

**Bill 26 Consultation
Feedback Table (Including Source Reference)
February 3, 2004**

Table 1: “Shall be consistent with”

Ref #	Comments Provided
1a	We are supportive of the direction provided for the PPS – “shall be consistent with”. This provides increased confidence and reliability for decisions and clear guidance that should eliminate some appeals.
1b	The "be consistent with" is a change Conservation Authorities have long supported.
1c	Requiring Planning Act decisions to be "consistent with" rather than "having regard to" provincial policy will serve to aid agencies like Conservation Authorities in encouraging municipal councillors to implement stronger natural heritage and natural hazard Official Plan policies. This is important in rural watersheds such as ours where concern over or awareness of potential negative impacts resulting from development generally does not seem to be as great.
1d	I've briefly gone through the relevant documents and there's no major issues here. I have no objection to the change to 'shall be consistent with' instead of 'have regard for.' I suspect that for some CAs the 'have regard for' term has been too weak, but for our Authority I would have to say that for the vast majority of cases that term has been sufficient to achieve our objectives.
1e	<u>Decisions to be "Consistent With" Policy Statements</u> We are supportive of the above proposed modification. The current wording of "shall have regard" could be mistakenly interpreted to mean give consideration and disregard, while to be "consistent with" clearly identifies the expectation that the Municipality will in its decision making apply Provincial Policies as they are intended. This wording will ensure a more consistent application of policy throughout the Province.
1f	“Consistent with” I think there should be support for this change. As you well know, there has been very extensive discussion this point for nearly ten years now. “Shall be consistent with” is less ambiguous than the current terminology.
1g	UTRCA experience with “have regard to” has not been bad. We have found that municipalities have not abused this wording but do feel that “consistent with” will assist in areas where the trivial consideration of “have regard to” has been a problem
	Committee Discussion/Action The Committee agreed that the move to “shall be consistent with” from “have regard for” should be supported. It was however noted that the existing “have regard for” did not seem to be subject to widespread abuse. The Committee also noted that the “shall be consistent with” approach does create the potential for increased complications when PPS policies conflict and there is a need to balance competing interests. The Committee noted that while this is addressed in the Implementation section of the current PPS,

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	<p>revisions to this section of the PPS were recommended by Conservation Ontario as part of the PPS Five Year Review Initiative. The Committee agreed that Conservation Ontario should encourage the Province to proceed with the completion of the Five Year Review process to deal with this specific policy issue but also to address the other Conservation Ontario recommendations on updating the PPS.</p> <p style="text-align: center;">Recommendation 1</p> <p>That Conservation Ontario support the amendment that would require that decisions “be consistent with” the PPS,</p> <p>And That Conservation Ontario encourage the Province to proceed with the PPS Five Year Review Process</p>

Table 2: Increase in time periods

Ref #	Comments Provided
2a	<p>The extension of timelines for consideration of the various applications is welcomed. Our experience has been that the current timelines are not realistic and in fact have not been met consistently. The removal of appeals for failing to hold the public meeting in 45 days is also encouraged. A suggestion for improving the review process would be to specify what is required (define) a “complete application”. Our experience is that by filing an application form and a cheque, the applicant can start the clock. Many applications sit for months waiting for the supporting documentation to allow review and decisions to be made. If the applicant is required to file a complete package, the review process will be easier to manage.</p>
2b	<p>As stated in the GTA Task Force Report on OMB reform, longer appeal periods will allow review agencies sufficient time to review necessary studies and aid municipalities in making sound planning decisions. Pre-consultation is essential in the planning process and the need for additional studies should be made clear to the applicant as early in the process as possible so that in the best case scenario, they can all be included with the application at the time of submission to avoid unnecessary delays and confusion.</p>
2c	<p>The revised time frames are more in keeping with the actual time required to complete the consultation process, for applicants to provide additional required information, and to resolve issues in consultation with all parties.</p> <p>However, consideration should also be given to giving municipalities authority to determine what constitutes a complete submission (perhaps with some guidance from the Province). Currently, a complete submission is determined by the Province, which does not include supporting technical reports. A submission that meets the provincial criteria, can be seriously lacking in required background materials such as an EIS, SWM report, geotechnical reports, etc. without which it is impossible for the environmental agencies to complete a meaningful review within the time frames.</p>
2d	<p><u>The proposed increase in the time period for making decisions</u></p>

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	<p>In many instances meeting the time frames for reviewing and circulating applications including holding a public meeting may not be feasible. For large scale developments, support studies required to be submitted are often not undertaken in advance, currently allowing the developer the opportunity to appeal a lack of a decision based on incomplete information. We are supportive of the increase in time frames for processing Planning Act applications and would further recommend inclusion of a number of recommendations contained within the <i>GTA Task Force Recommendations for Reforming the OMB and Ontario's Planning Appeal Process</i>.</p> <p>Of particular note, identified by the Task Force, would be that the proponents are currently required to submit an application with the fee and the clock begins to tick. The Council is then forced to process an application without the preparation of required studies which may assist with the decision making process. As recommended the GTA Task Force, the decision making authority should have discretion to determine when the application is complete based on defined requirements in the Lower or Upper Tier Official Plan and on the application form.</p> <p>Only after the completion and submission of studies undertaken to the satisfaction of the municipality, should the application be considered complete and circulated for review.</p> <p>In the context of the above statements, the required studies should be reviewed by the decision making authority to ensure that the conclusions are feasible, so that the technical experts can make recommendations to the Municipality on viable information rather than conceptual reports which may not be feasible.</p> <p>We are supportive of the other recommendations by the GTA Task Force contained in this section.</p> <ul style="list-style-type: none"> - That the Planning Act should be amended to mandate pre-consultation between the municipality and the applicant on all Official Plan amendment applications. Further, that the planner or representative from the municipality shall confirm in writing that this pre-consultation has occurred. - That the Planning Act provide guidance with respect to dispute resolution from the Board on information required for complete applications at any time. - That the OMB has the jurisdiction and direction to stay any appeal process where the municipality has not received complete information or had sufficient time to consider an application
2e	<p>Extension of the time lines</p> <p>We do work in fifteen municipalities. Our highest volume, however, is in the City of Ottawa. In a municipality of the size of Ottawa the preparation of agendas alone is a monumental task; this means fairly long lead times prior to Committee meetings simply for administrative purposes. In my view the current time lines are unreasonable. They put a heavy burden on the approval authority to ensure that sufficient staff are available to expedite approvals. There have been more than a few OMB hearings locally, precipitated by "failure to decide"... I applaud the initiative to extend the time lines, the proposed time periods are, I think, much more fair for all parties.</p>
	<p>Committee Discussion/Action</p> <p>The Committee agreed that the existing time periods for review are problematic and supported the proposed lengthening of the time periods. The Committee also noted that time periods for review are directly influenced by both the completeness of the application</p>

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	<p>and pre-consultation prior to application submission. In this regard, the Committee agreed that the GTA Task Force on OMB Reform recommendations on Complete Application and Pre-Consultation should be promoted as the Conservation Ontario position.</p> <p style="text-align: center;">Recommendation 2</p> <p>That Conservation Ontario support the proposed increase in time for reviews,</p> <p>And That CO recommend that the GTA Task Force on OMB Reform recommendations on Pre-Consultation and Complete Applications be incorporated into Bill 26</p>

Table 3: Appeals to OMB for urban expansions

Ref #	Comments Provided
3a	<p>If the refusal by a municipality to enact an urban boundary adjustment can not be appealed, is the ability to appeal where the municipality approves (its own or a request) an urban boundary expansion impacted?</p>
3b	<p><u>Appeals to the OMB for urban settlement area</u></p> <p>We are supportive of this proposed change, as we would offer that issues relating to settlement areas are addressed at exhaustive length at the time of the preparation of a new Official Plan. This process is justified through careful projections relating to land use requirements and servicing needs. In many cases, appeals of this nature have wasted municipal legal costs in order to represent these matters at the Board where the application is inappropriate.</p> <p>Through inclusion of the above amendments to the Act along with modifications to the Policy Statements as recommended in the Conservation Ontario response to the 5 year review of the PPS, many of the current difficulties in land use planning this Province could be resolved. Although we have previously recommended strengthening to the policies and Guidelines Manuals provided by Provincial Ministries, we wish to again mention the importance of clear and concise guidelines for implementation so that technical practitioners have the ability to implement policies as intended by the Province.</p>
	<p>Committee Discussion/Action</p> <p>Feedback from the CA's supported this revision and the Committee also agreed.</p> <p style="text-align: center;">Recommendation 3</p> <p>That Conservation Ontario support the revisions contained in Bill 26 relating to appeals for urban expansions.</p>

Table 4: Declare Provincial Interest

Ref #	Comments Provided
4a	The ability of the Province to intervene is something that we will have to see. Unless they are considerably more active in this area than they have been, it may not be much of a factor.
4b	The ability of the Minister of Municipal Affairs to identify where a matter of provincial interest is likely to be adversely affected by a plan does clarify and support what MMAH should be doing in the matter of appeals. It does go further in that the OMB decision is not final unless confirmed by Provincial Cabinet. From a CA perspective, again, the success of this clause will be in the implementation and involvement of appropriate Ministry staff in the planning process. In terms of Natural Heritage in our watershed, this involvement is lacking. I agree with the recommendation from the Nov/Dec 2003 Paul Eagle article in the Ontario Planning Journal "The OMB's Record on Natural Heritage". "To undertake a pre-cautionary approach to natural heritage conservation, the authors suggest that appropriate ministry staff should participate in this dimension of the planning process". Conservation Authority staff, of course, can assist at appeal hearings. However, the considerable cost and time commitment to defend MNR wetland boundaries or other Natural Heritage features can be a huge financial burden to the CA. Am I assuming correctly, that the inclusion of this section in Bill 26 will imply appropriate Ministry staff involvement. Is it to be worked out when and how the Ministry of Municipal Affairs and appropriate Ministry staff will be involved?
4c	<p>Declaration of Provincial Interest</p> <p>I agree with the principle of this section but was concerned over potential time-frame issues. Will the minister have a certain number of days following a decision to declare a Provincial Interest? Additionally, once an interest is declared will there be a similar time frame associated with his follow-up review and subsequent decision?</p>
	<p>Committee Discussion/Action</p> <p>The proposed legislation includes provisions for the Minister of Municipal Affairs to declare a matter as being a Provincial Interest and in such cases, the Lieutenant Governor in Council may confirm, vary or rescind the decision of the OMB. The Committee has considered these revisions and does not support them. Concerns identified include:</p> <ul style="list-style-type: none"> - The declaration by the Minister and the subsequent powers afforded to the L.G. in C. moves the technical and legal process into a political process. - The substitution of a political decision making process for an evidence based process may be a violation of natural justice. - It is felt that there will be a loss of openness and transparency when the decision making is moved to Cabinet - Provincial interests are already listed in Section 2 of the Planning Act and MMA already has the ability to identify a matter as being of Provincial Interest through the One Window Planning System and as a party at the OMB. - Decisions may become very politicized with the potential for private interest lobbying and at certain points in the mandate of the government, decisions may be deferred for political reasons. - It is our understanding that such a process was followed in the past (pre-1983) and that it was abandoned for some of the reasons noted above.

Ref #	Comments Provided
	<p>Recommendation 4 That Conservation Ontario not support the declaration of Provincial Interest provisions of the proposed legislation.</p>

Table 5: Other Bill 26 Comments

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5a	A final comment is that we would have supported the Province establishing a program to fund 3rd party public participation. However, I don't see anything mentioned in Bill 26. Funding assistance to support citizen groups at hearings would provide further support to the protection of natural heritage features.
5b	Applications already in progress Will this deal with any applications currently awaiting appeal to the OMB or only to those applications that were appealed after the Bill was introduced?
	<p>Committee Discussion/Action Committee chose to not make a recommendation on intervener funding.</p> <p>The need for transition policies and guidelines was identified through the CA consultation and is supported by the Committee.</p> <p>Recommendation 5 That Conservation Ontario encourage the Province to develop transition policies and guidelines to assist with implementation of Bill 26 when approved.</p>

Table 6: Bill 27 Comments

Ref #	Comments Provided
6a	Is there a plan/program outlined that provides guidance on the study to be completed through the one year moratorium? There have been a number of studies undertaken looking at this area, but without a study program the one year will only provide temporary relief from the development pressure.
	<p>Committee Discussion/Action Committee chose to not include comments on Bill 27 in the report. IT is the understanding of the Committee the various GTA / Niagara area CA's are preparing their own submissions on this proposed legislation.</p>