

LAND DEVELOPMENT AND PLANNING FORUM 2014

**THE 2014 PROVINCIAL POLICY STATEMENT AND
ENVIRONMENTAL PROTECTION**

**MARY L. FLYNN-GUGLIETTI
AND
ANNIK FORRISTAL**

mcmillan

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Introduction

The Provincial Policy Statement 2014 (the “**2014 PPS**”) was issued under section 3 of the *Planning Act* and replaces the Provincial Policy Statement 2005 (the “**2005 PPS**”). The 2014 PPS applies to all decisions in respect of the exercise of any authority that affects a planning matter made on or after April 30, 2014. Unlike previous provincial policy statements, there are no transition provisions in the 2014 PPS therefore, any municipal council decisions or Ontario Municipal Board decisions, regardless of when the development application was filed, must be consistent with the 2014 PPS as of April 30, 2014¹.

The 2014 PPS introduces a change in policy direction with a pronounced emphasis on environmental sustainability and conservation. Although it is far too early to fully appreciate how these changes will impact land use planning decisions going forward, the following provides a summary of the amendments to the 2014 PPS regarding environment protection and the potential impacts that may result.

Sustainability

The introductory paragraph of Part IV of the 2014 PPS states that “[t]he long-term prosperity and social well-being of Ontario depends upon planning for strong, **sustainable** and **resilient** communities for people of all ages, a clean and healthy environment, and a strong and

¹ Section s 4.1 and 4.2 of the 2014 Provincial Policy Statement.

competitive economy.” The terms “sustainable” and “resilient” are new to this introductory paragraph and are indicative of a broader policy shift evident in the 2014 PPS. Specifically, throughout the 2014 PPS are increased references to sustainability, resilience and long-term prosperity indicating a new focus of provincial policy on development and land use planning patterns that are harmonious and sensitive to environmental matters. However, it is important to note that neither the words “sustainable” nor “resilient” are defined terms.

Increased reference to and consideration of “sustainability” is found throughout the 2014 PPS. As noted, the 2014 PPS does not provide a definition of sustainable, however, the Oxford Dictionary defines the term as “able to be maintained at a certain rate or level”². Policies 1.1.4.1(f), 1.1.6.1 and 1.1.6.4 expressly provide for the promotion of the sustainable management and use of resources in rural areas and rural lands. These new considerations are indicative of a new focus on conservation and increased symbiosis between development and the natural environment.

Policies newly providing for the development, management and support of “resilient” communities have also been introduced. First, the focus of Policy 1.1 is to achieve efficient and resilient development and land use policies. Next, Policies 1.2.3 and 1.3.1(c) each expressly provide for the support of “resilient communities”. Although the word “resilient” is used throughout the 2014 PPS it is also not a defined term. The Oxford Dictionary defines resilient as “able to withstand or recover quickly from difficult conditions”³. It appears that under the 2014 PPS, resilient communities are considered to be those that have a more harmonious relationship

² <http://www.oxforddictionaries.com/definition/english/sustainable?q=sustainable>

³ <http://www.oxforddictionaries.com/definition/english/resilient?q=resilient>

to the natural environment allowing for strength, longevity and sustainability. As discussed in greater detail below, “resilient communities” under the 2014 PPS also appears to be those communities that reduce and adapt to the impacts of climate change.

The 2014 PPS includes increased references to planning that considers and provides for “long-term” prosperity and needs, including consideration of the full life-cycle of development.

For example, Policy 2.2.1 provides as follows:

“Using the watershed as the ecologically meaningful scale for integrated and long-term planning, which can be a foundation for considering cumulative impacts of development.”

This new policy places emphasis on sustainability and resilience by introducing reference to “long-term planning” and by providing for the consideration of cumulative impacts of development on the watershed.

Additionally, Policy 1.1.3.8 (which relates to the criteria for identifying or expanding the boundary of a settlement area) has been revised to provide that the infrastructure and public service facilities must be both financially viable over their life cycle and protect the natural environment. These two requirements were not present under the 2005 PPS.

With an emphasis on sustainability, resilience and long-term prosperity, a significant goal of the new 2014 PPS appears to be to encourage a more symbiotic relationship between development and the natural environment by promoting development that minimizes or avoids negative impacts⁴ or adverse effects⁵ on the environment.

⁴ **Negative impacts:** means a) in regard to policy 1.6.6.4 and 1.6.6.5, degradation to the quality and quantity of water, sensitive surface water features and sensitive ground water features, and their related hydrologic functions, due to single,

Throughout the 2014 PPS, this new emphasis is evident as development and planning policy encourages the preservation of natural heritage and resources. For example, the 2014 PPS includes policies that make express reference to the Great Lakes and seek their preservation. Policy 2.0 provides that “Ontario’s long-term prosperity, environmental health and social well-being depend on protecting the health of the Great Lakes”. Policy 2.2.1(g) provides that “planning authorities shall protect, improve or restore the quality and quantity of water by ensuring consideration of environmental lake capacity, where applicable”. Consideration of lake capacity may be accomplished through a lake capacity study or through an assimilative capacity study⁶, thus, going forward municipalities may complete their own studies or require the completion of additional reports by applicants in support of proposed developments in order to demonstrate not only that a development proposal will not negatively impact the Great Lakes, but will also protect, improve or restore⁷. This consideration of lake capacity was not present in the 2005 PPS and although it is consistent with the promotion of sustainable and resilient

multiple or successive development. Negative impacts should be assessed through environmental studies including hydrogeological or water quality impact assessments, in accordance with provincial standards; b) in regard to policy 2.2, degradation to the quality and quantity of water, sensitive surface water features and sensitive ground water features, and their related hydrologic functions, due to single, multiple or successive development or site alteration activities; c) in regard to fish habitat, any permanent alteration to, or destruction of fish habitat, except where, in conjunction with the appropriate authorities, it has been authorized under the Fisheries Act; and d) in regard to other natural heritage features and areas, degradation that threatens the health and integrity of the natural features or ecological functions for which an area is identified due to single, multiple or successive development or site alteration activities.

⁵ **Adverse effects:** as defined in the Environmental Protection Act, means one or more of: a) impairment of the quality of the natural environment for any use that can be made of it; b) injury or damage to property or plant or animal life; c) harm or material discomfort to any person; d) an adverse effect on the health of any person; e) impairment of the safety of any person; f) rendering any property or plant or animal life unfit for human use; g) loss of enjoyment of normal use of property; and h) interference with normal conduct of business.

⁶ “Assimilative capacity is the relationship between water quality and quantity, land use, and the capability of the watercourse or lake, to resist the effects of landscape disturbance without impairment of water quality. An assimilative capacity study (ACS) develops specific scientific modelling to support and assist municipalities and other legislative authorities in predicting the impacts of land use.” (Taken from <http://www.lsrca.on.ca/reports/acs.php>)

⁷ See, for example, the July 2006 Assimilative Capacity Studies for the Lake Simcoe Watershed and Nottawasaga River http://www.lsrca.on.ca/pdf/reports/acs/executive_summary_2006_jul.pdf

development it is unclear which applications will be required to complete what could be very onerous reports to demonstrate compliance with the provisions of the 2014 PPS.

Similarly, Policy 1.5.1(d) has been revised to provide that “healthy, active communities should be promoted by recognizing provincial parks, conservation reserves, and other protected areas, and minimizing negative impacts on these areas”. This change in language has strengthened the environmental focus of the 2014 PPS by providing that negative impacts should be minimized, whereas previously the 2005 PPS simply provided that impacts on such parks and reserves were to be considered.

As discussed in greater detail below, this shift in emphasis towards development that is more harmonious with the natural environment and which takes greater steps to preserve the environment is also evident under the 2014 PPS through the new policies dealing with climate change, biodiversity conservation and green infrastructure as well as through the revised policies dealing with endangered species and land use compatibility.

Climate Change

Closely linked to the concept of resilience in the 2014 PPS are the policies providing for the management of climate change. Part IV of the 2014 PPS provides that “strong, liveable and healthy communities promote and enhance human health and social well-being, are economically and environmentally sound, and are resilient to climate change”. The 2014 PPS then proceeds to include numerous policies that provide for consideration of climate change and, interestingly, for adaptation to the impacts of climate change.

To begin, Policies 1.1.1(h) and 1.6.1 provide for consideration of the impacts of climate change to create sustainable communities, infrastructure and public service facilities. Policy 1.7.1(j) provides that long-term economic prosperity is supported by “minimizing negative impacts from a changing climate and considering the ecological benefits provided by nature”. Although climate change is not clearly defined, Policy 1.8.1 has been revised to provide that planning authorities shall “support reduced greenhouse gas emissions and climate change adaptation” through specific land use and development patterns. Subsections (a) through (g) of Policy 1.8.1 would appear to provide direction as to how one would design a development project so that it would be more resilient to climate change, such as promoting compact development forms with renewable energy systems that have active transportation and transit capacity. As well, Policy 3.1.3 provides that the impacts of climate change on the risk of natural hazards must also be considered by planning authorities.

The focus of the 2014 PPS is to ensure that future development contributes to minimizing the impacts of climate change through development efficiencies. Going forward, these new requirements may place an additional burden on developers who may need to demonstrate how these matters have been considered for a proposed development. At this time it would appear that compliance with the policies requiring consideration of and adaptation to climate change may be demonstrated through compliance with the direction provided under Policy 1.8.1, however, it is possible that municipalities will expand upon these requirements through their Official Plans and by-laws. Thus, at this time it remains uncertain how exactly compliance with these climate change considerations will evolve. For example, a greater emphasis on compliance with “green” legislation or policy such as a municipality’s green-roof by-law or LEED

certification may emerge. Regardless, the 2014 PPS clearly intends greater consideration to be given to these environmental impacts and efficient developments going forward.

Conserving Biodiversity

Part IV of the 2014 PPS includes reference to ensuring that resources are managed in a sustainable way to conserve biodiversity. For example, Policies 1.1.1(h) and 1.1.4.1(h) both provide that the conservation of biodiversity is necessary to support healthy, liveable, safe and viable communities and rural areas. “Biodiversity” is not a defined term under the 2014 PPS, however, the Oxford Dictionary defines it to mean “the variety of plant and animal life in the world or in a particular habitat, a high level of which is usually considered to be important and desirable”⁸. As a result, more extensive consideration of the natural heritage in an area may be required in support of new development. The scope of Natural Heritage Impact Studies, for example, may be broadened to further identify and preserve the existing biodiversity of an area, including its vegetation and wildlife. A more expansive consideration of the natural environment, in order to conserve plant and animal life, furthers the environmental focus of the 2014 PPS.

Green Infrastructure

Policy 1.6.2 under the 2014 PPS introduces the concept of “green infrastructure” which is to be promoted by planning authorities. Green infrastructure is defined under the 2014 PPS as “natural and human-made elements that provide ecological and hydrological functions and processes”. Pursuant to the definition, green infrastructure can include components such as

⁸ <http://www.oxforddictionaries.com/definition/english/biodiversity?q=biodiversity>

natural heritage features and systems, parklands, stormwater management systems, street trees, urban forests, natural channels, permeable surfaces, and green roofs. Therefore, in keeping with and further emphasizing the promotion of sustainable and resilient development that is both protective of and more compatible with the natural environment, the 2014 PPS has introduced the concept of green infrastructure which is presumably to be incorporated into new developments. It is unclear at this time exactly how such green infrastructure will be implemented and whether compliance with this new policy will require changes to municipalities' existing green infrastructure policies. For example, many municipalities' Official Plans currently incorporate policies that provide for green infrastructure. The City of Toronto's Official Plan, Policy 2.2.3.3(c)(vii)(5) provides that Mixed Use Areas on an Avenue will be encouraged to incorporate "environmental sustainable building design and construction practices that create innovative green spaces such as green roofs" while Policy 3.4.1(b)(iv) provides that particular attention should be paid to "natural linkages between the natural heritage system and other green spaces". Tree protection by-laws and green-roof by-laws are already in existence in many municipalities which mandate the provision of "green infrastructure". Going forward, a greater emphasis on these types of green infrastructure policies by municipalities may emerge in furtherance of the 2014 PPS' new green infrastructure policy.

Endangered Species

The 2014 PPS revises the province's policy with respect to development and site alteration in the habitat of endangered species and threatened species. Specifically, Policy 2.1.7 provides that "development and site alteration shall not be permitted in the habitat of endangered species and threatened species, except in accordance with provincial and federal requirements".

At first glance this policy appears to be more permissive, allowing for development or site alteration in accordance with specific requirements whereas under the 2005 PPS (which did not include the language “except in accordance with provincial and federal requirements”) no development whatsoever was permitted in the “significant habitat of endangered species and threatened species”.

“Significant”, however, was a defined term under the 2005 PPS and meant “the habitat, as approved by the Ontario Ministry of Natural Resources, that is necessary for the maintenance, survival, and/or the recovery of naturally occurring or reintroduced populations of *endangered species* or *threatened species*, and where those areas of occurrence are occupied or habitually occupied by the species during all or any part(s) of its life cycle”. In comparison, “habitat of endangered species and threatened species” is now very broadly defined under the 2014 PPS as follows:

“Habitat of endangered species and threatened species: means (a) with respect to a species listed on the Species at Risk in Ontario List as an endangered or threatened species for which a regulation made under clause 55(1)(a) of the Endangered Species Act, 2007 is in force, the area prescribed by that regulation as the habitat of the species; or (b) with respect to any other species listed on the Species at Risk in Ontario List as an endangered or threatened species, an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding, as approved by the Ontario Ministry of Natural Resources; and places in the areas described in clause (a) or (b), whichever is applicable, that are used by members of the species as dens, nests, hibernacula or other residences.”

Thus, the 2014 PPS provides far broader protection of endangered species and threatened species and, as a result, in practice may capture a far greater area and impact a far greater number of proposed developments.

As mentioned above, Policy 2.1.7 does allow for development and site alteration in accordance with provincial and federal requirements which was not provided for in the 2005 PPS. However, the definition of provincial and federal requirements referenced in Policy 2.1.7 means legislation and policies administered by such governments for the purpose of protecting species at risk and their habitat. Therefore, a proposed development may proceed if it is in compliance with any applicable provincial or federal legislative requirements provided under species at risk legislation. Nevertheless, given the significant broadening of the application of this policy, land use planning and development will likely be noticeably impacted by this change.

As an example, in a 2006 Ontario Municipal Board Decision (PL031169), the Board heard considerable evidence and spent a significant amount of time on the issue of whether a particular site for proposed development constituted a “Significant Wildlife Habitat” for the purpose of the 1997 Provincial Policy Statement. In particular, the focus was on the significance of the site to migratory birds, which often included both threatened and endangered species of birds. At the time, criteria set out in the Ministry of Natural Resources’ “Significant Wildlife Habitat Technical Guide” were relied upon by the Board in order to inform its conclusion that the site was in fact a Significant Wildlife Stop Over Habitat for migratory birds. The criteria included the relative importance of the site, the presence of species of conservation of concern as well as the species diversity and abundance. The evidence before the Board included that the site was not frequented as often by migratory birds as other areas and that no rare species had been identified at the site. However, the Board accepted evidence that the site included an important food source for migrating birds and contributed to the function of a larger migratory bird stopover area. Although the 2014 PPS will continue to require reference to Ministry guidelines in order to inform the consideration of impacts on endangered and threatened species,

the much broader definition of “habitat of endangered species and threatened species” present under the 2014 PPS would likely simplify this analysis as it provides that if an endangered or threatened species depends on the area directly or indirectly to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding, the area is a habitat of endangered species and threatened species. Therefore, it is very likely that today the same site would be considered a “habitat of endangered species and threatened species” and, given the broad definition, the frequency of cases where such habitat is identified may increase.

Land Use Compatibility

Small, but noticeable changes to land use compatibility policies have occurred under the 2014 PPS. First, in keeping with the emphasis on sustainability, resilience and long-term prosperity, the 2014 PPS has revised the land use compatibility policies in such a way as to indicate that there should be greater emphasis on avoidance as opposed to mitigation with respect to natural and human-made hazards. This shift is primarily found in Part IV of the 2014 PPS where reference to mitigation has been removed such that Part IV now simply provides that development should be directed away from areas of natural and human-made hazards. This shift towards avoidance with respect to natural hazards appears to be linked to a consideration of climate change under the 2014 PPS and of its impacts on natural hazards such as flooding and wildfire. As previously mentioned, Policy 3.1.3 provides that the impacts of climate change on the risk of natural hazards must also be considered by planning authorities. Therefore, given the potential serious impacts of climate change on the severity of such occurrences, the 2014 PPS appears to have increased its emphasis on avoidance under these circumstances.

Second, the land use compatibility policy relating to major facilities and sensitive land uses has been removed from the long-term prosperity policies and is now a separate and distinct policy. Policy 1.2.6, states as follows:

“Major facilities and sensitive land uses should be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term viability of major facilities.”

(emphasis added)

Relocation of the policy appears to provide a greater emphasis on ensuring land use compatibility under the 2014 PPS. Policy 1.2.6 newly references “ensuring the long-term viability of major facilities”, which is consistent with the new sustainability and resilience focus of the 2014 PPS. Most notably, however, new Policy 1.2.6 also appears more permissive, expressly allowing for the mitigation of adverse effects.

Previously, under the 2005 PPS, Policy 1.7.1(e) provided that major facilities and sensitive land uses must be appropriately designed, separated or buffered in order to prevent adverse effects. No reference to mitigation was included. Thus, the 2014 PPS may result in further availability of mitigative measures when seeking to locate sensitive land uses in close proximity to major facilities.

As with the land-use compatibility policies relating to natural hazards, this shift towards increased implementation of mitigation measures also appears to be motivated by the new consideration of climate change under the 2014 PPS. More specifically, as described above, subsections (a) through (g) of Policy 1.8.1 would appear to provide direction as to how a development may be more resilient to climate change and these policies include the promotion of

more compact development. Compact development necessitates increased proximity between uses which, at times, will require the use of mitigation measures in order to ensure compatibility. Therefore the revised land use compatibility provisions help support those policies intended to address the impacts of climate change.

This new provision for mitigation under the 2014 PPS is timely, as the Ministry of the Environment (the “**MOE**”) in October 2013, released the new Environmental Noise Guideline, Stationary and Transportation Sources - Approval and Planning – Publication NPC-300 (the “**NPC-300 Guidelines**”), replacing older guidelines including Publication LU-131 – Noise Assessment Criteria in Land Use Planning and Publication NPC-205 – Sound Level Limits for Stationary Sources in Class 1 and 2 Areas (Urban).

The NPC-300 Guidelines are intended to address the control of sources of noise emissions to the environment by providing sound level limits for stationary sources such as industrial establishments. In addition to sound level limits that must be satisfied by industrial operations for environmental approvals, the NPC-300 Guidelines also provides advice, sound level limits and guidance that may be used in the land use planning process including when sensitive land uses are proposed adjacent to noise-producing facilities.

In the past, the MOE noise guidelines included three area classes – urban (Class 1), suburban (Class 2) and rural (Class 3) – and established appropriate sound level limits for each area class. One of the most notable features of the NPC-300 Guidelines is the introduction of a new area class, Class 4, which is intended to apply to infill developments and which provides for additional mitigation measures not typically permitted in order to facilitate compatibility between sensitive land uses and uses such as major facilities.

Specifically, Class 4 areas are subject to standards under the NPC-300 Guidelines that will make them particularly desirable as such a designation will be beneficial to both residential developers and to existing industry. For example, the use of enclosed noise buffers such as enclosed balconies will be permitted in Class 4 areas (subject to zoning and other requirements). For developers, the use of such balconies would result in the elimination of a point of reception providing new options for ensuring compliance with the NPC-300 Guidelines. Thus, this change to the 2014 PPS providing for mitigation to facilitate land use compatibility is consistent with the policy shift exemplified by the MOE under the NPC-300 Guidelines which also provide for additional mitigation measures to facilitate land use compatibility. This indicates that, going forward, the consideration and implementation of mitigation measures may form a greater part of the land-use planning process.

Concluding Comments

The amendments to the 2014 PPS introduces a change in policy direction with an emphasis on environmental sustainability and conservation. The introductory paragraph of Part IV of the 2014 PPS states that “[t]he long-term prosperity and social well-being of Ontario depends upon planning for strong, sustainable and resilient communities for all people of all ages, a clean and healthy environment and a strong and competitive economy”. Throughout the 2014 PPS is an increased reference to environmental sustainability and compact communities that are resilience to climate change. In order to achieve this goal, land use and development patterns must support energy conservation and efficiency, improved air quality, reduced greenhouse gas emissions and climate change adaptation as mandated in Policy 1.8.

When reviewing subsections (a) through (g) of Policy 1.8, together with the increased protections afforded to the environment such as biodiversity, natural heritage, water and endangered species it is clear that development, both residential and employment uses will continue to occur in more compact efficient forms in areas that are well served by transit and existing infrastructure and developments near environmentally sensitive areas and features will be discouraged. Although the province of Ontario has for years been moving away from permitting urban sprawl, it is clear that the 2014 PPS provides stronger policy direction to provide one more nail in that coffin.