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## Bill 139 - the proposed Building Better Communities and Conserving Watersheds Act, 2017

Technical Overview - Ontario Municipal Board Review  
September 2017

# Context for Proposed Reforms

- In the Spring of 2016, the government launched a review of the scope and effectiveness of the Ontario Municipal Board (OMB)
- A public consultation document was released in the Fall of 2016. It set out possible changes in key areas that the government was considering and invited feedback
- Over 1100 Ontarians sent in written comments, and over 700 Ontarians participated in 12 Regional Public Town Halls – Newmarket, Clarington, Hamilton, Windsor, London, Guelph, Oakville, Sudbury, Ottawa, Toronto, Mississauga, Thunder Bay
- During the consultation, a broad range of views were expressed:
  - There was general support for undertaking a review of Board's scope and effectiveness
  - Many Ontarians said that too many land use decisions are appealed, which has resulted in costly hearings and delays
  - There was widespread belief that there needs to be more respect and deference to municipal decisions
  - Community groups felt that it was difficult to participate in the appeal process and that they did not have the knowledge or resources to meaningfully participate
  - We also heard that hearings are too long and more should be done to reduce the adversarial nature of hearings, including increasing the use of mediation

# Proposed Reforms

- The proposed Building Better Communities and Conserving Watersheds Act, 2017 (Bill 139) would, if passed, replace the Ontario Municipal Board Act with the Local Planning Appeal Tribunal Act, amend the Planning Act and various other statutes, and enable the establishment of the Local Planning Appeal Support Centre
- If passed, the proposed reforms would transform the land use planning appeals system by:
  - Creating the Local Planning Appeal Tribunal to replace the Ontario Municipal Board
  - Improving the hearing process at the Tribunal
  - Establishing the Local Planning Appeal Support Centre to provide legal and planning support to Ontarians who want to participate in proceedings before the Tribunal
  - Limiting the Tribunal's ability to overturn municipal decisions that adhere to municipal official plans, provincial plans, and the Provincial Policy Statement
  - Giving municipalities greater control over local planning, resulting in fewer decisions being appealed
  - Sheltering major planning decisions from appeal
- The proposed amendments to the Planning Act would also support Ontario's Climate Change Action Plan
- In addition, the Bill proposes amendments to the Conservation Authorities Act, which the Ministry of Natural Resources and Forestry is leading (Schedule 4 of the Bill)

See Appendix A for more details on the impact of the proposed changes on appeals and Appendix B for details on the proposed planning and appeal process

# Proposed Reforms: Schedule 1, Local Planning Appeal Tribunal Act, 2017

## Creating the Local Planning Appeal Tribunal

Proposed Reform	Bill and Proposed Leg. References
OMB would be replaced by the <b>Local Planning Appeal Tribunal</b>	Schedule 1 of Bill – Local Planning Appeal Tribunal Act, 2017  The new Act would replace the Ontario Municipal Board Act which would, among other matters, replace the OMB with the Local Planning Appeal Tribunal

# Proposed Reforms: Schedule 1, Local Planning Appeal Tribunal Act, 2017

## Improving the hearing process at the Tribunal

Proposed Reform	Bill and Proposed Leg. References
<p><b>Promote mediation and settlement of disputes at the Tribunal by:</b></p> <ul style="list-style-type: none"> <li>Requiring the Tribunal to hold a case management conference in major land use planning appeals, where opportunities for settlement, including the possibility of mediation, would be discussed</li> </ul>	<p>Part VI of the Local Planning Appeal Tribunal Act, 2017</p> <p>Part VI of the new Act would set out the practices and procedures applicable to the Tribunal, as well as specific practices and procedures applicable to major land use planning appeals before the Tribunal.</p> <p>Related regulation-making powers are added, including the authority to prescribe timelines applicable to proceedings on appeals to the Tribunal under the Planning Act</p>
<p><b>Establish timelines for hearings and pre-hearing processes in major land use planning appeals at the Tribunal, including:</b></p> <ul style="list-style-type: none"> <li>Requiring submissions be given to the Tribunal at least 30 days before the mandatory case management conference</li> <li>Limiting the time for presentation at oral hearings</li> </ul>	
<p><b>Reducing adversarial hearings by:</b></p> <ul style="list-style-type: none"> <li>Eliminating oral testimony in major land use planning appeals at the Tribunal</li> <li>Clarifying the Tribunal’s power to ask questions, examine a party, and require a party to produce evidence or witnesses</li> </ul>	

# Proposed Reforms: Schedule 2, Local Planning Appeal Support Centre Act, 2017

## Establishing a Planning Appeal Support Centre and supporting Ontarians at hearings

Proposed Reform	Bill and Proposed Leg. References
<p><b>Establish an independent Local Planning Appeal Support Centre to:</b></p> <ul style="list-style-type: none"><li>• Provide Ontarians with general information on land use planning</li><li>• Offer guidance to residents on the appeal and hearing process at the Tribunal</li><li>• Provide legal and planning advice at different stages of the appeal process</li></ul>	<p>Schedule 2 of Bill – Local Planning Appeal Support Centre Act, 2017</p> <p>The new Act would establish the Local Planning Appeal Support Centre as a non-share corporation to establish and administer a cost-effective and efficient system for providing support services to eligible persons respecting matters governed by the Planning Act that are under the jurisdiction of the Local Planning Appeal Tribunal</p>
<p><b>New, user-friendly tools for Ontarians including:</b></p> <ul style="list-style-type: none"><li>• A new website for the Tribunal would make it easier for the public to access information in different formats, such as videos</li><li>• Public posting of Tribunal decisions, including plain language executive summaries</li></ul>	<p>Non-regulatory approach</p>

# Proposed Reforms: Schedule 3, Planning Act Amendments

## Reducing the ability of the Tribunal to overturn municipal decisions

Proposed Reform	Bill and Proposed Leg. References
<p><b>Tribunal’s jurisdiction would be limited to whether or not a municipal decision was inconsistent or did not conform with provincial / local plans</b> when dealing with appeals of the most important planning documents</p>	<p>Schedule 3 of Bill, subsections 6(1)-(2), 6(5), 6(9), 6(17), 6(20), 8(3), 8(6)-(7), 10(1), 10(5), 10(11), 10(14)</p> <p>New subsections of the Planning Act would provide that an appeal is restricted to issues of consistency or conformity with provincial plans and policy statements and, as applicable, conformity with official plan policies, when the appeal is concerning:</p> <ul style="list-style-type: none"> <li>• the adoption or approval of an official plan (17 (24.0.1) and (36.0.1))</li> <li>• appeals of refusals and non-decisions on requests to amend official plans (22 (7.0.0.1))</li> <li>• zoning by-laws (34(11.0.0.0.2) and 34(19.0.1))</li> </ul>
<p><b>The matter would be returned to the municipality to make a new decision,</b> if the Tribunal finds that a municipal decision was not consistent, or did not conform with local or provincial policies</p>	<p>New subsections 17 (49.1) to (49.5), 22(11.0.8) to (11.0.11) and 34(26) to (26.4) would provide rules concerning the Tribunal’s powers in connection with such appeals. Where the Tribunal determines that the new standard of review was not met, the municipality would have a second opportunity to make a decision. If that decision is appealed and the Tribunal again determines that it did not meet the standard of review, the Tribunal would make a final decision</p>

# Proposed Reforms: Schedule 3, Planning Act Amendments

## Giving municipalities greater control over local planning

Proposed Reform	Bill and Proposed Leg. References
<p><b>No appeal of municipal official plans and zoning by-laws that provide for densities that support higher order transit in “Protected Major Transit Station Areas”</b></p> <p><b>(Municipalities may employ this as a discretionary tool)</b></p>	<p>Schedule 3 of Bill, section 5 and subsections 6(6), 8(1)-(2) and 10(7)</p> <p>Section 16 of the Planning Act currently governs the content of official plans. The section would be amended to allow official plans to include policies to delineate “protected major transit station areas” and provide policies regarding development in these areas</p> <p>Decisions on these policies could not be appealed except by the Minister and requests to amend the policies could only be made with council approval (see subsections 17 (36.1.4) to (36.1.7) and 22 (2.1.3) to (2.2))</p> <p>When these policies are in place, zoning by-laws that establish permitted uses, minimum and maximum densities and, minimum and maximum heights (except where the maximum height would not satisfy the minimum density required) could not be appealed except by the Minister (see subsections 34 (19.5) to (19.8))</p>

See Appendix C for more details on the proposed “Protected Major Transit Station Areas” provision

# Proposed Reforms: Schedule 3, Planning Act Amendments

## Giving municipalities greater control over local planning

Proposed Reform	Bill and Proposed Leg. References
<p><b>No applications to amend new secondary (neighbourhood) plans</b> for two years, unless permitted by municipal council</p>	<p>Schedule 3 of Bill, subsections 8(1)-(2)</p> <p>A new subsection 22 (2.1.1) and an amended subsection 22(2.2) of the Planning Act would provide that during the two-year period following a new secondary plan, applications for amendment would only be permitted with council approval</p>
<p><b>No appeal of municipal interim control by-laws</b> (by-laws that effectively freeze development) when first passed, for a period of up to one year</p>	<p>Schedule 3 of Bill, subsection 12(1)</p> <p>Currently, under subsection 38 (4) of the Planning Act, anyone who is given notice of the passing of an interim control by-law may appeal the by-law within 60 days after the by-law is passed</p> <p>Amendments would be made to allow only the Minister to appeal an interim control by-law when it is first passed. Any person or public body who is given notice of an extension of the by-law beyond one year could appeal the extension</p>



# Proposed Reforms: Schedule 3, Planning Act Amendments

## Giving municipalities greater control over local planning

Proposed Reform	Bill and Proposed Leg. References
<p><b>Expand authority for local appeal bodies (LABs) to include site plans</b>, in addition to their current scope of minor variances and consents</p>	<p>Schedule 3 of Bill, subsections 4(1) and 19(1)</p> <p>Section 8.1 of the Planning Act currently provides for the establishment of a local appeal body which can deal with appeals of certain planning matters. Amendments would be made to expand those matters to include appeals related to site plan control. Similar amendments would be made to section 115 of the City of Toronto Act, 2006</p>
<p><b>Extend certain planning decision-making timelines by 30 days</b></p>	<p>Schedule 3 of Bill, subsections 6(11), 8(4), 10(1) and 11(1)</p> <p>Timelines for making decisions related to official plans and zoning by-laws would be extended by 30 days. For official plans the timeline would be extended to 210 days and for zoning by-laws the timeline would be extended to 150 days (see amendments to sections 17, 22, 34 and 36 of the Planning Act)</p> <p>For applications to amend zoning by-laws submitted concurrently with requests to amend a local municipality's official plans, the timeline would be extended to 210 days (see subsection 34 (11.0.0.0.1))</p>

# Proposed Reforms: Schedule 3, Planning Act Amendments

## Sheltering major planning decisions from appeal

Proposed Reform	Bill and Proposed Leg. References
<b>Remove ability to appeal provincial approvals of major planning documents</b>	Schedule 3 of Bill, subsection 6(8) and section 7  New subsections 17 (36.5) and 21 (3) of the Planning Act would provide that there is no appeal in respect of a provincial approval of an official plan or an official plan amendment adopted in accordance with section 26 (official plan updates)
<b>No mandatory referral of Minister's Zoning Orders to the Tribunal</b>	Schedule 3 of Bill, subsections 15(1)-(3)  Currently, under section 47 of the Planning Act, the Minister may make orders exercising zoning powers. The rules governing amendments and revocations of such orders would be amended and would provide that the Minister <u>may</u> refer a request from a person or public body to amend or revoke an order to the Tribunal

# Proposed Reforms: Schedule 3, Planning Act Amendments

## Supporting climate change

Proposed Reform	Bill and Proposed Leg. References
<b>Require all municipalities to include climate change policies in their official plans</b>	Schedule 3 of Bill, section 5  Section 16 of the Planning Act currently governs the content of official plans. A new subsection 16 (14) would require official plans to contain policies relating to climate change

# Proposed Reforms: Schedule 5, Amendments to Various Acts

## Creating the Local Planning Appeal Tribunal

Proposed Reform	Bill and Proposed Leg. References
Technical amendments to various acts	<p data-bbox="757 439 1020 474">Schedule 5 of Bill</p> <p data-bbox="757 531 1831 696">Consequential amendments would be made to various Acts to replace references to the Ontario Municipal Board Act with the Local Planning Appeal Tribunal Act, 2017 and to replace references to the Ontario Municipal Board with the Local Planning Appeal Tribunal</p> <p data-bbox="757 753 1823 828">References to the Ontario Municipal Board in other statutes would be amended as soon as practicable</p>

# Questions and Comments

- For a copy of Bill 139, the proposed Building Better Communities and Conserving Watersheds Act, 2017, and to monitor the status of the Bill through the legislative process, please visit the Legislative Assembly of Ontario website: [www.ontla.on.ca](http://www.ontla.on.ca)
- For more information and background on the Bill you may visit: [ontario.ca/OMBReview](http://ontario.ca/OMBReview)

# Appendix A – Impact of Proposed Changes on Appeals

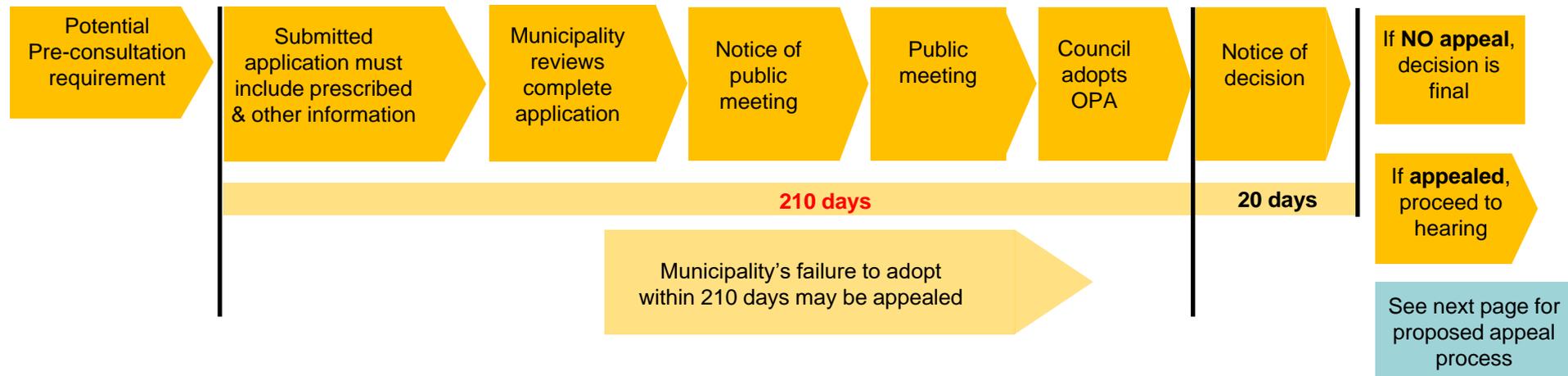
Planning Matter	Was a Decision Made?	Continued Ability to Appeal to Tribunal	Subject to Consistency/Conformity Review Standard	Ability to Appeal to LAB (only in Toronto)
Official Plans and updates approved by Province	Decision	No	n/a	n/a
	Non-decision	Yes	No	
Official Plan Amendments approved by Province	Decision	Yes	Yes	
	Non-decision	Yes	No	
Official Plans/Amendments not approved by Province	Decision	Yes*	Yes	
	Non-decision	Yes	No	
Privately-initiated Official Plan Amendments (s.22(7))	Municipal decision to refuse to adopt OPA	Yes	Yes	
	Non-decision	Yes	Yes	
Zoning By-laws / Community Planning Permit By-laws	Decision	Yes*	Yes	
	Non-decision	Yes	Yes	
Minister's Zoning Orders /Requests to amend or revoke	Decision or Non-Decision	No	n/a	
Interim Control By-laws		No (unless extended beyond 1 year)	n/a	
Community Planning Permits		Yes	No** would benefit from procedural hearing improvements (e.g., hearing timelines)	Yes
Subdivisions/ Condominiums				Yes
Site Plans				Yes
Consents				Yes
Minor Variances		Yes		

\* Unless a municipality chooses to use the proposed “protected major transit station area” tool, then those policies/provisions would not be appealable

\*\* Tools are subject to additional review criteria

# Appendix B – Proposed Planning and Appeal Process

## Planning Process: Official Plan Amendment Initiated by Applicant and Exempt from Approval\*



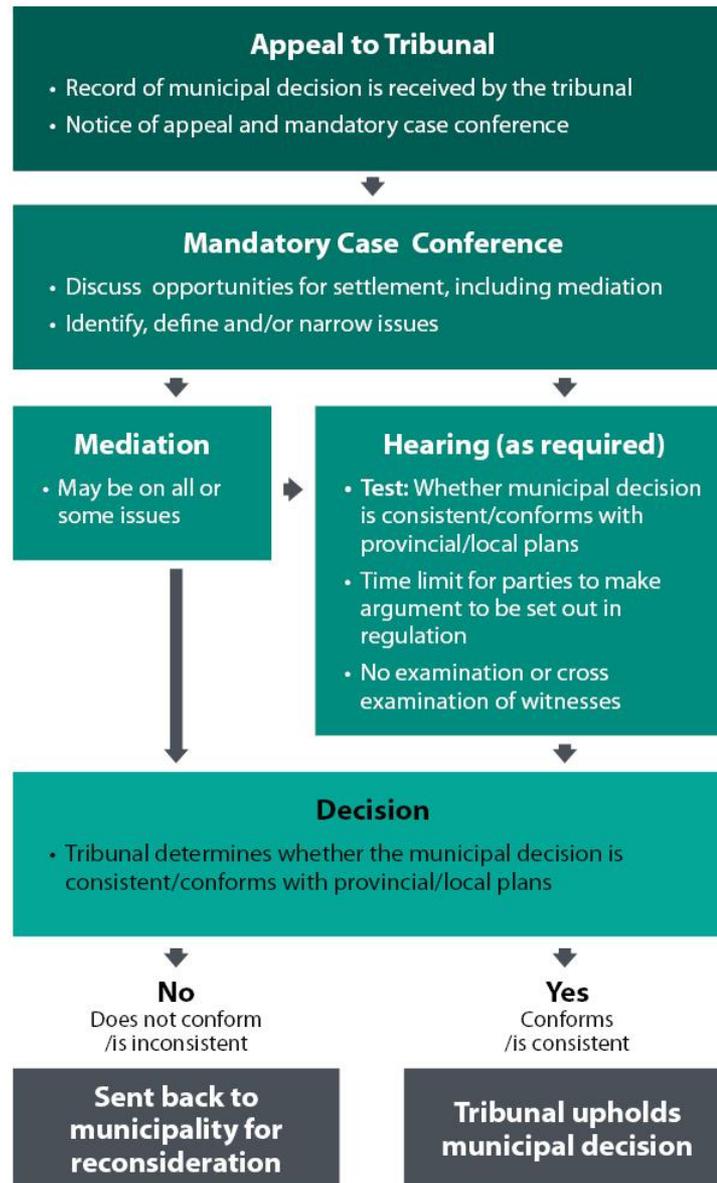
Note: Number of days based on extension of 180 day timeline to 210 timeline

\*Additional steps would be required where there is an approval authority

# Appendix B – Proposed Planning and Appeal Process

## Proposed Hearing Process

Appeal of municipal decision on official plan/zoning (i.e. conformity/consistency appeals)



### Municipal Planning Review

- 90 days for applications (hold public meeting, issue new decision)
- If no appeal, decision in effect
- If appealed proceed to Tribunal for final resolution

# Appendix C – Proposed “Protected Major Transit Station Areas” Provision

- Discretionary tool
- Upper-tier and single-tier documents (i.e. official plan, official plan amendment) would always require Ministry of Municipal Affairs approval
- Lower-tier documents (i.e. official plan, official plan amendment) would always require upper-tier approval
- Upper-tier official plan policies would need to be approved before lower-tier

Official Plans: Minimum Requirements		
Upper-Tier Municipality	Lower-Tier Municipality	Single-Tier Municipality
<ul style="list-style-type: none"> <li>• Identification of area around station or stop on <b>higher order transit</b> corridor as <b>protected major transit station area</b> and delineation</li> <li>• Identify <b>minimum density target</b> across area</li> <li>• Require lower-tier official plans to identify <b>uses</b> and <b>density</b></li> </ul>	<ul style="list-style-type: none"> <li>• Delineation of <b>protected major transit station area</b> in conformity with upper-tier official plan</li> <li>• Identify permitted <b>uses</b> within area</li> <li>• Identify <b>density</b> to achieve <b>minimum density targets</b> identified in upper-tier official plan</li> </ul>	<ul style="list-style-type: none"> <li>• Identification of area around station or stop on <b>higher order transit</b> corridor as <b>protected major transit station area</b> and delineation</li> <li>• Identify <b>minimum density target</b> across area</li> <li>• Identify permitted <b>uses</b> within area</li> <li>• Identify <b>density</b></li> </ul>

# Appendix C – Proposed “Protected Major Transit Station Areas” Provision

## NO APPEAL when a municipality establishes official plan policies and implements zoning

### Establishing the Policy Framework

Official plan policies for protected MTSA:

#### **NO APPEALS\* when Municipality:**

- Delineates protected MTSA in official plan
- Identifies the uses and minimum/maximum densities & heights within protected MTSA in official plan that are consistent with transit-supportive densities

No amendments except as permitted by municipality who will function as gatekeeper

### Implementing the Policy Framework

Zoning by-law provisions for protected MTSA:

#### **NO APPEALS\* when Municipality:**

- Identifies uses and minimum/maximum densities & heights in zoning by-law/community planning permit system that are consistent with transit-supportive densities

If a municipality **passes** a zoning by-law amendment in response to an application, that decision is not appealable\*

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#### **\*Matters that Continue to be Appealable**

- All other official plan policies (e.g. parkland, housing, environmental protection)
- All other zoning/community planning permit system requirements (e.g. bonusing, lot coverage, setbacks, parking)
- Minister can appeal any matter in a protected MTSA