



August 4, 2023

Planning Consultation
Provincial Planning Policy Branch
777 Bay Street, 13th floor
Toronto, ON
M5G 2E5

RE: ERO 019-6813

Review of proposed policies adapted from A Place to Grow and Provincial Policy Statement to form a new provincial planning policy instrument

<https://ero.ontario.ca/notice/019-6813>

Dear Minister,

The Shared Path Consultation Initiative (Shared Path) is a charitable organization that addresses the challenges and opportunities where land use change and Aboriginal and Treaty Rights intersect. Planning has the potential to impact Indigenous political and territorial claims. In response to the Truth and Reconciliation Commission's Calls to Action 47, 57, and 92, Shared Path provides resources for First Nation, Métis, municipal, and provincial governments, as well as professionals in land use change to better engage in consultation and relationship-building.

The SPCI is sympathetic to the fracturing of issues that the Government of Ontario must face, as the lack of cohesion on the fiscal, economic, cultural, social, and political fronts is immense. We have concerns about the province's intensive focus on residential development - the need for more housing in Ontario is apparent, but cannot be siloed from other matters of importance. Single-issue solutions lend themselves to top-down visions and context-less implementations, and run the risk of impinging on Aboriginal, Treaty, and Inherent rights of the Indigenous peoples of Ontario.

Context and Vision

In its haste to revise the PPS, the Greenbelt, and the Growth Plan, the provincial government has neglected the principles of "free, prior, and informed consent," regarding traditional territories, otherwise known as Ontario. (*see United Nations Declaration on the Rights of Indigenous Peoples, 2016*). The government has also forgotten to respect the Honour of the Crown in its duty to consult and accommodate the aforementioned rights (*see: The Royal Proclamation, 1764; the Constitution Act, 1867; the Constitution Act, 1982; the Royal Commission on Aboriginal Peoples, 1996; the Ipperwash Inquiry, 2007; the Truth and Reconciliation Commission, 2011; see jurisprudence: Calder, 1973; Sparrow, 1990; Delgamuukw, 1997; Haida, 2004; Taku River, 2004; Mikisew Cree, 2005; SON, 2017, etc.*)

Duty to Consult and Accommodate

In this section, we provide an overview of the legislative frameworks and policy tools that inform our consideration of the province's proposed implementation of a new policy planning instrument.

1. The *United Nations Declaration on the Rights of Indigenous Peoples* has been accepted by the Canadian government (2016). The result is that the "free, prior, and informed consent" of Indigenous peoples when actions are taken regarding the lands and resources traditional to their communities, is now part of Canadian jurisprudence.
2. The *Constitution Act, 1982* contains two sections recognizing Indigenous rights:
 - a. Section 25 in the Charter of Rights and Freedoms states that Aboriginal, treaty, or other rights or freedoms are not abrogated or derogated. It specifically mentions *The Royal Proclamation, 1763*. It, along with the implementing *Treaty of Niagara, 1764* is one of the first planning policies on this continent and is grounded in a relationship with the Crown.

- b. Section 35 recognises and affirms the “Aboriginal peoples of Canada ” and their treaty rights as they exist now or as they may be acquired.
3. Ontario, as the Crown, has a legal obligation to consult with Aboriginal peoples where it contemplates decisions or actions that *may adversely impact* asserted or established Aboriginal or Treaty Rights (*court cases: Haida, 2004; Taku River, 2004; Mikisew Cree, 2005*) .
4. The Province of Ontario understands that inherent in the Crown’s duty to consult is the obligation to ensure that the concerns of the impacted Aboriginal people are addressed (*court cases: Sparrow, 1990, Delgamuukw, 1997*).
5. This obligation now includes: *formal notice, information, peer-review funding, and accommodation of the concerns raised* during consultation. Further, that cumulative effects are the proper subject of consultation, and that private interests risk delayed projects by a failure to consult (*court case: SON, 2017*).

After the fact consultation on reports that are prepared without considering their concerns, and mitigation measures conceived of without their participation, will not discharge the Crown’s duty to consult.

Echoing Indigenous Peoples in Ontario

First Nations have voiced their concerns about the province’s recent amendments to planning legislation and policy.

In a comment submitted [RE: ERO 019-6177](#), Saugeen Ojibway Nation (SON) expressed concerns about the provincial government’s approach to the proposed PPS and the growth plan for the Greater Golden Horseshoe, reminding us that growth in the GGH and the GTA have real impacts on communities and lands to the north.

Indigenous peoples are not simply stakeholders in the planning realm, but unique rights holders as defined through treaties, the *Constitution Action 1982*, and decades of case law. To that end, we support SON’s view that a simple comment opportunity through the Environmental Registry of Ontario is not “in form or substance” adequate to explore the impacts amendments to land use policy and legislation will have on these rights.

Through our research and collaborations, we have heard from both First Nations and municipal representatives across southern Ontario that a formal process is sorely needed to guide adequate engagement and consultation practices with First Nations. SON expressed the same sentiment in their comments, requesting a “process in which SON is directly engaged and consulted about what Ontario is seeking to do, and how it will impact and enable infringements on SON’s rights,” informed by cataloging cumulative impacts of development.

Additionally, we have heard about the many gaps that exist in legislation and policy regarding archaeology, Indigenous engagement, and handling of artifacts and sacred sites including burial grounds. SON’s comments once again address the lack of essential frameworks in place to mitigate, monitor and prevent impacts caused through archaeological work.

Ontario must ensure that the existing PPS provisions in place to respect and protect Indigenous interests are not weakened. As SON writes, “these provisions form a fundamental, overarching direction to land use planning that” both SON and other Nations across Ontario rely to protect themselves from unwanted impacts of development on their lands, their rights, and themselves.

Proposed Provincial Planning Statement (PPS) Provisions

In this section, we outline our specific concerns with elements of the proposed planning policy instrument.

Preamble & Vision. We are gratified that the government chooses to acknowledge “the unique role Indigenous communities have in land use planning and development.” However, we are disheartened that this symbolic statement lacks substance. Specifically, there are no provisions made for the time, resources, funding, training, capacity building, statutory decision-making roles in provincial and/or municipal planning processes to make such a statement meaningful.

6.2 Co-ordination. Once again, we are gratified that the government insists that, “Planning authorities shall undertake early engagement with Indigenous communities and coordinate on land use planning matters to facilitate knowledge-sharing, support consideration of Indigenous interests in land use decision-making and support the identification of potential impacts of decisions on the exercise of Aboriginal or treaty rights.” Once again, however, we note that capacity issues and the preying upon of community resources and time is not considered (*see SON, 2017*).

4.0 Wise Use and Management of Resources. There is a deafening silence here on the inherent rights and interests of Indigenous peoples in the wise use of their resources on their territories, otherwise known as Ontario.

4.6 Cultural Heritage and Archaeology. We are gratified that the government insists that, “Planning authorities shall engage early with Indigenous communities and ensure their interests are considered when identifying, protecting and managing cultural heritage and archaeological resources, built heritage resources and cultural heritage landscapes.” However, we note that planning authorities are not mandated, but only “encouraged to develop” archaeological management plans, when AMPs are known to reduce construction-delaying incidents by at least 20%.

6.1 General Policies for Implementation and Interpretation. We are gratified that the government insists on respecting the Indigenous Rights protected in Section 25 & 35 of the *Constitution Act, 1982*. However, we note that in the identification of key indicators to measure PPS outcomes, to be done “in consultation with... Indigenous communities,” there is no provision of resources for such an undertaking.

PPS Language

The use of the phrase “Indigenous communities” is slowly becoming a term only used to represent those native people who live in town. If that is what is meant, and it is defined as such, then it is fine. However, if the terms “First Nations & Metis Nation of Ontario” are what is meant, then that phrase is more appropriate.

The Greater Golden Horseshoe Growth Plan

While numerous policies were or are now found in the PPS, integral policy components in the Growth Plan that have any application specific to the GGH have been abandoned, as has the entire basis of establishing a provincial plan to lay out and coordinate planning and resource management efforts in the GGH - one of the largest and fastest growing city regions in North America. To that end, maps laying out the visions and spatial connectivity of the GGH have been abandoned.

With the repeal of the Growth Plan the province now treats the region virtually the same as any other part of Ontario, despite being home to 70% of Ontarians, the vast majority of anticipated growth, and where major investments are being made in infrastructure, particularly in public transit via the \$60 billion Regional Transportation Plan.

The repeal builds on the removal of planning authority for 6 regions in the GGH via Bill 23 (yet to be proclaimed). This is despite the fact regions are legally responsible for planning and funding major transit, sewer, water and social housing and managing growth amongst their lower tiers, based in part on those responsibilities along with oversight over large regional agricultural, natural and water resource systems.

The overall thrust is to create a laissez faire approach to regional planning empowered by the 96 single and lower tier municipal governments, rather than have it coordinated through the Province and the 21 upper and single tier governments. The major policy plank of promoting compact urban form within our major urban areas is now augmented by a major policy thrust to essentially allow any residential development – including scattered residential lots and subdivisions – including in prime agricultural areas.

This approach to planning encourages development sprawl that stands to impinge on Indigenous lands and rights, as discussed in previous sections of this comment. It also risks the further fragmentation of Ontario’s planning regime, reducing the already precarious capacity of municipalities and Indigenous communities engaged in consultation and development processes.

Our Suggestions

Development, specifically of residential projects, is sorely needed in the Province of Ontario and the ever-expanding GGH. However, it needs to be conducted in a way that protects and respects Indigenous, Aboriginal and Treaty Rights.

To that end, we ask that, moving forward in regard to planning legislation and policy, the Government of Ontario:

1. Respects and accommodates requests emanating from First Nations and Métis communities in Ontario
2. Retains the strength of protective language used in PPS 2020
3. Works with First Nations and Métis governments to develop frameworks that facilitate meaningful consultation, accommodation, and archaeological processes

4. Develop a policy tool that limits sprawl, which serves to enhance the pressures of development on Indigenous communities

Thank you for your consideration,

The Shared Path Team