

## Report to Planning and Environment Committee

**To:** Chair and Members  
**Planning & Environment Committee**

**From:** John M. Fleming  
**Managing Director, Planning and City Planner**  
**George Kotsifas**  
**Managing Director, Development and Compliance Services**  
**and Chief Building Official**

**Subject:** Local Planning Appeal Tribunal Process Report

**Meeting on:** August 13, 2018

## Recommendation

That, on the recommendation of the Managing Director, Planning and City Planner, and the Managing Director, Development and Compliance Services and Chief Building Official, with the concurrence of the City Clerk and Solicitor II, the following actions be taken:

- a) The report dated August 13, 2018, entitled “Local Planning Appeal Tribunal Process Report” **BE RECEIVED**:
- b) The Civic Administration **BE DIRECTED** to initiate the processes outlined in the report noted in a) above.

## Executive Summary

This report provides information regarding the various changes to municipal processes and procedures as a comprehensive response to Bill 139, and the transition from the Ontario Municipal Board (OMB) to the Local Planning Appeal Tribunal (LPAT) system.

## Background

### 1.0 Previous Reports Pertinent to this Matter

June 18, 2018: Planning and Environment Committee, “Local Planning Appeal Tribunal Transition Report”

January 8, 2018: Planning and Environment Committee, “Ontario Municipal Board (OMB) Reform”

November 28, 2016: Planning and Environment Committee, “Ontario Municipal Board (OMB) Review, 2016.”

August 22, 2016: Planning and Environment Committee, “Ontario Municipal Board Review.”

### 2.0 Background

The new Local Planning Appeal Tribunal (LPAT) resulted from the review undertaken in 2016 by the Ontario Ministry of Municipal Affairs and the Ministry of the Attorney General of the scope and effectiveness of the Ontario Municipal Board (OMB). On May 30, 2017, Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017 (Bill 139)* was introduced for the purpose of improving how the OMB operates within the broader land use planning system. Bill 139 received Royal Assent on December 12, 2017, and the related schedules, rules and regulations applicable to the new Local Planning Appeal Tribunal came into force through proclamation on April 3, 2018.

An internal staff LPAT “Transition & Implementation Working Group” has been established to review and prepare the City of London for process updates and changes. The group is comprised of staff members from the City Clerk’s Office, Planning Services, Development and Compliance Services and Legal Services, which have all participated and provided input into this report. This report will build on the LPAT Transition Report received by the Planning and Environment Committee (PEC) in June 2018, and provides a comprehensive response to Bill 139, including such aspects as:

- Education and Communication strategy for the public and industry professionals;
- Format and timing for additional public participation meetings (PPMs);
- Changes to notice requirements;
- Supporting policy requirements including amendments to The London Plan;
- Complete application requirements and Report Templates; and,
- Changes to decisions and appeals.

Other recent changes to the *Planning Act*, such as the two-year moratorium on Official Plan Amendments after a new Official Plan comes into effect, introduced through Bill 73, that are related to, but not directly linked to the LPAT specific changes, are addressed in a separate report.

### **Transition Regulations**

Transition regulations are set out to direct which *Planning Act* matters would be considered under the ‘new’ LPAT process and ‘old’ OMB procedures. All appeals now received by the City will be considered before the Local Planning Appeal Tribunal (LPAT), regardless of when the application was made. The City currently has three applications under appeal before the new LPAT rules and regulations. There are a further twelve (12) applications in various stages of the OMB appeal process that were filed prior to April 3, 2018, and will proceed under the “old regime” as the *Act* existed on or before April 2, 2018.

### **Summary of LPAT Process**

The Local Planning Appeal Tribunal (LPAT) is an adjudicative tribunal that hears appeals in relation to a range of municipal planning, financial and land use matters. The new LPAT process divides applications and hearing types into Part 1 Appeals and Part 2 Appeals.

#### Part 1 Appeals

Part 1 appeals under the LPAT will follow the same rules and process as the former OMB. Part 1 hearings include appeals for:

- Minor variances
- Consents
- Site plans
- Subdivision decisions for approval or refusal
- Heritage appeals that previously went to the OMB
- *Aggregate Resources Act* appeals

#### Part 2 Appeals

The ‘Part 2’ hearings include appeals for:

- Part or all of an Official Plan exempt from approval
- Part or all of an Official Plan decision by the approval authority
- Non-decision or decision by the approval authority of a privately-initiated Official Plan Amendment
- Non-decision or decision by the approval authority of a Zoning By-law Amendment
- Non-decision of a Subdivision

All *Planning Act* appeals were previously conducted as *de novo* hearings, as if they were not previously heard or decided. Part 2 appeals will now face the applicable tests

of Bill 139 to determine if the appeal is valid, including whether the decision is consistent with the Provincial Policy Statement (PPS), and whether the matter conforms to the Official Plan. The LPAT will conduct preliminary screening as to whether or not an appeal is to be accepted, and can dismiss an appeal if the tests are not satisfied.

If an appeal is considered to be valid, the LPAT will undertake a hearing. If the LPAT hearing identifies that there is an inconsistency or non-conformity, the LPAT will return the application to the municipality and provide Municipal Council with the opportunity to make a new decision. Municipal Council would then have 90 days to reconsider the application, with the benefit of the LPAT's direction. If there is a second appeal to the subsequent decision of Municipal Council, or for a non-decision within the 90 days allocated, the Part 2 Appeal will be held as a Part 1 Appeal, or as a *de novo* hearing.

### **Prescribed Timeframes and Non-decision Appeals**

Under Bill 139, municipalities are provided with a longer period of time to make a decision on a planning application before a Part 2 appeal can be filed for non-decision. Municipalities now have 150 days to consider zoning amendments (previously 120 days), and 210 days to consider Official Plan amendment applications (previously 180 days), which includes combined Official Plan amendment and rezoning applications. Where a municipality fails to make a decision within the prescribed timelines, an applicant can appeal the non-decision of Municipal Council to the LPAT. In such an event, where there is no decision of Municipal Council, there may be a very limited evidentiary record to forward to the Tribunal for consideration (see section 8.0).

### **LPAT Requirements for Non-decision Appeals**

Prior to Bill 139, appeals for non-decision did not require the appellant to provide any reasons for the appeal. Under Bill 139, the appellant must now provide an explanation of the basis for the appeal. Specifically, the appellant must argue the 'dual compliance test', in the same way an appeal to a refusal would be argued. The dual compliance test would have to demonstrate how the existing part or parts of the Official Plan or Zoning By-law amendment affected by the requested amendment are not consistent with the PPS and/or do not conform to the Official Plan policies, and further how the proposed amendment to the Official Plan or Zoning By-law would be consistent with the PPS and/or conform to the Official Plan policies.

## **3.0 Education and Communication**

### **Summary of Key Issue and Consideration**

Bill 139, as it relates to LPAT, includes changes for how the overall planning and development industry operates, and how the public are consulted and provide input. A key part of the proposed changes contained in this report as it relates to the LPAT process, will be the approach to education and communication to ensure all who are involved or participate in the planning process have a solid understanding of the various requirements.

Applications and notices will continue to be updated to reference LPAT, the City's website has also been changed and is still being updated as the potential changes in process and policy for several types of applications are worked through. The Civic Administration, with the aid of the Province, will continue to provide information to the public as appeals come forward.

## Education and Communication Program

A Community Engagement Program is proposed to be undertaken to engage the Internal Service Areas, External Agency Partners and the Public on the following topic areas:

1. Provide an overview of LPAT
  2. Describe the transition to LPAT
  3. 1 or 2-step public process on *Planning Act* applications
    - Identify the types of applications that are subject to the 2-step process
    - Outline what is involved with the process and how it works
    - Outline the purpose of the Public Participation Meeting (PPM)
    - Clarify what the City is requiring to be included in the submission of an application
    - Identify changes to The London Plan (Our Tools)
    - Layout and explain the process for appeals
- Ensure that there are a variety of opportunities for Internal Service Areas, External Agency Partners and the Public to become engaged in the LPAT transition process
  - Educate the community about the importance of planning, the impact on city building, and the best ways and times to provide input
  - Engage stakeholders presently engaged in planning processes and make tools (literature) available for those who do not normally participate in planning or city initiatives
  - Ensure industry professionals are aware of changes to complete application and report requirements
  - Ensure Municipal Council and Standing Committees are briefed on the upcoming changes and their implications
  - Continue the collective effort to advance The London Plan Vision and Key Directions

### Implementation tools for Communication Education Program

- **Website** – a communication resource for consistent messaging

Key components of the website may include:

- Information resources provided in an efficient, visually compelling way;
  - News posts, events, and documents;
  - Display of interactive maps and online engagement elements;
  - Intuitive information architecture and search tools to help citizens locate relevant information quickly;
  - Integration with social media channels
  - Links to provincial LPAT resources such as the rules and legislation, Citizen Liaison Centre, and status of individual cases
- **Formal presentation format** – LPAT “roadshow” (initially internal to the City and ultimately to external audience, as requested)
    - Service Areas – Section/staff Meetings and/or workshops
      - Immediate appearances at team or Division meetings
      - Explain LPAT basics and transition
      - Introduce 1 or 2 step process
      - Work through scenarios
    - External groups (London Development Industry, London Homebuilders Association, Community Associations, Business Improvement Associations etc).

- Presentation of LPAT and City of London process, workshop, Q&A
- Tailor presentation topic areas to the group interests
- Work through scenarios
- **Workbooks**
  - Executive Summary Booklet of LPAT or user guide

## Timing

The preparation of an overall Education Communication Program is targeted for the end of Q3, 2018, with delivery of the program targeted for Q4, 2018.

## 4.0 Meetings and Planning Reports

### Summary of Key Issue and Consideration

The LPAT process changes under the *Planning Act* include certain risks that could result in the public not having the opportunity to provide input on a planning application or Municipal Council not having its direction form part of the record. This risk is most directly related to Part 2 appeals for non-decision.

### Analysis

The current planning review process includes a Public Participation Meeting (PPM) which is scheduled upon completion of the planning review, and once the staff recommendation is available. For some applications, the planning review may exceed the prescribed timeframe due to revisions to designs or studies, to resolve issues or to address community comments. In many of these cases, there is an acknowledgement that since additional time is required, it is accompanied by an ‘on-hold’ request from the applicant to informally suspend the statutory timeframe. This process is generally undertaken with the applicant as a cooperative and collaborative approach to achieving a beneficial planning outcome, though does create a vulnerability for the municipality for non-decision appeals since the ‘on-hold’ status has no formal basis in legislation.

In the past, if a non-decision appeal arose due to such a scenario it was possible to seek Municipal Council’s direction and the public’s input prior to the appeal hearing. The new LPAT process does not allow for this additional process to be incorporated into, or form what is referred to as, the evidentiary record. This could result in an incomplete and partial record that does not effectively or accurately reflect or convey the comments and concerns of the Municipal Council or the community.

### Two Step Meeting and Report Approach

In order to ensure that there is meaningful public participation and an adequate evidentiary record to submit to the Local Planning Appeal Tribunal in the event of a non-decision appeal, the proposed approach is to hold the PPM early on in the application review process. The first planning report known as the “Public Meeting Report” will provide:

- Detailed description of the proposed amendment
- The policy framework that will apply
- A summary of the public comments and feedback received up until the time the report is prepared
- A summary of any issues that have been identified and/or need to be addressed

The report will be provided for information purposes, and will contain limited analysis, no planning opinion/recommendation nor a proposed by-law. Comments received at the PPM will be considered by Planning Services/Development Services staff and the applicant during the remaining application review period. Additionally, the meeting will establish public comments and Council consideration in “the record” for the purposes of a potential LPAT appeal. Once the application review is complete, a subsequent planning report will be prepared known as the “Recommendation Report”, which will provide:

- A complete analysis, evaluation and opinion of the relevant policies
- A response to how the public comments have been addressed or incorporated
- How Standing Committee or Municipal Council direction from the first meeting has been addressed or incorporated
- A recommendation and implementing by-law

An additional public participation meeting could accompany the Recommendation Report if one of the following have been triggered:

- Substantial change or revision to the requested amendment
- New, important or relevant information is provided or available
- Substantial, or increase in, community comments or concerns
- If, for any other reason, an additional public meeting would be in the best interest of the public, and/or benefit the community
- Municipal Council directs that an additional public participation meeting be held

### **Changes to Report Templates**

The Transition Report from June 2018 outlined a number of changes and updates to the staff reports that were required on an immediate basis which included updated wording and references to consistency or inconsistency with the PPS and conformity or non-conformity with the Official Plan. Staff reports also now reference the qualifications of the author and those that provided expert input into the report. Additional changes to the content of planning reports will be required to reflect the proposed two-step process.

### **Recommendation**

A two-step planning process is proposed that will include two planning reports and an early public participation meeting (PPM). Should Municipal Council direct staff to move towards a two-step process the public would have an opportunity to provide input on an application before staff bring forward a recommendation. The input Municipal Council receives from the public prior to the PPM would be summarized in the report brought forward to the second Planning and Environment Committee (PEC) meeting along with a recommendation.

### **Timing**

The approach to meetings and planning reports will be fully implemented by Q4, 2018.

<b>5.0</b>	<b>Notice Requirements</b>
------------	----------------------------

### **Summary of Key Issue and Consideration**

The replacement of the Ontario Municipal Board with the Local Planning Appeals Tribunal requires that references contained in all municipal notices, such as Notices of Application, Notices of Public Meeting and Notices of Decision, be updated to ensure that applicants, organizations and the public are properly advised of their appeal and participation rights. Additionally, slight changes to the wording of existing Notices are required to comply with the new legislation. The Notices will otherwise remain substantially the same.

### **Analysis**

This legislative change applies to all applications for Official Plans and Official Plan amendments, Zoning By-law amendments, Draft Plans of Subdivision, Draft Plans of Condominium, Minor Variances, and Consents to Sever. The required changes affect document templates in Planning Services, Development and Compliance Services, and the City Clerks Office. Once the templates are updated, there are no long term impacts for staff or operations, other than consistent monitoring to ensure the content remains current.

## Timing

As of July 10, 2018, all of the relevant notice templates have been updated to meet the legislative requirements. Depending on Municipal Council's direction related to procedural changes and educational tools discussed elsewhere in this report, additional changes to the content of some or all of the Notices, and the on-site signs, may be required to implement those directions, which will occur by Q4, 2018.

## 6.0 Supporting Policy Requirements

### Summary of Key Issue and Consideration

The Official Plan and The London Plan contain the policies and direction for operational and process matters, including those proposed to change due to the LPAT process update.

### Analysis

The 1989 Official Plan contains Complete Application policies in Section 19.16 of the Plan, while The London Plan provides for Complete Application and Pre-Application Consultation Requirements in policies 1580 through 1614 of The Plan. The policies provide a list of submission requirements that are intended to provide Municipal Council and/or a delegated Approval Authority with all relevant and required information that would allow them to make an informed decision within prescribed timeframes and also provide members of the Public and other Stakeholders with access to information relating to the matter. The Policies outline the reports and studies that may be required as part of a Complete Application, as determined at a pre-application consultation meeting, and may include reports and studies that address planning, design, environmental, transportation, servicing, heritage and agricultural matters.

Notwithstanding the comprehensiveness of current policy relating to submission requirements for a complete application, some minor amendments to both Plans may be needed in response to the new LPAT regulations for planning application appeals. The new regulations place greater emphasis on the studies and reports submitted as part of planning applications in terms of addressing the new tests of consistency and conformity.

### Recommendation

The Civic Administration will review the need for minor amendments to current policy within the 1989 Official Plan/The London Plan and report back through the Planning and Environment Committee (PEC) should amendments be warranted.

### Timing

The review of applicable 1989 Official Plan and The London Plan amendments will be completed by Q4, 2018.

## 7.0 Complete Application Requirements

### Summary of Key Issue and Consideration

A review of the City's processes with regards to complete applications was undertaken as part of the LPAT review. The City's 1989 Official Plan and The London Plan both contain policies related to complete applications and mandatory pre-application consultation for various *Planning Act* applications, including the Part 2 appeals of Official Plan, Zoning by-law amendments, and non-decision appeals for plans of subdivision. Mandatory consultation is required *"to ensure that all relevant and required information pertaining to a planning application is available at the time of submission of the application in order to enable City Council and its delegated approval authorities to make informed decisions within the prescribed period of time, and to ensure that the public and other relevant stakeholders have access to all relevant information early in*

*the planning process*” (The London Plan, Policy 1580).

As part of the LPAT changes, Civic Administration reviewed and considered the following: whether additional information is required as part of a complete application; if changes are required to The London Plan policies related to Complete Application and Pre-Application Consultation Requirements; and, if any changes are necessary with respect to the Record of Consultation provided to the Applicant.

### **Analysis**

As part of any complete application, the Civic Administration typically require a Planning and Design Report (formerly known as Planning Justification Reports) to be submitted with the application, which contains the policy, background, rationale and justification for the requested land use change. The LPAT legislation places greater emphasis on more detailed material to be provided up front and available for Municipal Council’s and the community’s review. The proponent is required to provide the appropriate information and analysis as part of a complete application, which could constitute the proponent’s justification and position should the application be appealed. It is therefore in the proponent’s best interest to ensure that appropriate information and sufficient detail is provided with every planning application. There is no onus on the City to agree with the content of the information provided.

In order to ensure that applicants provide the necessary evaluation as required by The London Plan policy and LPAT, Staff will develop a Planning and Design report template in order to assist all applicants in providing the necessary information. Templates could be provided on the City website to assist proponents in their submissions for various aspects of the planning process.

### **Changes to the Record of Consultation provided to the Applicant**

As indicated above, the onus will be on the applicant or proponent to ensure that appropriate information and supportive materials have been provided with their application, and that an appropriate person who may be qualified to give expert opinion evidence at the LPAT is retained. Under the new rules for LPAT, there is a chance that appellants may not be able to provide further documentation (e.g. witness statement) to the Tribunal beyond what was provided to the Municipality (including both as part of the complete application, and as part of the public meeting submission). As such, there is a possibility that the materials provided in support of the application may be the only opportunity for the applicant to form the basis for a Planning argument if the application was appealed to the LPAT. To ensure that the proponents are made aware of this, a disclaimer is recommended to be added to the Record of Pre-application Consultation and to the minutes of an Initial Proposal Report. This will ensure that applicants are made aware of the possibility that their submission may form the basis of the planning position at the LPAT in-lieu of the previous OMB approach of having witness statements. Wording will be developed in consultation with the City’s Legal Department.

### **Timing**

It is recommended that the Civic Administration develop a Planning and Design report template in order to ensure applicants provide necessary information to assist in the review of the application and to enhance the evidentiary record. Staff anticipate developing the template and having it available on the City’s webpage for use by the end of Q3.

## **8.0 Appeals and Non-decisions**

### **Summary of Key Issue and Consideration**

As a result of the changes to the *Planning Act*, it is possible that an appeal from a non-decision of Municipal Council could proceed to the LPAT without any input or direction from Municipal Council. Additionally, there is the potential for a decision of Municipal Council to have no evidentiary support at the “first appeal” in the LPAT process, if a

decision is made that is different than the staff recommendation.

### **Analysis**

Under the previous procedural approach, once an appeal was filed, it was possible to obtain direction from Municipal Council by bringing a subsequent report prior to the hearing date; however, LPAT appeals will now be argued entirely on the record that existed at the time of appeal. This also creates potential challenges in the event that Municipal Council makes a decision contrary to a staff recommendation. Under the previous regime, Municipal Council would have the ability to retain experts in support of the decision, but the changes to the *Planning Act* will no longer permit additional evidence to enter the record on which an LPAT first appeal is argued.

Enhanced notice and earlier public participation meetings as described above are proposed to provide a genuine public engagement process that occurs earlier in the planning process, and will ensure that Municipal Council has the opportunity to consider each application prior to an appeal for non-decision. Additionally, in the event of a decision in conflict with a staff recommendation, the proposed changes will ensure that there has been adequate opportunity to consider the evidentiary basis for that direction.

### **Recommendation**

It will be critical that the Planning and Environment Committee (PEC) and Municipal Council understand the options available, should an appeal be filed. To that end, the recommendation is to provide education to the new Municipal Council with orientation materials of the differences in timing between the new and old approaches, as well as continue to have Legal staff available at PEC to provide advice prior to a decision.

### **Timing**

Changes related to appeals and non-decision matters are anticipated to be completed by Q4, 2018.

<b>9.0</b>	<b>Other Matters</b>
------------	----------------------

Under the new rules of the Local Planning Application Tribunal (LPAT), many appeals pertaining to development applications permitted under the *Planning Act* will function in a similar manner to those which would have been filed with the Ontario Municipal Board. The Civic Administration reviewed the processes for appeals filed under Section 41 (Site Plan Control), Section 45 (Minor Variance), Section 51 (Plans of Subdivision), and Section 53 (Consent). As per the legislation, appeals to these application types function with the same rules (Part 2) as other development applications (e.g. Zoning and Official Plan amendments) being challenged under a second appeal to the LPAT. Filing an appeal, participation, hearings, submission materials, and summons follow a similar path as that of the procedural operations of the former Ontario Municipal Board. From the perspective of the Civic Administration, it does not appear that an adjustment to how the Civic Administration process and report on the above noted development applications requires modification to align with the new rules of the LPAT.

In similar a manner, the Ontario Municipal Board dealt with appeals filed under the *Aggregate Resources Act*, the *Development Charges Act*, the *Education Act*, the *Expropriations Act*, the *Municipal Act*, and the *Ontario Heritage Act*. While there were changes to the respective legislation for each of the above noted Acts, substantial change to procedural matters at the LPAT are either unknown or untested. It appears it will be a “wait and see” approach to how appeals filed to the LPAT will function on a procedural basis. The Ministry of Municipal Affairs and Housing is currently preparing documentation to assist with cases filed under of the above noted Acts.

<b>Conclusion</b>
-------------------

This report provides information regarding the recent transition from the Ontario Municipal Board (OMB) to the Local Planning Appeal Tribunal (LPAT). Initial changes to municipal processes required to accommodate the new system were identified through the LPAT Transition Report in June, 2018. This accompanying LPAT Process Report includes various administrative and procedural changes that are required to comprehensively address the Bill 139 implications.

<b>Prepared by:</b>	<b>Sonia Wise, MCIP RPP Planner II, Current Planning</b>
<b>Concurred by:</b>	<b>Cathy Saunders City Clerk</b>
<b>Concurred by:</b>	<b>Aynsley Anderson Solicitor II, Legal and Corporate Services</b>
<b>Recommended by:</b>	<b>George Kotsifas, P.Eng. Managing Director, Development and Compliance Services and Chief Building Official</b>
<b>Recommended by:</b>	<b>John M. Fleming, MCIP RPP Managing Director, Planning and City Planner</b>
<p>Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Planning Services, Development and Compliance Services, and Legal and Corporate Services</p>	

August 2, 2018

/sw

Y:\Shared\policy\OMB Review 2016\LPAT\LPAT process report August 2018 v2.docx