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EC640/97

Planning Act Minimum Requirements for Municipal Official Plans

Pursuant to section 7 of the Planning Act, R.S.P.E.I., 1988, Cap-8, Council adopted the following policy effective 15 November 1997

INTRODUCTION

These *Minimum Requirements for Municipal Official Plans* are intended to provide helpful and practical direction to Municipal Council, Planning Boards, municipal staff, planners and the public in the preparation and approval of Official Plans. The requirements are enabled in clause 7(b) of the Planning Act and have been adopted as policy by Executive Council.

DEFINITIONS

In these requirements:

“Act” means the Planning Act, R.S.P.E.I., 1988, Cap P-8.

“Administrator” means the Administrator of the municipality as defined by the *Municipalities Act*, Part VII, subsection 24(1); as well as Chief Administrative Officer as defined by the *Charlottetown Area Municipalities Act*, subsection 22(1), and the *City of Summerside Act*, subsection 22(1).

“Approval” includes approval of both new Official Plans and revisions of amendments to existing Official Plans.

“Council” means a municipal council as defined by Part VI, subsection 15(1) of the *Municipalities Act*, the *Charlottetown Area Municipalities Act*, and the *City of Summerside Act*.

“Planning Board” means a Planning Board appointed by Council pursuant to the *Planning Act* to prepare and recommend a proposed Official Plan.

“Professional Planner” means a person qualified for membership in the Canadian Institute of Planners.

“Minister” means the Minister of Community Affairs and Attorney General.

“Municipalities” means a municipality incorporated under the *Municipalities Act*, the *Charlottetown Area Municipalities Act*, and the *City of Summerside Act*.

1.0 PLANNING ACT PROCEDURES

- 1.1 Prior to their coming into force, Official Plans must be approved by the Minister of Community Affairs and Attorney General. Before granting approval of an Official Plan, the Minister will satisfy himself that:
- (1) The procedure under the *Planning Act* relating to Official Plan adoption have been properly followed. The procedures are specified in sections 11-15 of the Act.
 - (2) The Plan is consistent with the Provincial Land Use and Development Policies adopted under clause 7(a) of the *Planning Act*.
 - (3) The Plan is consistent with the *Planning Act* Province-Wide Minimum Development Standards regulations (EC703/95) approved by the Lieutenant Governor in Council.
 - (4) There are no negative impacts on surrounding municipalities and unincorporated areas.
 - (5) The Plan is in substantial compliance with these requirements.
- 1.2 Documents which must accompany an application for Official Plan approval are:
- a) A copy of the newspaper ad notifying residents and the public of the public meeting held by the Planning Board to hear comments on the draft Official Plan (the ad copy must indicate the two dates on which the ad appeared in the newspaper);
 - b) A copy of Council's resolution adopting the Official Plan, bearing the name of the Official Plan, and showing the signatures of the Mayor/Chairman and the Administrator. This resolution sheet should also bear the Municipal seal, and have a space for the Minister's signature upon approval.
 - c) A copy of the minutes of the public meeting signifying to the Minister that the public has been given the opportunity for input.
- 1.3 It is the responsibility of the Administrator to supply all of the required documents at the time of the submission.

2.0 THE PROVINCIAL INTEREST

- 2.1 The interest which the Province has respecting development which may occur in a municipality seeking approval of an Official Plan is contained within the policies adopted under clause 79(a) of the *Planning Act*.

- 2.2 In general, when the Province establishes a Province-Wide Minimum Development Standard or a regulation, it is confined to the following areas:
- a) public health,
 - b) public safety,
 - c) environmental protection,
 - d) landscape management.
- 2.3 The Minister may include in his review, consideration of the impact of the plan on the development of the provincial economy.

3.0 Official Plan

- 3.1 The Minister will review the objectives and policies in an Official Plan.
- 3.2 Official Plans must contain all statements of objectives and policy required under section 12 of the Act. A specific format is not required.
- 3.3 The social, economic, physical and environmental objectives contained in the Official Plan should be measurable and as specific as possible. They should lend themselves to practical evaluation and interpretation. Very General statements should be avoided.
- 3.4 The Act requires statements of policy for future land use, management and development.
- 3.5 Policy statements must be relates to the objectives set out in the plan. Since policy is the basis for implementation, the statements must be specific. They should enable and influence bylaws, fiscal programs, budgetary actions or programs designed to implement the Official Plan.
- 3.6 The Official Plan's objectives and policies must not be contradictory, and must be at least as stringent as the Province-Wide Minimum Development Standards Regulations.

4.0 TECHNICAL CONTENT

- 4.1 Official Plans must be demonstrably technically competent, and should be prepared by a Professional Planner.
- 4.2 The Act does not specify studies or data to be considered by Planning Board and council in developing an Official Plan. However, a plan must be based on a sound technical foundation, including as appropriate:
- a) Regional and provincial context;
 - b) Population and other reliable demographic data;
 - c) Land use and settlement patterns
 - d) Building activity, by type;
 - e) Municipal services, their type, level and cost;

- f) Financial matters;
- g) Economic, social, physical;
- h) Environmental management problems and opportunities;
- i) Community facilities;
- j) Transportation; and other matters that Council considers to be pertinent.

- 4.3 The Minister may require that supporting documents, studies or data be submitted with an application for approval.
- 4.4 The Official Plan must be based on clear options where they exist. The Plan or supporting documents should reflect this or contain an adequate explanation where they do not.

5.0 PROVINCIAL LAND USE AND DEVELOPMENT

- 5.1 The Minister is responsible for the development of Provincial land use and development policy and its submission to the Lieutenant Governor in Council. Copies of the current provincial policies are available from the Department.
- 5.2 Under subsection 9(1.1) of the Planning Act, Official Plans must be consistent with provincial land use and development policies. Provincial land use and development policy, as it is adopted or altered, may require amendments to Official Plans. The *Planning Act* subsection 7(2) states that a community with an Official Plan must make such amendments to its plan or bylaws as are necessary to ensure that any requirements imposed thereby are not less stringent than those imposed by the Province-Wide Minimum Development Standards.
- 5.3 The onus is on the Council to ensure the Official Plan policies are consistent with established provincial land use and development policies, and where a Council fails to comply, the Lieutenant Governor in Council may declare that the Official Plan and bylaws are null and void. To the extent that the Official Plan or bylaws are declared null and void, the Minister may acquire exclusive jurisdiction with respect to subdivision approvals, development permits and building permits in the municipality.

6.0 IMPLEMENTATION AND ADMINISTRATIVE STRATEGY

- 6.1 An Official Plan must contain implementation and administrative proposals.
- 6.2 Preparation implementation and administration of an Official Plan and its supporting bylaws and strategies is a Council responsibility. The Council must ensure that practical implementation measures are contained in an

Official Plan, and should satisfy itself that these measures are likely to be implemented.

Examples of implementation measures are as follows:

- 1) bylaw proposals and administration procedures;
- 2) fiscal proposals including making suitable arrangements for administrative and technical expertise to implement policies and capital works in the official plan;
- 3) Council activities such as meetings with other councils or governments.
- 4) using the time and services of other organizations, municipalities, and the provincial or federal governments.

Approaches such as these should be the subject of an implementation strategy with a timetable for the first for the first several years following approval.

The Official plan policy should commit the municipality to providing the necessary funds to ensure proper administration of the official plan through its annual budget.

7.0 PLAN POLICIES

- 7.1 Municipalities are created mainly to provide property-related services to residents. The Official Plan is a major instrument in achieving this. To be effective, the Official Plan must be targeted to matters within the political, legislative and fiscal mandates and interests of the municipality.
- 7.2 The test for inclusion of specific objectives and policies should be whether the statement falls within the mandate or specific interest of the municipality. In general, if it does not, the statement should not be included. Official Plans may include statements, which do not comply with the test described above, if the intention is to implement the policy through discussions with the Province or through applications under the *Municipalities Act* for the extension of municipal powers.
- 7.3 Official Plans should address all relevant issues within the municipality's jurisdiction. While the council is the principle judge of local public opinion, the Minister, as part of an official plan/amendment review, may hold a public meeting where it is believed that a significant effect will occur beyond the boundaries of the municipality whose Official Plan is being reviewed.

- 7.4 If there is a clear necessity and benefit to a municipality in a matter within its mandate, policy statements that are not directly referenced in the Act may be approved.

8.0 EFFECTS ON SURROUNDING AREAS

- 8.1 Official Plans should take into account the Official Plans of municipalities in the region or general vicinity, regulations or plans in special planning areas, and provincial policy and regulations.
- 8.2 The Minister, will, in the approval review, attempt to ensure that an Official Plan does not impose hardship on or unnecessary risk to another municipality, an unincorporated are, a special planning area, an area designated under the *Natural Areas Protection Act*, or to an issue where the Province has specific interest.
- 8.3 Ordinarily, if there is a conflict; the rules should be that existing plans take precedence. This may, however, be varied in special cases after consultation with the authorities.
- 8.4 To the extent practical, Official Plans should reflect a policy of taking advantage of facilities with excess capacity where they can be accessed, or by expanding existing services or facilities, and of not duplicating services. In general, delivering services in the most efficient manner consistent with acceptable standards should be the rule.
- 8.5 Official Plans should generally contribute to and cooperate with regional and provincial objectives.

9.0 PLAN APPROVAL - PLANNING BOARD

- 9.1 The draft Official Plan/amendment must be approved and recommended for adoption by Council by a vote of the majority of the members of the Planning Board present and voting at a meeting for this purpose, prior to its submission to Council. Planning Board cannot adopt an Official Plan; its function is to make recommendation to Council, and to administer the Official Plan on behalf of Council if the Council passes a formal resolution to delegate this authority.

10.0 PLAN ADOPTION - BY COUNCIL

- 10.1 The Council may adopt an Official Plan/amendment by resolution.

11.0 PLAN APPROVAL – BY MINISTER

- 11.1 After adopting an Official Plan or plan amendment, the Council must submit the Official Plan/amendment to the Minister for approval, along with the documents outlined previously.
- 11.2 If the Minister is not satisfied that an Official Plan meets the requirements of the Act, approval will be withheld. In withholding approval, the Minister will state, in writing to the Council, the reasons for doing so, and indicate what changes, additions or deletions from the plan would be required for approval to occur.
- 11.3 If the Minister is of the opinion that there is no practical way of resolving an issue, he or she may deny the application for plan approval. This decision is not appealable under the *Planning Act*, since it occurs under the Act rather than under a regulation under the Act. It may however, be appealed to the courts.

12.0 OFFICIAL PLANS ARE BINDING

- 12.1 Official plans are binding on the Council, the Minister, residents and property owners within the municipality.

13.0 PLAN REVIEWS

- 13.1 Under subsection 15.1(1) of the *Planning Act* a Council must review its Official Plan and bylaws at intervals of not more than five years, and shall by resolution confirm or amend them. Where the official plan and bylaws were made or last reviewed more than three years before the date on which subsection 15.1(1) came into force (October 14, 1995), the Council must review the plan and bylaws within three years of that date.
- 13.2 Where a minor review is carried out, public participation need not be elaborate, but must meet the minimum requirements of the Act.
- 13.3 Municipalities should review their plans following any significant boundary alteration or when considering any major sewer and/or water servicing decision which is not contained within an existing Official Plan. Full public participation should be considered to be part of such a review.

14.0 PLAN AMENDMENTS

- 14.1 Amendments to Official Plans must follow the procedure outlined in section 11-15 of the Act. The Minister, will, in general, treat major amendments as if they were new Official Plans. Minor amendments are not required to address all of the parameters under the Technical Content (section 4) of the policy.

15.0 RESPONSIBILITY FOR PLAN PREPARATION

- 15.1 Effective September 15, 1993, municipalities become solely responsible for the preparation, maintenance and administration of their Official Plans.

16.0 REPEAL OF OFFICIAL PLANS

- 16.1 If a Council determines that it wishes to repeal its Official Plan, and return to the jurisdiction of the Province's *Planning Act* Regulations, the process of repealing an Official Plan is the same as the one followed in amending an Official Plan. A resolution repealing the municipality's Official Plan must be adopted by the Council and submitted to the Minister for approval, along with the usual documentation.
- 16.2 Once a municipality has repealed its Official Plan, the municipality's planning bylaws must also be repealed. The process for this is the same as that for a planning bylaw amendment. A resolution repealing the municipality's planning bylaw must be adopted by the Council and submitted to the Minister for approval.
- 16.3 Both the Official Plan and the planning bylaw should be repealed at the same time.