not entitled to require under ss. (7) or (8).

Recommendation 6

The Associations recommend the addition of the following subsection to s. 41 of the *Planning Act*:

“s. 41(4.4) Site plan approval of a school site under ss. (4) shall designate an area of the site for the placement of portable classrooms. The school board may install portable classrooms in the designated area without the need for additional site plan approval.”

Recommendation 7

To address the question of prematurity and the availability of school sites, the Associations propose that paragraph (j) of ss 51(24) of the *Planning Act* to be amended to provide:

“(j) the adequacy and availability of school sites and facilities.”

Recommendation 8

The Associations propose an initial school site reservation period of five years with a subsequent reservation period of five years, renewable at the instance of the school board.

Accordingly, the Associations propose the following amendment to s. 51(25) of the *Planning Act*:

(25) The approval authority may impose such conditions to the approval of a plan of subdivision as in the opinion of the approval authority are reasonable, having regard to the nature of the development proposed for the subdivision, including a requirement,

(a) that land be dedicated or other requirements met for park or other public recreational purposes under section 51.1;

(a.1) that land be reserved for use as a school site to provide pupil accommodation by a school board;

In order to deal with the length of the reservation period, the Associations propose that s. 51(25.1) of the *Planning Act* be repealed and replaced with the following subsections:

(25.1) In respect of a condition imposed under clause (25) (a.1), the school board may:

1. Enter into an agreement with the owner for the conveyance of the land to the school board;

2. Enter into an agreement with the owner under which the school board has the option, for a period of five years from the date of registration of the plan of subdivision, to purchase the land. The option period may, at any time during the five year

period, be extended by the school board for a further period of up to five years; or

3. Waive the condition;

and shall advise the approval authority accordingly.

Recommendation 9

The Associations recommend that school boards be exempt from the requirement to contribute land for park purposes or to contribute cash-in-lieu for park purposes, and the Associations propose that the following subsection be added to s. 42 and s. 51.1 of the *Planning Act*:

“(1.1) The calculation referred to in ss. (1) shall exclude land designated to be conveyed to a school board for use as a school site.”

Recommendations Relating to the Proposed Provincial Policy Statement

Recommendation 10

The Associations propose an amendment to s. 1.2.3. of the Provincial Policy Statement to provide:

“1.2.3. Land requirements and land use patterns will be based on:

b) Densities and a mix of land uses which:

1. Efficiently use land, resources, *infrastructure* and *public service facilities*, and maximize the opportunity for combining *public service facilities*;”

Recommendation 11

The Associations recommend that the title to s. 1.3 of the Provincial Policy Statement be changed to “Coordination Within and Among Public Bodies.”

Recommendation 12

The Associations recommend that s. 1.5.2. of the Provincial Policy Statement be amended to provide:

1.5.2 Existing *infrastructure* and *public service facilities* within *settlement areas* will be utilized to accommodate growth, where reasonably feasible and cost effective, before developing new *infrastructure* ordinary and *public service facilities*.

Recommendation 13

The Associations recommend the following changes to s. 4 of the proposed Provincial Policy Statement:

“Since the policies in the Provincial Policy Statement focus on end results, the official plan is the most important vehicle for its implementation.

Municipal official plans provide an appropriate mechanism through which: comprehensive, integrated and long-term planning is achieved; provincial interests are identified for protection; the interests of public bodies are considered and taken into account and cross-boundary matters are coordinated so that the actions of one planning authority complement the actions of another planning authority and promote mutually beneficial solutions.

Municipal official plans will integrate all applicable provincial policies, identify provincial land use planning interest, and apply appropriate land use designations and policies. Municipal official plans will take into account the long-term accommodation plans of school boards operating in the municipality. Municipal official plans will provide clear, reasonable and attainable policies for protecting provincial interests, and for development and site alteration in suitable areas.

In order to best protect provincial interests, planning authorities will keep their official plans up-to-date with the Provincial Policy Statement.”

Recommendation 14

The Associations propose the following amendment to paragraph 10 of s. 4 of the Proposed Provincial Policy Statement:

“10. The Province, in consultation with municipalities and other public bodies, will identify performance indicators for measuring the effectiveness of some or all of the policies, and will monitor their implementation, including review performance indicators concurrent with any review of the Provincial Policy Statement.”

Recommendation 15

The Associations recommend that a slightly re-worked definition of institutional uses be salvaged from the 1997 Provincial Policy Statement and inserted in the proposed Provincial Policy Statement as follows:

“institutional uses” means those uses associated with hospitals, nursing homes, pre-school, school nurseries, daycare facilities and schools, and other similar institutions.

Recommendations Relating to the Ontario Municipal Board

Recommendation 16

The Associations believe that an appeal mechanism for land-use planning decisions must continue to exist as part of the land-use planning system in Ontario.

Recommendation 17

The Associations believe that an appropriate appeal body is the Ontario Municipal Board.

Recommendation 18

The Associations believe, subject to the concerns discussed in the brief, that the Ontario Municipal Board should continue to have the same remedial jurisdiction that it has at the present time.

Recommendation 19

In general terms, and subject to the concerns raised in the brief, the Associations support the OMB's current "de novo" jurisdiction.

Recommendation 20

The Associations recommend that further consideration be given to defining a standard of review for the Ontario Municipal Board to apply to policy decisions of municipal councils and school boards under the *Planning Act*, the *Development Charges Act*, and the *Education Act*.

Recommendation 21

The Associations believe that it would be helpful for the OMB to have authority to require mandatory mediation.