

COMMUNITIES, CULTURAL AFFAIRS & LABOUR
GOVERNMENT OF PRINCE EDWARD ISLAND

LAND AND LOCAL GOVERNANCE

A WHITE PAPER ON GOVERNANCE AND
LAND USE IN PRINCE EDWARD ISLAND

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WHITE PAPER ON GOVERNANCE AND LAND USE

EXECUTIVE SUMMARY

1) INTRODUCTION

It is nearly impossible to talk about land in Prince Edward Island without also talking about municipalities. The oft-quoted description of local government as being the closest to the people applies in some ways equally to the land aspects of community – our communities are intimately aware of the relationship between the people and land use changes over time. The reverse is also true; it is difficult to speak of municipalities without touching on questions of land. That being said, to resolve land use issues without also examining the role of the unincorporated areas would be to respond to only one piece of the puzzle. For that reason – and since response has become increasingly urgent – any attempt to develop solutions to current challenges must necessarily acknowledge and take into consideration the inter-related nature of land use, local governments, unincorporated areas, and the Province.

2) CURRENT SITUATION

Prince Edward Island is a patchwork of systems in more ways than one. With a population of about 139,000, PEI has:

- 35 fire departments
- 26 sewer and/or water utilities
- 32 jurisdictions issuing building permits, including the Province
- 8 municipalities with responsibility for their own road and highway system (roughly 11%)
- 11 municipalities with responsibility for police services (roughly 15%)
- 10 percent of the Island's land mass covered by a municipal official plan; the remaining 90 percent falls under the jurisdiction of the Province and a general set of land use regulations.
- 30 percent of the Island's land mass incorporated as with local governments, taking into account approximately 70 percent of the province's population. The seventy-five municipalities range in population from 77 to 32,174 people (2006 Census).

Added to this mix are complex layers of community development areas, incorporated community development groups, economic development districts, school boards, health districts, and watersheds, along with all other components of governance from the Provincial level, including a network of 'regional communities of interest' under the Community Development Bureau system.

Moreover, the layers of political representation in Prince Edward Island contribute to the complexity of jurisdictional discussions:

- 4 members are elected to represent Islanders federally (34,740 people / elected official)
- 27 members are elected provincially to represent the interests of Islanders (5,148 people / elected official)
- 26 School Board Trustees are elected to represent the Island's education interests (5,346 people / elected official)
- 476 council members are elected to represent 70% of the Island's population, residing in 30% of the Island's land mass (195 people / elected official).

3) ISSUES

Both local governance and land use in the province have experienced a gradual transformation over the years, with villages and community improvement committees (CICs) shape-shifting into new municipal structures, provincial land-use service centres giving way to an amalgam of municipal and provincial planning jurisdictions, and changes at the national level affecting the roles and legal responsibilities of municipal bodies. Unfortunately, legislation, planning structures, funding structures, boundaries, and local capacity have not necessarily kept pace with changing realities on the ground, with the noted exception of large steps towards realignment in the mid-1990s with the amalgamations in the Charlottetown and Summerside areas.

A review of municipal legislation completed in 2005 identified, through more than 129 recommendations, a range of weaknesses in the existing framework. The modernization of the legislation is now intended to go hand in hand with the implementation of findings and recommendations from the Commissioner process.

4) OBJECTIVES

Government has signaled a desire to move towards a system of local governance and land use practice that is effective, adequately funded, and appropriately organized. Such a new system would take into account efficiencies of scale, resources and capacity at the local level, and any legislative, financial, and human resource tools required to implement any new models.

It is also Government's intent to move towards a system that is built on public consensus, education, shared goals, and regional cooperation.

5) PROCESS

The Province took the first step in moving towards comprehensive improvements when Premier Robert Ghiz announced the forthcoming appointment of a Commissioner of Land and Local Governance in his 2008 Throne Speech. This White Paper represents the second step; identifying the situation and setting the stage for the Commissioner's work. The appointment of the Commissioner and the commencement of his/her work will then take place over a period of twelve months, culminating in a report and suggested action plans for implementing changes. After the submission of the report will come a period of internal review of the recommendations, planning for change, consultation, amendment of legislation, possible restructuring, and a strengthening of the Island as a mosaic of communities.

6) CONCLUSION

Municipal and land use reform appears to follow cycles, with greater or lesser degrees of change at any given point. It is time once again to take a comprehensive look at the structures that govern the day to day life of Island residents, guide our local municipal officials, and direct our use of the land.

BACKGROUND

1) HISTORY

The announcement in the 2008 Speech from the Throne of a Commissioner of Land and Local Governance is by no means the first announcement of a provincial study on the question of municipal structures and/or land use. Indeed, the Commissioner will have access to a rich library of documents and recommended action plans, many of which remain just as (if not more) timely and relevant as they did when they were first released.

The complexity of the current land use and governance frameworks, and the potential for opposition to modernization strategies, has meant that implementation of previous reform efforts has been limited and incomplete.

Previous reports:

- the 1973 Royal Commission on Land Use and Land Ownership
- the 1990 Royal Commission on the Land
- the 1997 Roundtable on Resource Land Use
- the 1999 Institute of Island Studies report, *The Geography of Governance*
- 2005 Municipalities Act Review
- the 2007 Rural Governance study conducted by the IRIS Group,
- various internal reports
- annual submissions from the Federation of PEI Municipalities (FPEIM)

2) RECENT EFFORTS

The 2005 Municipalities Act review was the most recent report process to reach its conclusion. There are also a series of annual submissions from FPEIM outlining concerns and priorities from the municipal perspective. Within the broader realm of governance, moreover, a series of reviews are underway, including reviews of water quality, rural development and the future of agriculture. The challenge with the earlier and recent processes is two-fold: firstly, ensuring that the various reviews build on each other and acknowledge overlaps; and secondly, developing action plans that build strongly enough on public education and consensus that the necessary changes are broadly accepted and embraced.

3) MOTIVATING FACTORS

The motivations for examining local governance and land use issues in a comprehensive fashion are not new, but they are increasingly critical. Municipalities are facing ever more complex responsibilities, servicing needs, and expectations from their residents and taxpayers, and are struggling to identify the resources needed to meet those responsibilities, needs, and expectations. Community groups raise concerns over land use practices, fragmentation of the landscape and its impacts on the future of farming and tourism, and lack of local control over land use in areas without official plans. The Province faces continued requests to provide local, municipal-level services, especially in areas without local incorporation.

4) CONCLUSION

There are a variety of ways to respond to land use and governance challenges and concerns. The route most frequently chosen usually involves one-off, isolated, and short-term solutions that ultimately result in greater and far more complex issues down the road. By following a Commissioner process involving a comprehensive, multi-faceted review of the interconnected factors, it is hoped that our municipalities, communities, and our province as a whole, can begin to work towards a new governance and land use system that will bring us into the 21st century.

LAND USE

1) HISTORY OF REVIEWS

The question of land has been reviewed many times. With particular regard to land use, the following reports provided a wide range of insightful observations and targeted recommendations.

- the 1973 Royal Commission on Land Use and Land Ownership
- the 1990 Royal Commission on the Land
- the 1997 Roundtable on Resource Land Use

2) CHALLENGES AND LIMITING FACTORS – PROVINCIAL

The challenges and concerns raised by municipalities and their residents regarding land use should not be read as being limited in effect to the incorporated communities; the long-term impacts on the province as a whole are far-reaching.

Dispersed, scattered and unplanned development and the lack of detailed local area planning in culturally, historically, and naturally sensitive areas have:

- increased the cost of government service delivery, e.g snowplowing, school bussing, health care etc;
- undermined the viability of municipalities and the services they offer;
- countered any trends towards compact siting of services and commercial centres in the various regions;
- undermined climate change initiatives by encouraging greater use of fossil fuels through dispersed development and allowing development in areas that may be prone to storm surges;
- increased the threat to the water supply with dense development of individual wells and septic systems, with no requirements in place to develop on central sewer and water, regardless of population or development density;
- degraded viewsapes with continued development in the most scenic areas of the province, particularly in coastal and waterfront areas, with long-term implications for tourism;
- impaired the province's transportation system through the gradual transformation of roads designed to move goods into largely residential streets;

- increased dependency of the general public on commuter transportation patterns in an economy of rapidly increasing transportation and energy costs;
- promoted the ongoing conversion of prime agricultural land to residential or commercial use; and
- increased urban-rural conflict issues between farmers and their residential neighbors.

3) CHALLENGES AND LIMITING FACTORS – MUNICIPAL

In the late 70's and early 90's, planning responsibilities were systematically transferred to the municipalities. For those areas wishing to have official plans and bylaws, the onus was on the councils and their residents to develop, implement, maintain, and enforce their own planning documents. Not all of the municipalities have been willing or able to do so, and at this point in time, only 10 percent of the Island's land mass is covered by a municipal land use plan. The remaining 90 percent of the Island's land mass is subject only to the basic provincial planning regulations, with limited planning guidance.

Of the 31 municipalities with an official plan, only four have had permanent full-time planning staff, while the remaining municipalities have depended on administrators, councillors, contract consultants, or other individuals to meet their needs. In many cases, municipalities do not have the capacity, resources, or training to properly maintain or enforce their planning systems and many struggle to protect the land controls and priorities of their communities, knowing that abandoning their plan would result in an absence of local involvement in the development of their neighbourhoods.

Municipalities also raise other concerns prompted by the existing land use system:

- limited boundaries and space for growth within some of the municipalities (Montague is one clear example)
- competition between targeted land use regulations (zoning) and the comparatively simple requirements beyond municipal boundaries
- challenges posed by the overlapping of municipal planning and provincial special planning areas
- challenges in rural municipalities both with and without official plans to protect their rural qualities and characteristics in the face of provincial attempts to foster "rural" development.

4) CONCLUSION

Land use changes in all corners of the province will have long term impacts on all residents, business owners, primary resource operators, and visitors to the province. While the relatively slow rate of growth in PEI often lulls us into believing that we don't face the same planning pressures as larger jurisdictions, what we face has been described in the past as a death by a thousand cuts. Ribbon development, dispersed settlement patterns, loss of shore access, environmental degradation, loss of traditional character, viewscape erosion, and incompatible economic development will ultimately lead to undesirable and long lasting negative consequences.

LOCAL GOVERNANCE

1) HISTORY OF REFORM

The most serious challenge facing the municipal sector will depend on who one asks, but can be summarized as a lack of municipal capacity. Generally speaking, the smallest 30 municipalities have no staff, have no bylaws, offer no services other than the purchase of fire services for their residents, and operate on budgets of less than \$50,000 per year.

Given the range of services provided, the resulting fragmentation of traditional municipal services has undermined their efficient delivery, resulting in duplication, under-use of resources, and inconsistency in service standards or charges. Meanwhile, development pressures beyond municipal boundaries have led over time to infrastructure challenges and servicing issues. An initial attempt at municipal reform took place in the early 1990's with the Moase Commission and the resulting amalgamations in the Charlottetown and Summerside areas. While it was intended at the time that the process extend eventually to other areas of the province, the resulting public feedback and perhaps the complexity of negotiations required and an provincial election put the rest of the process on permanent hold.

A further process of reform, this time legislative, was begun with the 2005 *Municipalities Act Review*. During that process, extensive and wide-reaching shortcomings in existing legislation were highlighted; municipalities consider the replacement or modernization of the *Municipalities Act* to be an urgent priority.

2) BOUNDARIES AND LAND MASS

The land mass of municipalities range from 151 acres to 56,740 acres, and several municipalities have noted to the Province that they are restricted in their ability to grow or offer new services by the fact that the majority of land within their boundaries has already been developed. Processes to expand boundaries are similarly restricted by the vastly different conditions in the unincorporated areas, as tax rates, political structures, and in some cases planning regimes, make many reluctant to voluntarily bring their lands into the municipal fold.

3) FUNDING & FINANCIAL MANAGEMENT

Municipalities are funded through the traditional property tax system, as well as a program of equalization transfers and grants from the Province. Property taxes are also collected by the Province in all areas of the province. At the national level, municipalities are lobbying strongly for a new model of financial tools, as their responsibilities increase and extend beyond simple property-related services. Locally, it could be argued that there are varying expectations and understandings as to where responsibilities lie (municipally, provincially) for the various services such as policing, education, transportation, and planning, and what various existing funding sources are intended to cover.

Municipalities also face wide scale differences in fiscal capacity; tax rates range from 0 cents to 85 cents, and budgets range from \$2.7 thousand to \$35.8 million. Municipal literature suggests that a viable municipality should have a minimum tax assessment base of \$50 million dollars and a minimum population of 2,000. Currently, 62 municipalities have a tax assessment base of less than

\$50 million, and 41 of those have a tax assessment of less than \$20 million. Seventy-one municipalities have a population of less than 2,000 and 48 have a population of less than 500.

In this environment of overlapping responsibilities, municipalities remain troubled by their vulnerability to changes in provincial and federal funding and grant programs, and raise further objections to the provincial-municipal split in the collection of property taxes, especially in the case of so-called 'full-service' municipalities, where all property-related services are being provided at the municipal level.

4) CAPACITY & RESOURCES

Petitions by citizens and even members of various councils submitted to the Minister of Communities, Cultural Affairs and Labour have highlighted capacity issues at the municipal level; without strong and effective local government structures, individuals and groups feel bound to turn to the Province to act as an oversight body to what are still seen in some cases as committees comprised of volunteers, rather than governments of elected officials. Concerns range from transparency and accountability to financial management and administrative processes.

Approximately 15 municipalities have full-time staff, another 29 have part-time administrators, and only 25 have employees in addition to their administrators. Many of the part-time administrators offer their services on a volunteer basis. Two municipalities have a water utility, 14 have sewer utilities, and 11 have both water and sewer utilities. Four municipalities have their own police system, and 36 have bylaws of some nature.

5) INCORPORATED / UNINCORPORATED DIVIDE

Submissions to the Province by individual municipalities, as well as the Federation of PEI Municipalities, have referenced strains caused by the relationship between incorporated and unincorporated areas. In many cases, individuals are motivated by lower property tax rates and/or minimal development regulations outside municipal boundaries, knowing that the proximity to an incorporated municipality will guarantee access to services. Many developments are further encouraged by provincial incentives or other financial programs.

Municipalities have been struggling to provide adequate services with small and in some cases decreasing populations, while the areas just beyond their boundaries have continued to grow. In many cases, providing services shared with the neighbouring areas – such as fire protection – have meant added costs for municipal taxpayers. Meanwhile, those located in the unincorporated areas often reject incorporation or proposed annexations as they are unwilling to see their property taxes increase or the regulations around land use, where there is a municipal plan in place, become more complex.

It is in this context that the Federation and individual municipalities have repeatedly expressed concerns about unrestrained development in rural areas placing a significant burden of non-resident demand on services while making no contribution to the revenue base. They argue that the rural, unincorporated areas are in fact highly subsidized, to the detriment of the municipalities. With the dispersed patterns of development in the unincorporated areas, the cost of providing services becomes much higher than can be financed by the Provincial property tax rate, resulting in an invisible subsidy by the property taxes collected from the urban areas. Municipalities and the Federation have also called for municipalities to play a much larger role as important instruments in rural development strategies, in the siting of provincial institutions and facilities, and in negotiations with the Federal government.

Municipal governance is also like to become more complex in the years to come. Changing relationships with first nation communities and on-going legal developments will lead to additional responsibilities for municipalities to take expressed first nation rights into consideration when embarking on new developments.

6) CONCLUSION

While the range of concerns relating to local governance may ultimately exceed the abilities of any single process, especially in light of the scope of the challenges for municipalities nationally, the opportunity to share ideas, document shortcomings in the existing models, and explore alternate models can't help but move governance in PEI towards a more sustainable framework.

SCOPE OF REVIEW

1) THRONE SPEECH COMMITMENTS

- There is a critical link in our province between municipal and land use and development issues. My Government is committed to the progressive future development of our cities, towns and villages, within the framework of compatible provincial policy and regulatory structure.
- My Government will appoint a Commissioner on Land and Local Governance to conduct a comprehensive review of municipal and land use and development issues. This commission will report in 2009.
- The commissioner will also be asked to ensure that recommendations involving changes to responsibilities and expenditures will include recommendations on revenue measures needed to support such changes. Further, the commissioner will be asked to provide an opinion on the impact of unincorporated areas on existing municipal structures.
- My Government wishes to emphasize that any future amalgamation of communities will only follow a mutual recognition of the merits of regional co-operation and integration.

2) BUDGET SPEECH COMMITMENTS

- We have to defeat the temptations of the short-term fix and the instant solution. We understand the dangers and pitfalls of such an approach - and Government will not succumb to those who seek temporary and fleeting relief from challenges that require a deeper and more lasting resolution.
- Instead, Government is carefully and thoughtfully proposing plans meant to benefit our Island well into the future.
- Madame Speaker, we also believe it is time for the Province to take a close look at our Island's municipal framework.
- It has been 25 years since the last province-wide changes to municipal structures on the Island were made. Further, there is a critical link between municipal governance, land use issues and future development.

- For those reasons, a Commissioner on Land and Local Governance will be appointed to conduct a thorough review - including a broad examination of the fairness, equity and transparency of the provincial/municipal financial framework - and is expected to report in 2009.
- While this work is being done, Government understands that improvements must be made to the relationship between the Province and its municipalities.

OBJECTIVES FOR COMMISSIONER PROCESS

1) ANTICIPATED OUTCOMES

At its most basic level, it is anticipated that the Commissioner will review and highlight three components with regards to local governance:

- which services must be provided by municipalities to their citizens;
- which resources are required in order to provide those services, including funds, land base, population base, and assessment base; and
- how those resources will be funded.

The scope of the Commissioner process as laid out in the Speech from the Throne does not extend to a review of the provincial taxation policy. That being said, with the review to include an examination of municipal financing and funding structures, including required expenditures and revenues, there is value in identifying the nature of service responsibilities among the various orders of government, along with the revenue sources used to fund those services. Added complexity is generated by the fact that the Province offers services in some areas that in others are provided by municipalities (ie roads, lights, police, and development control), and other services that in some provinces are deemed to fall within the municipal realm, such as education.

As land is also included in the Commissioner's mandate, it is anticipated that the Commissioner will further review and highlight the following with regards to land use:

- the minimum requirements for land use planning; and
- the preferred models for providing land use planning services.

PROCESS

1) PROCESS FOR COMMISSIONER REVIEW

The Commissioner of Land and Local Governance shall be free to establish his/her own process for the undertaking of the review, including the assignment of research staff.

The review shall include an examination of previous reports and reviews, a broad consultation process with municipalities, community groups and the general public. The final report shall include the identification of potential options or solutions, recommendations, and implementation suggestions associated with each of the potential solutions. Recommendations and findings shall be guided by the quadruple bottom line principles of respect for our social system, our economy, our environment, and our culture.

Upon receipt of the final report from the Commissioner, the Province shall undertake its own review process, which will involve gathering public feedback from the Commissioner's report and an internal review period. After examining the final recommendations and models proposed for consideration in relation to the Province's policy directions, the Province shall provide a formal response and develop final implementation plans for the preferred solutions.

CONCLUSION

1) CONCLUDING REMARKS

The scope of the challenge ahead was well-described in the following words from the 1993 White Paper on Municipal Reform, words which remain true to this day:

“Responsibility for resolving the current shortcomings and inequities rests not with local municipal units, but with the Province. It is the Province which has created and perpetuated antiquated and artificial borders. It is the Province which has created and perpetuated inequities in delivery of municipal services. It is the Province which has, up to now, chosen to ignore the fundamental societal shifts which have dramatically altered urban life as we know it. This has occurred without effectively altering the administrative and statutory environment within which its municipalities must exercise their important local functions.

It is a provincial problem that requires provincial leadership and provincial solutions.”

With careful thought, effective public engagement, and fruitful discussion, however, the challenges can be overcome, and it is with great optimism that the process is now handed over to the Commissioner of Land and Local Governance.

TERMS OF REFERENCE

1) INTRODUCTION

While this White Paper as a whole is intended to set the stage for the review, identifying priorities and naming the problems as they are understood, the terms of reference shall set out more specifically what is anticipated from the process.

2) OBJECTIVES

- The Commissioner shall identify concerns and recommend changes in the areas of the provincial approach to land use planning, municipal structures, and municipal governance, in order to better protect our land and water resources, promote strong and vibrant local governments, and enable the province to respond to issues such as climate change, viewscape protection, and urban-rural conflicts.
- The Commissioner shall develop potential action plans and options which would lead, if adopted by Government, to a new model of land use planning for the province within the next 5-7 years, and recommendations on possible future municipal structures and governance, with emphasis on public information dissemination and public engagement.

3) MEMBERS

The Commissioner may appoint administrative and research staff to provide necessary support.

4) PROCESS

The Commissioner shall incorporate the following criteria into the review process:

- The report shall contain potential action plans and suggested implementation schedules associated with each of the identified models or options.
- The Commissioner will be responsible for designing a consultation process, but shall consult with individual municipalities, the Federation of PEI Municipalities, and other groups or individuals as the Commissioner deems appropriate.
- The work of the Commissioner will entail a review and analysis of existing studies and reports and the results of past consultative activities on the subject of PEI's local governance system and land use framework. In addition to this review of existing documentation, the commissioner will engage in discussions with stakeholder groups and provide opportunities for residents and groups to submit their views.
- The Commissioner may examine, inquire into, and report upon any matter or subject which the Commissioner may feel to be relevant to the responsibilities listed below.

5) RESPONSIBILITIES

The Commissioner shall provide to the Premier a report on findings and recommendations on the following areas:

- Roles and Responsibilities
 - The efficiency, sustainability and appropriateness of current municipal boundaries
 - Structure, organization, and legal framework of local governance in the province, especially in relation to the development of new municipal legislation
 - Mandatory and voluntary services appropriate to municipal governments
- Funding Frameworks and Property Taxation
 - A broad examination of the fairness, transparency, and sustainability of the provincial/municipal financial framework
 - Potential changes to responsibilities and expenditures, including any recommendations on revenue measures needed to support such changes
 - Diversification of revenue sources and revenue generation alternatives for municipalities
- Regional Co-operation
 - Potential options and minimum standards shall be identified with regards to regional co-operation relating to both municipal services (including utilities, infrastructure, and services such as policing), and land use planning services
 - The impact of unincorporated areas on existing municipal structures shall be assessed, noting that any future amalgamation of communities will only follow a mutual recognition of the merits of regional co-operation and integration
- Land Use Planning
 - Identification of the implications of the current situations – financial, social, and environmental, including the transformation of rural / agricultural land to suburban uses
 - Potential options and minimum standards for land use practices in the municipal and unincorporated areas, with an eye to long term impacts of development patterns, capacity and stewardship
 - A strategy for public education of issues, implications, costs, and structures should be identified

6) REPORT DATE

The Commissioner shall provide to the Premier a report on findings and recommendations in 2009.