

# **NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT**

**Chapter N.2, R.S.O. 1990  
(as amended by the Red Tape Reduction Act, 1999  
as amended by the Red Tape Reduction Act, 2000  
as amended by the Direct Democracy Through  
Municipal Referendums Act, 2000)**

**Office Consolidation**

**prepared by**

**Niagara Escarpment Commission  
Georgetown, Ontario**

**January 1, 2001**

## **NOTICE**

**This office consolidation is prepared for the purpose of convenience only. It is not an official document of the legislature. The authoritative text is set out in the official volumes of the Statutes of Ontario.**

(NOTE: By Order in Council effective March 1, 1997, the administration of all powers and duties under or in relation to the *Niagara Escarpment Planning and Development Act* were assigned to the Minister of Natural Resources.)

# NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT

## **1. Definitions**

### 1. In this Act,

"Commission" means the Niagara Escarpment Commission; ("Commission")

"development" includes a change in the use of any land, building or structure; ("aménagement")

"local plan" means an official plan under the *Planning Act*; ("plan local")

"Minister" means the member of the Executive Council to whom the administration of this Act is assigned; ("ministre")

"ministry" means any ministry of the Government of Ontario and includes a board, commission or agency of the Government; ("ministère")

"Niagara Escarpment Plan" means a plan, policy and program, or any part thereof, as approved by the Lieutenant Governor in Council under this Act on June 12, 1985 and amended and revised in accordance with this Act, covering the Niagara Escarpment Planning Area, or any part thereof defined in the Plan, designed to promote the optimum economic, social, environmental and physical condition of the Area, and consisting of the texts and maps describing the program and policy; ("plan de l'escarpement du Niagara")

"Niagara Escarpment Planning Area" means the area of land in Ontario designated as such by the Minister under this Act; ("zone de planification de l'escarpement du Niagara")

"zoning by-law" means a by-law under section 34 of the *Planning Act* or any predecessor of that section. ("règlement municipal de zonage")

## **2. Purpose of Act**

2. The purpose of this Act is to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment. R.S.O. 1990, c. N.2, s. 2.

### **3.(1) Establishment of Niagara Escarpment Planning Area**

3.(1) The Minister may, by order, establish as the Niagara Escarpment Planning Area the area of land in Ontario defined in the order and the Minister may alter the boundaries of the Planning Area by amendment to the order.

### **3.(2) Direction by Minister to prepare Niagara Escarpment Plan**

3.(2) Where the Niagara Escarpment Planning Area has been established under subsection (1), the Minister shall include in the order a direction to the Commission that it carry out an investigation and survey of the environmental, physical, social and economic conditions in relation to the development of the Planning Area or any part thereof, and that there be prepared within a period of two years or such other period of time as the Minister in his or her order determines, a plan suitable for approval as the Niagara Escarpment Plan.

### **3.(3) Order or amending order to be laid before Assembly**

3.(3) Where any order or amendment thereto is made under subsection (1), the Minister shall, on the day the order or amending order is made, or as soon thereafter as is practicable, lay the order or amending order before the Assembly if it is in session or, if not, at the commencement of the next session and the Assembly shall, by resolution, declare the order or amending order approved, revoked or varied. R.S.O. 1990, c. N.2, s. 3.

### **4.(1) Advisory committee**

4.(1) The Minister shall establish an advisory committee, consisting of such persons as the Minister appoints who are broadly representative of the people of the Niagara Escarpment Planning Area, to advise and make recommendations to the Minister, through the Commission, in respect of the amendment and implementation of the Niagara Escarpment Plan and to perform any other function given to the committee by the Minister.

### **4.(2) Additional advisory committees**

4.(2) The Minister may establish additional advisory committees, consisting of such persons as the Minister appoints, to advise and make recommendations to the Minister, through the Commission, in respect of the amendment and implementation of the Niagara Escarpment Plan and to perform any other function given to the committees by the Minister.

### **5.(1) Niagara Escarpment Commission continued**

5.(1) The commission known as the Niagara Escarpment Commission is continued under the name Niagara Escarpment Commission in English and Commission de l'escarpement du Niagara in French.

### **5.(2) Members**

5.(2) The Commission shall be composed of seventeen members appointed by the Lieutenant Governor in Council as follows:

1. Nine members shall be appointed as representative of the public at large.
2. The eight remaining members shall be appointed from a list containing the names of at least three persons submitted by the council of the City of Hamilton and the council of each county and regional municipality whose jurisdiction includes any part of the Niagara Escarpment Planning Area and one member shall be appointed from each list.

### **5.(3) Term of office**

5.(3) Each member of the Commission shall hold office for such period of time as the Lieutenant Governor in Council determines.

### **5.(4) Eligibility**

5.(4) No person is eligible to be included in a list of persons submitted under paragraph 2 of subsection (2) unless he or she is a member or employee of the council of a municipality whose jurisdiction includes a part of the Niagara Escarpment Planning Area.

### **5.(5) When Commission deemed established**

5.(5) The Commission shall be deemed to be established when a majority of the number of members has been appointed, and it may then proceed to carry out the functions conferred upon it under this Act, even if the remaining number of members has not been appointed.

### **5.(6) Chair**

5.(6) The Lieutenant Governor in Council may designate one of the members appointed under paragraph 1 of subsection (2) to be chair of the Commission and may designate the chair as an employee and the Commission as an employer for the purpose of the Ontario Municipal Employees Retirement System Act.

#### **5.(7) Quorum**

5.(7) Nine members of the Commission constitute a quorum.

#### **5.(8) Remuneration**

5.(8) Members of the Commission shall receive such salary and other remuneration as the Lieutenant Governor in Council from time to time determines.

#### **5.(9) Employees**

5.(9) Such employees as are considered necessary from time to time for the purposes of the Commission may be appointed under the Public Service Act.

#### **5.(10) Professional assistance**

5.(10) Subject to the approval of the Minister, the Commission may engage persons to provide professional, technical or other assistance to the Commission.

#### **5.(11) Seconding of staff to Commission**

5.(11) In the performance of its functions, the Commission may be assisted by such persons in the public service of Ontario as the Minister designates for the purpose.

#### **5.(12) Commission is body corporate**

5.(12) The Commission is a body corporate without share capital.

#### **5.(13) Non-application**

5.(13) The Corporations Act does not apply to the Commission. R.S.O. 1990, c. N.2, s. 5.

### **6. Money**

6. All expenditures, costs, charges and expenses incurred and payable in respect of the carrying out by the Commission of its functions, including the salaries and expenses of the members and employees of the Commission shall be paid out of the money appropriated therefor by the Legislature. R.S.O. 1990, c. N.2, s. 6.

### **6.1(1) Amendments to Plan**

6.1(1) An amendment to the Niagara Escarpment Plan may be initiated by the Minister or by the Commission, and application may be made to the Commission by any person, ministry or municipality requesting an amendment to the Plan.

### **6.1(2) Material to accompany application**

6.1(2) An application to the Commission by a person, ministry or municipality requesting an amendment to the Plan shall include a statement of the justification for the amendment and shall be accompanied by research material, reports, plans and the like that were used in the preparation of the amendment.

### **6.1(3) Rejection of certain applications**

6.1(3) Where, in the opinion of the Commission, an application for an amendment does not disclose a planning justification for the amendment, is not in the public interest, is without merit, is frivolous or vexatious or is made only for the purpose of delay, the Commission shall inform the Minister of its opinion and, where the Minister concurs in that opinion, the Minister shall inform the applicant in writing of his or her opinion and notify the applicant that unless the applicant makes written representations thereon to the Minister within such time as the Minister specifies in the notice, not being less than fifteen days from the time the notice is given, the provisions of this Act in respect of the consideration of the amendment shall not apply, and approval of the amendment shall be deemed to be refused.

### **6.1(4) Same**

6.1(4) Where representations are made to the Minister under subsection (3), the Minister, after giving consideration thereto, shall inform the applicant in writing either that the Minister's opinion is confirmed and that approval of the amendment is deemed to be refused or that the Minister has directed that consideration of the amendment be proceeded with in accordance with this Act.

## **7. Consultation for amendments to plan**

7. During the course of the consideration of amendments to the Niagara Escarpment Plan, the Commission shall consult with any affected ministry and with the council of each municipality within or partly within the Niagara Escarpment Planning Area, with respect to the proposed contents of the Plan.

## 8. Objectives

8. The objectives of the Niagara Escarpment Plan are, and the objectives to be sought in the consideration of amendments to the Plan shall be, in the Niagara Escarpment Planning Area,

- (a) to protect unique ecologic and historic areas;
- (b) to maintain and enhance the quality and character of natural streams and water supplies;
- (c) to provide adequate opportunities for outdoor recreation;
- (d) to maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery;
- (e) to ensure that all new development is compatible with the purpose of this Act as expressed in section 2;
- (f) to provide for adequate public access to the Niagara Escarpment; and
- (g) to support municipalities within the Niagara Escarpment Planning Area in their exercise of the planning functions conferred upon them by the *Planning Act*. R.S.O. 1990, c. N.2, s. 8.

## 9. Contents of Plan

9. The Niagara Escarpment Plan may contain,

- (a) policies for the economic, social and physical development of the Niagara Escarpment Planning Area in respect of,
  - (i) the management of land and water resources,
  - (ii) the general distribution and density of population,
  - (iii) the general location of industry and commerce, the identification of major land use areas and the provision of major parks and open space and the policies in regard to the acquisition of lands,
  - (iv) the control of all forms of pollution of the natural environment,

(v) the general location and development of major servicing, communication and transportation systems,

(vi) the development and maintenance of educational, cultural, recreational, health and other social facilities, and

(vii) such other matters as are, in the opinion of the Minister, advisable;

(b) policies relating to the financing and programming of public development projects and capital works;

(c) policies to co-ordinate the planning and development programs of the various ministries for the Niagara Escarpment Planning Area;

(d) policies to co-ordinate planning and development among municipalities within the Niagara Escarpment Planning Area;

(e) policies designed to ensure compatibility of development by the private sector; and

(f) such other policies as are, in the opinion of the Minister, advisable for the implementation of the Plan,

and shall contain such programs and policies as each minister desires to be incorporated in the Plan, in so far as the Commission considers it practicable. R.S.O. 1990, c. N.2, s. 9.

### **10.(1) Amendment of Plan**

10.(1) During the course of the consideration of amendments to the Niagara Escarpment Plan, the Commission shall,

(a) furnish each municipality, regional municipality and county within or partly within the Niagara Escarpment Planning Area with a copy of the proposed amendments and invite it to make comments thereon within such period of time, not being more than 60 days from the time the amendments are furnished to it, as is specified;

(b) publish a notice in such newspapers having general circulation in any area that is within the Niagara Escarpment Planning Area as the Commission considers appropriate, notifying the public of the proposed amendments, indicating where a copy of the amendments, together with the material used in the preparation thereof mentioned in subsection (6), can be examined and inviting the submission of

comments thereon within such period of time, not being more than 60 days from the time the notice is first published, as is specified; and

(c) furnish copies of the proposed amendments to the advisory committees appointed under section 4 and invite the committees to make comments thereon within such period of time, not being more than 60 days from the time the amendments are furnished to them, as is specified.

**10.(1.1) Public meetings during comment period**

10.(1.1) During the time for making comments, the Commission may hold public meetings to promote public discussion of the proposed amendments.

**10.(1.2) Notice of public meetings**

10.(1.2) The Commission shall give notice of public meetings held under subsection (1.1) in such manner as the Commission considers appropriate.

**10.(2) Extension of time**

10.(2) The Commission may extend the time for making comments, before or after the expiration of the time, if it is of the opinion that the extension is necessary to ensure a reasonable opportunity for comments to be made.

**10.(3) Hearing officer**

10.(3) If written objections to the proposed amendment are received by the Commission before the expiration of the time for making comments, the Commission shall, and if no written objections are received within that time the Commission may, appoint one or more hearing officers for the purpose of conducting one or more hearings within the Niagara Escarpment Planning Area or in the general proximity thereof for the purpose of receiving representations respecting the proposed amendments by any person desiring to make representations.

**10.(4) Notice of hearing**

10.(4) If one or more hearing officers are appointed under subsection (3) to conduct a hearing, they shall fix the time and place for the hearing and shall publish notice thereof in such newspapers having in their opinion general circulation in any area that is within the Niagara Escarpment Planning Area as they consider appropriate.

#### **10.(5) Time of hearing**

10.(5) The time fixed for any hearing under subsection (3) shall be not sooner than 21 days after the first publication of the notice of the hearing and not before the expiration of the time for making of comments on the proposed amendments.

#### **10.(6) Procedure at hearing**

10.(6) At a hearing under subsection (3), the persons proposing the amendments or their representatives shall present the proposed amendments and the justification therefor and shall make available for public inspection research material, reports, plans and the like that were used in the preparation of the amendments and, subject to the rules of procedure adopted by the hearing officers for the conduct of the hearing, the persons presenting the amendments and any other persons who make presentations at the hearing may be questioned on any aspect of the amendments by any interested person.

#### **10.(7) Power to summon witnesses, etc.**

10.(7) The hearing officers appointed to conduct a hearing under subsection (3) have the powers of a commission under Part II of the *Public Inquiries Act* and that Part applies as if they were conducting an inquiry under that Act.

#### **10.(8) Report of hearing officers**

10.(8) Not more than 60 days after the conclusion of any hearings conducted under subsection (3), or within such extended time as the Commission may specify, the hearing officers shall report to the Commission a summary of the representations made at the hearings together with a report stating whether the proposed amendments should be accepted, rejected or modified, giving their reasons therefor, and shall at the same time furnish the Minister with a copy of the report.

#### **10.(9) Commission recommendations**

10.(9) After giving consideration to any comments received under subsection (1) and, if one or more hearings were conducted under subsection (3), after giving consideration to any report received under subsection (8), the Commission shall submit its recommendations on the proposed amendments to the Minister.

#### **10.(10) Inspection of report and recommendations**

10.(10) A copy of any report made under subsection (8) and a copy of the recommendations submitted to the Minister under subsection (9) shall be made available in the office of the Minister, in the offices of the Commission and in the office of the clerk of each municipality, the whole or any part of which is within the

Niagara Escarpment Planning Area, and in such other offices and locations as the Minister determines, for inspection by any person desiring to do so.

**10.(11) Decision of Minister**

10.(11) After receiving the Commission's recommendations under subsection (9), the Minister may refuse the proposed amendments or may approve the proposed amendments with any modifications that he or she considers desirable, unless,

- (a) in the opinion of the Minister, to do so would be inconsistent with any recommendations received under subsections (8) or (9); or
- (b) the Lieutenant Governor in Council requires the Minister to submit proposed amendments to the Lieutenant Governor in Council because the Lieutenant Governor in Council is of the opinion that the amendments could have a significant impact on the purpose or objectives of the Niagara Escarpment Plan.

**10.(12) Submission of amendments to Lieutenant Governor in Council**

10.(12) If amendments are not refused or approved by the Minister under subsection (11), the Minister shall submit the proposed amendments with his or her recommendations thereon to the Lieutenant Governor in Council.

**10.(13) Public notice**

10.(13) If, in the opinion of the Minister, the recommendations of the Minister to the Lieutenant Governor in Council are inconsistent with any recommendations received under subsection (8), the Minister shall give public notice of his or her recommendations and the Lieutenant Governor in Council shall allow a period of 21 days after the giving of the notice during which representations in writing can be made by anyone concerned to the Lieutenant Governor in Council.

**10.(14) Decision of Lieutenant Governor in Council**

10.(14) The Lieutenant Governor in Council may refuse the proposed amendments or may approve the proposed amendments with any modifications that the Lieutenant Governor in Council considers desirable.

**10.(15) Effect of approval**

10.(15) If amendments are approved by the Minister under subsection (11) or by the Lieutenant Governor in Council under subsection (14), the amendments form part of the Niagara Escarpment Plan for the Niagara Escarpment Planning Area.

## **11. Copies of amendments**

When the Niagara Escarpment Plan is amended, the Minister shall promptly provide a copy of the amendment to the Commission and to the clerk of every municipality that is affected by the amendment.

## **12. Commission to make Plan available**

The Commission shall make the Niagara Escarpment Plan available for public inspection.

## **13.(1) By-laws, etc., to conform to Plan**

13.(1) Despite any other general or special Act, when the Niagara Escarpment Plan is in effect,

(a) no municipality or local board having jurisdiction in the Niagara Escarpment Planning Area, or in any part of the Area, and no ministry, shall undertake any improvement of a structural nature or any other development or undertaking within the Area; and

(b) no municipality having jurisdiction in such Area shall pass a by-law for any purpose,

that is in conflict with the Niagara Escarpment Plan.

## **13.(2) Minister may deem by-law, etc., conforms to Plan**

13.(2) The Minister, upon the application of the council of a municipality having jurisdiction in the Niagara Escarpment Planning Area, or in any part thereof, may in writing declare that a by-law, improvement or other development or undertaking of such municipality shall be deemed not to conflict with the Niagara Escarpment Plan, if the Minister is of the opinion that the by-law, improvement or other development or undertaking conforms with the general intent and purpose of the Plan.

## **14. Conflict**

14. Despite any other general or special Act, where the Niagara Escarpment Plan is in effect and there is a conflict between any provision of the Plan and any provision of a local plan or any provision of a zoning by-law covering any part of the Niagara Escarpment Planning Area, then the provision of the Niagara Escarpment Plan prevails. R.S.O. 1990, c. N.2, s. 14.

### **15.(1) Minister may require submission of proposals to resolve conflict**

15.(1) Where, in the opinion of the Minister, a local plan or a zoning by-law that covers any part of the Niagara Escarpment Planning Area is in conflict with the provisions of the Niagara Escarpment Plan, the Minister shall advise the council of the municipality that adopted the local plan or that passed the zoning by-law of the particulars wherein the local plan or zoning by-law conflicts with the Niagara Escarpment Plan and shall invite the municipality to submit, within such time as the Minister specifies, proposals for the resolution of the conflict.

### **15.(2) Power of Minister to amend local plan**

15.(2) Where the council of the municipality fails to submit proposals to resolve the conflict within the time specified by the Minister, or where after consultation with the Minister on such proposals the conflict cannot be resolved, and the Minister so notifies in writing the council of the municipality, the Minister may by order amend the local plan so as to make it conform to the Niagara Escarpment Plan, and the order when made shall have the same effect as though it were an amendment to the local plan made by the council of the municipality and approved by the Minister of Municipal Affairs and Housing. R.S.O. 1990, c. N.2, s. 15.

### **16. Minister may require adoption of local plan or passage of zoning by-law**

16. Where the Niagara Escarpment Plan is in effect in a municipality or any part thereof and the municipality does not have a local plan in effect or has not passed a zoning by-law or by-laws covering the municipality or that part of the municipality covered by the Plan, the council of the municipality, upon being notified in writing by the Minister of that fact, shall, within such time as is specified in the notice, prepare and adopt a local plan or pass a zoning by-law or by-laws that conform to the Niagara Escarpment Plan, as the case requires, and, in the case of a local plan, submit it to the Minister of Municipal Affairs and Housing or the approval authority.

### **17.(1) Regular reviews of Plan**

17.(1) The Minister shall cause a review of the Niagara Escarpment Plan to be undertaken not later than the earlier of the following dates:

1. The tenth anniversary of the date the Plan was confirmed or approved with modifications under subsection (4) following completion of the previous review.

2. The twelfth anniversary of the date the Minister established terms of reference under subsection (2) for the previous review.

**17.(2) Terms of reference**

17.(2) The Minister shall establish terms of reference for the review and the review shall be conducted in accordance with the terms of reference.

**17.(3) Procedure**

17.(3) Subject to the terms of reference and to subsection (4), the provisions of this Act relating to the amendment of the Plan apply with necessary modifications to the review.

**17.(4) Decision of Lieutenant Governor in Council**

17.(4) Following the completion of the review, the Minister shall submit a report on the review with his or her recommendations thereon to the Lieutenant Governor in Council, and the Lieutenant Governor in Council may confirm the Plan or may approve the Plan with any modifications that the Lieutenant Governor in Council considers desirable.

**17.(5) Effect of decision**

17.(5) The confirmed Plan or the modified Plan is the Niagara Escarpment Plan for the Niagara Escarpment Planning Area.

**17.(6) Transition**

17.(6) This section applies to the review that began on June 15, 1999 and to subsequent reviews.

**18.(1) Power to acquire land**

18.(1) For the purposes of developing any feature of the Niagara Escarpment Plan, the Minister may, for and in the name of Her Majesty, acquire by purchase, lease or otherwise, or, subject to the *Expropriations Act*, without the consent of the owner, enter upon, take and expropriate and hold any land or interest therein within the Niagara Escarpment Planning Area and sell, lease or otherwise dispose of any such land or interest therein.

## **18.(2) Power of designated minister**

18.(2) The Lieutenant Governor in Council may designate any minister of the Crown in respect of any land acquired under subsection (1), and thereupon the minister so designated may, for the purpose of developing any feature of the Niagara Escarpment Plan,

(a) clear, grade or otherwise prepare the land for development or may construct, repair or improve buildings, works and facilities thereon; or

(b) sell, lease or otherwise dispose of any of such land or interest therein. R.S.O. 1990, c. N.2, s. 18.

## **19. Grants**

19. Repealed

## **20. Financial assistance**

20. When the Niagara Escarpment Plan is in effect, the Minister may, out of the money appropriated therefor by the Legislature, provide financial assistance to any person, organization or corporation, including a municipal corporation, undertaking any policy or program that implements the Plan. R.S.O. 1990, c. N.2, s. 20.

## **21.(1) Transfer of Commission functions**

21.(1) Where, in the opinion of the Lieutenant Governor in Council, the Niagara Escarpment Plan has been substantially completed for any part of the Niagara Escarpment Planning Area, the Lieutenant Governor in Council may by order and subject to such terms and conditions as the Lieutenant Governor in Council considers appropriate, transfer any of the functions of the Commission to the council of a regional municipality or the council of a county or the council of a city outside of a county or regional municipality.

## **21.(2) Limitation**

21.(2) No order shall be made under subsection (1) except upon application made to the Lieutenant Governor in Council by the council of the municipality and every such application shall include a statement of the administrative procedures intended to be followed in the exercise of such functions.

## **22. Regulations**

22. The Minister may make regulations designating any area or areas of land within the Niagara Escarpment Planning Area as an area of development control. R.S.O. 1990, c. N.2, s. 22.

## **23. Regulations**

23. The Minister may make regulations,

(a) providing that where an area of development control is designated, such zoning by-laws and such orders made under section 47 of the *Planning Act*, or any part thereof, as are designated in the regulation, cease to have effect in the area or in any defined part thereof, provided that where land is removed from an area of development control such land is thereupon subject again to the aforementioned by-laws or orders or parts thereof, as the case may be, unless in the meantime such by-laws or orders or parts thereof have been repealed or revoked;

(b) providing for the issuance of development permits and prescribing terms and conditions of permits;

(c) providing for the exemption of any class or classes of development within any development area from the requirement of obtaining a development permit;

(d) prescribing the form of application for a development permit. R.S.O. 1990, c. N.2, s. 23.

### **24.(1) Development permits**

24.(1) Despite any other general or special Act, if an area of development control is established by regulation made under section 22, no person shall undertake any development in the area unless such development is exempt under the regulations or unless the development complies with a development permit issued under this Act.

### **24.(2) Terms and conditions**

24.(2) The Minister may issue development permits and may include such terms and conditions as he or she considers advisable.

#### **24.(2.1) Agreements**

24.(2.1) The Minister may, as a condition of issuing a development permit, enter into an agreement with an owner of land, the agreement may be registered against the land

and the Minister is entitled to enforce the provisions of the agreement against the owner and, subject to the *Registry Act* and the *Land Titles Act*, against any subsequent owners of the land.

#### **24.(3) Other permits**

24.(3) No building permit, work order, certificate or licence that relates to development shall be issued, and no approval, consent, permission or other decision that is authorized or required by an Act and that relates to development shall be made, in respect of any land, building or structure within an area of development control, unless the development is exempt under the regulations or,

(a) a development permit relating to the land, building or structure has been issued under this Act; and

(b) the building permit, work order, certificate, licence, approval, consent, permission or decision is consistent with the development permit.

#### **24.(4) Offence**

24.(4) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable,

(a) on a first conviction to a fine of not more than \$25,000; and

(b) on a subsequent conviction to a fine of not more than \$10,000 for each day or part thereof upon which the contravention has continued after the day on which the person was first convicted.

#### **24.(5) Corporation**

24.(5) Despite subsection (4), if a corporation is convicted under subsection (1), the maximum penalty that may be imposed is,

(a) on a first conviction a fine of not more than \$50,000; and

(b) on a subsequent conviction a fine of not more than \$25,000 for each day or part thereof upon which the contravention has continued after the day on which the corporation was first convicted.

#### **24.(6) Order to demolish, etc.**

24.(6) Where any person undertakes any development that is in contravention of subsection (1), the Minister may order such person to demolish any building or structure erected in connection with the development or to restore the site to the

condition it was in prior to the undertaking of the development, or both, within such time as the order specifies.

**24.(6.1) Order to stop work, etc.**

24.(6.1) If a person undertakes any development that is in contravention of subsection (1) and the Minister has reasonable grounds to believe that the contravention is causing or is likely to cause a risk to public safety or significant environmental damage, the Minister may order the person to,

(a) stop work on the development;

(b) take such steps as the Minister considers necessary to protect public safety or prevent environmental damage, within such time as the order specifies.

**24.(7) Cost of work**

24.(7) Where a person to whom an order is directed under subsection (6) or (6.1) fails to comply with the order within the time specified in it, the Minister may cause the necessary work to be done and charge such person with the cost thereof, which cost may be recovered with costs, as a debt due to Her Majesty, in any court of competent jurisdiction.

**24.(7.1) Offence**

24.(7.1) Every person who contravenes an order made under subsection (6) or (6.1) is guilty of an offence and on conviction is liable,

(a) on a first conviction a fine of not more than \$10,000 for each day or part of a day on which the contravention continued; and

(b) on a subsequent conviction, a fine of not more than \$25,000 for each day or part of a day on which the contravention continued.

**24.(7.2) Penalty for corporation**

24.(7.2) Despite subsection (7.1), if a corporation is convicted of an offence under subsection (7.1), the maximum penalty that may be imposed is,

(a) on a first conviction, a fine of not more than \$25,000 for each day or part of a day on which the contravention continued; and

(b) on a subsequent conviction, a fine of not more than \$50,000 for each day or part of a day on which the contravention continued.

#### **24.(8) Delegation of authority**

24.(8) Subject to subsection (9), where the Minister has delegated his or her authority under section 25, the delegate has, in lieu of the Minister, all the powers and rights of the Minister under this section.

#### **24.(9) Same**

24.(9) Subsection (8) does not apply to the powers and rights of the Minister under subsection (6.1) unless the delegate is the Commission or the Director of the Commission.

#### **25.(1) Delegation**

25.(1) Subject to subsection (2), the Minister may in writing, and subject to such conditions as he or she considers appropriate, delegate authority to issue development permits to,

- (a) the Commission;
- (b) an officer or employee of the Commission who is designated by the Commission;
- (c) a county or regional municipality having jurisdiction in the Niagara Escarpment Planning Area or any part thereof; or
- (d) a city outside a county or regional municipality having jurisdiction in the Niagara Escarpment Planning Area or any part thereof.

#### **25.(2) Limitation on delegation**

25.(2) No delegation shall be made under subsection (1) to a county or a regional municipality or a city, except where the county or regional municipality or city on application therefor, has been designated by order of the Minister as a municipality to which may be delegated the authority to issue development permits under subsection (1), and every such application shall include a statement of the organizational structure to be established and the administrative procedures intended to be followed.

#### **25.(3) Withdrawal of delegation**

25.(3) The Minister may in writing withdraw any delegation made under subsection (1) where, in his or her opinion, it is in the public interest to do so.

#### **25.(4) Delegate's power of decision**

25.(4) Where the Minister has delegated his or her authority under subsection (1), the delegate, on receiving an application for a development permit and, after giving consideration to the merits of the application, may make a decision in accordance with the Niagara Escarpment Plan to issue the development permit or to refuse to issue the permit or to issue the permit subject to such terms and conditions as the delegate considers desirable.

#### **25.(5) Notification of decision**

25.(5) The delegate to whom the Minister has delegated his or her authority under subsection (1), shall by regular or registered mail cause a copy of the decision made by the delegate on any application for a development permit to be mailed to the Minister, to the applicant for the permit and to all assessed owners of land lying within 120 metres of the land that is the subject of the application and every copy of such decision shall include a notice specifying that any person receiving a copy of the decision, other than the Minister, may, within 14 days of the mailing of it, appeal the decision by giving the delegate a written notice of appeal that specifies the reasons for the appeal.

#### **25.(6) Hearing officer**

25.(6) Where the Minister receives a copy of a decision under subsection (5) the Minister may, within 14 days of the mailing of it, request the Lieutenant Governor in Council to appoint an officer for the purpose of conducting a hearing at which representations may be made respecting the decision.

#### **25.(7) Procedure**

25.(7) Where the Lieutenant Governor in Council appoints a hearing officer at the request of the Minister under subsection (6), subsections (10) to (14) apply with necessary modifications and any reference in those subsections to the Minister shall be deemed to be a reference to the Lieutenant Governor in Council.

#### **25.(8) Hearing officer, appointment by Minister**

25.(8) Where the delegate receives one or more notices of appeal under subsection (5) the Minister shall appoint an officer for the purpose of conducting a hearing at which representations may be made respecting the decision.

#### **25.(8.1) Exceptions**

25.(8.1) Despite subsections (8) and (10), an officer appointed under subsection (8) may refuse to conduct or continue a hearing if,

(a) in the opinion of the officer, the appeal does not disclose a planning justification for the appeal, is not in the public interest, is without merit, is frivolous or vexatious, or is made only for the purpose of delay;

(b) the notice of appeal did not specify the reasons for the appeal; or

(c) the person who appealed the decision has not responded to a request by the officer for further information within the time specified by the officer.

**25.(8.2) Representations**

25.(8.2) Before refusing under subsection (8.1) to conduct or continue a hearing, the officer shall notify the person who appealed the decision and give the person an opportunity to make representations thereon.

**25.(8.3) Same**

25.(8.3) If an officer refuses under subsection (8.1) to conduct or to continue a hearing, the decision of the delegate shall be deemed to be confirmed.

**25.(9) Confirmation of decision**

25.(9) Unless within the time specified in subsection (5), the delegate receives one or more notices of appeal or unless the Minister has under subsection (6) requested the appointment of a hearing officer, the decision of the delegate shall be deemed to be confirmed.

**25.(10) Time of hearing**

25.(10) The officer appointed to inquire under subsection (8) shall fix a time and place for a hearing and shall send by regular or registered mail written notice thereof to each person to whom notice of the decision was sent under subsection (5).

**25(10.1) SPPA applies**

25(10.1) The *Statutory Powers Procedure Act* applies to a hearing held under subsection (10).

**25.(10.2) Failure to appear**

25.(10.2) If the persons who appealed the decision withdraw their appeals or fail to appear at the hearing, the decision of the delegate shall be deemed to be confirmed.

### **25.(11) Report**

25.(11) Within 30 days after the conclusion of the hearing or within such longer period as the Minister may permit, the officer appointed shall report to the Minister a summary of the representations made, together with his or her opinion on the merits of the decision.

### **25.(12) Deemed Confirmation**

25.(12) The decision of the delegate shall be deemed to be confirmed if,

(a) the opinion of the officer expressed in his or her report under subsection (11) is that the decision of the delegate was correct and should not be changed; and

(b) the decision of the delegate was not appealed by a local municipality, a county or a regional municipality.

#### **25.(12.1) Agreement on terms and conditions**

25.(12.1) The decision of the delegate shall be deemed to be confirmed if,

(a) the decision of the delegate was a decision to issue a development permit;

(b) the parties who appeared at the hearing have agreed on all of the terms and conditions that should be included in the development permit and all of these terms and conditions are set out in the report of the officer under subsection (11); and

(c) the opinion of the officer expressed in his or her report under subsection (11) is that, if the decision of the delegate included the terms and conditions referred to in clause (b), the decision would be correct and should not be changed.

#### **25.(12.2) Same**

25.(12.2) If subsection (12.1) applies, the decision of the delegate shall be deemed to be a decision to issue the development permit with the terms and conditions referred to in clause (12.1) (b).

### **25.(13) Application of subs. (12) and (12.1)**

25.(13) Subsections (12) and (12.1) do not apply if the officer was appointed by the Lieutenant Governor in Council following a request under subsection (6).

#### **25.(14) Power of Minister**

25.(14) If the decision of the delegate has not been deemed to be confirmed under subsection (8.3), (9), (10.2), (12) or (12.1), the Minister, after giving consideration to the report of the officer, may confirm the decision or may vary the decision or make any other decision that in his or her opinion ought to have been made and the decision of the Minister under this section is final.

#### **26.(1) Notice of application**

26.(1) Where the Minister has not delegated his or her authority under section 25 and the Minister receives an application for a development permit, the Minister shall, by personal service or by regular or registered mail, cause a written notice of the application, together with a brief statement of the nature of the application, to be delivered or mailed to all assessed owners of land lying within 400 feet of the land that is the subject of the application and every such notice shall specify the time within which any person receiving it may file with the Minister written notice of the person's objection to the issuance of a development permit.

#### **26.(2) Minister may issue, etc., permit**

26.(2) Subject to subsection (7), unless within the time specified in the notice referred to in subsection (1) a notice objecting to the issuance of a development permit is filed with the Minister, the Minister may issue the development permit, refuse to issue the permit or issue the permit subject to such terms and conditions as he or she considers advisable.

#### **26.(3) Hearing officer, appointment by Minister**

26.(3) Where a notice of objection to the issuance of a development permit is filed with the Minister within the time specified in the notice referred to in subsection (1), the Minister shall appoint an officer for the purpose of conducting a hearing at which representations may be made respecting the issuance of the development permit.

#### **26.(4) Time of hearing**

26.(4) The officer appointed to inquire under subsection (3) shall fix a time and place for a hearing and shall send by regular or registered mail written notice thereof to the applicant for the development permit and to each person to whom notice of the application was sent under subsection (1).

#### **26.(4.1) SPPA applies**

26.(4.1) The Statutory Powers Procedure Act applies to a hearing held under subsection (4).

#### **26.(5) Report**

26.(5) Within 30 days after conclusion of the hearing or within such longer period as the Minister may permit, the officer appointed shall report to the Minister a summary of the representations made, together with his or her opinion on the merits of the application for the development permit.

#### **26.(6) Minister may issue, etc., permit**

26.(6) After giving consideration to the report of the officer appointed to inquire into the matter, the Minister may issue the development permit, refuse to issue the permit or issue the permit subject to such terms and conditions as he or she considers advisable.

#### **26.(7) Hearing officer, appointment by Minister**

26.(7) The Minister where he or she considers it desirable may, and at the request of the applicant for the development permit made at the time of submitting the application to the Minister shall, appoint an officer for the purpose of conducting a hearing into the matter, and where the Minister does so subsections (4), (5) and (6) apply with necessary modifications.

#### **26.(8) Decision final**

26.(8) The decision of the Minister made under this section is final.

#### **26.(9) Subs. (1) amended**

26.(9) On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "400 feet" in the tenth line and inserting in lieu thereof "120 metres". R.S.O. 1990, c. N.2, s. 26.

#### **27.(1) Agreement for fixed assessment**

27.(1) Where the use of any land within the Niagara Escarpment Planning Area is not in conformity with the use designated for such land in the Niagara Escarpment Plan or in any local plan covering such land, and the assessment of such land is increased because of such designation, the local municipality in which the land is situate and the owner of the land may, with the approval of the Minister, enter into an agreement

providing for a fixed assessment for the land reflecting the use to which the land is being put, to apply to taxation for general, school and special purposes, but not to apply to taxation for local improvements.

**27.(2) Term of agreement**

27.(2) Every such agreement shall be for such term of years not exceeding three as the Minister approves and the Minister may, in granting his or her approval, attach such terms and conditions thereto as the Minister considers appropriate.

**27.(3) Procedure**

27.(3) Where a parcel of land has a fixed assessment under subsection (1),

**assessment**

(a) the land shall be assessed in each year as if it did not have a fixed assessment;

**taxes**

(b) the treasurer of the local municipality shall calculate each year what the taxes would have been on the land if it did not have a fixed assessment;

**record**

(c) the treasurer shall keep a record of the difference between the taxes paid each year and the taxes that would have been paid if the land did not have a fixed assessment and shall debit the land with this amount each year during the term of the agreement and shall add to such debit on the 1st day of January in each year such interest as may be agreed upon the aggregate amount of the debit on such date.

**27.(4) Payment to municipality**

27.(4) The Minister may, out of the money appropriated therefor by the Legislature, pay in each year to a local municipality in respect of which an agreement made under subsection (1) is in force, an amount of money equal to the difference in the taxes paid pursuant to the agreement and the taxes that would have been paid if the land covered by the agreement did not have a fixed assessment.

**27.(5) Apportionment**

27.(5) Where a local municipality receives an amount of money under subsection (4), the council of the local municipality shall apportion the amount to each body in the

same manner as taxes would have been apportioned if taxes had been levied in the normal manner on the assessment in accordance with clause (3)(a).

**27.(6) When agreement terminated**

27.(6) Where the land or a part thereof that is subject to an agreement under subsection (1) ceases to be put to the use that was the basis for determining the fixed assessment, the agreement is thereupon terminated with respect to the land or such part thereof.

**27.(7) Registration of agreement**

27.(7) Any agreement entered into under subsection (1) may be registered against the land affected by the agreement and when registered such agreement runs with the land and the provisions thereof are binding upon and enure to the benefit of the owner of the land and, subject to the provisions of the Registry Act, any and all subsequent owners of the land.

**27.(8) Termination of agreement, as to all lands**

27.(8) Where an agreement is for any reason terminated in respect of the whole of the land, the owner shall pay to the local municipality the amount debited against the land, including the amounts of interest debited in accordance with clause (3)(c).

**27.(9) as to part of lands**

27.(9) Where an agreement is for any reason terminated in respect of a part of the land, the owner shall pay to the local municipality that portion of the amount debited against the land, including the amounts of interest debited in accordance with clause (3)(c), that is attributable to the portion of the land in respect of which the agreement is terminated.

**27.(10) Payment to Minister**

27.(10) Where a local municipality receives a payment under subsection (8) or (9), the treasurer of the municipality shall forthwith pay the amount of money received, including the amount of debited interest, to the Minister.

**27.(11) Termination of agreement by owner**

27.(11) An agreement may be terminated on the 31st day of December in any year upon the owner of the land that is the subject of the agreement giving six months notice of such termination in writing to the municipality.

### **27.(12) Apportionment**

27.(12) For the purposes of an apportionment required under any Act, the assessment used as the basis for such apportionment shall include the assessment determined under clause (3) (a). R.S.O. 1990, c. N.2, s. 27.

### **28.(1) Powers of entry**

28.(1) An employee or agent of the Commission or a person designated under subsection 5(11) may enter private property, other than a dwelling or building, without the consent of the owner or occupier and without a warrant, if,

- (a) the entry is for the purpose of considering an amendment to the Niagara Escarpment Plan proposed by the owner of the property;
- (b) the entry is for the purpose of a review of the Niagara Escarpment Plan under section 17 and is not inconsistent with the terms of reference established under that section for the review;
- (c) the entry is for the purpose of considering an application for a development permit under this Act;
- (d) the entry is for the purpose of considering or commenting on an application under any Act for a permit, order, certificate, licence, approval, consent, permission or other decision related to land use or development; or
- (e) the entry is for the purpose of enforcing section 24 and the person entering the property has reasonable grounds to believe that a contravention of section 24 is causing or is likely to cause significant environmental damage and that the entry is required to prevent or reduce the damage.

### **28.(2) Other persons**

28.(2) A person who is authorized to enter private property under subsection (1) may be accompanied by any person possessing expert or special knowledge that is related to the purpose of the entry.

### **28.(3) Time**

28.(3) Subject to subsection (4), the power to enter property under subsection (1) may be exercised at any reasonable time.

#### 28.(4) **Notice**

28.(4) The power to enter property under subsection (1) shall not be exercised unless,

- (a) reasonable notice of the entry has been given to the owner of the property and, if the occupier of the property is not the owner, to the occupier of the property; or
- (b) the person entering the property has reasonable grounds to believe that significant environmental damage is likely to be caused during the time that would be required to give notice under clause (a).

#### 28.(5) **No use of force**

28.(5) Subsection (1) does not authorize the use of force.

#### 28.(6) **Offence**

28.(6) Any person who prevents or obstructs a person who is entitled to enter property under subsection (1) or (2) from entering the property is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

#### 28.(7) **Restriction on entry**

28.(7) Except as authorized by subsection (1) or by any other Act, an employee or agent of the Commission or a person designated under subsection 5(11) shall not enter private property for any purpose associated with this Act without,

- (a) the consent of the owner of the property and, if the occupier of the property is not the owner, the consent of the occupier of the property; or
- (b) the authority of a warrant under the *Provincial Offences Act*.