



REPORT FOR ACTION

Bill 139 - Proposed Amendments to the *Planning Act* and the Province's Land Use Planning Appeal System

Date: September 29, 2017

To: Planning and Growth Management Committee

From: Acting Chief Planner and Executive Director, City Planning Division

Wards: All

SUMMARY

In December of 2016, City Council adopted a series of recommendations in response to the Province's request for stakeholder feedback with regard to the scope and effectiveness of the Ontario Municipal Board (OMB). On May 30, 2017, the Province introduced Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017*. The Bill passed Second Reading September 27, 2017 and has been referred to the Standing Committee on Social Policy.

If passed, Bill 139 will replace or amend a number of existing Acts, such as the *Planning Act*, the *City of Toronto Act*, the *Ontario Municipal Board Act* and the *Conservation Authorities Act* and change the provincial land use planning appeals system by:

- establishing a new two-step appeal process for Official Plans/Amendments and Zoning By-laws;
- requiring mandatory case management for certain planning application appeals;
- creating a new Appeal Tribunal and new statutory rules regarding the conduct of hearings for land use planning appeals, through the enactment of the *Local Planning Appeal Tribunal Act*;
- sheltering municipally initiated Official Plan Amendments that require the Minister's approval, from appeal;
- placing a two-year moratorium on amendments to newly approved Secondary Plans;
- sheltering Interim Control By-laws from appeal;
- establishing longer timelines for municipal processing of planning applications; and
- establishing a "Local Planning Appeal Support Centre" to assist eligible Ontarians with navigating the land use planning appeal process.

This report summarizes and comments on key changes that would be brought about by the enactment of Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017*. The report also provides recommendations for Council's consideration with respect to the proposed changes. Legal Services has been consulted in the preparation of this report.

RECOMMENDATIONS

The Acting Chief Planner and Executive Director, City Planning Division recommends that City Council:

1. Commend the Province on its initiative to significantly improve and modernize the Ontario Municipal Board (the "OMB") and the Province's land use appeal process.
2. Advise the Province that:
 - a. it would support the elimination of "de novo" hearings that adjudicate planning appeals without deference to previous Council decisions, in the context of Bill 139's proposed two-step appeal process for Official Plans/Amendments and Zoning By-law appeals;
 - b. it seeks further clarification with regard to whether the intent of Bill 139 is to eliminate "de novo" hearings for each of the steps that comprise the proposed two-step appeal process;
 - c. it expresses its support for the direction taken by Bill 139 to place restrictions on holding oral hearings for Official Plans/Amendments and Zoning By-law matters; to establish time lines for making oral submissions; and to restrict parties or persons to orally offer new evidence or call or cross-examine witnesses;
 - d. it encourages the Province to set a prescribed timeline for reviewing the effectiveness of the two-stage hearing appeal process further to Bill 139 coming into force and effect;
 - e. it supports proposed *Local Planning Appeal Tribunal Act* measures to case manage complex appeals through a "case management conference process"; and
 - f. regulations should be established prescribing key steps to be followed in the mandatory case management conference process to ensure the process fits seamlessly and effectively with the Tribunal's hearing process.
3. Support the establishment of an independent provincially funded Local Planning Appeal Support Centre through the introduction of the *Local Planning Appeal Support Centre Act, 2017*, on the assumption that the Centre will facilitate meaningful and more affordable public participation in Ontario's planning appeal process.
4. Support the increased planning application timeframe proposed in Bill 139, for Council to make a decision for Official Plan and Zoning By-law Amendments and Holding Provisions By-laws.
5. Request the Province to increase the length of time Council has to make a new decision when the new Local Planning Appeal Tribunal sends a planning matter back to Council for re-consideration from 90 days to 120 days.
6. Support Bill 139's proposal to shelter all statutory updates to Official Plans and municipal conformity exercises to Provincial Plans requiring the Minister's approval, (as per Section 26 of the *Planning Act*), from appeal.

7. Request the Province to place a moratorium on all privately initiated requests for official plan amendments to newly approved Official Plan policies that required the Minister's approval, (as per Section 26 of the *Planning Act*), unless Council declares otherwise by resolution.
8. Support the Bill 139 provision to remove interim control by-laws, when first passed, from appeal.
9. Support the introduction of a moratorium on privately initiated requests for secondary plan amendments in Bill 139 and request the Province to further amend Bill 139 to extend the moratorium to privately initiated implementing zoning by-laws passed concurrently with the secondary plan.
10. Support the introduction, in Bill 139, of a moratorium on privately initiated requests for Official Plan Amendments to "major transit station area" policies.
11. Request the Province to extend moratoriums to include privately initiated official plan amendments within those "Urban Growth Centres" that are planned to achieve by 2041, or have already achieved, a density target that exceeds the minimum density targets set out in the Growth Plan (2017).
12. Request the Province to extend all proposed moratorium periods from two to five years, unless Council declares otherwise by resolution.
13. Request the Province to release all regulations and transition policies associated with the proposed *Planning Act* amendments in draft form prior to Bill 139 coming into force.
14. Support the proposed requirement for municipalities to incorporate climate change policies into their Official Plans.
15. Support the proposal making it mandatory to send back new evidence on subdivision appeals to Council for re-evaluation.
16. Commend the Province for the extensive consultation process undertaken to inform the provincial strategy outlined in "Conserving Our Future: A Modernized Conservation Authorities Act".
17. Forward this report to the Minister of Municipal Affairs for his information.
18. Direct appropriate staff to participate in further opportunities with the Province to provide feedback, including presentations and submissions, to the Province's Standing Committee on Social Policy examining Bill 139, with respect to the issues raised in this report.
19. Request the City Solicitor to report to Planning and Growth Management Committee, in the event that Bill 139 is given Royal Assent, with recommendations for any potential changes in the City's processes and procedures that may be required to implement the legislation.

FINANCIAL IMPACT

There are no direct financial implications arising from the recommendations in this report. It is unclear at this point whether the enactment of amendments identified in Bill 139 will result in cost savings or increased costs with respect to land-use planning appeals. Staff will report further on any impacts upon the *Building Better Communities and Conserving Watersheds Act, 2017*, and its implementing regulations, coming into force and effect.

DECISION HISTORY

On October 5, 2016, the Province of Ontario released its Public Consultation Document in support of its review of the scope and effectiveness of the OMB. The City Planning Division submitted a report for Council's consideration which provided recommendations for legislative change in response to the questions posed in the Consultation Document. <http://www.toronto.ca/legdocs/mmis/2016/pg/bgrd/backgroundfile-98408.pdf>

ISSUE BACKGROUND

On October 5, 2016, the Province of Ontario released a Public Consultation Document related to the review of the OMB. The review afforded the City a further opportunity to revisit matters that were not addressed in the last round of *Planning Act* and *City of Toronto Act* reform measures and to also comment on the proposed recommended changes to the OMB identified in the Provincial Public Consultation Document.

City Council adopted PG16.6 "Response to Provincial Consultation on Reforming the Ontario Municipal Board" on December 13, 2016 for submission to the Province. Twelve proposed policy amendments were recommended by Council and Council expressed support for 15 of the Province's proposals for reform of the OMB intended to: (1) allow for more meaningful and affordable public participation; (2) give more weight to local and provincial decisions and support alternative ways to settle disputes; (3) bring fewer municipal and provincial decisions to the OMB; and (4) support clearer and more predictable decision-making.

On May 30, 2017, Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017* received first reading in the provincial legislature. The Bill passed Second Reading September 27, 2017 and has been referred to the Standing Committee on Social Policy. Among other measures, Bill 139 expresses the government's desire to reform the land use planning appeal system in Ontario. It is an omnibus Bill which seeks to replace or amend a number of existing Acts, such as the *Planning Act*, the *City of Toronto Act*, the *Ontario Municipal Board Act* and others. If enacted, a new tribunal, the Local Planning Appeal Tribunal (the "Tribunal") will replace the Ontario Municipal Board (the "OMB"). Bill 139 also proposes amendments to the *Conservation Authorities Act* to clarify and modernize the role of and to strengthen accountability for Conservation Authorities.

It is important to note that the release of the Bill was not accompanied by regulations which will contain many of the details regarding the implementation of the proposed changes to the appeal system, the function of the new Tribunal and the transition policies for appeals within the current pipeline. Without the ability to review and analyze the regulations and transition provisions it is difficult to gain a complete understanding of the impact of the changes. The timing of the release of the regulations and whether they might be circulated in draft before enactment of the Bill is unknown. Until the Bill comes into force and effect, it is business as usual in terms of processing land use planning applications and appeals of applications to the OMB.

COMMENTS

This report outlines the key planning appeal process changes that would be brought about by the *Local Planning Appeal Tribunal Act, 2017 (the "LPAT Act")*, the *Local Planning Appeal Support Centre Act, 2017*, amendments to the *Planning Act* and the *City of Toronto Act, 2016*. There are also a number of technical amendments to various Acts (for example, name change references) which are not referenced in this report.

The proposed changes are in keeping with the direction of previous submissions put forward by Council to the Province to strengthen the authority of municipalities to make local land use planning decisions. Nine of the City's previously requested policy amendments and 12 of the Council supported provincial reforms have been fully or partially addressed with the proposed Bill 139 changes. Attachment 1 provides a detailed status update for all amendments requested by Council in December of 2016. Staff are proposing some further amendments to the proposed legislation for Council's consideration.

Legal Services have reviewed Bill 139, which has passed Second Reading but is still subject to debate and further changes. A number of legal questions remain regarding the interpretation and implementation of the draft legislation. Accordingly, the City Solicitor should be asked to report back regarding any further analysis and potential changes to the City's processes and procedures that may be required if and when Bill 139 receives Royal Assent.

1. Elimination of *De Novo* Hearings for Certain Planning Appeals As Part of the Creation of a Two-Step Appeals Process - *Planning Act*

Bill 139 proposes to create a two-step appeal process (see Attachment 2 for a description of the two-step appeal process). The new process applies to all appeals of Official Plans and Zoning By-laws (decisions, refusals and non-decisions) and also to appeals of non-decisions of Council with respect to plans of subdivision. These are the only appeals that are subject to the proposed mandatory case management process.

Official Plan and Zoning By-law appeals, where a decision has been made by Council, do not appear to be initially subject to *de novo* hearings, (the term *de novo* has been used to describe how the OMB deals with appeals of municipal land use planning decisions, by considering the same issue that was before the municipality as though no previous decision had been made), but rather to a new test relating to *provincial*

conformity failure testing. Appeals of official plans can only be made on the basis that the municipal decision meets with one of the conformity failure tests by being:

- inconsistent with a policy statement issued under subsection 3 (1) of the *Planning Act*;
- failing to conform with or conflicting with a provincial plan; and
- in the case of zoning by-laws, failing to conform with the Official Plan.

The elimination of de novo hearings, further restrictions on the types of planning matters that can be appealed to the OMB and a more scoped and streamlined appeal process, have been key requests of City Council in terms of important steps to be taken by the Province to reform Ontario's land use appeal process.

It is staff's understanding that the proposed two step appeal process, where the Tribunal on a second appeal does not send a matter back to Council and has the final decision making authority, is necessary to avoid situations of potentially endless circular appeals. In the proposed two-step appeal process, a municipality has a second opportunity to make a decision if the Tribunal determines that Council's first decision failed the conformity tests. This second new decision, if it is made within 90 days, can be appealed again and once back at the Tribunal, is to be re-evaluated based on the same conformity failure tests. In making this determination however, fewer rules or restrictions will be applied and more discretion afforded to the Tribunal at the "second hearing", in terms of the evidence to be admitted and examined at the hearing.

With regard to the issue of determining "conformity", greater clarity is required from the Province on the operational implications of conformity failure tests in terms of steps that will need to be taken during the mandatory case management and appeal process to establish and evaluate consistent parameters and thresholds for these tests.

It appears that the new Tribunal's biggest challenge will be determining provincial conformity not from a broader policy perspective but from an area wide or site specific perspective for affected applications under appeal.

The municipality's determination of consistency and conformity with provincial policies and plans will also have to form a robust part of the municipal development approval process in anticipation of the conformity failure tests that will be applied by the Tribunal during the appeal process.

2. Replacing the *Ontario Municipal Board Act* with the *Local Planning Appeal Tribunal Act* ("LPAT Act")

If enacted, the *Local Planning Appeal Tribunal Act, 2017*, (the "LPAT Act") will repeal the *Ontario Municipal Board Act* (the "OMB Act") Act. The effect of this Act will be to replace the OMB with the Local Planning Appeal Tribunal (the "Tribunal").

The Tribunal will continue to have appeal, approval and arbitration functions under various statutes that previously made reference to the OMB. The key difference in mandates between the OMB and the Tribunal is:

- the Tribunal must give greater weight to decisions of elected municipal councils and local planning authorities;

- limiting the Tribunal's authority to overturn a municipal decision where the decision does not conform or is inconsistent with provincial policies or municipal plans;
- restricting *de novo* hearings for certain types of planning matters; and
- exempting more major land use planning documents from appeal.

The Tribunal will continue to hear appeals of all matters currently under the jurisdiction of the OMB, however it will have expanded control over hearing format, practices and timelines, including practices regarding the admission of evidence (such as limiting evidence, in the majority of cases, to written submissions by additional parties) and the format of decisions (such as the use of multi-member panels). The Province will need to ensure that consistent parameters, rules and guidelines for assessing and determining provincial conformity are developed and applied by the Tribunal during the new appeal process.

3. Expanded Rule-Making Powers for Tribunal Hearing Practices and Procedures - *LPAT Act*

While the OMB has always had the ability to make “general rules regulating its practice and procedure”, the *LPAT Act* will go further by giving the Tribunal this same general rule-making ability and delineating specific types of rules that the Tribunal will be empowered to establish. Rule-making powers will include the ability to adopt alternative approaches to traditional adjudicative or adversarial procedures and the authority to appoint a person from among the parties to be a class representative where the parties have a common interest. This latter rule-making function is intended to limit the number of parties making submissions to the Tribunal, where all parties have a common interest and one party could effectively present arguments to the Tribunal on behalf of the group.

With respect to each proceeding before it, the Tribunal is directed to adopt practices and procedures that will offer the best opportunity for a fair, just and expeditious resolution of the merits of the proceeding.

Oral hearings of appeals will no longer be as of right. If an oral hearing is granted, each party or person identified by the Tribunal as a participant may make an oral submission that does not exceed a time that will be provided by a future regulation. At the oral hearing, no party or person may offer new evidence or call or examine witnesses.

Under the *LPAT Act*, the Tribunal will have the discretion to permit other persons to participate as an additional party subject to specific and strict criteria depending on the planning decision that is being appealed and only on the basis of written submissions to be made by the person 30 days before the mandatory case management conference is to be held.

Staff support placing restrictions on holding oral hearings for Official Plan and zoning matters; on establishing time lines for making oral submissions and on not allowing parties or persons at the oral hearing to adduce evidence or call or examine witnesses. These proposed changes will help ensure appeals proceed in a timely and focussed manner and that the evidence cited reflects the information Council had before it when making its decision.

4. Mandatory Case Management Conference Relating to Appeals of Official Plans, Zoning By-laws and Plans of Subdivision - *LPAT Act*

The *LPAT Act* (section 39) will make it mandatory for the appellant and the municipality or approval authority whose decision or failure to make a decision is the subject of the appeal, to participate in a case management conference prior to a hearing. The case management conference will be used to identify additional parties, to identify or narrow issues, to identify facts or evidence that may be agreed upon, to provide directions for disclosure of information and to discuss opportunities for settlement, including the possible use of mediation or other dispute resolution processes. In sum, the Tribunal will be provided with more modern case management powers to encourage meaningful case conferences including discussions of opportunities for settlement and mediation.

A case management conference will be mandatory for the following *Planning Act* application appeals:

- official plans, official plan amendments and requests to amend official plans;
- zoning by-laws, zoning by-law amendments and applications to amend zoning by-laws, and
- plans of subdivision, but only where the approval authority has failed to make a decision relating to the plan of subdivision.

Other planning matters before the Tribunal, such as site plan applications, consents and minor variances, some types of plan of subdivision appeals and interim control and holding by-laws, will not be subject to mandatory case management.

The *LPAT Act*, will give the Tribunal expanded control of the hearing procedure. While this is in some ways a continuation of current Board practice respecting pre-hearing conferences and encouraging mediation, the Tribunal will now have the power at any stage of the proceeding to examine a party or a person who is not a party who makes submissions, or to require such persons to produce evidence or witnesses for examination. Staff support this proposed approach to managing complex appeals on the assumption that it will be properly resourced, managed and integrated into the Tribunal's hearing process. This case management approach will hopefully play an important role in clearly scoping planning matters under appeal for the Tribunal's consideration and in encouraging more collaboratively based and earlier settlements, thereby reducing the time and cost of the appeal. We note the importance of ensuring that the case management process works seamlessly with the Tribunal as part of the hearing or dismissal process.

5. Specific Powers and Procedures Relating to Participation by Other Persons In Appeals - *LPAT Act*

For certain appeals where the approval authority has made a decision with respect to an official plan or a zoning by-law the *LPAT Act* provides that the Tribunal has the discretion to permit other persons to participate as an additional party or otherwise participate in the appeal, on the basis of written submissions to be made by the person at least 30 days before the case management conference. These submissions must

address whether the decision or failure to make a decision was inconsistent with a policy statement issued under the *Planning Act*; fails to conform with or conflicts with a provincial plan; or fails to conform with an applicable official plan. Staff support amendments introduced in the Bill that would increase transparency and efficiency in addressing how a person other than a party to the appeal, may participate in the proceeding.

6. Independent Legal and Planning Support for Ontarians through the Local Planning Appeal Support Centre

Schedule 2 of Bill 139, would enact new legislation, the *Local Planning Appeal Support Centre Act, 2017*. This legislation, if passed, will establish a new Local Planning Appeal Support Centre (the "Centre"). The Centre will provide free independent legal and planning support, advice and representation to eligible Ontarians when pursuing land use planning appeals. It will:

- Establish and administer a system for providing support services to eligible persons respecting matters governed by the *Planning Act* that are under the jurisdiction of the Tribunal as follows: providing general information on land use planning; guiding citizens through the Tribunal procedures; and providing legal and planning advice, including representation in certain instances at case conferences and hearings; and
- Allow for regulations to be made with respect to the following: prescribing provisions of support services to be provided by the Centre; governing the eligibility of persons to receive support from the Centre; and providing for other matters to carry out the purposes of the Act.

Staff support the establishment of the Local Planning Appeal Support Centre if the Centre will facilitate meaningful and affordable public participation in Ontario's new planning appeal process.

7. Having Regard for Municipal Decisions of Specified Planning Matters - *Planning Act*

Section 2.1 of the *Planning Act* currently requires approval authorities and the OMB, when making decisions relating to planning matters, to "have regard to" decisions of municipal councils and approval authorities and to any supporting information and material that was before a municipal council or approval authority, relating to the same planning matter. Bill 139 proposes to limit its application to specified planning matters relating to official plans, zoning by-laws, interim control by-laws, site plan control, plans of subdivision and consents.

When an approval authority for a non-exempt official plan amendment makes a decision on a plan, it shall have regard to any decision by a municipal council that relates to the same planning matter, and any information and material the municipal council considered in making the decision.

When the Tribunal makes a decision in respect of any of the following appeals, it shall have regard to any decision by a municipal council or approval authority that relates to

the same planning matter and to any information and material the municipal council or approval authority considered in making the decision:

- second appeal (appeal of a municipal council's new decision) regarding an official plan or zoning by-law;
- matter of provincial interest (official plan or zoning by-law);
- appeal of an interim-control by-law;
- appeal of a site plan matters; and
- appeal of subdivision control or consent.

Staff support the greater clarity that this amendment provides. The revised provision highlights the importance of having Council decisions relating to planning matters in place, that are consistent with provincial policies and that conform with provincial plans, as these will guide and inform decision-making by the Tribunal at all stages of the appeal process.

8. Longer Timelines for Municipal Processing of Planning Applications - *Planning Act*

Bill 139 will extend the timelines for a municipal council to make a decision on an application before an appeal can be filed by 30 days as follows:

- Council failure to make a decision on a zoning by-law amendment would be appealable 150 days after the application, rather than the current 120 days;
- a council or planning board's non-decision with respect to an official plan amendment would be appealable 210 days after the application, rather than the current 180 days;
- an approval authority's failure to give notice of decision with respect to an official plan would be appealable 210 days after the plan is received, rather than the current 180 days (the rules for extension of time for appeal in section 40.1 continue to apply); and
- if a zoning by-law amendment application requires an official plan amendment, and the two applications are brought together, a failure to make a decision on the zoning by-law amendment would only be appealable 210 days after the application.

Also, with regard to the timeline for filing a non-decision appeal for a municipality's failure to make a decision on an application to lift an "H" holding symbol, is extended from 120 days to 150 days.

Staff welcomes these increased timelines as they enhance opportunities for front-end consultation and collaboration with applicants and the public. These increased timelines in association with the last round of changes to in the *Planning Act* which introduced voluntary mediation into the planning approval process by allowing Council to initiate a 60-day "time-out" period for alternative dispute resolution after an appeal has been made, will assist the City to proactively work with applicants and the public to resolve issues.

However, in terms of the timeline of 90 days that will be afforded to Council for making new decisions with regard to appeals that have been sent back to Council by the Tribunal for a second decision, staff recommend that an additional 30 days (a 120 day

total) be considered by the Province to better ensure that Council has had an opportunity to make a new and well informed decision.

9. No Appeals of Official Plans and Official Plan Amendments Requiring Minister's Approval - *Planning Act*

Bill 139 will remove the right to appeal the updating of official plans or official plan amendments made pursuant to a municipal conformity exercise (Section 26 of the *Planning Act*) where the Minister is the approval authority. A proposed new sub-section in the *Planning Act* will apply to any official plans or official plan amendments that revise or update an official plan to ensure that such plan:

- conforms with provincial plans and does not conflict with them, as the case may be;
- has regard for matters of provincial interest listed in Section 2 of the *Planning Act*; and
- is consistent with provincial policy statements.

Staff support these proposed amendments to the *Planning Act*. Official plan amendments resulting from a statutory provincial conformity exercise are prepared after extensive public engagement and input and build upon numerous detailed studies. Municipalities should not be subject to ongoing lengthy and costly challenges to updates and revisions of their official plans and official plan amendments to justify implementation of mandated provincial policies once the Minister has determined their conformity.

10. No Appeal of Interim Control By-laws When First Passed - *Planning Act*

Currently, under the *Planning Act*, anyone who is given notice of the passing of an interim control by-law may appeal the by-law within 60 days after the by-law is passed. Bill 139 will amend the *Planning Act* to allow only the Minister to appeal an interim control by-law, filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and reasons in support of the objection. Any person or public body who is given notice of the extension of an interim control by-law will, however, continue to be able to appeal the extension.

The purpose of the initial interim control by-law is to allow Council to quickly hit the "pause button" and to give City staff time to assess potential impacts on established land uses, built form context and infrastructure capacity. It is a tool that allows Council to better assess its land use priorities over the longer term within a rapidly changing and volatile planning environment. Staff support the Bill 139 provision to remove interim control by-laws, when first passed, from appeal.

11. No Appeal of Protected "Major Transit Station Area" Official Plan Policies and Associated Zoning By-law Provisions - *Planning Act*

Bill 139 provides both single and upper-tier municipalities with the authority to identify protected areas for existing or planned higher order transit in their official plans. The

Growth Plan (2017) defines "higher order transit" as transit that generally operates in partially or completely dedicated rights-of-way, outside of mixed traffic and can achieve levels of speed and reliability greater than mixed-traffic transit. Higher order transit can include heavy rail (such as subways and inter-city rail) and buses in dedicated rights-of-way.

If a single-tier municipality identifies an area as being protected for higher order transit it will be required to delineate boundaries around the given major station areas or stops and include policies in the official plan which identify:

- minimum number of residents and jobs collectively per hectare that are planned to be accommodated within this protected transit area;
- uses of land in the protected transit area and of buildings or structures on lands in the protected area; and
- minimum densities that are authorized with respect to buildings and structures in the protected area.

Once an area has been approved by the Minister as protected for higher order transit, the policies that identify the protected area, including any changes to those policies, both for the official plan policies and land use designations noted above and for associated zoning by-laws establishing permitted uses, and minimum and maximum densities and heights, cannot be appealed, except by the Minister.

No appeals of the Minister's approval decisions are permitted. This prohibition is not applicable to official plan amendments unless the amendment was adopted in accordance with the prescribed updating of official plan policies and official plan amendment conformity exercises (Section 26 of the *Planning Act*). However there is one exception that allows for appeals of the official plan policies and/or zoning by-law provisions on a site specific basis, to height limits within the protected transit area, where the maximum height permitted with respect to a particular parcel would result in a building or structure not satisfying the minimum density requirement in respect of that parcel. Staff support the proposal that once an area has been approved by the Minister as protected for higher order transit, the policies that identify the protected area, including any changes to those policies, both for the official plan and for associated zoning by-laws establishing permitted uses, and minimum and maximum densities and heights, cannot be appealed, except by the Minister.

12. Secondary Plans Described and Two-Year Moratorium Placed on Secondary Plan Amendments - *Planning Act*

Amendments to the *Planning Act*, introduced by Bill 139, provides that no person or public body shall request an amendment to a secondary plan before the second anniversary of the first day any part of the secondary plan comes into effect. The new provisions do however, extend a municipal council's ability to permit, by adoption of a resolution, specific requests, classes of requests or requests generally.

Bill 139 introduces a new sub-section which describes a secondary plan as part of an official plan added by amendment that contains policies and land use designations that

apply to multiple contiguous parcels of land, but not an entire municipality, and that provides more detailed land use policy direction in respect of those parcels than was provided before the amendment.

A new sub-section also provides that if a protected major transit station area is identified in an official plan, than no person or public body shall request an amendment in respect of any of the policies described with respect to that area. Again, the new provision allows council to permit, by adoption of a resolution, specific requests, classes of requests or requests generally.

If Council permits, by way of a resolution, a private application to be submitted to amend a secondary plan before the anniversary period has expired or with an amendment to official plan policies protecting a major transit station area, then those applications will be subject to the provisions contained in Section 22 of the *Planning Act*, as would be amended by Bill 139.

Developing a Secondary Plan is a complex and lengthy process that involves significant staff resources and public consultation. A moratorium on privately initiated amendments will permit the secondary plan to be implemented in the manner envisioned by Council and the public who participated in its creation. It will allow for policies to take root while still acknowledging that Council should have the right to consider requests for exceptions.

City Council advocated for a moratorium to be placed on amendments to secondary plans and thematic conformity based updates to the Official Plan as part of the City's response to provincial public consultations held with regard to Bill 73 and more recently OMB reform.

Staff support the introduction of a moratorium on privately initiated requests for secondary plan amendments but recommend that Council request the Province to further amend the Bill to extend the moratorium to privately initiated implementing zoning by-laws passed concurrently with the secondary plan.

Staff also support placing a moratorium on privately initiated requests for Official Plan Amendments to "major transit station area" policies but request the Province to extend a moratorium to include privately initiated official plan amendments within those "Urban Growth Centres" that are planned to achieve by 2041, or have already achieved, a density target that exceeds the minimum density targets set out in the Growth Plan (2017).

Staff recommend that the moratoriums referenced in this section of the report, be put in place for a five year rather than a two year period.

13. Requirement for Climate Change Official Plan Policies - *Planning Act*

Section 16 of the *Planning Act* sets out the content that must be contained in an official plan. Bill 139 proposes to amend the *Planning Act* such that municipal councils will

need to consider climate change policies when developing official plans. Specifically, the proposed legislation would amend the *Planning Act* by adding a new sub-section 16 (14) requiring an official plan to "contain policies that identify goals, objectives and actions to mitigate greenhouse gas emissions and to provide for adaptations to a changing climate, including through increasing resiliency". Undertaken as part of the City's municipal comprehensive review of its Official Plan, OPA 262 strengthened the City's existing environmental policies and addressed Council direction on climate change. In May of 2016, the Province approved OPA 262 and it is now in full force and effect.

The implementation of climate change measures has also been recently introduced into the *City of Toronto Act*. New (2017) provisions in the Act clarify that the City may now pass by-laws respecting climate change mitigation and adaptation and also by-laws respecting matters relating to the conservation of the environment, (i.e. building standards relating to energy conservation), that could go beyond any minimum standards established by the Ontario Building Code (OBC).

14. Added Powers for TLAB - *City of Toronto Act, 2006*

Section 115 of *City of Toronto Act* currently provides for the establishment of a local appeal body which can deal with appeals of certain planning matters. Bill 139 clarifies that the local appeal body has all the powers and duties of the Tribunal under the relevant provisions of the *City of Toronto Act* and the *Planning Act*. Bill 139 also expands those matters to include appeals and motions for directions related to site plan control matters and motions for directions related to minor variances and consents. Motions for direction can be combined with site plan matters and consents and more specific interpretation is given in the Bill for determining who has jurisdiction to hear motions for direction and appeals and what to do with related motions for direction and appeals involving site plan and other matters filed under other sections of the *Planning Act* relating to official plans, zoning by-laws and plans of subdivision. Amendments are also being proposed to Section 115 (22) which deal with transition to specify that this section does not apply to an appeal under subsection 114 (7), (15) or (15.1) of the *City of Toronto Act* or subsection 53 (4.1) or (14) of the *Planning Act*, if the appeal is made before the day on which a by-law passed by the City empowering the appeal body to hear that type of appeal, comes into force.

With regard to adding site plan appeals to the TLAB, the City had requested the Province for this power in 2005 when the *Planning* and *OMB Acts* were under review.

15. Modernizing the Role of Conservation Authorities

Bill 139 proposes several amendments to the *Conservation Authorities Act* that enable regulatory and policy changes proposed in the Province's plan to modernize the role of Conservation Authorities, as presented in "Conserving Our Future: a Modernized Conservation Authorities Act": <https://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTI4NTQz&statusId=MjAxNDU0>.

The provincial plan proposes legislative, regulatory, and policy changes that are intended to strengthen oversight and accountability, increase clarity and consistency in programs and services delivered by Conservation Authorities, increase clarity and consistency in regulatory requirements, enhance collaboration and engagement, and modernize funding mechanisms.

Since the initiation of the legislative review process in 2015, City staff have provided extensive comment and input to the Ministry of Natural Resources and Forestry. In particular, staff comments were focused on enhancing oversight and accountability, clarifying roles and responsibilities of conservation authorities under the *Conservation Authorities Act* and municipal planning authorities under the *Planning Act*, and the need for long-term and sustainable funding mechanisms. The proposed legislative amendments address many of the City's comments, including enhanced accountability and oversight and alignment with City Council's policies by:

- Increasing the maximum term of office of members of an authority from three to four years (Section 14(4.1)); consistent with term of appointments per the City of Toronto Act, 2006 and Municipal Act, 2001.
- Establishing open meeting requirements, subject to exceptions that may be provided in an authority's by-laws (Section 15(3)).
- Making it a legislative requirement that authorities make by-laws relating to its governance as set out in Section 19.1(1).
- Requiring that all conservation authority by-laws, fee schedule, and any memoranda of understanding with a municipality be made available to the public (Sections 21(3)-(3.1), 21.2(6)-(8), and 19.1).

The City had also provided extensive input regarding the need for clarity with respect to the role and authority of conservation authorities and the local planning authority of a municipality. Several amendments were made to clarify the relationship between conservation authorities and the Ministry of Natural Resources and Forestry. Clarification of roles and responsibilities between authorities, other agencies and municipalities, will largely be determined through an updated regulatory framework.

Lastly, the Bill also proposes legislative changes regarding the apportionment of operating expenses and project capital costs to municipalities by conservation authorities (sections 27 and 25 respectively). While costs were previously apportioned to participating municipalities according to the benefit derived or to be derived by municipalities, the amended language suggests that the process for determining the municipal allocation will be established in accordance with the regulations. The Bill also proposes to retain a process whereby a municipality may contest the apportionment of a capital cost by the authority.

The legislative amendments described above will be implemented over the next four years. City staff are supportive of amendments to clarify the mandate, roles and responsibilities of conservation authorities to ensure it meets the current and future needs of the City as it relates to natural resource management and protection of watersheds. The municipal implications of these amendments will need to be assessed as the supporting regulatory framework is updated.

City staff will be participating in the development of the regulatory framework and report on any implications resulting from these changes as required. The implications of the Conservation Authority Act amendments and associated regulations will be assessed with respect to the City's role in the Toronto Region Conservation Authority.

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SIGNATURE

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ATTACHMENTS

Attachment 1: Comparing Council Recommendations Made in Response to Provincial Consultation on Reforming the OMB to Bill 139

Attachment 2: Overview of the Two-Step Appeal Process Proposed by Bill 139

Attachment 1: Comparing Council Recommendations Made in Response to Provincial Consultation on Reforming the OMB to Bill 139

Council Recommendation	Status of Request	Bill 139 Proposed Amendments
<p>Province have the authority to specify which parts of provincial decisions on Official Plans would not be subject to appeal, provided that municipalities continue to retain their right of appeal.</p>	<p>Proceeding in Bill 139</p>	<p>All Section 26 <i>Planning Act</i> updates/revisions to Official Plans requiring the Minister's approval, are sheltered from appeal.</p> <p>Municipalities continue to have the right to appeal non-decisions of the Minister for Section 26 Official Plan updates/revisions.</p>
<p>Amend the <i>Planning Act</i> such that the Province would have the authority to specify which parts of thematic Official Plan policy amendments would not be subject to appeal.</p>	<p>Proceeding in Bill 139</p>	<p>All Section 26 <i>Planning Act</i> updates/revisions to Official Plans requiring the Minister's approval, are sheltered from appeal.</p>
<p>Amend the <i>Planning Act</i> such that all Official Plans and Official Plan amendments subject to Provincial approval not be appealable in their entirety following issuance of the provincial decision.</p>	<p>Proceeding in Bill 139</p>	<p>All Section 26 <i>Planning Act</i> updates/revisions to Official Plans requiring the Minister's approval, are sheltered from appeal.</p>
<p>Provincial decisions on new Official Plans or Official Plan amendments by municipalities to bring their Official Plans into conformity with the Provincial Policy Statement or Provincial Plans be final and not subject to appeal.</p>	<p>Proceeding in Bill 139</p>	<p>All Section 26 <i>Planning Act</i> updates/revisions to ensure that the Official Plan conforms with a provincial plan (for example, the Growth Plan); is consistent with a provincial statement (for example, the Provincial Policy Statement); and has regard for matters of provincial interest listed in Section 2 of the <i>Planning Act</i>; are sheltered from appeal.</p>

Council Recommendation	Status of Request	Bill 139 Proposed Amendments
<p>Amend the <i>Planning Act</i> to restrict appeals of a refusal or a non-decision by Council, of privately initiated Official Plan amendments relating to Urban Growth Centres that are planned to achieve by 2031, or have already achieved a gross density that exceeds the minimum density targets set in Policy 2.2.3.3 of the proposed Provincial Growth Plan for the Greater Golden Horseshoe, until such time as the municipality has completed its official plan and infrastructure capacity review to determine the impacts, if any, of permitting additional intensification in these areas.</p>	<p>Not Proceeding in Bill 139</p>	<p>(See Recommendation 11 of this Report).</p>
<p>Give the Minister and not the Ontario Municipal Board, the authority to make the final decision on requests to amend zoning provisions, put in place through a Minister's Zoning Order.</p>	<p>Proceeding in Bill 139</p>	<p>When a Minister's Zoning Order is referred to the LPAT, it makes a recommendation to the Minister, and the Minister, after considering that recommendation, makes the decision.</p>
<p>Restrict appeals of Official Plan policies that support provincially funded transit infrastructure provided that the wording of Policy 2.2.4. in the proposed Provincial Growth Plan for the Greater Golden Horseshoe is amended to allow municipalities to identify which major transit station areas will be planned at higher densities</p>	<p>Proceeding in Bill 139 Partially achieved in Growth Plan (2017)</p>	<p>Major Transit Station Area policies are sheltered from appeal.</p> <p>New Growth Plan policies identify minimum density targets for major transit station areas and stops but also allow municipalities to set alternative density targets with Provincial approval. It is within these parameters that municipalities can identify which major transit station areas will be planned at higher densities. However, the Growth Plan allows the Minister to add more stations at his discretion without consulting with the municipality.</p>
<p>Amend the <i>Planning Act</i> to not allow privately initiated amendments to newly approved secondary plan amendments, along with concurrent implementing zoning by-laws, for a five-year period.</p>	<p>Partially addressed in Bill 139</p>	<p>Unless Council declares otherwise by resolution, a privately initiated request to amend a secondary plan is prohibited, for a two-year period.</p> <p>(See Recommendation 12 of this Report).</p>

Council Recommendation	Status of Request	Bill 139 Proposed Amendments
Amend the <i>Planning Act</i> to not allow privately initiated amendments to newly approved official plan policies stemming from comprehensive municipal reviews of existing official plans along with concurrent implementing zoning by-laws, for a five-year period.	Not addressed in Bill 139	(See Recommendation 12 of this Report).
No appeals for a municipal interim control by-law.	Proceeding in Bill 139	Only the Minister may appeal the passing of an interim control by-law within 60 days after the date of passing of the by-law .Any person/public body may appeal the passing of a by-law extending the period of the interim control by-law within 60 days after the date of passing of the extending by-law.
Expand the authority of local appeal bodies adjudicating appeals of minor variances and consents to include associated appeals relating to site plan applications.	Proceeding in Bill 139	Council may by by-law empower a local appeal body to hear appeals of site plan approval matters.
Further clarify, through legislation and OMB Practice Procedures, that the OMB's authority is limited to dealing only with matters that are part of the municipal council's decision.	Proceeding in Bill 139	When the Tribunal makes a decision on a planning matter it shall have regard to any decision by a municipal council or approval authority that relates to the same planning matter and to any information and material the municipal council or approval authority considered in making the decision.
Make it mandatory for the OMB to send significant new information that arises in an OMB hearing back to the municipal council for re-evaluation of the original decision if a municipality brings a motion advising that the new information and material could have materially affected council's decision.	Partially Addressed in Bill 139	With regard to plans of subdivisions only, new evidence at a hearing that was not provided to Council before it made its decision on the matter will be sent back to Council, if it so requests, to reconsider its decision in light of the information and to make a written recommendation to the Tribunal. The Tribunal shall have regard to Council's recommendations if they are received within the prescribed time period.
Request the Province to amend the legislation and regulations governing the planning approval and appeals process to reflect the primacy of municipal decision-making on planning matters.	Partially addressed in Bill 139	The Tribunal will continue to have to make decision that "have regard for" municipal decisions on all planning matters.

Council Recommendation	Status of Request	Bill 139 Proposed Amendments
<p>Advise the Province of its concern that a full OMB hearing, or a hearing <i>de novo</i> on an appeal of a planning application should not be automatic and should only be scheduled if the OMB first finds that a municipality's decision falls outside a range of reasonable outcomes or in a manner not consistent with the Provincial Policy Statement (PPS) or not in conformity with Provincial Plans.</p>	<p>Partially addressed in Bill 139</p>	<p>Bill 139 creates a two phased appeal process in which the first appeal of a municipal decision appears to eliminate <i>de novo</i> hearings relating to appeals for; official plans, official plan amendments and requests to amend official plans; zoning by-laws, zoning by-law amendments and applications to amend zoning by-laws; and plans of subdivision. It is not clear as to whether the second phase of the appeal process is intended to be a <i>de novo</i> hearing.</p>
<p>Request the Minister of Municipal Affairs to amend the <i>Planning Act</i> to limit appeal matters and impose directions for changes to the OMB's Rules of Practice Procedure to effectively limit the scope of OMB hearings and focus on deference to municipal decision-making.</p>	<p>Partially addressed in Bill 139</p>	<p>New subsections provide that an appeal concerning the adoption or approval of an official plan or zoning by-law is restricted to issues of consistency or conformity with provincial plans and policy statements and for zoning by-law appeals, conformity with official plan policies. The authority of the Tribunal to allow such appeals is limited, but where an appeal is allowed and successful, the municipality has a second opportunity to make a decision. If that decision is appealed and the Tribunal again determines that the municipality did not meet the new conformity tests, the Tribunal will make another decision.</p>
<p>Express support for the Province's proposals to expand and re-configure the Citizen Liaison Office (CLO) and to explore funding tools, including intervener funding to assist citizens to retain planning experts and lawyers, at no cost to the municipality.</p>	<p>Proceeding in Bill 139</p>	<p>Bill 139 establishes a new Local Planning Appeal Support Centre. The Centre will provide free support, advice and representation to eligible persons who want to participate in matters that are under the jurisdiction of the Tribunal. The Centre will provide the following support services to eligible persons; information on land use planning, guidance on Tribunal procedures, advice or representation and any other services prescribed by regulation. The Centre will establish criteria for determining the eligibility of persons to receive support services, subject to any rules prescribed by regulation.</p>

Council Recommendation	Status of Request	Bill 139 Proposed Amendments
Support the Province's proposal that the OMB reintroduce multi-member panels with panel members representing a broad range of skills and backgrounds.	May Proceed through Bill 139 as a Regulations	<p>No specific legislative amendments proposed but may proceed by way of future regulations</p> <p>The LPAT Act will provide the Minister with regulation making powers regarding the practices and procedures of the Tribunal to, among other matters, provide for multi-member panels to hear proceedings before the Tribunal and governing the composition of such panels.</p>
Recommend that the Province re-examine OMB member recruitment practices and modernize OMB practices to improve the efficiency and quality of dispute resolution processes at the OMB and the scheduling of hearings.	May Proceed through Bill 139 as a Regulation	<p>No specific legislative amendments proposed but may proceed by way of future regulations.</p> <p>The LPAT Act will provide that the Minister may make regulations regarding the practices and procedures of the Tribunal.</p>
Request the Province to prioritize the scheduling of OMB cases related to the adoption of planning policy documents such as official plans, municipally initiated comprehensive official plan amendments and comprehensive zoning by-laws.	May Proceed through Bill 139 as a Regulation	<p>No specific legislative amendments proposed but may proceed by way of future regulations.</p> <p>The LPAT Act will provide that the Minister may make regulations regarding the practices and procedures of the Tribunal.</p>
Support the Province's proposal to actively promote mediation as a means to scope and resolve planning issues under appeal.	Proceeding in Bill 139	<p>The Tribunal will be required to conduct a mandatory case management conference relating specified <i>Planning Act</i> appeals.</p> <p>The case management conference must include a discussion of opportunities for settlement, including the possible use of mediation or other dispute resolution processes.</p>
Support the Province's proposals requiring all appeals to be considered by an OMB appointed mediator before scheduling a hearing.	Partially addressed in Bill 139	<p>The Tribunal will be required to conduct a mandatory case management conference for appeals related to official plans/ amendments, zoning by-laws and non-decisions of plans of subdivision. Bill 139 does not require or specify that other types of appeals of planning matters be considered for the case management conference.</p>

Council Recommendation	Status of Request	Bill 139 Proposed Amendments
<p>Support the Province's proposal to strengthen the case management at the OMB to better stream and scope issues in dispute, identify areas that can be resolved at pre-hearings and support OMB members during hearings.</p>	<p>Proceeding in Bill 139 and may also proceed through Bill 139 as a Regulation</p>	<p>The Tribunal will be required to conduct a mandatory case management conference for appeals related to official plans/ amendments, zoning by-laws and non-decisions of plans of subdivision. The case management conference must include a discussion of opportunities for settlement, including the possible use of mediation or other dispute resolution processes.</p> <p>Bill 139 does not require or specify that other types of appeals of planning matters be considered for the case management conference.</p>
<p>Extend application processing timeframes in the <i>Planning Act</i> before "failure to proceed" appeals can be made for applications, in order to provide for more opportunities for mediation and reduce the potential number of "failure to proceed" based appeals, as follows:</p> <p>a. Official plan amendments be increased from 180 days to 240 days;</p> <p>b. Zoning by-law amendments be increased from 120 days to 180 days; and</p> <p>c. Zoning by-law amendments that run concurrently with an official plan amendment be increased from 180 days to 240 days.</p>	<p>Partially addressed in Bill 139</p>	<p>The proposed legislation extends the application processing timeframes in the <i>Planning Act</i> before "neglect or refusal to decide" appeals can be made for applications, as follows:</p> <p>a. Official plan amendments are increased from 180 days to 210 days;</p> <p>b. Zoning by-law amendments are increased from 120 days to 210 days; and</p> <p>c. Zoning by-law amendments that run concurrently with an official plan amendment are increased from 180 days to 210 days.</p> <p>(Recommendation 5 of this Report proposes that the length of time Council has to make a new decision when the Tribunal sends a planning matter back to Council for re-consideration, be increased from 90 days to 150 days).</p>

Attachment 2: Overview of the Two-Step Appeal Process Proposed by Bill 139

First Appeal (on a refusal of an application)

The proposed legislation considerably reduces the Tribunal's jurisdiction in respect of appeals related to official plans, zoning by-laws, or plans of subdivision. Appeals can only be made on the basis that the decision meets one of the conformity failure tests. The appeal letter must explain how the decision fails the test, failing which the Tribunal must dismiss the appeal.

If the Tribunal determines that one of the conformity failure tests has been met, the Tribunal will not be able to substitute its own decision for that of the municipal council; rather, the Tribunal will be required to return the matter to the municipal council, with written reasons explaining the Tribunal's rationale for overturning the decision.

The municipality will then have 90 days to reconsider the official plan or zoning matter that failed the conformity test, and make a new decision, triggering a second appeal right. On that second appeal, the Tribunal could modify and approve as modified, or refuse to approve, the part of the planning matter that was part of Council's new decision to rectify conformity failure.

At a first appeal, the parties would no longer have the opportunity to present evidence, and to call and cross-examine witnesses. Amendments proposed by Bill 139 would appear to prohibit oral evidence at the first hearing. Specifically, at the first hearing, the parties could make written submissions, but they could not adduce any evidence or call and cross-examine witnesses.

Second Appeal

If the municipality's second decision is determined to fail to meet the new conformity test, there would be a second right of appeal, but again only on the basis of failing the conformity test. As part of this second appeal hearing, it appears that the Tribunal would have the authority to conduct a hearing with the opportunity for parties to present new evidence, including the calling of expert witnesses and cross-examination. If the Tribunal determined that the second decision failed the conformity test, only then would the Tribunal have the authority to make a final decision to modify and approve as modified, or refuse to approve, the second official plan/amendment and/or zoning-by-law.

Failure to Make a Decision by Council (within the prescribed timeframe)

Where there was a failure to make a decision by Council (to adopt another plan within 90 days), the Tribunal does not appear to be limited to the conformity failure tests in making its decision, widening the scope of the hearing. The Tribunal will have the authority to make a final decision in Council's place to modify and approve as modified, or refuse to approve, all or part of the matter before it.