



**City of Kingston
Information Report to Council
Report Number 18-049**

To: Mayor and Members of Council
From: Lanie Hurdle, Commissioner, Community Services
Resource Staff: Paige Agnew, Director, Planning, Building & Licensing Services
Date of Meeting: April 17, 2018
Subject: Bill 139 – The *Building Better Communities and Conserving Watersheds Act, 2017*

Executive Summary:

On December 12, 2017, Bill 139 received Third Reading and Royal Assent. The short title of the Act is the *Building Better Communities and Conserving Watersheds Act, 2017*. The Bill was proclaimed to be in effect by the Lieutenant Governor as of April 3, 2018. Bill 139 impacts a variety of provincial legislation; however, the focus of this report is on the changes to the *Planning Act* and relevant Ontario Regulations, along with the creation of two new Acts; the *Local Planning Appeal Tribunal Act, 2017* and the *Local Planning Appeal Support Centre Act, 2017*.

The biggest change to the Provincial planning framework is the repeal of the Ontario Municipal Board (OMB) and replacement with the new Local Planning Appeal Tribunal (LPAT). The new legislation:

- Protects long-term public interests;
- Maintains and improves access to dispute resolution;
- Creates greater transparency in the hearing and decision making processes;
- Gives more deference to professional planners with a strong focus on written submissions;
- Gives more autonomy to municipal decision makers;
- Creates a new, independent agency to administer a cost-effective system for providing support services to the public for matters governed by the *Planning Act* that are under the jurisdiction of the LPAT;
- Creates a new mandate for the LPAT as it relates to specific types of applications;
- Establishes a new standard of review for appeals of specific applications;

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- Limits the grounds for appeals on major matters to their failure to conform to or be consistent with provincial and local policies; and
- Exempt certain municipal land use decisions from appeal.

Recommendation:

This report is for information purposes only.

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Options/Discussion:

The changes introduced by Bill 139 are far reaching and affect many of the requirements governing land use planning in Ontario. It is not the intent of this report to address every single provision introduced by the enactment of Bill 139, rather, the intent is to provide a high level overview with a focus on the key changes. For additional, more detailed information, please refer to Exhibit A.

1. Local Planning Appeal Tribunal

One of the most significant Bill 139 changes is the enactment of the *Local Planning Appeal Tribunal Act, 2017* and the repeal of the *Ontario Municipal Board Act*, which essentially changes the name of the OMB to the LPAT and modernizes hearing procedures and practices. With a focus on timely processes and decisions, promotion of alternative dispute resolution and reduction in the number of hearings, the LPAT will carry out a “check-and-balance function” with respect to decision making. Highlights include:

- a) New Rules of Practice and Procedure are intended to provide “the best opportunity for a fair, just and expeditious resolution of the merits of the proceedings”;
- b) The mandate of the LPAT has changed for Official Plan appeals (ss. 17(24), 17(36), 17(40), and 22(7)), zoning by-law appeals (ss. 34(11) and 34(19)) and Subdivision appeals for non-decision only (s. 51(34)), with new rules and procedures that apply only to this class of appeals. For the purpose of this report, this class of appeals will be referred to as “Class 1” appeals. All other appeals will be referred to as “Class 2”;
- c) A “new decision” procedure has been added to Class 1 appeals. The OMB currently conducts *de novo* hearings from decisions of a municipal approval authority. In other words, the OMB deals with the matter as if not previously heard or decided. Under the previous system, the OMB must have regard to the decisions of a municipal Council but is able to make its own independent decision without deference to the initial municipal decision. Bill 139 considerably reduces the authority of the LPAT to overturn the municipal decision. Following a hearing, if the LPAT does not believe the decision of the municipality meets the applicable tests, the LPAT will not substitute its own decision; rather, it will provide notice to the municipality that it is returning the matter to the municipality for reconsideration with written reasons explaining the rationale for overturning Council’s decision. Council would then have 90 days to reconsider the application, with the benefit of the LPAT’s decision.
- d) “Validity of the notice of appeal” will also be applied to Class 1 appeals, which is a preliminary screening exercise where the LPAT will assess whether the notice of appeal provides an explanation of the appeal that satisfies the new applicable tests. The LPAT has a goal to undertake the screening within 10 days following the acknowledgement of

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the appeal and issues a Notice of Commencement if it is determined to be valid. Previously, the *Planning Act* allowed the OMB to dismiss an appeal without holding a hearing, whereas the LPAT is now required to dismiss a Class 1 appeal if it does not meet the applicable tests;

- e) A mandatory Case Management Conference is required for Class 1 appeals that will detail the list of matters to address, including opportunities for settlement and directions for disclosure;
- f) The LPAT is required to meet legislated timelines to hear and dispose of appeals, starting at the date of the Notice of Commencement. However, the LPAT may issue a notice of postponement to postpone a time period when necessary to secure a “fair and just determination of the appeal”;
- g) For Class 1 appeals, the legislated timelines to hear and dispose of appeals generally range from 10 to 12 months, with 6 month timelines applied to the “new decision” procedure where there is a new appeal after the municipality has been given an opportunity to reconsider its decision;
- h) For most Class 2 appeals, the general legislated timeline for the LPAT to hear and dispose of an appeal is 6 months;
- i) An enhanced municipal record is required to be provided to all persons who filed an appeal;
- j) For Class 1 appeals, the new rules will enable the LPAT to carry out a more active role in dispute resolution where only the LPAT may call or examine a witness and evidence will be based primarily on the written record that was before Council when it made its original decision. Time limits will also be imposed on witnesses, parties and participants by the LPAT during hearings and hearings may be oral or written, or potentially conducted by electronic means; and
- k) Transition regulations set out which *Planning Act* matters will be considered under the new procedures and which will be “grandfathered” under the legislation as it read pre-Bill 139. Generally, if an appeal was filed prior to April 3, 2018, it will still proceed to the OMB. Appeals submitted on or after April 3, 2018 will proceed to the LPAT.

2. Local Planning Appeal Support Centre

The Local Planning Appeal Support Centre (LPASC) has been established as an independent body that is accountable to the Government of Ontario. The LPASC is mandated to provide free and independent advice and representation to eligible persons when pursuing land use appeals under the jurisdiction of the LPAT. The LPASC is mandated to provide the following support services in order to achieve its objectives:

- a) Information on land use planning;
- b) Guidance on Tribunal procedures;
- c) Advice or representation; and
- d) Any other services prescribed by the Regulations.

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3. Other Amendments to the *Planning Act* and Associated Ontario Regulations

a) The New Tests

New subsections 17(24.0.1) and (36.0.1) of the *Planning Act* provide that an appeal concerning the adoption or approval of an Official Plan may only be made on the basis that the decision:

- Is inconsistent with a Policy Statement issued under subsection 3(1); or
- Fails to conform with or conflicts with a Provincial Plan.

For refusals and non-decisions with respect to requests for an amendment to the Official Plan, the new subsection 22(7.0.0.1) provides that an appeal can only be made on the basis that:

- The amendment is inconsistent with a Policy Statement issued under subsection 3(1), or fails to conform with or conflicts with a Provincial Plan; or
- The requested amendment is consistent with Policy Statements issued under subsection 3(1), or conforms with or does not conflict with Provincial Plans.

Similar language is added to Section 34 in respect of Council's refusal of a zoning by-law amendment or Council's failure to make a decision within the prescribed timeline. The new subsection 22(7.0.0.1) provides that an appeal can only be made on the basis that:

- The amendment is inconsistent with a Policy Statement issued under subsection 3 (1), fails to conform with or conflicts with a Provincial Plan, or fails to conform with an applicable Official Plan; or
- The requested amendment is consistent with Policy Statements issued under subsection 3(1), conforms with or does not conflict with Provincial Plans and conforms with applicable Official Plans.

New subsection 34(19.0.1) of the *Planning Act* provides that an appeal concerning the approval of a zoning by-law amendment may only be made on the basis that the decision:

- Is inconsistent with a Policy Statement issued under subsection 3 (1); or
- Fails to conform with or conflicts with a Provincial Plan; or
- Fails to conform with an applicable Official Plan.

In all cases, the notice of appeal must explain: how the decision is inconsistent with a Policy Statement or fails to conform to a Provincial Plan or the applicable Official Plan; or, how the decision is consistent with Policy Statements or conforms with or does not conflict with Provincial Plans or the applicable Official Plan. If the LPAT is of the opinion that the notice of appeal does not meet the required tests, it shall dismiss the appeal.

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b) Items Exempt from Appeals

Bill 139 amends various sections of the *Planning Act* in order to limit or exempt a broad range of municipal land use planning decisions from appeal to the LPAT, including:

- There is no appeal in respect of an Official Plan or an Official Plan amendment adopted in accordance with Section 26 (Official Plan Updates) where the Minister is the approval authority (subsections 17(36.5) and 21(3));
- During the two year period following the adoption of a new secondary plan, applications for amendment would be permitted only with Council approval (subsection 22(2.1.1));
- Only the Minister can appeal an Interim Control By-Law when it is first passed. Any person or public body can appeal an application for the extension of an Interim Control By-Law beyond one year (subsection 38(4));
- Only the Minister can appeal policies related to development around higher order transit areas (subsection 17(36.1.4)); and
- Only the Minister can appeal by-laws that establish permitted uses, minimum and maximum densities and minimum and maximum heights in higher order transit areas, except in certain specified circumstances (subsection 34(19.5)).

c) Timelines for Council Decisions

Bill 139 amends Sections 17, 22, 34 and 36 of the *Planning Act* to extend the timeline for Council to make decisions related to Official Plans and zoning by-laws by 30 days (i.e. from 180 days to 210 days for Official Plans and from 120 days to 150 days for zoning by-laws). For an application to amend a zoning by-law that is filed concurrently with an application to amend the Official Plan, the timeline is extended to 210 days. Applications submitted on or before December 12, 2017 are subject to the original timelines.

d) Changes to Statutory Language and Required Application Information

The *Planning Act* and associated Ontario Regulations include a number of technical changes to the statutory language required in certain notices and documents in order to reflect all of the changes contained within Bill 139. All of the City's templates have been changed to reflect the required statutory language. Additional application requirements have been added to the majority of applications made under the *Planning Act* to ensure that the new tests are clearly addressed in application submission materials.

Existing Policy/By-Law:

Bill 139 amends the Acts listed below. With the exception of the *Planning Act* and the *Conservation Authorities Act*, most of the amendments to the other listed Acts are for the purpose of replacing references to the *Ontario Municipal Board Act* and the Ontario Municipal Board (OMB) with the *Local Planning Appeal Tribunal Act, 2017* and the Local Planning Appeal

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Tribunal (LPAT) and/or to recognize the procedures of the new LPAT. In addition, the proposed *Local Planning Appeal Tribunal Act, 2017* would repeal the *Ontario Municipal Board Act*.

- The *Planning Act*,
- The *Conservation Authorities Act*,
- The *Ontario Municipal Board Act*,
- The *Aggregate Resources Act*,
- The *City of Toronto Act, 2006*;
- The *Consolidated Hearings Act*,
- The *Drainage Act*,
- The *Expropriations Act*,
- The *Housing Development Act*,
- The *Municipal Act, 2001*;
- The *Municipal Arbitrations Act*,
- The *Ontario Heritage Act*,
- The *Ontario Planning and Development Act*,
- The *Ontario Water Resources Act*,
- The *Public Transportation and Highway Improvement Act*,
- The *Retail Business Holidays Act*, and
- The *Shortline Railways Act*.

Notice Provisions:

Not applicable

Accessibility Considerations:

Not applicable

Financial Considerations:

Not applicable

Contacts:

Paige Agnew, Director, Planning, Building & Licensing Services 613-546-4291 extension 3252

Laura MacCormick, Project Manager, Planning Division 613-546-4291 extension 3223

Other City of Kingston Staff Consulted:

Susan Nicholson, Director, Legal Services and City Solicitor

John Bolognone, City Clerk

George Wallace, Senior Special Projects Manager

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Exhibits Attached:

Exhibit A Bill 139, the *Building Better Communities and Conserving Watersheds Act, 2017*
[Link to Bill 139](#) (This document is not attached)