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To whom it may concern,

**Re: ERO #019-0279 Provincial Policy Statement Review**

We thank you for the opportunity to submit our comments for this important review process, regarding the proposed changes to the Provincial Policy Statement (PPS). Please accept the following comments and suggested revisions to the PPS as a constructive support to this challenging process.

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**1. Executive Summary**

Some important changes have been proposed, which indicate potential for progress and must be acknowledged, in particular with respect to the shift from encouraging planning authorities to coordinate with Indigenous communities to directing that they “shall” engage with them. There are however some changes that will serve to undermine the good progress made, for instance the appearance of “market-ready” terminology, and the significant reduction in referencing generally accepted principles of sustainable land use planning.

The implications for the effective implementation of this policy must be a central facet of this review process. Thus, while it is outside the bounds of this particular policy review, we believe it critical to point out that, in order for this policy to lead to meaningful engagement between Indigenous communities and municipalities, supporting policies must be enacted by the Province to enable implementation, for example:

- the *Draft guidelines for ministries on consultation with Aboriginal peoples related to Aboriginal rights and treaty rights* (hereafter “Draft Guidelines”) must be updated and finalised to provide greater coordination guidance for other levels of government that are actively embedded with Ontario’s land use planning system;
- funding mechanisms and structures must be in place for capacity-building in Indigenous communities to meet the demand for engagement and consultation with local governments;
- planning authorities must have access to training to understand the requirements for engagement with Indigenous communities

Reference ought to be made to international policies such as The Great Lakes Water Quality Agreement, the United Nations Declaration on the Rights of Indigenous Peoples, the principles of Free, Prior, and Informed Consent

## **2. Who We Are**

The Shared Path/SPCI is a charitable organisation that provides space and resources to enhance, inform, and facilitate Indigenous–municipal planning and engagement. We work towards a future in which Indigenous voices and rights form a sustained and integral part of land-use planning law, policy, and governance in Ontario. SPCI facilitates and supports a community of practice drawn from Indigenous and local governments, institutions, and organizations to navigate the challenges of an emerging reconciliation landscape through research, education, and relationship-building opportunities and resources. We believe that in order to flourish alongside each other, the path forward requires that we acknowledge our past, inform our present, and aspire towards a future in which we plan together for the benefit of all.

This working group draws together Indigenous and non-Indigenous practitioners from a range of professions addressing land-based relationships between local government and Indigenous communities. Our members include members of the Canadian Institute of Planners as well as the Ontario Professional Planners Institute; planners working for Six Nations of the Grand River, the City of Mississauga, and People Plan Community; consultants working for Shared Values Solution, and OPPI; archaeologists from ASI - Archaeological and Cultural Heritage Services; and academics from York University’s Faculty of Environmental Studies. The working group supports the mandate of the Shared Path Consultation Initiative and the work of its Board of Directors.

Our goal in providing these comments for the PPS review process is to acknowledge where good change has been proposed with respect to planning with Indigenous peoples, provide suggested changes where appropriate, and provide further recommendations for the Province that would breathe life into this policy in order to enact meaningful progress in municipal-Indigenous relations.

## **3. Proposed Changes to be Lauded**

The Proposed PPS 2019:

- Acknowledges Indigenous communities':
  - Unique relationship with the Land and its resources
  - Continued shaping of history and economy
  - Unique role in land-use planning and development
  - Contribution of perspective and traditional knowledge to land-use planning decisions
- Recognises:
  - Importance of consulting with aboriginal communities on planning matters that affect Section 35 Aboriginal or Treaty rights
- Encourages planning authorities and Indigenous communities to:
  - Build constructive co-operative relationship
  - Conduct meaningful engagement
  - Facilitate knowledge-sharing in land-use planning processes and inform decision making
- Instructs planning authorities to engage with Indigenous communities to:
  - Co-ordinate on land-use planning matters
  - Consider their interests when identifying, protecting and managing cultural heritage and archaeological resources
  - Implement the PPS consistent with the:
    - *Constitution Act, 1982* (section 35)
    - Ontario Human Rights Code
    - Canadian Charter of Rights and Freedoms (section 25)

#### **4. Concerns to be Raised**

As indicated by the Province, there has been a shift towards red tape reduction, increasing housing supply, and reducing barriers and costs to development. This shift towards a stronger focus on economics and speeding up approval processes will have an impact on Indigenous rights through changes to the environment, based on market-ready terminology as a tool for determining development. For instance, what are the determinants of an area of land being considered market-ready, and how within this assessment are Indigenous consultation, accommodation and engagement to be considered or included? Given the significance and weight of market-ready as a determinant for settlement boundary expansions, residential type, housing options and long-term prosperity, at the very least a definition for the term should be provided, so there is clarity on this new policy direction.

The combination of neglecting the discussion of Indigenous culture in favour of “market-ready” language indicates that the discussion of Indigenous rights is being marginalised. This is a significant problem for Indigenous communities; not only does it undermine the Province’s efforts to build better relations with Indigenous peoples, it also undermines the Province’s efforts to build a better economy for all Ontarians.

## 5. Suggested Changes & Recommendations

### Part IV: Vision for Ontario's Land Use Planning System

- Paragraph 3:
  - *GENERAL COMMENTS:* Reference to Section 35 of the Constitution and to Indigenous communities largely implies First Nations, and neglects the large populations of Indigenous peoples living in municipalities with no formal representation.
  - *SUGGESTED CHANGE TO PPS:*
    - Clarify the Province's fiduciary duty to consult and accommodate Aboriginal peoples, and the potential to delegate the procedural aspects of that duty to third parties.
    - Include maps of:
      - Treaties in Ontario
      - First Nations communities
      - Traditional territory of First Nations and Métis communities, created in collaboration with those communities
    - Include reference to international documents/policies/principles such as
      - UNDRIP
      - FPIC
    - Suggested text to add:
      - Planning authorities shall fulfill their planning duties in light of constitutional and international obligations regarding the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as well as the principles of Free, Prior, and Informed Consent (FPIC) by seeking advice from their host Indigenous communities.

### Section 1.0 Building Strong Healthy Communities

- 1.2.2
  - *GENERAL COMMENTS:*
    - The proposed change in language from "are encouraged", to "shall engage", is to be lauded.
    - However, engaging with Indigenous communities on-reserve requires cross-jurisdictional coordination, which is complex.
    - Furthermore, it requires that the Indigenous community has the capacity to respond to consultation and engagement requests, which is not possible for many smaller communities, and communities surrounded by a high concentration of municipal and other planning authorities.



- Moreover, it has not been clear in the past, nor is it made clearer with these proposed changes, who has the authority to decide whether adequate engagement/consultation has taken place.
- *SUGGESTED CHANGE TO PPS:*
  - Clarify what the Province means when it says “Indigenous communities”
  - indicate where planning authorities and Indigenous communities can look to for guidance/support/arbitration from the province with respect to these policy requirements and the activities it triggers
  - Supporting legislation must be referenced, where it exists, or created/updated where it does not yet exist or adequately provide guidance. See Section 6. “Further Recommendations” (**below**) for more detail.
- *ADDITIONAL SUGGESTIONS FOR THE PROVINCE:*
  - Explore the development of funding mechanisms and structures to support greater engagement with levels of government and First Nations to help support capacity requirements that may lead to greater delays in critical decision-making in the planning and development process. For instance, the Province could implement a planning application fee for planning applications, to be paid to host Indigenous communities on/adjacent to whose land the project proposal rests order to engage with the Indigenous community within the municipality. Make this a requirement.

## Section 2.0 Wise Use and Management of Resources

- 2.6.5
  - *GENERAL COMMENTS:*
    - The proposed changes to this section now specify three areas for which to engage/consult, thus limiting the scope of the Province’s duty to consult and accommodate.
  - *SUGGESTED CHANGES:*
    - Make reference to the process of identifying archaeological potential
    - Direct planning authorities to engage with Indigenous communities within whose territory the municipality resides, in order to explore potential areas of concern for the Indigenous community, including but not limited to archaeological potential and cultural heritage
    - Make reference to Indigenous language and traditional knowledge, which is written into the preamble, but not currently in the body of this policy.

## **6. Further Recommendations**

- The Ministry of Municipal Affairs and Housing must be better prepared to discuss issues of Indigenous rights with municipal and planning authorities. There is a lack of guidance coming from the Ministry around these issues, which is hindering efforts to make progress with respect to municipal-Indigenous relations. Ultimately, it is the Province and the Federal governments

that hold the fiduciary duty to consult with Aboriginal peoples where their rights are to be affected by decisions or actions, and where appropriate, to accommodate.

- Update the Ontario Planning Act
  - *COMMENTS:* That the Planning Act's only reference to engagement with Indigenous peoples is in "Ontario Regulation 543/06: Official Plans and Plan Amendments" where it directs planning authorities to notify the chief of every First Nation within one kilometre of the proposed official plan or plan amendment, leaves an inordinate amount of room for interpretation and neglect.
  - *RECOMMENDATION:* The Planning Act must be updated so that it lays out clearly the constitutional rights of First Nations and Métis peoples; it must clarify the Province's fiduciary duty to consult and accommodation Indigenous peoples when their rights may be affected; and it must guide planning authorities with respect to their responsibilities as third parties to the Crown, to fulfill the procedural aspects of the Crown's duty.
  
- Update the "Draft guidelines for ministries on consultation with Aboriginal peoples related to Aboriginal rights and treaty rights"
  - *COMMENTS:* This document has been left largely unchanged since it was drafted, and does not fulfil the Province's responsibility to ensure that its fiduciary duty to consult and accommodate is fulfilled with respect to the procedural obligations it is allowed to delegate to third parties such as companies, local governments, planning authorities, etc.
  - *RECOMMENDATION:* The Draft Guidelines ... must go through its own review process, beginning with a period of time dedicated to engaging and consulting meaningfully with all Indigenous communities in Ontario, followed by a period of review for third parties, and the general public
  
- Province to engage more broadly with relevant organisations for the implementation process
  - The Shared Path is readily available resource and support to the Province on behalf of the above-referenced comments. The Shared Path Consultation Initiative is working to address issues that emerge where land use planning and Aboriginal and treaty rights intersect, in order to ensure that Indigenous communities and non-Indigenous planning authorities have the resources to draw on in order to adequately respond to the requirements of these and other policies.