

Why the PPS is a Big Deal

Three huge reasons to pay attention to the new PPS

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The new Provincial Policy Statement (PPS) came into effect on March 1, 2005. This version of the PPS replaces the 1997 version, with which we all have some familiarity, notwithstanding its shortcomings. The purpose of the PPS is to provide policy direction on matters of provincial interest related to land use planning and development. Section 3 of the *Planning Act* sets out the authority of the Province to issue policy statements!

The Minister . . . may from time to time issue policy statements that have been approved . . . on matters relating to municipal planning that in the opinion of the Minister are of provincial interest.

The PPS has a broad, over-arching impact. Any decision made on a planning matter by a public body and any comments, submissions or advice provided by an agency on planning matters "must be consistent with" the PPS. This is a more rigorous test than the previous "have regard to" requirement. The "consistent with" standard reflects the current government's commitment to ensuring the PPS is implemented and is a commentary on how ineffective the previous PPS really was.

Perhaps the potential impact of the PPS is illustrated by the response of the development industry immediately prior to the new PPS coming into effect. As an example, in Oakville, 18 plans of subdivision were filed with the Town on February 28, 2005. In terms of dwelling units, this represents almost 9,000 units, which is equivalent to five years of growth.

What is the significance of February 28? Applications filed before March 1 would be subject to the old PPS. Applications filed on or after March 1 would be subject to the new PPS. More than anything else, this reaction by the development industry is a commentary on their concern with how the new PPS might affect the way things will work in the future.

Yes, the PPS is a big deal. It affects, at some level, almost everything land use planners do on day-to-day basis. It is the foundational core of what we do. Therefore, it is essential that

planners have a through understanding of what the PPS is seeking to achieve.

And the best news of all? Happily, there is not a single reference to smart growth in the entire document. This over-used and mis-used term appears to have been a passing fad and for that reason alone, planners everywhere will stand up and cheer.

The Main Themes—the PPS Re-Focused

The Government of Ontario has recently introduced three major planning initiatives—the Places-to Grow Draft Growth Plan for the Greater Golden Horseshoe, released February 2005, The Greenbelt Plan, approved February 24, 2005, and the Provincial Policy Statement (2005), approved on March 1, 2005. These documents converge to provide a coordinated planning strategy that builds on three key principles:

1. Urban areas will accommodate urban growth. Rural and agricultural areas will not be a reserve for urban uses.
2. Natural resources (agricultural land, water, minerals, petroleum, aggregates) are important to the long-term economic health of the economy and will be protected and managed.
3. Significant environmental features and areas will be protected and enhanced for their ecological value and their social benefit.

The contribution of the PPS to these principles can be seen in the Preamble:

The PPS provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural environment.

The vision on which the PPS has been established is that long-term prosperity and social well-being is dependent on maintaining strong communities, a clean and healthy environment, and a strong economy.

In many cases, the policies in the 1997 version of the PPS have been continued to the new set of policies. This similarity extends to the basic structure of the document where, aside from some minor reword-

ing, the basic organization of the document follows the previous version.

The main policy portion of the PPS is organized into three sections:

- *Building Strong Communities*—efficient land use and development patterns to support strong, liveable and healthy communities.
- *Wise Use and Management of Resources*—protecting natural heritage, water, agriculture, mineral, and cultural heritage and archaeological resources for their economic, environmental and social benefits.
- *Protecting Public Health and Safety*—reducing risk from hazards by directing development away from areas where there is an unacceptable risk to health, safety or property damage.

Building Strong Communities

This is the largest section and contains several themes that emerge as being central planks of the PPS.

1. *An emphasis on confining urban growth to urban areas*
This goal is apparent in many of the policies:
 - Settlement areas are to be the focus of growth and regeneration;
 - New development is to take place in designated growth areas occurring adjacent to existing built-up areas;
 - Phasing policies are to ensure the orderly progression of development;
 - Policies will control the expansion of settlement areas.
2. *An emphasis on intensification and redevelopment*
There is a clear message in the PPS—intensification and redevelopment is to be promoted and encouraged. This theme is threaded through many different sections of the PPS and is addressed more comprehensively than in any other policy. Some examples are:
 - Requiring the identification of land where intensification and redevelopment can be accommodated;
 - Establishing development standards that

facilitate intensification and redevelopment;

- Setting minimum targets for intensification and redevelopment;
- Requiring phasing policies to ensure that intensification and redevelopment targets are achieved;
- Prioritizing intensification and redevelopment as a growth management strategy ahead of development in designated growth management areas in preparing a 20-year land use plan;
- Permitting the expansion of settlement areas only if sufficient opportunities for growth are not available through intensification and redevelopment and designated growth areas;
- Developing standards for intensification and redevelopment that minimize costs and facilitate a compact form;
- Optimizing the use of existing infrastructure and public services before developing new infrastructure and public services.

3. The provision of affordable housing

The PPS requires municipalities to establish minimum targets for the provision of affordable housing.

4. Long-Term Economic Prosperity

This is a goal that is common across all policies. The pursuit of this goal is the rationale as to how resources are to be used and why risks are to be avoided. It is developed at some length in the Building Strong Communities section and deals with enhancing downtowns and mainstreets, the redevelopment of brownfields, planning for major facilities, tourism, minimizing land use conflict, promoting agriculture, and providing opportunities for energy generation.

Wise Use and Management of Resources

In this section, the policy on Natural Heritage includes references to maintaining or enhancing the diversity and connectivity of the ecological function and improving linkages between the various environmental components. However, it appears agriculture trumps environmental priorities. Existing agricultural uses are not limited by the Natural Heritage policies.

Protecting Public Health and Safety

Protecting public health and safety is intuitive for planners and something with which we can all quickly agree. The underlying premise for the policy is to direct development away from areas where there would be an unacceptable risk to public health and safety or property damage. It is in this section

where terms like hazardous lands, erosion hazards, flood plains, flood hazards, and floodways are introduced. Human-made hazards are included in this part of the PPS. The focus is on protecting people and property from damage as opposed to preserving, enhancing and restoring the natural features for their inherent environmental and ecological value (which is addressed the Resources section).

Comparison of the Old and New—the PPS Re-Thought

What we now have to be “consistent with” and how this is different from what we previously had to “have regard for.”

The new PPS is not entirely different from the old PPS, but takes things one step further by providing direction on how specific goals and objectives are to be achieved.

Vision Instead of Principles

The new PPS begins by articulating its main themes in a set of high-level statements. This Vision for Ontario's Land Use Planning System is more comprehensive than the three principles that formed the backbone of the old PPS. However, recognizing its own limits in terms of a “one size fits all” approach to policy planning, the Vision provides that it may be further articulated through planning direction for specific areas issued through provincial plans. The *Niagara Escarpment Planning and Development Act*, policy approved by the Lieutenant Governor in Council or the Minister of MAH, and the Growth Plan for the Greater Golden Horseshoe would fit this description.

A Holistic Approach to Building Strong Communities

The new PPS devotes considerable attention to the “Building Strong Communities” theme, which has been re-oriented and expanded from the former “Developing Strong Communities” theme in the old PPS. There are many interesting new policies. For example, the PPS now requires that:

- The regeneration of settlement areas be promoted;
- Settlement area land use patterns be based on densities and a mix of land uses that minimize negative impacts to air quality and climate change, and promote energy efficiency;
- Planning authorities identify and promote opportunities for intensification and redevelopment and establish minimum targets for intensification and redevelopment in built-up areas where they have not already been established through provincial plans;

- Planning authorities establish and implement phasing policies to ensure that intensification and redevelopment targets are achieved prior to or concurrent with new development in designated growth areas, and to ensure that development in designated growth areas progresses in an orderly manner;
- New land uses in rural areas, including the creation of new lots and new or expanding livestock facilities, comply with the minimum distance separation formulae established by the Province;
- Planning authorities establish and implement minimum targets for the provision of housing which is affordable to low- and moderate-income households;
- Municipalities establish policies to ensure that individual or private communal sewage and water services meet a comprehensive set of pre-established criteria including the protection of human health and the natural environment before they are used;
- Transportation and land use considerations be integrated at all stages of the planning process.

The new PPS also contains policies respecting employment areas, as well as public spaces, parks and open spaces. The employment area policies promote economic development and competitiveness through a variety of means. The employment area policies also address the issue of employment land conversion. The policies require that this question be considered within the framework of a comprehensive review and be permitted only where it has been demonstrated that the land in question is not required for employment uses over the long term and that there is a need for the conversion.

The public spaces, parks and open spaces policies promote the creation of healthy and active communities through a variety of means like the provision of public access to shorelines.

An Enhancement of the Resources Policies

The new PPS also contains numerous policies designed to protect natural heritage, water, agriculture, mineral and cultural heritage and archaeological resources for their economic, environmental and social bene-



Photo: Ontario Ministry of Agriculture and Food

Agricultural pro

fits. Several new policies now require that:

- Development and site alteration not be permitted in significant wetlands across Ontario, not just those south and east of the Canadian Shield;
- Any development or site alteration in fish habitat be in accordance with federal and provincial requirements;
- Development and site alteration in or near sensitive surface water features and sensitive ground water features be restricted so that these features and their related hydrologic functions are maintained;
- Planning authorities designate specialty crop areas in accordance with evaluation procedures established by the province;

- Criteria for secondary and agriculture-related uses be included in municipal planning documents;
- Mineral aggregate extraction be undertaken in a manner that minimizes social and environmental impacts;
- Mineral aggregate extraction activities be progressively and finally rehabilitated to accommodate subsequent land uses, promote land use compatibility and to recognize the interim nature of extraction;

- Any development or site alteration on a property adjacent to a protected heritage property be evaluated to ensure that the heritage attributes of the protected heritage property will be conserved.

Clarification of the Public Health and Safety Policies

The new PPS also elaborates on the Public Health and Safety policies of the old PPS. Several new policies of interest here are:

- A policy that generally directs new development to areas outside of hazardous lands adjacent to small inland lake systems that are impacted by flooding and erosion;
- A prohibition on development and site alteration in areas that would be rendered inaccessible to people and vehicles during times of flooding, erosion or dynamic beach hazards unless proved otherwise;
- A prohibition on development and site alteration in a floodway regardless of whether the area contains high points of land that aren't flooded;

- Policies that prohibit sensitive institutional uses (such as hospitals and schools) and essential emergency services (such as police and fire) from locating on hazardous lands or sites where there is either a threat to the safe evacuation of the sick, elderly or the young, or where the delivery of the emergency service would be impaired during a flood, the failure of flood proofing measures or erosion.

Implications for Planners—the PPS Re-Loaded

For decades, there has been a quiet but unsettling feeling of discontent that the Province of Ontario had abandoned any meaningful oversight role in planning matters. This was not always the case. Major, bold steps in strategic thinking that resulted in TCRA, COLUC, the Parkway Belt, and the 400-series highway network characterized provincial planning in the 1960s and 1970s. A clear vision for growth and development and an essential role for planning at the provincial level were firmly established. For better or worse, this top-down approach was replaced in the 1980s and 1990s with municipalities playing a greater role in determining the outcome of planning decisions. But the need for overall direction was obvious as disconnected, inconsistent and, in many cases, inefficient patterns of growth emerged across the GTA and the GGH. With the emergence of the current planning initiatives, the role of the province in planning has been firmly re-established.

The "Regard" Clause Re-placed

With respect to the PPS, the change in the provincial planning role is evident in what will prove to be the single most significant change to the policies. The more rigorous standard now is that planning decisions must be consistent with the PPS. Apparently, the government was not satisfied with the level of adherence to the previous PPS. The message appears to be "... we are serious about planning, we have a vision and a clear direction, and we insist on everyone getting on board to implement the policy." No longer will planners, or planning-related agencies, or municipal councils, or other decision-making bodies be able to claim regard for the PPS and fail to come to grips with implementing its stated objectives.

This significantly changes the environments in which planners operate. There is an obligation on the part of all planners to include the matter of consistency with the PPS when giving advice.

Intensification and Re-Development

The PPS encourages, promotes and even requires municipalities to provide for intensification and redevelopment. More to the point,

there is a priority for intensification plans and targets to be established before expanding urban development into greenfield areas.

Intensification and redevelopment is permitted in brownfield areas, but it is not relegated only to brownfields. Both upper-tier and lower-tier municipalities are responsible for ensuring intensification plans and targets are achieved. This is a very forceful change in direction.

With respect to the prospect of intensification and redevelopment, one newspaper in the GTA headlined—"This Is Going To Get Ugly"—quoting an elected official's response to a staff report. This sentiment reflects the potential for this policy to dramatically affect existing, established communities and to significantly change the character of these areas. It also reflects the inherent conflict between inappropriate and extreme intensification, which may claim consistency with the PPS, and more sensitive and gentle intensification that is complementary to the existing development fabric, but which may equally be consistent with the PPS.

Given the potential for dramatic change to the character of urban spaces, the challenge for planners is to properly evaluate the appropriateness of intensification and redevelopment proposals. Planners will play a significant role in providing oversight and advice. It will be fascinating to watch how this policy is implemented over the next few years. To the detached and passive observer, it will be an interesting study of group dynamics and stakeholder interests. To those intensely involved in the process, it may prove to be a controversial and at times painful experience.

Affordable Housing Re-Introduced

The new PPS requires municipalities to establish targets for the provision of affordable housing to medium- and low-income households. This was a focus of a previous Ontario government, where 25 percent of all housing was to be affordable. At that time, without significant funding support for the initiative, implementation of the policy proved to be ineffective. Planning responses were varied, ranging from merely ensuring a mix of housing forms and densities to seeking to control house prices beyond the first buyer—a solution that became untenable.

The goal of providing affordable housing has considerable merit and certainly is in the public interest. But it is doomed to continued frustration unless it is undertaken with the active involvement of other agencies and both provincial and federal levels of government. Planning can be the mecha-



tion on the agenda

nism that provides the opportunity for affordable housing, but the actual implementation is achieved in cooperation with other partners.

Resolving Conflicts Between Policy

In any general document that purports to be applicable to the entire province, the potential for some conflict between various policies is inevitable. In the new PPS, there are several areas where this conflict might occur, depending on specific circumstances:

- The preservation of natural heritage areas versus the encouragement given to agricultural and aggregate extraction uses that could effectively eliminate or damage the natural feature;
- The desire to retain prime agricultural lands for agricultural uses for the long-term versus the timing of an expansion to a settlement area boundary into an agricultural area to achieve the mandated growth projections based on 20-year, 10-year and 5-year time frames.

More of these conflicts will emerge over time as experience is gained in working with the PPS. For planners, it is in the resolution of these competing goals that our jobs become interesting. If every policy were crystal clear with no interpretation required, life would be dull indeed. It is in discerning the intent behind the policy, seeking to understand the entirety of the policy goal in a comprehensive way, and giving weight and balance to different factors that a proper application of relevant policy will be achieved. This is what planners do—not mindlessly administer a set of rules and regulations, but creating or discerning a vision, and then working within a policy framework to shape and implement the vision, appropriately balancing competing and at times conflicting policy. Conflicting policy within the PPS will not be an insurmountable problem.

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John Ghent and Jason Ferrigan are members of OPPI's Government & Legislative Working Group. OPPI's comments and submission on Planning Reform, including the PPS are posted online at www.ontarioplanners.on.ca, and click on Current Planning Issues.

Heritage gets a new look

Heritage buffs can hardly believe their luck

Jason Ferrigan

Bill 60, an *Act to Amend the Ontario Heritage Act*, became law on April 28, one year after first being introduced by the government. This Bill is significant as it represents the first time in 30 years that the laws governing the management of our heritage assets have been comprehensively changed. The Bill confers new powers on the province, municipalities and individual citizens designed to better identify, preserve and protect our heritage assets.

What are some of these new powers? At the local level, the Bill would:

- Give local councils the ability to refuse applications to demolish heritage buildings. This differs from the current practice, which only delays demolitions by 180 days. This ability to say "no" is balanced with a new right of appeal for heritage property owners whose demolition applications are refused. None of these changes affects the ability of local councils to say "yes" to a demolition application or the ability of the property owner to re-apply for demolition.
- Provide "any person" the right to object to an application that involves the removal of a property's heritage designation.
- Allow local councils to give staff the power to approve alterations to heritage properties, in certain circumstances.
- Give local councils the ability to enact "one-year heritage interim control by-laws" covering areas that are designated as Heritage Conservation District Study Areas.
- Require local councils to adopt, by by-law, Heritage Conservation District Plans.
- Give local councils the ability to prescribe minimum standards for the maintenance of heritage property attributes.
- Formalize the practice of "listing" properties in municipal heritage property databases.

At the provincial level, the Bill would:

- Give the Minister of Culture the ability to designate any property in the province as property of cultural heritage value or interest of provincial significance. Such properties cannot be demolished or removed without Ministerial consent. Refusals are subject to a right of appeal to the Ontario Municipal Board.
- Enable the Minister to issue a stop order to prevent the alteration, demolition or removal of any property in Ontario that has cultural heritage value or interest, even in cases where a local council has already granted its consent.
- Give the Minister the ability to prescribe minimum standards for the maintenance of heritage property attributes.

The real question is implementation.

The effectiveness of these changes will depend on how they are used and applied by all of the players involved. This raises several interesting questions. Will local municipalities refuse applications for her-

itage demolition? In what instances will the Minister of Culture intervene to protect a property from alteration, demolition or removal? How "important" does a heritage asset have to be for the Minister to intervene and stop the alteration or demolition of a property when a local municipality has given its approval to proceed? How will the Ontario Municipal Board factor expert heritage evidence into its decision-making processes? Only time will tell.

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Heritage building can now be protected from the wrecking ball