



**Ontario**  
Home Builders'  
Association

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November 17, 2017

Graham Chernoff  
Ministry of Tourism, Culture and Sport  
401 Bay Street, Suite 1700  
Toronto, ON M7A 0A7

**Re: A Guide to Cultural Heritage Resources in the Land Use Planning Process**

**EBR Registry Number: 013-0914**

Dear Mr. Chernoff,

The Ontario Home Builders' Association (OHBA) is the voice of the land development, new housing and professional renovation industries in Ontario. OHBA represents over 4,000 member companies, organized through a network of 29 local associations across the province. Our membership is made up of all disciplines involved in land development and residential construction, including builders, professional renovators, trade contractors, manufacturers, consultants and suppliers. Our members have built over 700,000 homes in the last ten years in over 500 Ontario communities. In 2016 alone, the residential construction industry employed over 336,000 people, generated \$19.8 billion in wages and contributed over \$56 billion to the province's economy.

On behalf our members, OHBA appreciates the opportunity to respond to the EBR posting with respect to *A Guide to Cultural Heritage Resources in the Land Use Planning Process*. OHBA understands that the proposed guide will provide advice and guidance on best practices in applying the cultural heritage policies in the *Provincial Policy Statement, 2014* (PPS). The guide will also articulate how the conservation, wise use and management of cultural heritage and archaeological resources are in the provincial interest and is an important part of land use planning and development.

Provincial guidance is critical, as OHBA has serious concerns regarding a number of municipalities' treatment and application of the "Cultural Heritage Landscape" designation under the *Ontario Heritage Act*, and its potential broader implications across the rest of Ontario. Although OHBA does not involve ourselves in individual member applications, we have previously raised concerns directly to the Premier in letter dated August 21, 2017 regarding the process of the Town of Oakville's consideration of a potential heritage designation. This instance further raised concerns that other municipalities may look to Oakville's actions as an example of how to attempt to use the heritage designation process to regulate land use and/or as a means to impede an unpopular development application that supports the provincial government's *Growth Plan for the Greater Golden Horseshoe*.

The decision to leave the definition of "cultural heritage landscape" very broad in the PPS has created this problematic situation. It is identified as being a "defined geographical area that may have been modified by

human activity and is identified as having cultural heritage value or interest by a community, including an Aboriginal community” and examples may broadly include areas as “villages, parks, gardens, ... main streets and neighbourhoods, ... and viewsheds”. Although we recognize that Policy 2.6.1 of the PPS directs that “significant cultural heritage landscapes shall be approached when considering the merits of a planning application,” likewise, cultural heritage resources can be conserved in a number of ways that will implement various provincial planning objectives. Accordingly, our members have successfully implemented and conserved cultural heritage resources through numerous development projects across the Province.

With that in mind, OHBA has serious concerns with attempts by municipalities to further regulate the use of privately owned lands or areas through a “Cultural Heritage Landscape” designation process under the *Ontario Heritage Act*. If left unchecked, it is not unreasonable to imagine that a municipality may seek to use the heritage designation process to attempt to impede the development of large privately owned open spaces, broad viewsheds, or even entire villages or neighbourhoods, where the lands would otherwise have development potential, by simply identifying them as a “cultural heritage landscape.”

We are very concerned, and the Province should be equally concerned, that municipalities will use the heritage designation process for lands that they choose to identify as a “cultural heritage landscape” as an attempt to protect areas from potential development within settlement areas, and particularly in built-up areas where local resistance to development pressures may be greatest. The Province continues to encourage and demand greater density and intensification in settlement areas, directing more of Ontario’s growing population into existing communities.

Importantly, this could have the potential to undermine the Province’s other Provincial planning objectives, including efforts to achieve intensification targets set out in the *Growth Plan*, to optimize the use of existing infrastructure and the efficient use of land, and to achieve transit-supportive densities in urban areas. Through the Development Approvals Roundtable, OHBA advocated for much clearer guidance to Cultural Heritage Resources in the land use planning process. The Development Approvals Roundtable chaired by the Secretary of Cabinet had an objective to identify opportunities to streamline the development approval process to ensure there are not undue delays in bringing new housing supply to market, while maintaining the intent of policy and legislative requirements. Through the Development Approvals Roundtable, the Ministry of Tourism, Culture and Sport (MTCS) committed to produce guidance on cultural heritage resources in the land use planning process by Fall 2017.

As stated on the EBR posting, the Guide is intended to help those involved in the land use planning process in Ontario to understand the cultural heritage policies in the PPS, 2014. The Guide draws on multiple sources and original content in pursuit of this goal, and once finalized should be consulted by anyone wishing to obtain background on the Ministry’s interpretation of the PPS. However, the EBR posting states that these positions are being advanced through a guide and therefore does not have the force of statute or regulation.

OHBA notes that through the Guide, the scope of cultural heritage planning has been expanded considerably. Examples such as public art policies, affordable artists live-work space, creative industries hubs, etc. are explicitly mentioned. While land use planning policy can be an effective tool to support cultural heritage policy, without increased municipal expenditure, OHBA is concerned that additional requirements may result in considerable additional costs for the private sector.

OHBA recommends that the Guide should include PPS direction (Section 1.3) on balancing policy objectives, recognizing that the conservation of cultural heritage resources is but one of many Provincial planning policy objectives. OHBA further recommends that the following sections from the PPS should be cited or included in full:

**Part III: How to Read the Provincial Policy Statement** *The provincial policy-led planning system recognizes and addresses the complex interrelationships among environmental, economic and social factors in land use planning. The Provincial Policy Statement supports a comprehensive, integrated and long-term approach to planning, and recognizes linkages among policy areas.*

**Read the Entire Provincial Policy Statement** *The Provincial Policy Statement is more than a set of individual policies. It is to be read in its entirety and the relevant policies are to be applied to each situation. When more than one policy is relevant, a decision-maker should consider all of the relevant policies to understand how they work together.*

OHBA notes that Section 4.3 provides a list of planning tools that can be used to conserve cultural heritage landscapes. These tools are helpful and OHBA suggests that the list should either be repeated in Section 4.6 or moved entirely to that section. The list should also be expanded to reflect the broader list provided within the Ontario Heritage Tool Kit's *Heritage Resources in the Land Use Planning Process*. This document provides the following list of planning tools that can be used to conserve cultural heritage landscapes in land use planning:

- ) Heritage conservation district policies, guidelines, & studies
- ) Area design guidelines
- ) Height and setback restrictions / site plan control
- ) Landscape impact assessments
- ) Secondary plan policies for special areas
- ) Special zoning by-laws with heritage criteria overlay
- ) Subdivision development agreements
- ) Community improvement plans
- ) Stewardship
- ) Financial incentives
- ) Landscape conservation plans
- ) Park area / corridor area management plans

The Guide provides that not only significant cultural heritage landscapes need to be conserved, but that it may not be possible to determine that something is significant until development or site alteration is proposed (4.4). OHBA is concerned that this makes investment in a property much more risky, and it encourages lands to be identified as significant and in need of conservation solely in response to a proposed development. Similar to recent experiences, this raises the possibility for this tool to be used for political purposes in response to unpopular development applications.

The Guide also broadens conservation of “intangible” heritage, which may potentially restrict development even where there will be no impact on built heritage. The Guide goes so far as to state it may be appropriate to restrict land uses even on adjacent lands because of a nearby intangible heritage feature (4.11). OHBA is strongly opposed to this language in the Guide.

The Guide also includes shadows cast from a high-rise development as an example of inappropriate impact on a heritage attribute (p. 50). This language in the Guide elevates the importance of shadows to the level of Provincial policy. OHBA is very concerned by this language as it could be used inappropriately for political purposes and/or impact development in areas where provincial policy directs growth.

OHBA notes that the protection of views and vistas has been expanded (6.3.1 and 8.9). This issue has already been raised for a number of development applications in Toronto, and with the proposed guidance, other municipalities will likely follow. While the protection of a view to a historic place may be appropriate, from OHBA's perspective, protecting views “from” or “within” such heritage buildings is problematic. Therefore greater clarity is required as to what exactly is being protected and how a view from a heritage property out to non-heritage areas is to be “conserved” as it can negatively impact large geographic areas of land where

growth has been directed. OHBA strongly recommends that the Guide should acknowledge that conservation of a view “from” a heritage site does not mean that there would be no adjacent development or change.

OHBA notes that Section 8.2 references the use of Regulation 9/06 of the OHA to determine whether a property has cultural heritage value or interest. Given the complexity of cultural heritage landscapes, further analysis and guidance on the use of 9/06 as an evaluation metric for this type of heritage resource should be considered. The use of Regulation 9/06 can be problematic when evaluating potential cultural heritage landscapes as it is generally understood that these evaluation criteria were specifically designed for individual built heritage resources and not cultural heritage landscapes. As a result, evaluation of potential cultural heritage resources using Regulation 9/06 can sometimes lead to a recommendation for designation under the OHA when, in fact, designation may not otherwise be warranted.

As acknowledged in previous sections, the conservation of cultural heritage landscapes can be achieved through a variety of protection measures, including the use of tools under the *Planning Act*. Heritage evaluation should lead to a discussion of which planning tools are most appropriate for conserving a particular cultural heritage resource.

The explanation of the “Description of Heritage Attributes” in Section 8.4 is problematic. From OHBA’s perspective in that it seems to be confusing the PPS definitions of “conserved” and “heritage attributes”, particularly where it states that the description of heritage attributes is a list of the key attributes or elements “that must be retained to conserve the CHVI.” According to the PPS definitions, “heritage attributes” are the “principal features of elements that contribute to a *protected heritage property’s* cultural heritage value or interest” and the key principle reflected in the PPS definition of “conserved” is to ensure that the “cultural heritage value or interest is retained.” Thus, it is the cultural heritage value or interest, as opposed to the specific attributes or elements of a property, that are to be retained. Furthermore, although the list of heritage attributes is identified as being non-exhaustive, it improperly implies that each of the listed items must be included in the description of the heritage attributes by the use of the term “will”. To be consistent with the PPS definition of “heritage attributes,” which recognizes that each property may have different types of heritage attributes, the term “will” should be replaced with “may.”

OHBA further notes that “good design” within the Guide is identified as design that “favours retention, rehabilitation, and adaptive reuse (or continuity of use) of the existing buildings, structures and landscape elements that support sense of place, and encourages sympathetic integration of new built form with old,” while design choices “should discourage complete redevelopment that has an adverse effect on built heritage resources, archaeological resources, cultural heritage landscapes and the natural environment.” OHBA is concerned that such guidance elevates all existing structures to standards for heritage-listed or-designated structures and thus would limit architectural design flexibility.

The examples used in Section 8.7 in the fourth bullet, when read in conjunction with the third bullet, are confusing and OHBA suggests should be deleted. The third bullet refers to an intention to “remove or demolish any building or structure on a protected heritage property or cultural heritage landscape,” which is specifically addressed in Section 34 of the OHA. By contrast, the fourth bullet refers to plans to “alter a property that contains cultural heritage resources”, which is addressed in Section 33 of the OHA where the property is designated under Part IV of the OHA. These two separate activities (demolition/removal vs. alteration) are dealt with separately in the OHA and it is therefore confusing to reference demolition and removal as examples of activities to “alter” a heritage property.

The description of a Heritage Impact Assessment (HIA) (8.8) has added that it “takes into account the opinions of interested persons, communities and organizations”. These new policies are problematic, as the opinion of the community is very likely to value the status quo over a proposed development, regardless of whether there is a legitimate heritage concern. The proposed guidance also seems to require public consultation before an HIA is prepared, which means before there has been any application. OHBA is very concerned that these

proposed policies will be utilized to place local political considerations ahead of good planning. OHBA recommends these policies be removed from the Guide.

OHBA notes that assessing impacts to heritage resources is a qualitative exercise. Impacts can be both positive and negative and can vary in degree, significance, and duration. OHBA recommends that Section 8.9 should be titled "Impacts" and should refer to impacts more broadly than simply negative impacts. Further guidance on assessing positive impacts should be considered.

OHBA appreciates the opportunity to submit comments on a *Guide to Cultural Heritage Resources in the Land Use Planning Process* and looks forward to additional dialogue with the Ministry of Tourism, Culture and Sport.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Collins-Williams', with a long horizontal flourish extending to the right.

Mike Collins-Williams, RPP, MCIP  
Director, Policy  
Ontario Home Builders' Association