

Summary Assessment of Provincial Legislative Framework ONTARIO¹

The strength of Ontario’s legislative framework for protecting farmland is **very strong**. Most notably, as shown in Table 11, the framework is consistently very strong for three of the four principles without any significant weak elements throughout the framework. A profile of the provincial legislative framework is provided at the end.

Strength of Provincial Legislative Framework: Summary Assessment

	Maximise stability	Integrate across jurisdictions	Minimise uncertainty	Accommodate flexibility
Ontario	****	****	****	***

* = Very weak; **** = Very strong

Maximise stability

Acts of legislation, policy, and governance structures for agricultural land use planning in Ontario are quite stable. The *Planning Act* (R.S.O 1990, Chapter P.13) provides the foundational framework for a policy-led planning system that supports provincial goals. A fundamental section of the Act is ss. 2(b), which directs planning authorities² to have regard to matters of provincial interest, including “the protection of the agricultural resources of the Province” (R.S.O. 1990, Chapter P.13). This clear, concise language can hold up to court challenge and serves to stabilize the provincial legislative framework. This language also lends itself to clarity in terms of what the rules are – it is language that planners can count on to bolster their actions.

Section 3 of the *Planning Act* gives the Minister of Municipal Affairs and Housing the authority to issue policy statements on matters related to the municipal planning that are of provincial interest. Effective April 30, 2014, the Government of Ontario implemented a revised Provincial Policy Statement (PPS) that replaced the earlier 2005 version. The PPS provides policy direction to planning authorities (Figure 1). As an enforceable policy, PPS is well entrenched in acts of legislation and governance structures. Also, it is based on relatively clear and concise language that has proven to hold up to court challenge. The PPS is policy that planners and the public are relatively familiar with. The PPS is comprised of many policies and it is not the intention for these policies to be interpreted individually; rather, the document is to be interpreted as a whole when applied to any given situation.

The effect of changes to provincial lot creation policy in the 2005 PPS is an example of how elements of stability come together to make the legislative framework strong. These changes saw an end to all but one type of non-farm rural residential severance in *prime agricultural areas*³ because upper-tier

¹ From: Sharpe, Bryce, Wayne Caldwell, and David. J. Connell (2015). “Agricultural Land Use Planning in Canada: Case Study of the Town of Niagara-on-the-Lake, Ontario.” Guelph, ON: University of Guelph.

² The phrase ‘planning authorities’ refers to municipalities, planning boards, government agencies or other entities with legal responsibilities under the *Planning Act*.

³ The Ontario Ministry of Municipal Affairs and Housing (2014) defines prime agricultural land as, “*specialty crop areas* and/or Canada Land Inventory Class 1, 2, and 3 lands, as amended from time to time, in this order of priority for protection”

(county or regional) and lower-tier (local) municipalities are required to be consistent with the PPS. Overall, the provincial legislative framework is quite stable; it cannot be easily changed because it is so well entrenched in acts of legislation, policy, and governance structures.

Integrate public priorities across jurisdictions

Subsection 3(5) of the *Planning Act* requires that the decisions of councils and other planning authorities “shall be consistent with” the PPS and “shall conform with” provincial plans or “shall not conflict with them” as the case may be. The legislative authority for this level of integration is clearly stated in provincial planning documents. For example, the PPS incorporates the following statement: “decisions affecting planning matters “shall be consistent with” policy statements issued under the [*Planning Act*] (Ontario Ministry of Municipal Affairs and Housing, 2014, pg. 1). This thread of consistency becomes extremely important at the local government level as policy is integrated across jurisdictions. When the council of a municipality develops an official plan to guide land use within its geographic boundaries, the official plan has to be consistent with the PPS and has to conform to, or not conflict with, any applicable provincial plans (Ontario Ministry of Municipal Affairs and Housing, 2010).

Where there is conflict, legislation sets out the procedures for resolving it. For example, the *Greenbelt Act* (S.O. 2005, c.1) prescribes that the policy direction afforded by the provincial Greenbelt Plan prevails in cases where there is conflict between the Plan and an official plan; a zoning by-law; or the PPS. Likewise, if there is conflict between the Greenbelt Plan and the Niagara Escarpment Plan (NEP), the NEP prevails. The Growth Plan for the Greater Golden Horseshoe (GGH) is slightly different; provincial policies that afford the greatest protection to the natural environment or human health prevail (Ontario Ministry of Infrastructure, 2006).

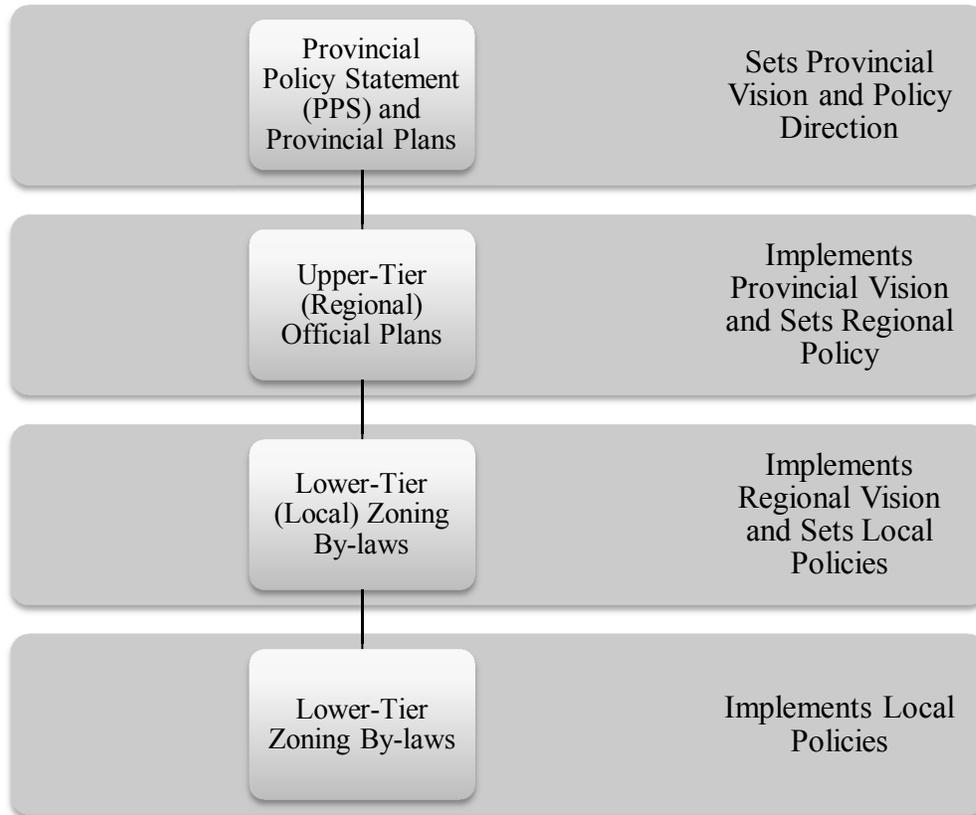
Some might argue that the requirement for integration is arguably equivalent to a double-edged sword because certain provincial policy creates friction within a system that is ultimately applied locally. Examples are provincial policy that enables aggregate resource extraction to be undertaken in prime agricultural areas at the local level; provincial policy that enables new lot creation for residences surplus to a farm operation as a result of farm consolidation; provincial policy for new lot creation stemming from so-called “farm splits” and the associated criteria for setting minimum lot size standards; provincial policy that enables settlement area expansion onto prime agricultural lands; and finally, the provincial exclusion of certain regional areas (e.g. Huron County) from provincial plan areas (e.g. the Greater Golden Horseshoe [GGH] Growth Plan Area), the inclusion of which would otherwise submit those areas to more robust policy requirements (e.g. urban intensification targets).

In cases where there is a two-tier system of local government in place, the upper-tier (or regional) official plan sets out a broad planning framework for the lower-tier (or local) municipalities within its geographic boundaries that is consistent with the PPS. All lower-tier official plans and zoning by-laws must then conform to the regional plan (Ontario Ministry of Municipal Affairs and Housing, 2010). A zoning by-law is a legally enforceable document enabled by Part V of the *Planning Act* that controls the use of land within a given municipality. A zoning by-law accomplishes this by implementing the objectives and policies of a local municipality’s official plan (Figure 1). This level of integration, which is ultimately linked back to the *Planning Act*, the PPS, and provincial plans (as the case may be), creates a legislative framework that is highly integrated. Integrating policies across jurisdictions in this way creates formal linkages that provide consistency and cohesion across provincial, regional, and local governments. The effect is that upper and lower-tier policies are set within the

(pg. 46). Specialty crop areas are comprised of areas where specialty crops are predominantly grown such as tender fruits (e.g. peaches, cherries, plums, etc.), grapes and other fruit crops, vegetable crops, greenhouse crops, and crops from “agriculturally developed organic soil” (Ontario Ministry of Municipal Affairs and Housing, 2014, pg. 46).

context of broader provincial priorities (Figure 1). As well, this thread of consistency reinforces the stability of upper-tier and lower-tier land use policy and decision-making. OMB processes serve as a system of checks and balances to safeguard against inconsistency.

Figure 1. Relationship between key planning documents in a two-tier system of local government.



Minimise uncertainty

When considering uncertainty, it is important to consider policy-specific language. The PPS sets out limitations and prohibitions, such as: “*Prime agricultural areas shall be protected for long-term use for agriculture*” (Ontario Ministry of Municipal Affairs and Housing, 2014, p. 24, *emphasis in original*). This strong language minimises uncertainty by making a clear distinction about the type of policy (in the above example, directive and prohibitive) and the nature of implementation. Other policies use enabling or supportive language (e.g., “should”, “promote” or “encourage”). There is some discretion when applying policies with enabling or supportive language, although s. 2.3 (Agriculture) of the PPS contains very few (if any) of these types of policies (Ontario Ministry of Municipal Affairs and Housing, 2014, pg. 2). While the council of a municipality or another planning authority may differ in their interpretation of the PPS policies, they do so at the risk of a sometimes lengthy appeal process under the *Planning Act*, through which the Ontario Municipal Board (OMB) becomes involved.

There are elements of the provincial legislative framework that arguably create uncertainty; these elements can be considered “weak points” in the framework. An example is s. 2.3.6 of the PPS, which allows certain non-agricultural uses to be undertaken in prime agricultural areas, including the extraction

of mineral aggregate resources. In this regard, ss. 2.5.4.1 of the PPS states that the extraction of mineral aggregate resources is “permitted as an interim land use provided the site is rehabilitated” (Ontario Ministry of Municipal Affairs and Housing, 2014, pg. 28). In certain cases, complete rehabilitation is not required, when, in the case of prime agricultural areas, there is a “substantial quantity of *mineral aggregate resources* below the water table warranting extraction, or the depth of planned extraction in a quarry makes restoration of pre-extraction agricultural capability unfeasible” (Ontario Ministry of Municipal Affairs and Housing, 2014, pg. 28, *emphasis in original*). An application by The Highland Companies to convert prime farmland into a massive limestone quarry in the Township of Melancthon near Orangeville, Ontario, is an example of the type of uncertainty that this policy creates in terms of farmland protection. Had the 937-hectare quarry been developed, restoration back to its former state of agricultural capability would have been unfeasible. The Province ordered an environmental assessment of the proposal in 2011, a prerequisite that it had previously not made a requirement for the development of quarries in Ontario. That application has since been withdrawn.

Accommodate flexibility

The provincial legislative framework accommodates flexibility through periodic revisions to PPS and provincial plans. For example, the *Planning Act* requires the PPS be reviewed every five years to determine if revisions are required. A revised PPS was just published by the Province. Extensive consultation was undertaken that included postings to the Environmental Bill of Rights Registry (EBR), distribution of materials to First Nations and all affected municipalities, regional workshops, and face-to-face meetings (Ontario Ministry of Municipal Affairs and Housing, 2008). These periodic reviews enable decision-makers to accommodate a controlled level of flexibility without compromising the primary functions of the legislative framework. As well, the OMB, a quasi-judicial review board that retains the right to review and alter land use planning decisions, affords a governance mechanism to accommodate flexibility. The OMB conducts hearings and makes decisions on planning matters that have been appealed under the *Planning Act*, such as official plans, zoning by-laws, plans of subdivision, consents (or severances) and minor variances to name a few. Hearings are intended to be comparatively less formal, more timely, and less costly means to resolve disputes by comparison to the court system. Appointed Members of the Board make impartial decisions based on relevant law and policies, as well as evidence presented at hearings. It is common for evidence to be presented by staff representing provincial ministries (e.g. the Ontario Ministry of Agriculture, Food and Rural Affairs). As each OMB decision needs to be evaluated on its individual merits, it is unclear to what extent the process supports or hinders farmland protection efforts in the province.

Summary Assessment of Provincial Legislative Framework: Ontario

Legislative Framework for Ontario

	POLICY	LEGISLATION	GOVERNANCE
PROVINCIAL	<p>Provincial Policy Statement (2014)</p> <p>Minimum Distance Separation Formulae</p>	<p><i>Planning Act</i> (1990)</p> <p><i>Farming and Food Production Protection Act</i> (1998)</p> <p><i>Places to Grow Act</i> (2005)</p> <p><i>Greenbelt Act</i> (2005)</p> <p><i>Niagara Escarpment Planning and Development Act</i> (1990)</p>	<p>Ontario Municipal Board</p>
REQUIRED INTEGRATION	<p><i>Planning Act, 1.1(c)</i> to integrate matters of provincial interest in provincial and municipal planning decisions</p> <p><i>Planning Act, c. P.13, Part I, Section 5</i> Decisions shall be consistent with provincial policy statements and shall conform, or shall not conflict, with provincial plans, as the case may be.</p> <p><i>Planning Act, c. P.13, Part I, Section 6. (2)</i> Ministries shall have regard for municipal planning policies.</p> <p>PPS (2014) Subsection 2.3.3.3 New land uses, including the creation of new lots, and new or expanding livestock facilities, shall comply with <i>minimum distance separation formulae</i>.</p> <p><i>Planning Act, c. P.13, Part I, Section 2</i> planning authorities shall have regard for provincial interest (e.g. protection of agricultural resources).</p> <p><i>Planning Act, c. P.13, Part III, Section 27. (1)</i> amendments to lower-tier OPs shall conform to upper-tier OPs.</p> <p><i>Greenbelt Act, 2005, c. 1, Section 6. (2) (e)</i> the Greenbelt Plan may set out policies with respect areas designated as Protected Countryside, including policies prohibiting official plans and zoning by-laws containing provisions that relate to specific matters and are more restrictive than those provisions relating to such matters in the Greenbelt Plan.</p> <p><i>Greenbelt Act, 2005, c. 1, Section 7. (1)</i> decisions made under the <i>Planning Act</i> shall conform to with the Greenbelt Plan. .</p>		
REGIONAL		<p><i>County Official Plan</i></p>	
LOCAL		<p><i>Official Plan</i></p> <p>Zoning Bylaw</p>	<p>Committee of Adjustment</p>

Acts (provincial laws), bylaws (local government laws, e.g., official municipal plan) [italicised]

Enforceable policy, regulations pursuant to acts [bold]

Aspirational policy at all levels [plain text]