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Planner: T. Macbeth

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	ONTARIO MUNICIPAL BOARD (OMB) REFORM: BILL 139 POTENTIAL REGULATIONS MEETING ON JANUARY 8, 2018

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning & City Planner, the following report **BE RECEIVED** for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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November 28, 2016 Planning and Environment Committee, "Ontario Municipal Board (OMB) Review, 2016."

August 22, 2016 Planning and Environment Committee, "Ontario Municipal Board Review."

EXECUTIVE SUMMARY

The Province has prepared proposed regulations to address the transition between the Ontario Municipal Board and its proposed replacement called the "Local Planning Appeal Tribunal" (LPAT). The change to the Local Planning Appeal Tribunal is through Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017*. **Bill 139 received Royal Assent on December 12, 2017**. These regulations have been released to the public to assist with the transition to the new processes, procedures, and matters that are appealable under the LPAT.

The proposed regulations are available for a 45 day commenting period (December 7, 2017 to January 21, 2017) and the Province is seeking input from stakeholders, the public, and municipalities. Comments can be submitted to the Ministry of Municipal Affairs through the web address above or to the Ministry's Provincial Planning Policy Branch in Toronto. The proposed regulations are available through the Environmental Bill of Rights Registry (EB) and are available at the following web address:

<https://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTM0MTQy&statusId=MjA0MDgw&language=en>

Staff are generally supportive of the regulations proposed, as they reflect the City's earlier position during the 2016 OMB review that led to the drafting of Bill 139. Also of note is

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that the draft transition regulations indicate the *London Plan* will continue to be heard under the Ontario Municipal Board (i.e. under the “old rules”); however, decisions of Council on current applications made after Royal Assent would, generally, be required to be heard by the Local Planning Appeal Tribunal under the “new” rules and procedures.

BACKGROUND

The Ontario Ministry of Municipal Affairs and the Ministry of the Attorney General undertook a review of the scope and effectiveness of the Ontario Municipal Board (OMB) in 2016, to develop recommendations to improve how the OMB operates within the broader land use planning system. The City of London provided responses to the review in initial response in August 2016 and a more detailed response to the Province’s “Review of the Ontario Municipal Board: Public Consultation Guide” in November 2016. The Province’s Public Consultation Guide addressed the following themes of potential reforms:

- Theme 1: OMB’s Jurisdiction and Powers;
- Theme 2: Citizen Participation and Local Perspective;
- Theme 3: Clear and Predictable Decision Making;
- Theme 4: Modern Processes and Faster Decisions; and
- Theme 5: Alternative Dispute Resolution and Fewer Hearings.

The City response was, in general terms, that:

- i) the scope of matters that can be appealed to the Ontario Municipal Board is too broad;
- ii) the Ontario Municipal Board does not place sufficient weight on Municipal Council’s decisions (arrived at by Council as an elected body and with substantial public consultation);
- iii) an emphasis on alternative dispute resolution that includes limited public consultation, following Municipal Council’s decision, has the potential to undermine the province’s rigorous requirements for public participation throughout the planning process prior to appeal and, thus, weaken meaningful public participation in establishing a final local planning decision; and,
- iv) the Ontario Municipal Board should be more accountable for implementing existing legislation in its hearings and practices relating to such matters as not allowing for new information to be introduced at Ontario Municipal Board hearings that was not clearly in front of the public and the Council at the time of Municipal Council’s decision;

A result of the public consultations and the OMB Review was the introduction of Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017*. The Bill proposes to enact many of the changes considered through the 2016 review, and aligns with the input provided by the City during that process. Some of the significant changes through Bill 139 include:

- Replacing the *Ontario Municipal Board Act* with the *Local Planning Appeal Tribunal Act* and replacing the Board itself with the new “Local Planning Appeal Tribunal” (LPAT);

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- Enacting a new *Local Planning Appeal Support Centre Act* intending to provide support services to the public to help them navigate appeals and the tribunal system’s processes and procedures;
- Scoping the LPAT’s jurisdiction over matters which can be appealed, and thus giving greater recognition to the local, public processes and decision of municipalities;
- Decisions that cannot be appealed to the LPAT include: provincial approvals of Official Plans or Official Plan Amendments where the Minister is the approval authority; municipal planning policies on affordable housing; policies on climate change; and those policies related to development around higher-order transit stations and stops. There are also limitations on appeals to secondary plans and interim control by-laws.
- Eliminating “de novo” hearings: in other words, under the OMB, appeals were heard “over again anew” as if no decision had been made by City Council, and the Board could overturn the decision of Council.
- “De novo” hearings are to be replaced by the LPAT evaluating Council’s decisions for its conformity with, and consistency with, Provincial legislation and policies and local planning policies. By the new Tribunal giving greater recognition to local decisions, it is only where there are local decisions that are inconsistent with Provincial or municipal policy directions that a new decision can be made. Under the LPAT system, local decisions will not be overturned by the Tribunal, but instead Councils will be given a second opportunity to make their decision conform to the policies with which it is inconsistent. However, if Council’s decision remains contrary to the LPAT’s recommendations then the Tribunal will make a decision for a local Council.
- The *Planning Act*’s statutory timelines for planning application decisions by Council are extended to 210 days (from 180 days) for applications to amend the Official Plan and to 150 days (from 120 days) for applications to amend the Zoning By-law.

In addition to the above changes, Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017*, also makes amendment to the *Conservation Authorities Act*. While Bill 139 also proposes changes to the *Conservation Authorities Act*, this report focuses on the changes to the Ontario Municipal Board and Province’s proposed regulations to implement those changes.

Royal assent occurred on December 12, 2017 for the *Building Better Communities and Conserving Watersheds Act, 2017*.

PROVINCE PROPOSES REGULATIONS FOR BILL 139

In order to transition to the new Tribunal system and its processes, the Province has posted some proposed new Ontario Regulations under the *Planning Act* to implement the legislation.

The proposed transition regulations are available through the Province’s Environmental Bill of Rights Registry (EBR). The Province has a 45 day commenting period for the public, stakeholders, and municipalities. The commenting period is between December 7, 2017, and January 21, 2018.

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The proposed regulations intend to set out the transition between the OMB and the LPAT and the “stream” for any appeals to planning applications that are in process at the time of Bill 139 being proclaimed into law. Any changes to the *Planning Act* through Bill 139 that are not addressed in the proposed transition regulation would apply immediately. In other words, the transition regulation would identify the exceptions to the new LPAT tribunal procedures and processes coming into effect immediately.

From the EBR, it is proposed that the change to the LPAT system and its processes come into force as follows:

- Removing provincial approvals of official plans and official plan updates, including for conformity exercises, as an appealable matter would apply to provincial decisions where the notice of Minister’s decision is given after the Bill comes into force;
- Restricting the grounds of appeal of a decision on an official plan or zoning by-law (or amendments) to consistency and/or conformity with provincial and/or local plans would apply to:
 - appeals of decisions when the notice is given after the Bill comes into force (i.e., the LPAT would apply to appeals made during appeal periods that begin after the Bill comes into force); and
 - appeals of decisions made before proclamation in respect of:
 - complete applications made after Royal Assent;
 - municipally-initiated official plan amendments that are adopted after Royal Assent; and
 - municipally-initiated zoning by-law amendments that are passed after Royal Assent;
- Restricting appeals of a Municipal Council’s non-decision on an application for an amendment to the official plan or zoning by-law to its consistency and/or, conformity with provincial and/or local plans would apply to:
 - appeals of non-decisions made after the Bill comes into force; and
 - appeals of non-decisions made before proclamation in respect of complete applications made after Royal Assent;
- The removal of mandatory referrals of Minister’s zoning orders would apply to requests to refer made after the Bill comes into force;
- The removal of appeals (other than by the province) of interim control by-laws when first passed (for a period of up to 1 year) would apply to decisions made after the Bill comes into force;
- The restriction on the ability to amend secondary plans for 2 years following their approval, unless allowed by council, would apply to applications for amendments to secondary plans that come into effect after the Bill comes into force;
- The extension for decision timelines on applications for amendments to the official plan and zoning by-law would apply to complete applications submitted

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after Royal Assent and the extension for decision timelines for approval authorities on adopted official plans/amendments would apply to official plans/amendments adopted after Royal Assent.

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December 8, 2017

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