

October 21, 2019

**BY EMAIL**

Planning Consultation  
Provincial Planning Policy Branch  
Ministry of Municipal Affairs and Housing  
777 Bay Street, 13<sup>th</sup> Floor  
Toronto, ON M5G 2E5

Dear Sir/Madam:

**RE: ERO NOTICE #019-0279 – 2019 REVIEW OF PROVINCIAL POLICY STATEMENT ISSUED UNDER THE *PLANNING ACT***

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On behalf of the Canadian Environmental Law Association (CELA), we are writing to provide comments in relation to the proposed changes to the Provincial Policy Statement (PPS) issued under the *Planning Act*.

At the outset, it should be noted that CELA has recently endorsed the comprehensive PPS submission that has been jointly filed under separate cover by various public interest groups, including Ontario Nature, Environmental Defence, and a number of other non-governmental organizations.

Accordingly, the purpose of this supplementary letter is to reiterate and expand upon CELA's concerns about certain aspects of the proposed PPS, and to raise additional issues that are not addressed in the groups' joint brief.

In the Environmental Registry notice<sup>1</sup> for the proposed PPS, the Ontario government states that PPS changes are being proposed in order to:

- encourage the development of an increased mix and supply of housing;
- protect the environment and public safety;
- reduce barriers and costs for development and provide greater predictability;
- support rural, northern and Indigenous communities; and
- support the economy and job creation.

However, CELA's assessment of the proposed PPS reveals that the proposed policy changes are unlikely to achieve all of these intended outcomes.

For example, as outlined below, CELA concludes that the new and amended policies in the proposed PPS will unfortunately facilitate – not lessen – inappropriate urban sprawl by:

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<sup>1</sup> See <https://ero.ontario.ca/notice/019-0279>.

- expediting residential development and reducing perceived barriers to new construction;
- giving even greater (and inappropriate) priority to new or expanded aggregate operations, even in ecologically sensitive areas;
- undermining already weak PPS policies aimed at protecting natural resources and farmland throughout Ontario; and
- failing to restrict urban growth in proximity to existing nuclear power plants in Ontario.

In addition, the Ontario government's proposal does not remedy long-standing systemic problems in interpreting and applying the PPS in land use planning disputes where two or more competing policies are triggered by a site-specific development application (e.g. preservation of prime agricultural lands vs. aggregate extraction). In addition, the proposed PPS fails to include adequate requirements regarding the monitoring of, and reporting upon, the implementation of PPS policies throughout Ontario.

CELA therefore recommends that the proposed PPS policies should not proceed in their current form, and they should instead be withdrawn, deleted or substantially re-written so that they are clearly consistent with the overarching provincial vision entrenched in the proposed PPS:

The long-term prosperity and social well-being of Ontario depends upon planning for strong, sustainable and resilient communities for people of all ages, a clean and healthy environment, and a strong and competitive economy (page 6).

## **PART I – CELA'S BACKGROUND**

CELA is an environmental public interest law group founded in 1970 for the purposes of using and enhancing laws to protect the environment and safeguard human health. For almost 50 years, CELA lawyers have represented low-income and vulnerable communities in the courts and before tribunals on a wide variety of environmental issues.

Since our inception, CELA's casework, law reform and public outreach activities have included work on behalf of client communities on land use planning matters at the provincial, regional and local levels in Ontario.

For example, CELA lawyers represent clients involved in appeals under the *Planning Act* in relation to official plans, zoning by-laws, subdivision plans and other planning instruments. In some cases, CELA clients are the appellants, while in other cases, CELA clients are added by the Local Planning Appeal Tribunal (formerly the Ontario Municipal Board (OMB)) as parties or participants in response to appeals brought by other persons or corporations.

CELA's land use cases typically involve new or expanded residential, commercial or industrial development in eastern, south-western, central and northern Ontario. The overall objectives of CELA's clients in these hearings include: conserving water resources and sources of drinking water; protecting local air quality and ecosystem features and functions; preserving prime

agricultural lands; safeguarding public health and safety; and ensuring strong public participation toward good land use planning and decision making across Ontario.

In some of CELA's quarry cases, the public hearings also include matters under the *Aggregate Resources Act* upon referral by the Ministry of Natural Resources and Forestry. Similarly, CELA has represented clients in landfill hearings before the Joint Board pursuant to the *Consolidated Hearings Act*. Moreover, as a founding member of the Coalition on the Niagara Escarpment, CELA has a lengthy history of involvement in proceedings under the *Niagara Escarpment Planning and Development Act*, including representing clients in appeal hearings held by the Niagara Escarpment Hearing Office

In addition to the above-noted casework, CELA continues to participate in broader provincial planning and law reform initiatives, such as the previous reviews of the *Planning Act*, PPS, OMB, and major provincial land use plans (e.g. Niagara Escarpment Plan, Oak Ridges Moraine Conservation Plan, Greenbelt Plan, and Growth Plan for the Greater Golden Horseshoe).<sup>2</sup> Similarly, CELA lawyers have appeared before the Standing Committee on General Government and made submissions in relation to the previous review of the *Aggregate Resources Act*.

On the basis of our decades-long experience in land use planning matters throughout Ontario, CELA has carefully considered the proposed 2019 PPS from the public interest perspective of our client communities. Our findings, conclusions and recommendations are set out below.

## **PART II – CELA COMMENTS ON THE 2019 PPS**

### **(a) Need to Delete New Policies that will Facilitate More Sprawl**

CELA remains highly concerned about several new PPS policies that are likely to move Ontario away from achieving complete, compact and climate-resilient communities.

For example, the new PPS proposes to significantly increase the planning time horizon from 20 years to 25 years (Policy 1.1.2), and the housing land supply requirement from 10 years to 12 years (Policy 1.4.1). However, the province's underlying rationale for these increases (e.g. an apparent lack of serviced land available for development) is not supported by any empirical data presented by the Ontario government as part of the PPS review.

To the contrary, this rationale was refuted on the evidence by the Neptis Foundation, which reported in 2017 that for the Greater Golden Horseshoe area:

The total unbuilt supply of land to accommodate housing and employment to 2031 and beyond now stands at almost 125,600 hectares.

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<sup>2</sup> CELA's numerous briefs, submissions and backgrounders on land use planning in Ontario are available on the CELA website: <http://www.cela.ca/collections/land/land-use-planning-ontario>.

Most of that land is in the Designated Greenfield Area contiguous to existing built up urban areas, where full municipal water and wastewater servicing is available or planned (page 8).<sup>3</sup>

Moreover, important new terms – such as “market-based” and “market demand” – are introduced in the proposed PPS without supporting definitions or explanations, including the description of residential types (Policy 1.1.1), conditions for expansion of settlement area boundaries at the time of comprehensive review (Policy 1.1.3.8), description of housing options (Policy 1.4.3), and the description of long-term prosperity (Policy 1.7.1).

CELA is concerned that without detailed and appropriate provincial guidance on how to interpret and apply these terms, past market conditions and trends that resulted in sprawl will continue to be fostered by planning authorities, and will likely result in yet more sprawl (and less affordable housing). In our view, rather than pursuing or entrenching market trends that ushered in sprawl, a new planning approach to housing development should be developed in Ontario in order to create the complete, compact and climate-resilient communities that are required now and in the foreseeable future.

On this point, CELA concludes that the 2019 PPS must not utilize proposed permissive words instead of the mandatory language currently used to describe planning authorities’ obligation to ensure appropriate development forms. For example, the proposed PPS states that new development “should” (not “shall”) have a compact and efficient form (Policy 1.1.3.6), that phasing policies “should” (not “shall”) establish phasing policies to ensure orderly development (Policy 1.1.3.7), and “should” (not “shall”) use existing/proposed infrastructure (Policy 1.6.7.2.). In our view, based on the history of land use decisions under prior versions of the PPS, rolling back (or eliminating) the PPS’s current prescriptive requirements in this manner virtually guarantees that these important planning outcomes will not be achieved adequately or at all across the province.

Similarly, the proposed PPS adds a new policy that will allow changes to settlement area boundaries in the absence of a comprehensive review by the municipality (Policy 1.1.3.9). CELA submits that this proposal runs counter to the need to design communities in an orderly and compact manner, and it risks piecemeal development that is directly contrary to the PPS’s overall vision for land use planning in the public interest, as noted above.

CELA further notes that the new PPS proposes significant changes to the municipal servicing “hierarchy”, which create much greater flexibility (and less accountability) in allowing the use private and on-site services in planning for sewage and water services (Policies 1.6.6.1, 1.6.6.4, and 1.6.6.5). Although the proposed PPS confirms that municipal services remain the “preferred form of servicing” (Policy 1.6.6.2), these changes empower planning authorities to approve the use of other on-site servicing when municipal services are “not available, planned or feasible.”

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<sup>3</sup> This report is available at: [https://www.neptis.org/sites/default/files/land\\_supply\\_briefs\\_2016/an\\_update\\_on\\_the\\_total\\_land\\_supply\\_even\\_more\\_land\\_available\\_for\\_homes\\_and\\_jobs\\_in\\_the\\_ggh.pdf](https://www.neptis.org/sites/default/files/land_supply_briefs_2016/an_update_on_the_total_land_supply_even_more_land_available_for_homes_and_jobs_in_the_ggh.pdf).

CELA submits that opening the door to more – not less – privately serviced lot development appears to be inconsistent with good planning principles, particularly in areas that are hydrogeologically unsuitable for private on-site services.

**RECOMMENDATION #1: The numerous new development policies proposed throughout Policy 1.1 of the 2019 PPS must be deleted.**

*(b) Need for Fundamental Reform of Mineral Aggregate Policies*

Alarming, the proposed PPS leaves most of the current aggregate extraction policies (e.g. Policy 2.5) largely intact. In CELA’s view, this means that new or expanded aggregate operations will still receive inappropriate priority under the PPS (e.g. with no requirement to consider “need” for new or expanded aggregate supply; continued inappropriate permitting of aggregate extraction on prime agricultural land; the unnecessary requirement of “close to market” siting, etc.).

At the same time, the Ontario government is proposing a new clause in Policy 2.5.2.2 as follows:

Outside of the Greenbelt Area, extraction may be considered in the natural heritage features listed in 2.1.5, 2.1.6 and 2.1.7, provided that the long-term rehabilitation can demonstrate no negative impacts upon on the natural features or their ecological functions (page 34).

In CELA’s view, this new policy constitutes one of the most objectionable and inappropriate aspects of the proposed PPS for several reasons.

First, CELA notes that the types of natural heritage features that would be potentially vulnerable to aggregate operations include: certain **significant** wetlands, woodlands, valleylands, wildlife habitat and coastal wetlands [2.1.5]; fish habitat [2.1.6]; and habitat of endangered/threatened species [2.1.7]. CELA submits that these are precisely the types of natural heritage features that should be off-limits to aggregate extraction in light of the invaluable ecological services and socio-economic benefits provided by these features. This is particularly true since these types of features are generally unable to be fully restored once physically impacted, altered or destroyed (e.g. by sizeable bedrock removal, interference with groundwater flow systems, etc.).

Second, CELA notes that the provincial government has presented no compelling evidence demonstrating that it is now necessary to facilitate more aggregate operations in these environmentally sensitive features. To our knowledge, there is no credible data suggesting that these features must be opened up to aggregate operations because proponents have been unable to access and extract aggregate deposits elsewhere across the province. As noted above, aggregate extraction has enjoyed preferential treatment under the PPS for decades, and there is no evidentiary support for the proposition that proponents have found it impossible to establish pits and quarries outside of significant natural heritage features.

Third, CELA observes that the new Policy vaguely stipulates that proponents must demonstrate that the planned “long-term rehabilitation” will not adversely affect the above-noted natural heritage features/functions. In our view, this questionable requirement falls well short of satisfactorily protecting these extremely important ecosystem features and systems. As noted in

the 2017 report of Ontario's former Environmental Commissioner, the complete rehabilitation of pits and quarries has frequently been non-existent or of poor quality across Ontario, and the local landscape is rarely returned to its original form.<sup>4</sup> In addition, given the malleable nature of rehabilitation plans, CELA submits that there is no long-term certainty that restoration measures (and site after-uses) promised by proponents will actually materialize once the pit or quarry is closed years or decades into the future.

Fourth, CELA is concerned that permitting aggregate extraction within natural heritage features outside the Greenbelt Area inadvertently creates an inequitable two-tiered planning regime in Ontario. On this point, it should be noted that CELA continues to strongly support effective and enforceable protection of the Greenbelt Area. However, it does not necessarily follow that other non-Greenbelt areas of the province (and the residents therein) should now become increasingly exposed to the significant risks and well-documented impacts of aggregate operations in natural heritage features.

For these and other reasons, CELA submits that new Policy 2.5.2.2 does not represent sound land use planning, and it therefore must be deleted from the proposed PPS.

**RECOMMENDATION #2: The new Policy 2.5.2.2 must be deleted from the proposed PPS.**

Another new clause has been proposed in Policy 2.5.2.4 in relation to excavation depths in pits and quarries:

Where the *Aggregate Resources Act* applies, processes under the *Aggregate Resources Act* shall address the depth of extraction of new or existing mineral aggregate operations (page 35).

In CELA's experience, this new policy, on its face, appears duplicative and unnecessary since the elevation of quarry lifts and the final quarry floor are typically addressed in site plans and other documentation filed under the *Aggregate Resources Act*.

If, however, this new PPS clause is intended by the provincial government to prevent municipalities from protecting groundwater by addressing excavation depths under the *Planning Act* (e.g. through official plans and zoning-by-laws), then CELA strongly objects on the grounds that municipalities should remain free to do exactly what the PPS requires them to do: safeguard the quantity/quality of water resources and protect hydrologic functions (Policy 2.2). In our view, if municipalities have cogent, site-specific hydrogeological evidence demonstrating the need to restrict excavation depths in order to protect groundwater and surface water, then they should be able to do so, subject only to an appeal to the Local Planning Appeal Tribunal (LPAT) under the *Planning Act*.

**RECOMMENDATION #3: The new Policy 2.5.2.4 must be deleted from the proposed PPS.**

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<sup>4</sup> ECO, *Good Choices, Bad Choices: 2017 Environmental Protection Report*, Chapter 5, online: <https://docs.assets.eco.on.ca/reports/environmental-protection/2017/Good-Choices-Bad-Choices.pdf>.

Even if the two above-noted deletions are made to the proposed PPS, CELA remains highly concerned about the mineral aggregate policies that are being left unchanged. For example, CELA maintains that a number of PPS revisions are required in relation to aggregate extraction, including the following:

- proponents should be required by the PPS to demonstrate the "need" or justification (including demand/supply analysis) for new or expanded aggregate extraction at the proposed location;
- in addressing the question of alleged "need," the PPS should direct planning authorities to consider the availability of mineral aggregate resources both locally and outside the municipality;
- Policy 2.5.2.3 should be amended to establish clear quantified targets and clear deadlines/timelines for achieving aggregate conservation and recycling in order to minimize the need to extract and process "new" aggregate; and
- Policies 2.5.3.1 and 2.4.4.1 should be amended to delete the misleading term "interim use" because it fails to correctly characterize the long-term nature of environmental impacts arising from aggregate extraction, particularly below the water table.

In CELA's view, these and other planning reforms are long overdue, and we submit that the Ontario government should undertake a focused public review of the PPS's aggregate policies, perhaps in conjunction with the concurrent provincial review of the *Aggregate Resources Act* itself. CELA's additional recommendations regarding the regulation of aggregate operations will be provided to the Ontario government under separate cover in relation to ERO #019-0556.

**RECOMMENDATION #4: The Ontario government should immediately undertake a focused public review to reconsider and revise the current mineral aggregate policies in the PPS. Consideration should be given to conducting such a review in conjunction with the ongoing public consultations on the *Aggregate Resources Act*.**

*(c) Need to Enhance Protection of Natural Heritage*

In general, the proposed PPS does not contain any new policies that strengthen or improve the protection of the natural heritage matters addressed in Section 2.0 of the PPS. To the contrary, some new policy proposals (if adopted) will serve to undermine already weak protections in the PPS regarding natural heritage, as described above. In this regard, CELA concludes that the current review of the PPS represents a missed opportunity to enhance the efficacy of provincial planning directions in order to safeguard these resources from depletion or degradation.

For example, the proposed PPS contains a new policy stating that municipalities "may" protect non-significant wetlands in southern and northern Ontario, but only in accordance with guidelines issued by the province (Policy 2.1.10). To our knowledge, no new guidelines have been released by the province to enable stakeholders to better understand the nature and scope of this new policy direction. In addition, we remain concerned that under this optional approach, unevaluated wetlands (which may be significant if assessed) may nevertheless be lost if municipalities fail or refuse to exercise their discretion in a timely manner.

More importantly, CELA submits that this sparse new policy is insufficient and unacceptable from the public interest perspective, particularly given the extensive loss of wetlands south and east of the Canadian Shield, with historic losses exceeding 90% in some areas. While the current PPS may have slowed down – but not reversed – the rate of wetlands loss, it does not require “net gain” of lost or degraded wetland area/function. Accordingly, CELA submits that the PPS should be further revised to ensure that all remaining wetlands (and their ecological functions) south and north of Ecoregions 5E, 6E and 7E are identified, evaluated and protected against development and site alteration. Similarly, all coastal wetlands must be protected in Ecoregions 5E, 6E and 7E.

Similarly, no new substantive policies on water are set out in the proposed PPS, except for some language that directs planning authorities to “evaluate” and “prepare for” the “impacts of a changing climate on water resource systems at a watershed level” (Policy 2.2.1.c). In CELA’s view, this imposes no meaningful direction for planning authorities, and it is unclear how this policy will be effectively implemented on the ground in light of recently passed and pending changes to the role, function and funding of conservation authorities in Ontario.<sup>5</sup>

In addition, the proposed PPS definition of “impacts of a changing climate” fails to acknowledge any specific adverse effects upon Ontarians or the environment, and instead predicts that “opportunities” will arise from changes in weather patterns at the local and regional levels. Given the current climate emergency faced by Ontario municipalities and their inhabitants, this definition (and other climate-related policy) needs to be re-drafted in the PPS in order to:

- reflect the urgency and seriousness of climate change impacts (not just undefined “consequences”); and
- provide sufficiently detailed planning direction to land use decision-makers on not only climate change adaptation but also mitigation (e.g. transportation planning and development patterns that reduce greenhouse gas emissions).

We further note that aside from including the new phrase “impacts of a changing climate,” the proposed PPS makes no substantive changes to policies in relation to natural hazards (Policy 3.1). However, the PPS indicates that such policies are currently being reviewed by the province’s Special Advisor on flooding, and are therefore subject to change. CELA reserves the right to submit comments to the Ontario government on this topic in the event that further hazard-related changes are proposed in the future. In addition, it goes without saying that such changes must be web-posted on the Environmental Registry and subject to meaningful public notice/comment opportunities.

In relation to human-made hazards, the proposed PPS simply adds a new policy directing planning authorities to support, “where feasible, on-site and local re-use of excess soil through planning and development approvals while protecting human health and the environment.” (Policy 3.2.3). In principle, CELA agrees that clean soil is a valuable and potentially reusable resource that should not be needlessly sent to fill sites or waste disposal sites.

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<sup>5</sup> See, for example, CELA’s comments on the Bill 108 (Schedule 2) changes to the *Conservation Authorities Act*, online: <https://www.cela.ca/submission-re-bill-108>.

In practice, however, it is both necessary and desirable for planning authorities to require all necessary steps (e.g. credible sampling/analysis by qualified persons) to ensure that soil slated for re-use is uncontaminated and suitable for the intended on-site or off-site application. In this regard, CELA is concerned that the proposed soil policy fails to provide sufficient particulars to municipalities (as well as generators, handlers or receivers of excess soil) about how this provincial interest should be addressed at the local level in order to prevent adverse environmental, human health and nuisance impacts. In addition, it is unclear to CELA whether – or to what extent – this one-sentence policy accords with the province’s detailed brownfields regulations and excess soil management regime administered by the Ministry of the Environment, Conservation and Parks.

**RECOMMENDATION #5: The Ontario government must take all necessary steps to expand, strengthen and improve PPS policies in relation to: (i) natural heritage features/functions (particularly in the context of wetlands protection); (ii) the significant environmental, social and economic effects of climate change upon Ontario and its residents; and (iii) characterizing, managing and re-using excess soil in a manner that prevents adverse environmental, human health and nuisance impacts.**

*(e) Need to Address Nuclear Emergency Response and Preparedness*

CELA notes that the Environmental Registry notice for the PPS review states that “the government is proposing changes to the Provincial Policy Statement to help increase the supply of housing, support jobs and reduce barriers and costs in the land use planning system.”<sup>6</sup> Among the aims of the province’s “More Homes, More Choice: Ontario’s Housing Supply Action Plan” (Action Plan) is the advancement of the health and safety of Ontarians, providing healthy communities, and protecting human health.<sup>7</sup>

However, the proposed PPS lacks any specific policies aimed at the protection of public health and safety for Ontarians living around the Pickering, Darlington and Bruce nuclear generating stations (NGS). CELA has a lengthy history reviewing the sufficiency of emergency preparedness in the context of nuclear power plants and has been actively involved in discussions and consultations regarding the Province of Ontario’s recently revised Provincial Nuclear Emergency Response Plan (PNERP).<sup>8</sup> We frequently intervene in licensing matters before the Canadian Nuclear Safety Commission (CNSC), as well as the federal environmental assessment proceedings relating to the sufficiency of emergency preparedness and planning.<sup>9</sup>

CELA has four main concerns about the proposed PPS’s consideration of land use planning around Ontario’s existing nuclear power plants.

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<sup>6</sup> *Supra*, note 1.

<sup>7</sup> Ontario’s Housing Supply Action Plan (2019), p 8, 9, and 12, online: <https://www.ontario.ca/page/more-homes-more-choice-ontarios-housing-supply-action-plan>.

<sup>8</sup> CELA, “Re: Discussion Paper on Planning Basis Review and Recommendations and List of Proposed Changes to the PNERP 2009” (28 July 2017), online: <http://www.cela.ca/sites/cela.ca/files/EmergencyPlg.pdf>

<sup>9</sup> See: Canadian Environmental Law Association, online: <https://www.cela.ca/test-emergency-planning-around-canadian-nuclear-plants>

First, CELA is concerned by the current paucity of land use planning requirements which limit growth around Ontario's existing nuclear power plants, and submits that the PPS is an important tool that can be used to help ensure the health and safety of the public and the environment in the event of an off-site radiological release. Despite nearly five million people living within 50 kilometres of the Pickering Nuclear Generating Station (which is one of the world's largest nuclear facilities<sup>10</sup>), the proposed PPS fails to remedy a considerable gap in Ontario's land use planning framework, in that it only applies to new nuclear reactors and not those currently in operation.<sup>11</sup> In our view, it is inherently risky to operate a nuclear generating station in a high-density area. Thus, CELA submits that local land use planning decisions must be commensurate with the complexity of emergency response measures necessary to alert, evacuate and distribute potassium-iodide (KI) in a populous area in the event of an emergency.

Second, CELA submits that the proposed changes to the PPS should consider potential effects on the efficacy of emergency planning measures, such as evacuation, capacity of Emergency Workers Centres and number of emergency workers, traffic routes, size of evacuation centres, and locations and capacity for decontamination and monitoring.

**RECOMMENDATION #6: The PPS should ensure that land use planning decisions are commensurate with the complexity of emergency response measures necessary to alert, evacuate and distribute potassium-iodide (KI) in a populous area in the event of an emergency. The Ontario government should review the impact of any changes to the PPS and accompanying Growth Plans on the efficacy of emergency planning measures, such as evacuation, the capacity of Emergency Workers Centers and number of emergency workers, traffic routes, size of evacuation centres, and locations and capacity for decontamination and monitoring.**

Third, CELA submits that the PPS should have stronger policies that prevent or avoid land use planning decisions which threaten public health and safety. Currently, the PPS requires avoiding development which may cause public health and safety concerns (Policy 1.1.1.c) and indicates that development shall be directed away from areas with human-made hazards where there is an unacceptable risk to public health and safety and not create new or aggravate existing hazards (Policy 3.0). In accordance with a 2017 update to the PNERP, the planning zones surrounding Ontario's nuclear power plants are:

- Automatic Action Zone (AAZ): 3 km
- Detailed Planning Zone (DPZ): 10 km
- Contingency Planning Zone (CPZ): 20 km

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<sup>10</sup> Office of the Auditor General of Ontario, (2017). "Emergency Management in Ontario," online: [http://www.auditor.on.ca/en/content/annualreports/arreports/en17/v1\\_304en17.pdf](http://www.auditor.on.ca/en/content/annualreports/arreports/en17/v1_304en17.pdf), p 224; "Pickering Nuclear" 2018, online: <https://www.opg.com/generating-power/nuclear/stations/pickering-nuclear/Pages/pickering-nuclear.aspx>

<sup>11</sup> CNSC, "Transcript, Public Hearing, June 29, 2019" online: <https://nuclearsafety.gc.ca/eng/the-commission/pdf/FinalTranscript-OPG-Pickering-Hearing-June29-2018.pdf>, p 198.

- Ingestion Planning Zone (IPZ): 50 km<sup>12</sup>

Upon this basis, CELA submits that the PPS should require provincial and municipal decision-makers to consider the implications for nuclear emergency management and planning in the event that increases to population density in the detailed planning (0-10km) and contingency planning zones (10-20km) are proposed. Accordingly, the PPS should be used to limit the use and occupation of land within 20 km of the Bruce, Pickering and Darlington nuclear power plants, thereby ensuring the maintenance of safety margins for the fifth level of Defence in Depth by preventing the intensification and development of residential dwellings.

**RECOMMENDATION #7: The PPS should direct provincial and municipal decision-makers to limit the use and occupation of land within 20 km of the Bruce, Pickering and Darlington nuclear power plants, thereby ensuring the maintenance of safety margins for the fifth level of Defence in Depth by preventing the intensification and development of residential dwellings.**

Fourth, as a matter of shared provincial-federal jurisdiction, the Ontario government must consider the safety of citizens living in the vicinity of the province's nuclear power plants. Emergency response planning and preparedness is multi-faceted and requires cooperation between the regulator, provincial authorities and licensee. Indeed, Canada's nuclear safety regulator, the Canadian Nuclear Safety Commission ("CNSC") has stated that emergency preparedness should be a "major consideration" during land use planning. As the CNSC held in its 2018 relicensing decision for the Pickering nuclear generation station:

Ensuring adequate emergency response measures is directly tied to population density. In the context of the CNSC's mandate of ensuring the health and safety of persons, the Commission encourages the Province of Ontario to examine the concerns submitted by intervenors for this hearing and to take into consideration zoning and population intensification in the vicinity of the PNGS. The Commission recommends that emergency preparedness be a major consideration during any population density intensification planning near existing NGSs.<sup>13</sup>

In the event of a radiological emergency, the Province of Ontario's encouragement of population growth in the vicinity of an NGS could have severe, negative and repercussive effects on public safety. Thus, for any proposed population intensification, the PPS must demonstrate how emergency preparedness is a "major consideration." We further request that the PNERP Technical Study, which sought to assess impacts of weather and topographical features on dose projection modelling in the event of an off-site release, be publicly released in full.

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<sup>12</sup> Ontario, "Provincial Nuclear Emergency Response Plan, Master Plan 2017" online: [https://www.emergencymanagementontario.ca/english/emcommunity/response\\_resources/plans/provincial\\_nuclear\\_emergency\\_response\\_plan.html](https://www.emergencymanagementontario.ca/english/emcommunity/response_resources/plans/provincial_nuclear_emergency_response_plan.html) at 2.2.6.

<sup>13</sup> Canadian Nuclear Safety Commission, "Record of Decision In the Matter of Ontario Power Generation Inc. Application to Renew the Nuclear Power Reactor Operating Licence for the Pickering Nuclear Generating Station," (20 December 2018), para 544.

**RECOMMENDATION #8: In line with the direction of the Canadian Nuclear Safety Commission, the PPS must demonstrate how emergency preparedness was a “major consideration” in any population density intensification planning near existing nuclear power plants. We request this be supported by empirical data, namely the PNERP Technical Study which should be released in full and made publicly available.**

*(f) Need to Address Outstanding Implementation Issues*

CELA has two main concerns in relation to the implementation of the proposed PPS: (i) the need for an explicit paramouncy clause to resolve operative conflicts between and among different policies; and (ii) the need for improved PPS monitoring and reporting, particularly in relation to cumulative effects.

First, like its predecessors, the proposed PPS indicates that all applicable policies should be considered simultaneously by decision-makers when making land use planning determinations (page 3). However, in our experience, the aim, scope and complexity of the disparate policies within the PPS often makes it exceedingly difficult to follow this generic direction, particularly if a planning matter involves competing or conflicting policies.

Accordingly, CELA concludes that the proposed PPS should provide more explicit guidance to decision-makers on how to resolve planning matters where conflicting/competing policies are applicable. In particular, CELA recommends that the following conflict resolution mechanism should be inserted into Part III of the PPS:

None of the policies of the Provincial Policy Statement are to be read in isolation from each other. In situations where there is an actual or potential conflict with respect to a matter relating to the natural environment or human health, the policy that provides more protection to the natural environment and/or human health shall prevail.

On this point, CELA notes that some provincial statutes include similar paramouncy provisions that prioritize protective requirements in cases of conflict,<sup>14</sup> and we submit that such provisions are long overdue in the PPS.

**RECOMMENDATION #9: The proposed PPS should be amended to include a conflict resolution provision stipulating that in cases of conflict, decision-makers shall prioritize and apply policies that protect the environment and human health.**

Second, since municipalities are primarily tasked with PPS implementation (e.g. primarily through official plans), CELA submits that it is incumbent upon the provincial government to closely monitor and report upon implementation results and trends at the local, regional and provincial scale. This is particularly true in relation to the cumulative effects of land use decisions since it is critical to collect, assess and consider data on the combined or additive effects of development (e.g. air quality, water quantity, natural heritage features/functions, etc.), especially in geographic areas or regions experiencing rapid growth or considerable development pressure.

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<sup>14</sup> See, for example, section 105 of the *Clean Water Act, 2006*, online: <https://www.ontario.ca/laws/statute/06c22>.

Accordingly, CELA recommends that the proposed PPS should contain an addendum or schedule that sets out measurable targets, concise monitoring requirements and clear reporting deadlines so that the provincial government, municipalities, stakeholders and Ontarians can better track whether the PPS is actually achieving its public interest purposes, or whether further changes are required in the next iteration of the PPS.

**RECOMMENDATION #10: The proposed PPS should be amended to include effective monitoring and reporting requirements in relation to policy implementation data and trends, particularly in relation to the cumulative environmental impacts of land use planning decisions.**

### **PART III – CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS**

For the foregoing reasons, CELA submits that the 2019 PPS contains a number of problematic new policies that are inconsistent with the public interest vision of the PPS. In our view, these policies should not proceed in their current form, and they must therefore be withdrawn, deleted or substantially re-written with full public input.

Accordingly, CELA makes the following recommendations in relation to the proposed PPS:

**RECOMMENDATION #1: The numerous new development policies proposed throughout Policy 1.1 of the 2019 PPS must be deleted.**

**RECOMMENDATION #2: The new Policy 2.5.2.2 must be deleted from the proposed PPS.**

**RECOMMENDATION #3: The new Policy 2.5.2.4 must be deleted from the proposed PPS.**

**RECOMMENDATION #4: The Ontario government should immediately undertake a focused public review to reconsider and revise the current mineral aggregate policies in the PPS. Consideration should be given to conducting such a review in conjunction with the ongoing public consultations on the *Aggregate Resources Act*.**

**RECOMMENDATION #5: The Ontario government must take all necessary steps to expand, strengthen and improve PPS policies in relation to: (i) natural heritage features/functions (particularly in the context of wetlands protection); (ii) the significant environmental, social and economic effects of climate change upon Ontario and its residents; and (iii) characterizing, managing and re-using excess soil in a manner that prevents adverse environmental, human health and nuisance impacts.**

**RECOMMENDATION #6: The PPS should ensure that land use planning decisions are commensurate with the complexity of emergency response measures necessary to alert, evacuate and distribute potassium-iodide (KI) in a populous area in the event of an emergency. The Ontario government should review the impact of any changes to the PPS and accompanying Growth Plans on the efficacy of emergency planning measures, such as evacuation, the capacity of Emergency Workers Centers and number of emergency workers,**

**traffic routes, size of evacuation centres, and locations and capacity for decontamination and monitoring.**

**RECOMMENDATION #7: The PPS should direct provincial and municipal decision-makers to limit the use and occupation of land within 20 km of the Bruce, Pickering and Darlington nuclear power plants, thereby ensuring the maintenance of safety margins for the fifth level of Defence in Depth by preventing the intensification and development of residential dwellings.**

**RECOMMENDATION #8: In line with the direction of the Canadian Nuclear Safety Commission, the PPS must demonstrate how emergency preparedness was a “major consideration” in any population density intensification planning near existing nuclear power plants. We request this be supported by empirical data, namely the PNERP Technical Study which should be released in full and made publicly available.**

**RECOMMENDATION #9: The proposed PPS should be amended to include a conflict resolution provision stipulating that in cases of conflict, decision-makers shall prioritize and apply policies that protect the environment and human health.**

**RECOMMENDATION #10: The proposed PPS should be amended to include effective monitoring and reporting requirements in relation to policy implementation data and trends, particularly in relation to the cumulative environmental impacts of land use planning decisions.**

We trust that CELA’s recommendations will be duly considered and acted upon by the Ontario government as it continues the public review of the proposed PPS.

Please contact the undersigned if you have any questions arising from this submission.

Yours truly,

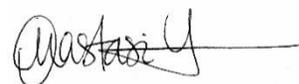
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