



**CITY OF HAMILTON**  
**CORPORATE SERVICES DEPARTMENT**  
**Legal Services**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	February 6, 2018
<b>SUBJECT/REPORT NO:</b>	Update on Bill 139, <i>Building Better Communities and Conserving Watersheds Act, 2017</i> - Ontario Proposed Changes to the Land Use Planning and Appeals System LS16027(b) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Patrick MacDonald, ext. 4708 Solicitor, Legal Services
<b>SUBMITTED BY:</b>	Nicole Auty City Solicitor, Corporate Services Department
<b>SIGNATURE:</b>	

## RECOMMENDATION

That the City Solicitor and the General Manager of Planning and Economic Development, be authorized to make submissions to the Province, Ontario Municipal Board and/or the Local Planning Appeal Tribunal with respect to any rules or regulations that may be proposed relating to Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017*, provided the submissions are consistent with previous submissions by the City on Bill 139.

## EXECUTIVE SUMMARY

The purpose of this Report is to provide an update on Bill 139 and the impact of proposed potential transition regulations as it relates to the reform of the Ontario Municipal Board and its replacement with the Local Planning Appeal Tribunal. In addition, it is recommended that the City Solicitor and General Manager of Planning and Economic Development be provided with the authority to make submissions with respect to the implementation of Bill 139, including any proposed regulations, provided such submissions are not inconsistent with City Council's previously identified position(s) on Bill 139.

On May 30, 2017, Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017*, was introduced at the Legislature. On December 12, 2017, Bill 139 received

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Royal Assent and is now an act (the *Building Better Communities and Conserving Watersheds Act, 2017*, S.O. 2017, c.23, henceforth the “Act”). However, many of the Act’s provisions will come into force on a date to be named by proclamation of the Lieutenant Governor. The provisions of the Act not yet in force include all amendments to the *Planning Act* and provisions relating to the new Local Planning Appeal Tribunal (the “Tribunal”) and the Local Planning Appeal Support Centre (the “Centre”).

The Province has indicated that it is seeking to have the new system implemented in Spring 2018.

The transition from the Board to the Tribunal will be determined by upcoming regulations accompanying the Act. No draft regulations have been put forward yet by the Province. However, three draft summaries have been released indicating the potential content and direction of transition regulations.

The proposed transition regulations propose that existing proceedings before the Board as of December 12, 2017 will not be affected and any appeal made after Bill 139 is proclaimed by the Lieutenant Governor would be subject to the new rules therein. For appeals filed between December 12, 2017 and the date of proclamation, the appeal would be heard by the Board if the subject application was complete prior to December 12, 2017, and would be heard by the Tribunal if the application was complete after that date.

Other matters addressed by the proposed regulations include set timelines for completing different types of appeals before the Tribunal, restrictions on examination of witnesses before the Tribunal, time limits on submissions by parties at an oral hearing, and technical matters of implementation.

Comments are due on the draft transition regulation summaries by January 21<sup>st</sup>, 2018. Legal Services and Planning staff do not have any significant concerns at this time with the content of the draft transition regulation summaries and as a result, have not made any submissions.

### ***Alternatives for Consideration – N/A***

## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: For further consideration, please see Report LS16027(c)/PED16237(b).  
Staffing: For further consideration, please see Report LS16027(c)/PED16237(b).  
Legal: Legal Services and Planning staff will continue to monitor the status of Bill 139 and its proposed regulations and will make any submissions that

are determined to be appropriate, provided that such submissions are not inconsistent with City Council's previously identified position(s) on Bill 139. City staff will provide updates to Committee and Council regarding any submissions made. For further consideration, please see Report LS16027(c)/PED16237(b).

## **HISTORICAL BACKGROUND**

In report LS16027(a)/PED16237(a), Legal Services and Planning Staff provided an update on the introduction of Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017* in the Legislature and recommended submissions be made to the Ministry.

On December 7, 2017, the Ministry of Municipal Affairs and Housing (the "Ministry") and the Ministry of the Attorney General ("MAG") released summaries of the proposed regulations in respect of Bill 139, as well as a background paper providing information and guidance respecting the new regulations. Comments on the proposed Regulations were being received until January 21, 2018. As noted previously, Legal Services and Planning staff do not have any significant concerns at this time with the content of the draft transition regulation summaries and as a result, have not made any submissions. Legal Services notes that the content of the draft regulations may not reflect the summaries described below and remain subject to change.

On December 12, 2017, Bill 139 received Royal Assent and the Act came into force. The majority of the provisions under the Act, including all *Planning Act* amendments and matters related to the Tribunal and the Centre, are not yet in force until they are proclaimed at a future date by the Lieutenant Governor. There has been no confirmation from the Province of what the proclamation date will be, however the Province has made public announcements indicating that proclamation may take place in Spring 2018.

## **RELEVANT CONSULTATION**

Planning and Economic and Development Department, including Planning Division and Growth Management Division.

## **ANALYSIS**

### **Changes to the Final Version of the Act**

The City made submissions to the Ministry in respect of Bill 139 (which can be found in Reports LS16027/PED16237 and LS16027(a)/PED16237(a)). To the extent that the City's submissions could be incorporated at this time, the final version of Bill 139 included some of the City's recommendations.

Prior to Royal Assent, Bill 139 was reviewed clause-by-clause by the Standing Committee on Social Policy and amendments were made. The final text of Bill 139 which received Royal Assent was substantively the same as the version that was previously summarized by staff in Report LS16027(a)/PED16237(a). The following are some notable changes from the prior version:

- a requirement that an official plan shall contain such policies and measures as are practicable to ensure the adequate provision of affordable housing. No changes are required to the City's Official Plans as they already contain policies and measures relating to the adequate provision of affordable housing.
- subsection 70.8(2.1) to *the Planning Act* was introduced which gives the Minister additional power to make regulations providing for transitional matters respecting matters commenced before or after Royal Assent of Bill 139, and the date of proclamation of Schedules 1, 2, 3, and 5.

With the provisions of the Act now finalized, as part of the Places to Grow Plan and Greenbelt Plan conformity exercises, the City's Official Plan will need to incorporate changes made to the *Planning Act* as a result of the Act, including to reflect the new policy statements identified by the Act. In addition, the Zoning By-law will need to be reviewed to ensure conformity.

Bill 139 also contains amendments to the *Conservation Authorities Act*, which will not be summarized in this Report.

### **Summary of Proposed Regulations**

On December 7, 2017, three summaries of proposed regulations under the Act were released by the Province. One was completed by the MAG (the "MAG Summary"), and concerns the proposed regulations under the new *Local Planning Appeal Tribunal Act, 2017* (the "LPAT Act").

A summary of the proposed regulations in the MAG Summary is outlined below.

### ***Transition***

The new process under the LPAT Act for appeals of a municipality or an approval authority's decision in respect of an official plan or zoning by-law amendment would apply to:

- Appeals made during appeals periods that begin *after* the LPAT Act comes into force (being the eventual date of proclamation); and
- Appeals made *before* the LPAT Act comes into force in respect of:
  - complete applications made to a municipality or an approval authority after December 12, 2017; and
  - municipally-initiated official plan and zoning by-law amendments that are adopted/passed after December 12, 2017.

The new process set out in the LPAT Act for appeals of a municipality's failure to make a decision in respect of an official plan or zoning by-law would apply to:

- appeals made *after* the LPAT Act comes into force; and
- appeals made *before* the LPAT Act comes into force in respect of complete applications made to a municipality or an approval authority after December 12, 2017.

The new process set out in the LPAT Act for appeals of an approval authority's failure to make a decision in respect of an official plan or plan of subdivision would apply to appeals made after the LPAT Act comes into force.

### ***Timelines***

The following overall timelines for proceedings before the Tribunal in relation to appeals under the *Planning Act* are proposed, calculated from the date the appeal is received and validated by the Tribunal, excepting extensions for matters such as adjournments:

- Ten months for appeals of a municipality or approval authority's decision or a municipality's failure to make a decision in respect of an official plan or zoning by-law under the LPAT Act.

- Six months for appeals of a new decision of a municipality or approval authority (or failure to make a decision), where the Tribunal previously determined that the municipality or approval authority's original decision failed the new test under the Act and sent the matter back to the municipality or approval authority to make a new decision.
- Twelve months for appeals of an approval authority's failure to make a decision in respect of an official plan or plan of subdivision under the LPAT Act.
- Six months for any other proceeding before the Tribunal under the *Planning Act* (e.g. minor variances, consent, etc.).

It is unclear what the impact of exceeding these timelines will be or what resources the Province and the Tribunal will provide in order to meet these timelines.

### ***Time Limits for Submissions at Oral Hearings***

At an oral hearing of an appeal of a municipality or approval authority's decision or a municipality's failure to make a decision in respect of an official plan or zoning by-law under the LPAT Act, it is proposed that each party would have a maximum of 75 minutes to make a submission (i.e. presentation) to the Tribunal. There is no time provided for participant submissions, as under the LPAT Act these would take place as written submissions and no participants would appear at the oral hearing. However, the Tribunal has the power under the LPAT Act to declare a participant an additional party in the appeal, in which case the time limit above may apply.

At an oral hearing of an appeal of an approval authority's failure to make a decision in respect of an official plan or plan of subdivision under the LPAT Act, it is proposed that each party would have a maximum of 75 minutes to make a submission to the Tribunal and other persons identified by the Tribunal as participants would each have 25 minutes to make a submission to the Tribunal.

It is proposed that the Tribunal would have discretion to increase the time limits where, in the opinion of the Tribunal, it is necessary for a fair and just determination of the appeal.

There are no such legislated time limits imposed on hearings before the Board at present, and there is no indication that this new time limit will affect existing or forthcoming appeals before the Board. Further, there is no indication whether such time limits will apply to any reply submissions at an oral hearing before the Tribunal or to other matters before the Tribunal, including minor variance or consent application appeals.

### ***Practices and Procedures***

It is proposed that the examination of a party or any other person, other than by the Tribunal, would be prohibited for certain matters. This restriction would apply to appeals of a municipality or approval authority's decision in respect of an official plan or zoning by-law, a municipality or approval authority's failure to make a decision in respect of an official plan or zoning by-law, or the failure of an approval authority to make a decision in respect of an official plan or plan of subdivision. This means that the parties may not be able to call witnesses at an oral hearing event, as they are presently permitted to do before the Board.

The proposed regulations are silent on whether other planning application appeals would be subject to this restriction, such as minor variances or consents.

### **Ministry Summaries**

The Ministry has also released two summaries of proposed regulations under the Act. The first summary released by the Ministry deals with transitional provisions (the "Ministry Summary"), similar to the MAG Summary. There are some internal consistency issues with the terminology used within the Ministry Summary, and the content remains subject to change. The following transition provisions are proposed:

- Restricting the grounds of appeal of a decision on an official plan/amendment or zoning by-law/amendment to consistency and/or conformity with provincial and/or local plans 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 the grounds of a non-decision appeal on an application for an official plan amendment or zoning by-law amendment to 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 Ministry Summary suggests the following additional proposals on transition Regulations under the Act:

- Removing appeals of provincial approvals of official plans and official plan updates, including for conformity exercises to provincial plans. These provisions would apply to provincial decisions in respect of which notice is given after the Bill comes into force.
- 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 two 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 official plan amendments and zoning by-law amendments would apply to complete applications submitted 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.

The Ministry has also posted a second summary of proposed regulations that appears to be largely technical in nature and will update existing regulations under the *Planning Act* to reflect the changes being made under the Act. These changes include revisions to what information or materials is to be included in the giving of notice or in a complete application and revisions to what material is required to be forwarded to the Tribunal on an appeal.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Community Engagement & Participation**

*Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.*

### **Our People and Performance**

*Hamiltonians have a high level of trust and confidence in their City government.*

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**APPENDICES AND SCHEDULES ATTACHED**

N/A