

INFORMATION ITEMS

Week Ending August 18, 2017

REPORTS

1. City of Guelph Response to Bill 139 (Schedule 3) Proposed Building Better Communities and Conserving Watersheds Act, 2017

INTERGOVERNMENTAL CONSULTATIONS

1. Potential Changes to Ontario's Building Code – Phase Two Index

CORRESPONDENCE

1. None

BOARDS & COMMITTEES

1. [Committee of Adjustment Meeting Minutes – July 13, 2017](#)

ITEMS AVAILABLE IN THE CLERK'S OFFICE

1. None

Service Area Infrastructure, Development and Enterprise Services

Date Friday, August 18, 2017

Subject **City of Guelph Response to Bill 139 (Schedule 3)
Proposed Building Better Communities and
Conserving Watersheds Act, 2017**

Report Number IDE 17-105

Executive Summary

Purpose of Report

To inform Council of the City of Guelph staff response submitted to the Ministry of Municipal Affairs to Bill 139 (Schedule 3) Proposed Building Better Communities and Conserving Watersheds Act, 2017.

Key Findings

Bill 139 (Schedule 3), which proposes to replace the Ontario Municipal Board (OMB) with the Local Planning Appeal Tribunal (LPAT) fundamentally changes the nature of what can be appealed and adjudicated. In broad terms the Province's proposed overhaul of Ontario's land use planning appeals system strengthens local Council's decision making and improves the effectiveness of the planning appeals system. The proposed changes positively respond to and in some instances exceed the Council endorsed comments and recommendations provided to the Ministry of Municipal Affairs in December 2016 regarding the review of the Ontario Municipal Board Public Consultation Document, October 2016.

Financial Implications

There are no immediate financial implications to the City. The typically high financial costs to municipalities and the public, related to current OMB policies and procedures, has been a key area of concern. Replacing the OMB with the Local Planning Appeal Tribunal and fundamentally changing the nature of what can be appealed and adjudicated is anticipated to reduce the financial expense of hearings.

Report

Background

In 2014, the Province announced it would review the scope and effectiveness of the Ontario Municipal Board (OMB). City staff provided the Province with comments on OMB reform as part of its response to the Provincial Review of the Land Use Planning and Appeal System. The comments were endorsed by Council via Staff

Report 14-02 dated February 10, 2014. In June 2016 the Province launched a review of the OMB which was followed by the release of the Review of the Ontario Municipal Board Public Consultation Document in October 2016. City staff submitted a Council endorsed response on the consultation document to the Province in December 2016. The comments submitted were endorsed by Council [via Staff Report 16-89](#) dated December 12, 2016.

Bill 139 (Schedule 3) Highlights

On May 31, 2017 the Province posted Bill 139 (Schedule 3) on the Environmental Bill of Rights (EBR) Registry with a request for comments by August 14, 2017. The deadline for comments was subsequently extended to September 1, 2017. The Bill 139 EBR posting was included on the June 9, 2017 Information Items under Intergovernmental Consultations as a Provincial/Federal Consultation Alert indicating that a staff level response would be provided based on the comments contained in Staff Report 16-89.

In broad terms the Province's proposed overhaul of Ontario's land use planning appeals system and replacement of the Ontario Municipal Board with the Local Planning Appeal Tribunal fundamentally changes what can be appealed, strengthens local Council's decision making and improves the effectiveness of the planning appeals system. Under Bill 139 the following appeals are not permitted:

- Global appeal of Council's adoption decision of a new official plan;
- Provincial approvals of official plans and official plan updates, including approvals of conformity exercises to provincial plans, and Minister's zoning orders;
- Interim control by-law when first passed for a period of up to one year; and
- New secondary plan for two years, unless permitted by municipal council.

In addition appeals concerning the adoption or approval of an official plan, official plan amendment, zoning by-laws or plans of subdivision are restricted to issues of consistency or conformity with provincial plans and policy statements. The tribunal would only be able to overturn a municipal decision if it does not follow provincial policies or municipal plans.

Local decision making is also strengthened by the tribunal sending matters back to a local Council in a number of instances including when the tribunal overturns a municipal decision. A municipality is provided with an additional opportunity to make a new decision on an application within 90 days instead of the tribunal replacing the municipal decision with its own.

City Response

City staff submitted a response to the Bill 139 (Schedule 3) EBR Registry posting on August 15, 2017 based on the December 2016 City Council endorsed submission to the Province (See Attachment 1). The proposed changes positively respond to and in some instances exceed the Council endorsed comments and recommendations provided to the Ministry of Municipal Affairs in December 2016. The response noted a few outstanding items and commended the province for the fundamental nature and content of the changes.

Financial Implications

There are no immediate financial implications to the City. The typically high financial costs to municipalities and the public, related to current OMB policies and procedures, has been a key area of concern. Replacing the OMB with the Local Planning Appeal Tribunal and fundamentally changing the nature of what can be appealed and adjudicated is anticipated to reduce the financial expense of hearings.

Consultations

None

Corporate Administrative Plan

Overarching Goals

Service Excellence
Financial Stability

Service Area Operational Work Plans

Our Services - Municipal services that make lives better
Our People- Building a great community together
Our Resources - A solid foundation for a growing city

Attachments

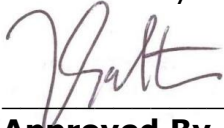
ATT-1 City of Guelph Response to EBR Registry 013-0590 Bill 139 (Schedule 3)
Proposed Building Better Communities and Conserving Watersheds Act, 2017

Departmental Approval

Darrell Mast, Associate Solicitor, Legal, Realty & Risk Services

Report Author

Joan Jylanne
Senior Policy Planner



Approved By

Todd Salter
General Manager
Planning, Urban Design and
Building Services
519.822.1260, ext. 2395
todd.salter@guelph.ca



for:

Recommended By

Scott Stewart, C.E.T.
Deputy CAO
Infrastructure, Development and Enterprise
519.822.1260, ext. 3445
scott.stewart@guelph.ca

Attachment 1

City of Guelph Response to EBR Registry 013-0590 Bill 139 (Schedule 3) Proposed Building Better Communities and Conserving Watersheds Act, 2017

The following comments are provided by City of Guelph staff on Bill 139 (Schedule 3) Proposed Building Better Communities and Conserving Watersheds Act, 2017: Amendments to the Planning Act. The City of Guelph submitted a Council endorsed response on the Provincial Review of the Ontario Municipal Board Public Consultation document (October 2016) in December, 2016.

The response responded to the twenty-four questions raised in the provincial document covering the following themes:

1. OMB's jurisdiction and powers;
2. Citizen participation and local perspective;
3. Clear and predictable decision-making;
4. Modern procedures and faster decisions; and
5. Alternative dispute resolution and fewer hearings.

This response to Bill 139 is based on the above noted December 2016 City submission to the Province.

Bill 139 (Schedule 3), which proposes to replace the Ontario Municipal Board (OMB) with the Local Planning Appeal Tribunal (LPAT) fundamentally changes the nature of what can be appealed and adjudicated. In broad terms the Province's proposed overhaul of Ontario's land use planning appeals system strengthens local Councils' decision making, improves the effectiveness of the planning appeals system, and generally responds positively to, and in some instances exceeds the comments and recommendations contained in the City's December 2016 submission. The Province is to be commended for this proposed legislation.

The EBR Registry comments are presented in the order of the Province's five themes to align with the City's response on the Province's October 2016 public consultation document.

1) OMB's Jurisdiction and Powers

City staff are supportive of Bill 139 not permitting the global appeal of Council's adoption decision of a new official plan and limiting what can be appealed. The proposed changes would not permit appeals regarding Provincial approvals of official plans and official plan updates, including approvals of conformity exercises to provincial plans, and Minister's zoning orders. Appeals concerning the adoption or approval of an official plan, official plan amendment, zoning by-laws or plans of subdivision are restricted to issues of consistency or conformity with provincial plans and policy statements. However, city staff remain concerned about maintaining the municipal right of appeal. It doesn't appear that Bill 139 retains the ability of municipalities to appeal parts or all of provincial decisions. It does appear that the Minister retains a right to appeal.

In addition applications to amend a new secondary plan would not be permitted for two years, unless permitted by municipal council and the ability to appeal an interim control by-law would be limited when first passed for a period of up to one year. Any person or public body who is given notice of the extension of the interim control by-law can appeal the extension. City staff recommend that appeals on the extension should be limited to questions of jurisdiction.

City staff support the provision included in Bill 139 that allows a municipality to make a new decision within 90 days for appeals the Tribunal has determined are consistent with policy statements and conform with or do not conflict with provincial plans. This provision essentially sends significant information presented as part of an appeal process back to a municipal council.

The proposed changes also protect municipal policies from appeal that support appropriate development around protected major transit station areas that can include an existing or planned higher order transit station or stop. City staff recommend that additional protections are also provided to planned and publicly funded transit infrastructure not just to protected major transit station areas.

Decisions on official plan policies relating to development around higher order transit stations and stops cannot be appealed except by the Minister and requests to amend the policies can only be made with Council approval. Zoning by-law regulations that implement the higher order transit policies including permitted uses, minimum and maximum densities and, except in certain circumstances, minimum and maximum heights, can only be appealed by the Minister.

City staff support eliminating “de novo” hearings for the majority of land use planning appeals and removing the ability of the Local Planning Appeal Tribunal from overturning a municipal decision. For complex land use appeals, the Tribunal would only be able to overturn a municipal decision if it does not follow provincial policies or municipal plans. In addition the Tribunal would be required to return the matter to the municipality with written reasons when it overturns a decision and provide the municipality with 90 days to consider a new decision on the matter. Following the subsequent review by the municipality, the Tribunal would retain the authority to make a final decision only where the municipality’s subsequent decision still fails to follow provincial policies or municipal plans. In addition the Tribunal would be required to send new material back to the municipality for re-evaluation when adjudicating subdivision appeals at the request of a municipality.

City staff support the use of the word “shall” in Bill 139 instead of “may” with regard to the Local Planning Appeal Tribunal’s power to dismiss appeals or portions thereof that don’t have merit, e.g. don’t meet appeal scope and requirements, not made in good faith or is frivolous or vexatious, is made only for the purpose of delay, etc. In addition City staff recognize limiting the items that can be appealed as well as increased notice requirements including an explanation of how the decision, which is the subject of the notice, is inconsistent with a policy statement or fails to conform with or conflicts with a provincial plan.

2) Citizen Participation and Local Perspective

City staff are supportive of the creation of a Local Planning Appeal Support Centre to provide free and independent advice and representation to eligible persons on land use planning appeals. The proposed Centre would provide general information on land use planning, guidance on the tribunal appeal and hearing process and provide legal and planning advice, including representation in certain cases at case conferences and hearings. The Centre would establish the criteria for determining who would be eligible to receive support services from the Centre.

City staff support open access to the Centre's educational materials, which should be linked to land use planning information posted by Provincial Ministries (e.g. Municipal Affairs). Community groups and citizens should have broad access to legal and planning advice to provide guidance to the appeals process which might remove unfounded or vexatious appeals or improve ones that do come in by focusing them on triable issues.

3) Clear and Predictable Decision-making

City staff are supportive of the Minister making regulations for multi-member panels to hear proceedings at the new Local Planning Appeal Tribunal. Multi-member panels, with representation across a number of cross disciplines, are needed for complex hearings. The composition could include a legal representative and a subject area expert(s) based on the key issues that will be before the Tribunal. City staff are also supportive of the Minister making regulations governing the practice and procedures of the Local Planning Appeal Tribunal that include the format of decisions. Tribunal decisions should include a summary and clarity regarding next steps that are written in plain language.

Bill 139 appears to make no mention regarding the training, skill set or performance review of Tribunal members. City staff recommend that Tribunal members have strong mediation skills training, land use planning training and plain language communications skills. In addition Tribunal member(s) should physically visit the subject site to better appreciate arguments based on local knowledge, etc. Continuing education opportunities in dispute resolution and exposure to best municipal practices on issues that frequent the Tribunal would be helpful along with training on granting party status and admitting new evidence. In addition Tribunal members should have regular performance reviews completed and connected to re-appointment decisions. City staff support a six year staggered appointment term with one right to request a renewal subject to satisfactory performance reviews.

4) Modern Procedures and Faster Decisions

City staff are supportive of the Tribunal or Minister through regulation to make rules and regulations governing the practice and procedures of the Tribunal including alternatives to traditional adjudicative or adversarial procedures. Under Bill 139, oral hearings of appeals are no longer as of right and hearings may be held in writing or by any electronic or automated means. City staff support these alternative procedures provided they suit the specific situation. For example,

videoconferencing could be used for hearing evidence since it allows the expert to be cross examined. Written hearings might work for appeals based on jurisdictional issues, legal arguments, procedure and summary dismissal, motions and settlements, minor variances, site plan related appeals, small one or two issue cases and straight forward policy interpretation questions.

The proposed changes permit the Local Planning Appeal Tribunal to direct the parties to participate in a case management conference prior to a hearing. The case management conference could include matters such as: identifying parties; defining issues; identifying agreed upon facts; providing directions for information disclosure; discussing settlement opportunities including the possible use of mediation or other dispute resolution processes; establishing dates for proceedings including when steps are to be initiated or taken; determining the length, schedule and location of a hearing; determining the presentation order of submissions; and dealing with other matters that may assist in the fair, just and expeditious resolution of the issues. City staff agree with the use of a case management conference to support faster decisions with improved outcomes from current OMB policies and procedures. However, it is important that the issues are scoped appropriately so that it is clear which policy or regulation a potential appellant is appealing and why. Broad and unclear issue lists often lead to unfocused long hearings that are more about lengthy delays than a planning decision. In addition all parties need to be held accountable to the set timelines.

The Tribunal should not allow new parties to be added to a hearing once the process has started. Bill 139 currently allows the Tribunal to add a person or public body to a hearing when it is of the opinion there are reasonable grounds. City staff feel that parties should be prevented from sheltering under or expanding existing appeals through requests for party status after the expiration of the appeal period.

City staff support providing planning authorities with a 30 day extension to decision timelines in relation to official plans and zoning by-laws. A time limit (20 days) should be automatically invoked for additional appeals following a non-decision appeal of an Official Plan or Official Plan Amendment.

Bill 139 appears to set timelines for appellants and municipalities but not for the Tribunal. City staff recommend that timelines be provided for the Tribunal regarding the amount of time that can pass between the completion of a hearing and the issuance of a Tribunal decision. City staff recommend 30 days for simple matters such as minor variances and 60 days for complex cases. Setting a time limit for scheduling a hearing once a complete appeals package is received is also important. City staff recommend 90 days for stand-alone minor variance cases and 180 days for more complex cases. Timelines for complex cases should be firm but flexible.

5) Alternative Dispute Resolution and Fewer Hearings

City staff are supportive of the Tribunal being required to consider the use of alternative dispute resolution practices and procedures including mediation and mandatory case management conferences on appeals regarding official plans, zoning by-laws and plans of subdivision. City staff do not support mandatory mediation since not everything can be mediated. The positions of parties may be too polarized or entrenched on principle and philosophical grounds with no common ground to base a successful mediation upon. Mediation is most effective when all parties are willing, the playing field is levelled and issues are scoped and well defined. If issues are not appropriately scoped beforehand, mediation can become a delay tactic, where people are holding out for the hearing and their chance to win, instead of trying to resolve issues. A power imbalance between parties with few resources and those with extensive resources can reduce the ability of the disadvantaged party to successfully engage in mediation since preparation can be more intensive in regards to cost, resources, complications and onerous technical requirements with no guarantee of results.

Mediation should be actively promoted and supported with the appropriate processes and resources in place to help shorten the appeal process and result in better decisions on key issues. Tribunal files should be pre-screened with a mediation assessment completed in most instances. Mediation should be done sooner in the process while the matter is fresh since lag time destroys the chances of being successful. Developers should be compelled to engage in mediation before filing an appeal or required prior to a hearing application being accepted. This could help limit developers holding out in the municipal process and using the OMB to get the decision they want. A formalized framework for mediation is required with commitments to established timelines which include repercussions if not met.

Provincial/Federal Consultation Alert							
Title	Ministry	Consultation Deadline	Summary	Proposed Form of Input	Rationale	Lead	Link to Ministry Website
Potential Changes to Ontario's Building Code – Phase Two Index	Ministry of Municipal Affairs (MMA)	September 29, 2017	<p>Further to the Province's consultation that took place last fall regarding Phase 1 amendments to the Building Code, the Ministry of Municipal Affairs is now seeking input on changes for potential inclusion in the next edition of the Building Code related to the objectives of Climate Change Action Plan (CCAP).</p> <p>Specifically the Ontario government is proposing a range of initiatives to reduce GHG emissions; making buildings more resilient during extreme weather events, as well as additional items that could inform potential future changes to the Building Code, or other regulations.</p>	Online comment form	Staff input to the survey is considered appropriate in this case.	<p>Building Services</p> <p>Water Services and Climate Change staff will be consulted as well.</p>	http://www.mah.gov.on.ca/Page16490.aspx