

Election Issues Position Paper

May 2014





The Ontario Association of Architects (OAA) was founded in 1889 and is the licensing body and professional association for Ontario's architects established under the Architects Act, R.S.O. 1990, to regulate the practice of architecture "...in order that the public interest may be served and protected." The OAA has a membership of 3,600 licensed architects, 1,450 intern architects, and 1,700 practices. As part of its regulatory mandate, the Association provides a wide range of services to its members and to the public.

Now in our 125th year, the OAA has a long history of engaging the built form in the Province of Ontario. For the first time, the OAA is pleased to present a list of election issues for parties to take forward into the 41st Parliament.



Design Excellence

Design Excellence
Procurement
Public Safety
Site Plan Approval
Large Scale Bundling
Transparency in P3s
Construction Lien Act
OMB
Heritage

The commitment by public institutions to a general concept of design excellence has grown in recent years from the expansion of design review panels at the municipal level to a design focus in policy and procedure in the legislature and government operations.

Design excellence is more than a catch phrase. Design excellence can result in significant contributions to the economy, to our happiness, to our civic engagement, and to our safety and well-being. Design excellence speaks to our image as a Province, it speaks to every resident and visitor about who we are and what we believe in as a society. It contributes to what makes Ontario unique in a world where 'sameness' is far-reaching. Cultural identity is key to maintaining a strong Ontario. And design excellence plans for the future, allowing architects to foresee things that may not be required in the present but will make tremendous difference and result in significant costs savings and other benefits in the near or far future.

The OAA welcomes this direction, and hopes to see it continue in the 41st Parliament.



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Ending ‘lowest-bid’ Procurement

In the United States, the *Brooks Act* has been federal law since 1972. The *Brooks Act* prohibits the selection of architectural and engineering firms based on price, and mandates that they are selected based on merits such as competency, qualifications, and experience. The *Brooks Act* goes on to mandate that architectural and engineering services must be contracted at “fair and reasonable prices.” The *Brooks Act* was established after the Government of the United States realized that procuring architectural and engineering services—inherently tied to public safety—by the lowest-bid ultimately put the public at risk.

The procurement of architectural services should not be treated like procuring pencils or toilet paper. Similarly, the Government must realize that it is not procuring merchandise, it’s procuring hours and a level of service, more akin to hiring employees. Significantly weighting the selection of architects based on who is the lowest-bidder demonstrates a Government commitment to devoting the least number of hours and/or the lowest level of service to our public infrastructure. It is time to end this practise.

The OAA has continually advocated for Quality-Based Selection (sometimes known as QBS). QBS puts design considerations first, allowing architects to focus on functionality and innovation to the benefit of the people of Ontario. This helps to ensure the Government is getting the best value for what is ultimately your tax dollars.

The OAA has provided various methods for implementing QBS, and remains committed to working with the Government to end lowest-bid procurement and to implement a responsible, appropriate, and cost-effective procurement system for architectural services.



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Protecting Public Safety

For years, the OAA has been expressing significant caution over a gap in the Ontario Building Code regulations that can pose a risk to public safety. As a result of a court case, public safety provisions were stripped from the *Building Code Act*, 1992 as well as the regulations that had allowed Building Officials in the Province to reject building permits that weren't stamped by a licensed architect or engineer.

While unqualified and unlicensed practitioners or members of the public were still technically prohibited to design large and complex buildings by the *Architects Act*, R.S.O. 1990, and the *Professional Engineers Act*, R.S.O. 1990, Building Officials no longer had the authority through the *Building Code Act*, 1992 to reject illegally-submitted building permits. This has resulted in a serious risk to both owners and end-users of buildings throughout the Province.

The now-defunct provincial budget introduced in May 2014 proposed to enact amendments to the *Building Code Act*, 1992, that would have closed this gap and put an end to this risk by re-empowering Building Officials to refuse illegally-submitted building permits. However, with the dissolution of Parliament puts this commitment at risk of being abandoned or forgotten.

The OAA stresses that this commitment must be re-introduced by the 41st Parliament.



Reducing Costly Delays from the Site Plan Approval Process

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In the fall of 2013, the OAA delivered its independent Review of the Site Plan Approval Process in Ontario. The study tasked planning and economic consultants “to undertake a consultation exercise, highlight municipal best practices and make recommendations on potential improvements to the Site Plan Approval process” as well as to explore the cost of this process in Ontario.

The findings, delivered at a well-attended symposium, showed significant economic impacts as a result of great variation from one municipality to the next in the implementation of Site Plan Approval processes. According to the independent consultants, the costs associated with the time spent getting from site plan application to approval affects applicants, municipalities, other levels of government, existing communities and end users (home buyers, office tenants, etc.), and can be summarized as follows:

Study Findings



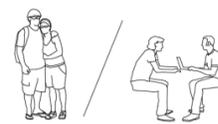
applicants

Applicants – additional taxes on vacant land, carrying costs of financing, and inflation on construction costs (labour and wages).



municipalities and existing communities

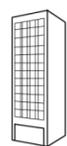
Municipalities and Existing Communities – delayed tax revenue from newly developed building and lost spending by residents on retail shops, restaurants and service providers in a community.



end-users

End Users – additional development charges can get passed on to buyers, lost equity for new home buyers by not beginning to pay a mortgage sooner, and increased rent costs from persons who had been renting and will have to rent for a longer period of time.

case studies



A. 100-unit condo building



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Cost to the Home Owner

The time spent in the site plan review process would cost the end-users a combined \$44,000 per month, or roughly \$443 per unit per month

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Cost to the CITY

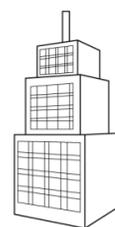
The time spent in site plan review process costs the municipality and existing community a combined \$159,900 to \$241,600 per month

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DELAYS ++ Cost to the Home Owner

Each additional month would cost the applicant \$193,000, or roughly \$1,930 per unit per month, which will likely get passed on to new home buyers



B. 50,000ft² commercial building



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Cost to the User

The time spent in the site plan review process would cost end-users (office tenants) a combined \$7,000 per month, or roughly \$0.14 per square foot per month

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Cost to the CITY and/or USER

The time spent in site plan review costs the municipality between \$4,100 and \$16,000 per month or roughly between \$0.08 and 0.32 per square foot, which will likely get passed to the eventual tenants of the new office space

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DELAYS 250 JOBS

Additionally, this time spent will also delay the arrival of 250 new job opportunities

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DELAYS ++ Cost to the User

Each additional month would cost the applicant roughly \$113,000 or roughly \$2.25 per square foot per month which will likely get passed on to the eventual tenants of new office space

Results:

The independent consultants concluded that “there is an opportunity to improve the manner in which the process is currently being administered”, noting that “the issue is not with the legislative framework, which already provides for, among other manners, pre-consultation, delegation, an appeal period, limited appeals and required tools to implement control over exterior design, but rather with the way in which the process is administered.”

The independent consultants identified eight recommendations or best practices that could improve the process including:

- Streaming Site Plan Applications and Exempting Certain Developments
- Pre-application Consultation Meeting
- Dedicated Staff Person/Project Manager
- Dedicated Site Plan Team
- Streamlined Process for Resubmission
- Delegated Approval
- Provision of Implementation Options
- Alternatives to Site Plan Approval

The OAA welcomes these recommendations, and hopes the 41st Government will consider the development of a guideline covering these eight recommendations. The OAA remains committed to working with its provincial counterparts to ensure the guideline increases accountability to ensure that municipalities across the Province implement the Site Plan Approval process similarly and effectively, reducing the associated timing and financial burden on the people of Ontario.

In this vein, the OAA also encourages the Government to implement an open and transparent benchmarking system to monitor the implementation of Site Plan Approval processes throughout the Province.

To read the full report, please visit:
<http://tinyurl.com/SitePlanReport>

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Ending Large-Scale Bundling

The announcement of the selection process for the Eglinton-Crosstown Line generated significant commentary and media coverage around concerns from the design and construction industry on the effects of bundling large-scale infrastructure projects in the Province. The Construction Design Alliance of Ontario estimated that bundling on this project alone drastically reduced the number of qualified bidders, thereby reducing competition and potentially increasing the cost of the project by up to \$500 million. Bundling has resulted in much of our infrastructure construction and maintenance going to foreign conglomerates as Ontario firms can no longer participate in the bidding and construction process.

While the OAA is open to joining with the Government and stakeholders to explore instances where bundled contracts may make economic sense, we remain in stark opposition to bundled contracts on the scale of the Eglinton-Crosstown Line.



Transparency in P3s

Private-public partnerships (P3s), sometimes also known as Alternative Financing and Procurement (AFP), have been in existence in Ontario for a number of years. Recent industry, expert, and media commentary has often focused on whether P3s are the best method of procurement over the traditional model.

For a project to qualify for procurement through a P3 model, the P3 cost projection is assessed against a “Public Sector Comparator” (PSC) and whichever method costs less is then favoured for the procurement. While this appears to be a sound rationale and fiscally responsible approach, significant theoretical risk is assigned to the PSC, sometimes adding excess theoretical cost to the project in the range of 40-50% which may or may not ever be realized.

Many critics have argued that this artificially tips the scale in favour of P3s, and complain that how this risk factor is determined is not disclosed by the Government. While examples of cost-saving P3s undoubtedly exist, recent audits have shown the potential for troubling results. In one instance, Ontario’s Auditor General found that the P3 approach for the construction of the Brampton Civic Hospital “resulted in a \$613 million cost, \$194 million over what a traditional public approach would have cost.”

While the OAA remains ambivalent on the benefit or necessity of procuring infrastructure through P3s as opposed to through the traditional model, the OAA does call for greater transparency in the P3 process and hopes the 41st Parliament will fully disclose all cost and risk projections on proposed P3 projects.

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Updating the Construction Lien Act

Prior to the dissolution of Parliament, deliberations around a bill on prompt payment lead to an announcement for a review of the *Construction Lien Act*, which aims to incorporate the principles of prompt payment. The dissolution of Parliament puts this review at risk of being abandoned or forgotten. The *Construction Lien Act* is an outdated piece of legislation, and has significant holes from its original drafting and implementation, putting the entire supply chain of the design and construction industry needlessly at risk.

The OAA, along with other members of the construction and design industry, has supported this review and have called for an independent ‘blue-ribbon panel’. Such panels consist of “a group of exceptional persons appointed to investigate or study or analyze a given question”. The OAA hopes this commitment will continue in the 41st Parliament and remains committed to serving on this panel to represent the profession and bring forward the interests of the people of Ontario.



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Keep the OMB

In 2013, legislation was introduced that opened a debate on the utility of the Ontario Municipal Board (OMB). The *Ontario Municipal Board Act*, 1990, gives the OMB “jurisdiction and power in relation to municipal affairs”. We would argue that the primary role of the OMB is to ensure that municipalities maintain coherent and defensible policies and by-laws, and that these municipalities follow their own rules and those dictated by the *Planning Act*, R.S.O. 1990.

Recent criticisms of the OMB have centered on the fact that it is an unelected board, appointed by the Government-of-the-day. While this may be true, there are thousands of appointments occurring at a Municipal and Provincial level including throughout our court system. Appointment by the Government does not inherently compromise judicial impartiality or effectiveness.

Another common criticism is that the OMB allows municipal matters to be heard and ruled upon by judicial officials from outside of the municipality. However, matters of planning can be interpreted and ruled upon by a professional regardless of where they reside. Furthermore, the very fact that individuals who are not subject to municipal politics or governed by local councillors actually would suggest a more independent and defensible judicial body.

The OAA has noted criticisms of the OMB, and would welcome efforts to improve efficiency and expediency. However, the OAA does not support any calls to remove a municipality from the OMB nor does it support the disbanding of the OMB altogether.

The OAA hopes that the 41st Parliament will focus its attention on improving and strengthening the OMB as opposed to eroding or eliminating it.



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Leadership on Heritage Conservation

The 2011 tornado that hit Goderich, Ontario, caused more than \$100 million in damage and destroyed much of the downtown core of the historic town. This tragedy resulted in significant debate as to whether the Government did enough to support the rehabilitation of the town, as well as criticism that many of the historic buildings were needlessly torn down and could have been fully rehabilitated or at least partially preserved.

The OAA's heritage architects wants to partner with the Government to enhance heritage conservation, as well as post-disaster assessments and preservation. One such proposal is for the Government to enable a system that resembles the United States Federal Emergency Management Agency (FEMA). In this model, architects join with first responders to assess the safety of the building stock and determine what can and cannot reasonably be saved.

Beyond the issues of disaster response, many within the development community do not understand that heritage buildings can be redeveloped to maintain their usefulness and to bring forward their often inherent energy efficiency at the same time as preserving our heritage. While previous changes to the *Heritage Act* have improved the climate for heritage preservation, further research is needed to ensure awareness of opportunities inherent in these structures.





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