

Planning Consultation  
Provincial Planning Policy Branch  
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Canada

October 21, 2019

**RE: Provincial Policy Statement Review – Proposed Policies**

My name is Paul Racher, I am a Principal at Archaeological Research Associates Ltd. (ARA). I am writing to express concern over the proposed changes to the *Ontario Heritage Act* being put forward through Bill 108.

Established in 1972, ARA is Ontario's oldest archaeological and heritage consulting firm. We undertake archaeological assessments, heritage assessments and complete heritage restorations for homeowners. ARA's head office is in the City of Kitchener where it maintains a full-time staff of 30 researchers, technical writers, GIS technicians, laboratory technicians, field archaeologists and heritage specialists. An additional 65 interns, consisting of R-licensed Field Directors, university graduates with degrees in Archaeology, and other highly trained individuals are seasonally employed (usually from April to November) on field projects. Smaller satellite offices are maintained in the Town of Midland and the City of Hamilton. Our staff also live in these cities, many in historic houses.

I will try to keep my comments as succinct as possible, and to acknowledge both the positive improvements and the ones that cause me concern.

- 1) In the Preamble, Part IV, wording has been changed from: *The Province recognizes the importance of consulting with Aboriginal Communities on planning matters that may affect their right and interests.* To: *The Province recognizes the importance of consulting with Aboriginal communities on planning matters that may affect their section 35 Aboriginal or treaty rights.* The original sentence suggests a broader consideration of Indigenous rights, though the explicit mention of Section 35 Treaty Rights is more legally precise. Furthermore, the inclusion of the following sentence: *Planning authorities are encouraged to build constructive, cooperative relationships through meaningful engagement with Indigenous communities to facilitate knowledge-sharing in land use planning processes and inform decision-making,* is to be lauded.
- 2) We support the change in Section 2.6.5 from: *Planning authorities shall consider the interests of Aboriginal communities in conserving cultural heritage and archaeological*

resources. To: *Planning authorities shall engage with Indigenous communities and consider their interests when identifying, protecting and managing cultural heritage and archaeological resources.* The reference to engagement with Indigenous communities a clear improvement over “considering the interests of Aboriginal communities”. The notion that planning authorities have the capacity to “imagine” what Indigenous communities might want from them in conserving their heritage smacked of paternalism. Indigenous communities clearly must be allowed to “speak for themselves.”

There are changes to the definitions section that give us some pause. Specifically:

- i) PPS 2014 stated: *Areas of archaeological potential: means areas with the likelihood to contain archaeological resources. Methods to identify archaeological potential are established by the Province, but municipal approaches which achieve the same objectives may also be used. The Ontario Heritage Act requires archaeological potential to be confirmed through archaeological fieldwork.* In the new definition the term “methods” has been replaced with “criteria” but, to date, there has been no definition of such criteria in this new PPS or in the Ontario Heritage Act. As such, it is not possible to assess the implications of this wording change. It should be noted, however, that the archaeological history of the province is still imperfectly understood. We are perpetually finding archaeological sites in places where we do not expect them to be. Accordingly, we would expect that the new criteria would allow for the possibility of sites in unexpected contexts.
- ii) The removal of the provision for municipal approaches to determine areas of archaeological potential may be laudable if, unlike previous iterations of the PPS, municipalities were actually required to follow its archaeological and heritage provisions. Up to now, many municipalities continue to think of archaeological and heritage conservation as an expensive and unnecessary “frill,” while allowing development without consideration of any archaeological or heritage resources that may be destroyed.
- iii) The definition for “conserved” has been modified in subtle but significant ways. Originally, the definition indicated that cultural heritage resources were to be conserved in a manner that ensures their *cultural heritage value or interest* was to be retained under the Ontario Heritage Act. However, in the new definition reference to the Ontario Heritage Act has been removed. As such, it suggests the creation of a gap in which there is no legislation to support conservation.
- iv) Additionally, the PPS 2014 definition stated: *“This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment.”* New: *“This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment that has been approved or adopted by the planning authority or decision-maker.”* The addition of approval or adoption by a planning authority or decision-maker is concerning as municipalities may not have the staff and/or staff with training on cultural heritage matters to review, comment and approve such studies. As a result, it creates an opportunity in which significant heritage or archaeological resources could be compromised.
- v) Changes to the definition of what is considered “significant,” are concerning. PPS,2014 defined it as follows: *Significant means in regard to cultural heritage and archaeology, resources that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event, or a people.*

The new definition reads: *Significant means in regard to cultural heritage and archaeology, resources that have been determined to have cultural heritage value or interest. Processes for determining cultural heritage value or interest are established by the Province under the authority of the Ontario Heritage Act. National and international criteria are established by the certifying bodies.*

In the previous Provincial Policy Statement, the “criteria” for determining significance for cultural heritage resources identified throughout the PPS are recommended by the Province, but it also allowed for municipal approaches that achieve or exceed the same stated objective. The new wording appears to allow for changes to how significance is determined by either Ministerial direction or through regulation. We are concerned that this change does not take into consideration the views of both Settler and Indigenous communities. Centralizing the power, in the person of the Minister, to determine what does and does not have value to communities may put this section of the PPS in conflict with the requirement that Section 35 Treaty Rights be respected.

- vi) We also have concerns about the proposed changes to the definitions of Built Heritage Resources and Cultural Heritage Landscapes. The proposed changes to these definitions and the definition of significance emphasize cultural heritage resources that are already identified in some manner, through designation or registers. The definitions appear to exclude, or not allow for, the identification of additional cultural heritage resource through the planning process. This is troublesome since recognized cultural heritage resources represent only fraction Ontario’s history. The absence of formal recognition does not mean a property does not have cultural heritage value or interest - only that someone has not yet examined the property to determine if it may have cultural heritage value or interest. This change, coupled with the proposed changes to the OHA which outline a more onerous designation and listing process, puts heritage at risk.

In all, the proposed document holds the potential to do some real good. As is usual with such things, the “Devil is in the details.” Please forgive us if we have parsed any of the language incorrectly or failed to understand its intent. Our concern is with making sure that all heritage stakeholders and Descendent groups feel that the new PPS will protect their interests. Thank you for taking the time to read this.

Sincerely,



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**Principal, ARA Ltd.**

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