

2014 PROVINCIAL POLICY STATEMENT (PPS) AT A GLANCE

Changing Tides in Ontario Provincial Planning Policy
with Respect to First Nation Interests

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1.0 THE REVIEW PROCESS

Following an extensive public consultation as part of its 5-year review, the latest Provincial Policy Statement (PPS) was released on February 24th, 2014. Various members of our research team participated in the PPS 5-year review by attending workshop sessions in Toronto, Hamilton, and Kingston, Ontario. Additionally, Jared Macbeth of the Walpole Island First Nation (WIFN) and Carolyn King of the Mississaugas of the New Credit First Nation (MNCFN) met with representatives of the Ontario Ministry of Municipal Affairs and Housing to recommend ways to include First Nations and encourage stronger and positive municipal-First Nation relationships in the reworking of the PPS (Viswanathan *et al.*, 2013). Without any previous mention of First Nations or Aboriginal and treaty rights in the previous 2005 versions of the PPS, the research team was “starting from scratch” with these efforts (Viswanathan *et al.*, 2013: 22).

2.0 WHY IT MATTERS

The PPS was of particular interest to our research team because of its influence in the provincial policy-led planning system in Ontario. As a planning instrument, the PPS shapes, constrains and enables “the kinds of conversations that planners and land managers are able to have with Indigenous peoples, and the kind of decisions and processes in which Indigenous people are involved” (Porter & Barry, 2013: 12). Planners at the municipal-scale are not often fully aware of Crown-First Nations relations, and Aboriginal and treaty rights, but the PPS, as a direction-setting planning document, can assist planners in redefining the limits of their relationships with and bring attention to neighbouring First Nation concerns and the role First Nations have to play in planning processes on traditional territories (Viswanathan *et al.*, 2013). As a result, the research team was strategic in their recommendations and focused attention on several key sections of the draft PPS sent out for review in the fall of 2012. These efforts coupled with the efforts and written submission of others has resulted in the PPS including, for the first time in its history, direct references to First Nations communities under the constitutional term of Aboriginal peoples, section 35 of the *Constitution Act, 1982* and the importance of consultation with First Nations.



3.0 KEY AREAS OF CHANGE WITH RESPECT TO FIRST NATIONS¹

Provincial Policy Statement, 2005	Provincial Policy Statement, 2014
No reference	Part IV: Vision for Ontario's Land Use Planning System Part V: Policies – 1.2 Coordination – 1.2.2 Part V: Policies- 2.0 Wise Use and Management of Resources – 2.6 Cultural Heritage and Archeology- 2.6.5 Part V: Policies- 4.0 Implementation and Interpretation -4.3 Part V: Policies -6.0 Definitions – Built Heritage resources Part V: Policies -6.0 Definitions – Cultural heritage landscape

¹ Note: First Nation communities throughout the PPS are referred to under the constitutional term Aboriginal as the provincial Crown utilizes this term to not only refer to First Nations, but also three separate groups of Aboriginal people- First Nations, Métis and Inuit- as recognized under section 35 of the *Constitution Act, 1982*.

4.0 HIGHLIGHTS OF KEY SHIFTS²

² Note: use of strikethrough and bold for emphasis

4.1 Internal Changes between 2012 PPS Draft & 2014 Final PPS

Key Shift	Section	Key Quotation
4.1.1 The removal of 'as appropriate' with respect to Aboriginal interests	Part IV: Vision for Ontario's Land Use Planning System	<u>2014 Provincial Policy Statement</u> "[...]The Provincial Policy Statement reflects Ontario's diversity, which includes the histories and cultures of Aboriginal peoples, and is based on good land use planning principles that apply in communities across Ontario. The Province recognizes the importance of consulting with Aboriginal communities, as appropriate , on planning matters that may affect their rights and interests" (MAH, 2014a: 4).
4.1.2 The removal of 'where appropriate' with respect to coordination of planning matters with Aboriginal communities	Part V: Policies – 1.2 Coordination	<u>2012 Provincial Policy Statement Draft</u> "1.2.2 Planning authorities are encouraged to coordinate planning matters with Aboriginal communities, where appropriate " (MAH, 2012: 17).
		<u>2014 Provincial Policy Statement</u> "1.2.2. Planning authorities are encouraged to coordinate planning matters with Aboriginal communities" (MAH, 2014a: 12).
4.1.3 The shift from 'should' to 'shall' and the removal of 'as appropriate' on matters of cultural heritage and archeological resources	Part V: Policies - 2.0 Wise Use and Management of Resources – 2.6 Cultural Heritage and Archeology	<u>2012 Provincial Policy Statement Draft</u> "2.6.5 Planning authorities should consider the interests of Aboriginal communities in conserving cultural heritage and archaeological resources, as appropriate " (MAH, 2012:30).
		<u>2014 Provincial Policy Statement</u> "2.6.5 Planning authorities shall consider the interests of Aboriginal communities in conserving cultural heritage and archaeological resources" (MAH, 2014a: 29).

4.2 Additional Changes between 2005 PPS & 2014 Final PPS

<p>4.2.1 Inclusion of reference to existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982</p>	<p>Part V: Policies- 4.0 Implementation and Interpretation</p>	<p><u>2005 Provincial Policy Statement</u> No mention of section 35</p> <hr/> <p><u>2014 Provincial Policy Statement</u> “4.3 This Provincial Policy Statement shall be implemented in a manner that is consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982” (MAH, 2014a: 33).</p>
<p>4.2.2 Integrating Aboriginal interests into the definition of built heritage resources</p>	<p>Part V: Policies - 6.0 Definitions – Built Heritage resources</p>	<p><u>2005 Provincial Policy Statement</u> No reference to First Nations within definition</p> <hr/> <p><u>2014 Provincial Policy Statement</u> “Built heritage resource: means a building, structure, monument, installation or any manufactured remnant that contributes to a property’s cultural heritage value or interest as identified by a community, including an Aboriginal community. Built heritage resources are generally located on property that has been designated under Parts IV or V of the Ontario Heritage Act, or included on local, provincial and/or federal registers” (MAH, 2014a: 39)</p>
<p>4.2.3 Integrating Aboriginal interests into the definition of cultural heritage landscape</p>	<p>Part V: Policies - 6.0 Definitions – Cultural heritage landscape</p>	<p><u>2005 Provincial Policy Statement</u> No reference to First Nations within definition</p> <hr/> <p><u>2014 Provincial Policy Statement</u> “Cultural heritage landscape: means a defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Aboriginal community. The area may involve features such as structures, spaces, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. Examples may include, but are not limited to, heritage conservation districts designated under the Ontario Heritage Act; villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways, viewsheds, natural areas and industrial complexes of heritage significance; and areas recognized by federal or international designation authorities (e.g. a National Historic Site or District designation, or a UNESCO World Heritage Site)” (MAH, 2014a: 40).</p>

5.0 CONCLUSION

The 2014 PPS represents a significant shift forward with respect to Crown policies that shape and inform provincial Crown-First Nation relations. In fact, the PPS has surpassed other Crown legislation and policies including, the *Planning Act (1990)* and the *Growth Plan for the Greater Golden Horseshoe (2006)*, in terms of recognizing and supporting First Nation interests. One of the most important shifts has been the integration of First Nations within discussions and definitions around conserving cultural heritage and archaeological resources. In particular, the improved clarity between the 2012 draft and the 2014 PPS with the shift from 'should' to 'shall' in section 2.6.5 demonstrates that the province may be willing to take into consideration a critical issue in southern Ontario for First Nations and ensure that community concerns are properly addressed through land-use planning processes.

Yet, section 2.6.5 is not without its own limitations, and it can be further improved by including a statement such as, "Planning authorities are encouraged to meet with Aboriginal communities to discuss cultural heritage and archeological resources and to include Aboriginal Traditional Knowledge in the decision making process" (MAH, 2014a: 3). This type of addition would ensure that municipalities and other planning authorities are actively communicating with neighbouring First Nations and sharing knowledge in order to figure out how to proceed with issues on the land that may affect Aboriginal and treaty rights as well as individual First Nations' traditional territories.

Additionally, there are several sections of the PPS that may affect the daily lives of First Nation communities that have not changed, particularly with respect to mineral and aggregate resources development. A continued provincial priority placed on resource extraction may infringe on the rights, daily life and cultural heritage of First Nations and traditional lands. In fact, in sections 2.4 and 2.5 which speak to mineral and petroleum resources as well as mineral aggregate resources, there is no specific acknowledgement of First Nations, traditional territories or sites of cultural significance as valid reasons to hinder or reconsider the establishment of new mineral development operations.

Finally, there is a lack of discussion surrounding ideas of co-management as well as relationship building between municipal planning authorities and First Nation authorities. Without direction from the provincial Crown in this influential text on how to engage, build and sustain positive relationships across inter-jurisdictional boundaries between Indigenous and non-Indigenous organizations, the PPS is fragmented when it comes to its transformative potential. Nonetheless, the latest PPS is a step forward and may signal larger changes to the status quo of provincial Crown land-use and resource management legislation and policies in Ontario to improve recognition and support of First Nations. The direct recognition of Aboriginal communities and the removal of 'as appropriate' and the change in terminology from 'should' to 'shall' is acknowledged as a strong step forward and evidence that the province of Ontario is beginning to alter the status quo of a regulatory regime that has traditionally ignored First Nation participation. It should be noted that the new PPS has a section related to guidance material that can be used to "assist planning and decisions-makers with implementing the policies of the Provincial Policy Statement" (MAH, 2014a: 3). Developing guidance materials with a clear focus on relationship building and mutual understanding would assist planners at the municipal-scale greatly in their daily interactions with First Nations and the promotion of active reconciliation.

6.0 ADDITIONAL COMMENTS

With continued efforts the next PPS provides the opportunity to move beyond just referencing consultation in relation to Aboriginal communities and towards providing clarity on municipal-First Nation relationship building. Having a PPS that prioritizes spaces of mutual learning and understanding between municipalities and First Nations can significantly change how we plan in the province and how we understand each other, as Indigenous and non-Indigenous communities.

7.0 REFERENCES

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APPENDIX 1

ROLE OF THE PPS IN ONTARIO

What its significance is

Within the Ontario context, the PPS provides policy direction on matters of provincial interest relating to land use planning. With section 3 of the Planning Act requiring that all decisions affecting planning and development “shall be consistent with” the PPS, this text can be regarded as an integral part of Ontario’s provincial policy-led planning system. Additionally, the PPS “represents the minimum standards” that planning authorities and decision-makers must follow in the province (MAH,2014a:3).

Why it has been revised

Adhering to the *Planning Act*, the PPS has recently undergone a 5-year review in order to reflect the changing needs and interests of the province. After an extensive consultation process that began in 2010, and with over 950 written submissions, the latest PPS is the most comprehensive yet (MAH, 2014a).

Where it fits in relation to other policies and plans

The policies of the PPS are to be read in its entirety in conjunction with provincial plans, such as the *Growth Plan for the Greater Golden Horseshoe*. However, if there is a conflict, provincial plans take precedent over the PPS, unless legislation says otherwise. Municipal plans must be consistent with the PPS (MAH, 2014a).

Where it applies

The PPS applies all across Ontario and at different scales. Some policies relate to specific areas of interests whereas others are directed at municipalities. In regards to municipalities, all official plans and decisions at the local-scale must take into consideration and be informed by the PPS. Therefore, this text carries a vast amount of significance for on-the-ground planning as it is one of several provincial texts that planners, particularly at the municipal-scale must take into consideration in their day-to-day decisions regarding land-use and development.

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