

Clause 24 in Report No. 12 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on September 21, 2017.

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Proposed Changes to the Land Use Planning Appeal System
through Bill 139, Building Better Communities and Conserving
Watersheds Act, 2017

Committee of the Whole recommends adoption of the following recommendations contained in the report dated August 24, 2017 from the Commissioner of Corporate Services and the Chief Planner:

1. Council endorse the attached staff comments on the Ontario Municipal Board Reform Initiative (Bill 139) as submitted to the Province on September 1, 2017 in response to the Environmental Registry Posting No. 013-0590, including the following key comments:
 - Staff supports the proposal to shelter provincially approved Official Plans and Official Plan Amendments from appeal, eliminate de novo appeals in most cases, and protect investment in transit infrastructure.
 - Further clarification is required regarding transition to the new Tribunal, and implementation of the moratorium on applications to amend a Secondary Plan.
 - Additional protection is needed for approved local official plans.
 - 90 days may not provide sufficient time for council decisions to be reconsidered after the Tribunal finds an appealed decision to be inconsistent or not in conformity with Provincial policy and plans or municipal plans.
2. The Regional Clerk forward this report to the Minister of Municipal Affairs, and the local municipalities for information.

Report dated August 24, 2017 from the Commissioner of Corporate Services and Chief Planner now follows:

1. Recommendations

It is recommended that:

1. Council endorse the attached staff comments on the Ontario Municipal Board Reform Initiative (Bill 139) as submitted to the Province on September 1, 2017 in response to the Environmental Registry Posting No. 013-0590, including the following key comments:
 - Staff supports the proposal to shelter provincially approved Official Plans and Official Plan Amendments from appeal, eliminate *de novo* appeals in most cases, and protect investment in transit infrastructure.
 - Further clarification is required regarding transition to the new Tribunal, and implementation of the moratorium on applications to amend a Secondary Plan.
 - Additional protection is needed for approved local official plans.
 - 90 days may not provide sufficient time for council decisions to be reconsidered after the Tribunal finds an appealed decision to be inconsistent or not in conformity with Provincial policy and plans or municipal plans.
2. The Regional Clerk forward this report to the Minister of Municipal Affairs, and the local municipalities for information.

2. Purpose

This report summarizes and compares changes proposed to the Ontario land use planning appeal system through Bill 139, to comments previously submitted by the Region in December 2016. This report also seeks Council endorsement of Attachment 1, comments submitted by Regional Staff to meet the September 1, 2017 Environmental Bill of Rights Registry (EBR) deadline.

A separate report on this agenda has been prepared by Environmental Services staff, titled "Proposed Amendments to the Conservation Authorities Act under Bill 139".

3. Background and Previous Council Direction

The Region commented on the Province's review of the Ontario Municipal Board in December, 2016

In October 2016, the Province initiated a review of the Ontario Municipal Board (OMB) through a public consultation document and a series of public meetings. Planning staff consulted with interested departments and with all nine local

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municipalities, and attended several of the provincial public information meetings. Regional staff also contributed to the Regional Planning Commissioners of Ontario (RPCO) report on reforming the OMB.

On [December 15, 2016](#), Council endorsed comprehensive comments submitted to the Province, a summary of which can be found in Attachment 2. Council also requested that the Province consider the inclusion of a sunset clause on development approvals related to OMB rulings. Regional comments were submitted to the Province on December 16, 2016.

Bill 139 received first reading on May 30, 2017

On May 16, 2017, the Province announced details of proposed changes to the land use planning appeal system in Ontario as ultimately released through Bill 139, Building Better Communities and Conserving Watersheds Act, 2017. Bill 139, which introduces substantive changes, including replacing the OMB with the Local Planning Appeal Tribunal (Tribunal), received first reading in the Legislative Assembly of Ontario on May 30, 2017. On May 31, 2017 the Bill was posted to the Environmental Registry (EBR #013-0590) for a comment period ending September 1, 2017.

Staff provided comments to the Province on September 1, 2017 (Attachment 1).

4. Analysis and Implications

Proposed changes to the land use planning appeal system are significant and align with many of the Region's recommendations

The Region's comments of December 2016 covered a broad range of issues, with a focus on increasing the legitimacy, accountability and certainty of the municipal planning process. In particular, removing the right to appeal provincially approved Official Plans that conform to provincial legislation, and eliminating *de novo* ("as new") hearings, were highlighted.

Overall, the changes to the land use planning appeal system proposed through Bill 139 are positive and address many of the Region's comments and recommendations. When implemented, the changes should reduce the time, effort and expense of appeals of Council decisions. Changes proposed in Bill 139 are discussed below under the themes established by the Province during the OMB review process:

- OMB's Jurisdiction and Powers
- Citizen Participation and Local Perspective
- Clear and Predictable Decision-Making
- Modern Procedures and Faster Decisions

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- Alternative Dispute Resolution and Fewer Hearings

Comments to the Province on Bill 139 are captured in the September 1 letter (see Attachment 1). Attachment 2 summarizes the changes proposed in Bill 139, and compares them to previous Council comments.

Theme: Changes to Jurisdiction and Powers

The Ontario Municipal Board is to be renamed “Local Planning Appeal Tribunal”, and given new mandate and powers

Bill 139 proposes to change the name of the OMB to the Local Planning Appeal Tribunal and give the Tribunal a new mandate with decreased scope and powers regarding land use planning appeals. The *Ontario Municipal Board Act* will be repealed and replaced with the *Local Planning Appeal Tribunal Act, 2017*, and sections of the *Planning Act*, the *City of Toronto Act*, the *Ontario Planning and Development Act*, and the *Conservation Authorities Act* will also be amended.

The proposed changes fundamentally alter the land use planning appeal process in Ontario, and will provide more weight to local concerns in appeals related to land use and development. The Province has not released details regarding the transition of land use planning appeals from the OMB system to the new Tribunal system. Staff have requested clarification of the transition plan.

Under Bill 139, once approved by the Province, Official Plans or Official Plan Amendments, will be sheltered from appeal

Bill 139 removes the right to appeal an upper- or single-tier Official Plan (OP), or Official Plan Amendment (OPA) once it has been approved by the Province. This includes Regional OPAs to conform to Provincial policy or legislation, supported by a Municipal Comprehensive Review (MCR). An exception is made to permit appeal of a privately-initiated Regional OPA if the existing part or parts of the official plan affected by the requested amendment are inconsistent with or fail to conform to provincial policies or plans, or upper-tier municipal plans. If the requested amendment is consistent with provincial policies and plans, and upper-tier municipal plans, an appeal is permitted.

Removing the right to appeal new or updated OPs was one of the primary recommendations made in the Region's December 2016 submission to the Province. It is anticipated that this change will significantly reduce the time spent defending Regional Official Plan (ROP) policies and technical work that has already been determined to conform to provincial plans and policies through provincial approval.

Appeals and Tribunal decisions will be limited to whether or not a council decision is consistent with provincial policies and plans and municipal plans

Currently, appeals of decisions that conform to the applicable provincial policies and plans and municipal plans, but are not agreeable to an appellant, are permitted. Under Bill 139, the notice of appeal must explain how council's decision fails to conform to or is inconsistent with provincial policy and plans or municipal official plans. No other grounds for appeal will be considered.

Where the Tribunal finds, through a hearing, that a council decision is in conformity with provincial policies and municipal plans, the decision of council will stand. Where the Tribunal finds council's decision is not in conformity, it will provide a written response and give council 90 days to reconsider the original decision. If council's subsequent decision is appealed and again found not to be in conformity, the Tribunal's written decision will stand. It is not clear in the proposed legislation whether the municipality would need to provide notice that a decision is being re-considered and hold an additional public meeting. The Region has requested clarification of the process that is envisioned in this circumstance.

If the Minister of Municipal Affairs identifies at the time of an appeal that a matter of provincial interest may be adversely affected, and the Tribunal finds council's decision does not conform to provincial policies or municipal plans, the Tribunal may substitute its own decision, subject to that decision being confirmed by the Lieutenant Governor in Council.

Reducing *de novo* hearings will increase respect for local decision-making process

Currently, the OMB holds what are known as *de novo* hearings, where the appeal is heard "as new". In these cases, a significant amount of time may be spent considering information beyond what may have been available to council at the time of their decision. The OMB has the ability to substitute its own decision on a matter, in place of the decision of council. Bill 139 proposes to eliminate *de novo* hearings where a council decision is being appealed.

Where there is an appeal of council's failure to make a decision, the Tribunal will conduct a *de novo* hearing. The proposed legislation requires that any significant new information presented to the Tribunal be sent back to municipal council for consideration. This is a requirement for all hearings, not just *de novo* hearings.

Minimizing *de novo* hearings at the Tribunal provides motivation to municipal councils to make a decision on all applications that come before them. This will avoid both the risk of having the local decision-making process subverted, and the cost associated with a *de novo* hearing.

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Provincially funded transit infrastructure will be supported by prohibiting appeal of Official Plan policies and Zoning Bylaws related to Major Transit Station Areas

Through Bill 139, the Province proposes to protect transit investment by prohibiting appeals of municipal OP policies and zoning bylaws in Major Transit Station Areas (MTSA), as introduced through the *Growth Plan*. This includes OP policies and specifications regarding boundaries, number of residents and jobs, permitted land uses, maximum densities, or minimum and maximum building heights. MTSA policies in OPs require approval by an approval authority, and these policies can only be appealed by the Minister. An exception is provided for an appeal of maximum building height, but only where the permitted maximum height would not satisfy the minimum density authorized for the parcel. Further information on MTSA's will be provided in an October 2017 report on the Municipal Comprehensive Review.



Requests for amendments to MTSA policies are not permitted, unless Council makes a resolution allowing either a specific request or a class of requests for amendments to approved MTSA policies.

A two-year moratorium will be placed on applications to amend Secondary Plans

In addition to the prohibition Bill 73 placed on privately-initiated applications to amend OPs within two years of the adoption of an OP, Bill 139 introduces a two-year moratorium on applications to amend an approved secondary plan, except where council resolution permits such requests.

Appeal of an interim control bylaw will also no longer be permitted by anyone other than the Minister. However, if the period of the interim control bylaw is extended, anyone entitled to receive notice of passing of the bylaw may appeal the extension.

Under the proposed Bill, Council will have 210 days (seven months) to consider OPA applications, an increase from the 180 days (six months) currently permitted

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by the *Planning Act*. While this may assist the Region in processing routine amendments, local Official Plans, major secondary plans and other complex OPAs may remain a challenge to evaluate and render a decision within the new 210 day limit.

Theme: Citizen Participation and Local Perspective

A new Local Planning Appeal Support Centre will be established by the Province to assist the public

The Centre will be established under the *Local Planning Appeal Support Centre Act* and funded by the Province. The Centre is intended to provide both legal and planning advice to citizens. Eligibility criteria to access the Centre's resources will be established by the Centre.

The Region's September 1, 2017 comments reiterate the December 2016 recommendation to provide online or in-person training courses, educational videos and other educational materials to the public. Some or all of these educational resources could be provided by the Centre.

Theme: Clear and Predictable Decision-Making

Tribunal decisions will identify the basis upon which a council decision has been found not in conformity

OMB written decisions are currently inconsistent in explaining the evidence presented and the Board's analysis, findings and justification for the Board Order. Bill 139 proposes that the Tribunals jurisdiction will be limited to determining consistency with provincial policies and plans and municipal official plans. If the Tribunal finds the decision of council is not in conformity with provincial policy and plans or municipal plans, the proposed legislation requires that the Tribunal identify in its decision the basis upon which the council decision has been found not in conformity.

The Region's September 1, 2017 comments reiterate the December 2016 recommendation that decisions be prepared in plain language and based on a standard format to aid citizens in understanding decisions. It is also recommended that long or complex decisions include a summary or abstract.

Multi-member panels can still be used to hear complex appeals

The Province has proposed that where more than 2 members preside over a hearing, an odd number of members will be used. Staff is unclear when a hearing would require more than two tribunal members, and therefore question the need for the proposed change.

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Consistent with the Region's December 2016 recommendations, staff continue to recommend that multi-member panels include subject-matter experts to hear appeals of complex applications and that local knowledge or experience be included on the panel.

The Province is encouraged to review compensation for members to attract experienced, senior-level professionals as adjudicators, and to institute performance reviews for members.

Theme: Modern Procedures and Faster Decisions

Most hearings will be conducted in writing, with strict timelines imposed when oral hearings are necessary

Bill 139 proposes to change the current practice of oral hearings, and instead will conduct most hearings in writing. When an oral hearing is deemed necessary, time limits for parties to make arguments will be imposed. Those time limits are to be set out in regulations when the legislation is enacted. Examination and cross-examination of witnesses will no longer be permitted as part of the hearing process.

Mandatory case management will be used for all cases and active adjudication will be permitted throughout proceedings

When passed into legislation, Bill 139 changes will allow the Tribunal to impose a mandatory case management conference, prior to all hearings. The conference may be used for a variety of purposes, including:

- identifying all parties to the proceeding
- identifying, defining or narrowing issues raised by the proceeding
- identifying agreed upon facts
- discussing opportunities for settlement or mediation
- establishing a schedule for certain steps in the proceeding and for any hearing that may be required.

Currently, a mandatory prehearing serves a similar purpose only for hearings longer than five days, and cases are assessed for mediation on a voluntary basis. The introduction of mandatory case management may be used to address many of the issues raised by the Region in December 2016.

The Tribunal will be empowered to undertake active adjudication during any stage of a proceeding. Active adjudication may include examining a party or a person other than a party who makes a submission to the Tribunal, requiring a party or other person who makes a submission to produce evidence for

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examination by the Tribunal, and requiring a party to produce a witness for examination by the Tribunal.

Opportunities for mediation will be explored for all cases

The Region commented in December 2016 that mediation should be explored, but not be mandatory, for all cases. Bill 139 proposes that the mandatory case management process include a discussion of opportunities for mediation or alternative dispute resolution. The Region's September 1, 2017 comments reiterate the importance of encouraging mediation where there is a reasonable chance of success, and avoiding lengthy mediation procedures where the likelihood of reaching a settlement is low.

The September 1, 2017 comments also repeat the Region's recommendation that the Tribunal ensure citizens remain involved in or informed of proceedings during the mediation process. The proposed Local Planning Appeal Support Centre could assist citizens to stay involved in a proceeding, in the event of mediation.

New Rules of Practice and Procedure may be created for the new Tribunal

Bill 139 permits the development of new rules of practice and procedure for the Tribunal. These rules could address a number of the Region's comments of December 2016 that are not addressed directly in legislation. For example, the rules of practice and procedure may include the Region's suggestion for making case documents and records available online and easier to locate, and the use of a standard casebook and document book for all cases in order to ensure that each case file does not need to include the submission of Provincial Plans, the Planning Act, the Provincial Policy Statement, and other documents that are common to the majority of land use planning appeals.

This recommendation has been reiterated in the September 1 letter attached.

Local Appeal Body powers will be expanded to include site plan appeals

The Planning Act currently permits Local Appeal Bodies to be established to hear appeals of consent and minor variances. Bill 139 proposes to expand the powers of Local Appeal Bodies to include site plan appeals as well. There are currently no Local Appeal Bodies established in York Region. The City of Toronto recently set up the first Local Appeal Body in Ontario. It remains to be determined whether the use of a Local Appeal Body results in significant cost or time saving on appeals, and whether other lower- or single-tier municipalities will choose to establish a Local Appeal Body to divert appeals from the Tribunal to a local body.

It should be noted that Local Appeal Body decisions cannot be appealed to the OMB/Tribunal.

5. Local Municipal Impact

Local municipalities will be affected by a number of the proposed changes discussed above, in particular the moratorium on applications to amend secondary plans for a period of two years, the removal of the right to appeal an interim control bylaw, and the ability to have site plan appeals adjudicated by a Local Appeal Body, should one be established.

Local municipal staff in several municipalities will report to their councils regarding the specific implications for their procedures and practice, and have also submitted comments to the Province. To date Aurora, East Gwillimbury, Georgina, Markham, Newmarket, Richmond Hill and Whitchurch-Stouffville have reported to their councils on Bill 139. Local municipal staff comments and recommendations are substantially similar to those of Regional staff, with the addition of comments related to local municipal planning decisions.

6. Conclusion

Under the proposed legislation, appeal of local and regional applications will be more limited in scope, generally take the form of written hearings and could be expected to require less staff time and cost to defend. The cost to defend the YROP-2010, including mediation to settle a number of appeals and narrow the scope of other appeals, was nearly \$5 million. This type of appeal of provincially approved Regional Official Plans will no longer be permitted under the proposed legislation.

The Province anticipates Bill 139 will be passed in the spring of 2018. Staff will report back to Council, as necessary, with a more detailed examination of the impacts of the legislation on the Region's procedures at that time.

Overall, the Province should be commended on the breadth of proposed changes to the land use planning appeal process in Ontario, and the potential impact Bill 139 will have in placing land use planning decisions back into the hands of elected municipal councils.

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Building Better Communities and Conserving Watersheds Act, 2017

For more information on this report, please contact Paul Freeman, Director of
Long Range Planning at 1-877-464-9675 ext. 71534.

The Senior Management Group has reviewed this report.

August 24, 2017

Attachments (2)

7841106

Accessible formats or communication supports are available upon request

York Region Response: Bill 139, Building Better Communities and Conserving Watersheds Act



August 31, 2017

Ken Petersen, Manager
Provincial Planning Policy Branch
777 Bay Street, 13th floor
Toronto, Ontario, M5G 2E5

Dear Mr. Petersen,

York Region thanks the Province for the opportunity to provide input to the review of Bill 139, the Building Better Communities and Conserving Watersheds Act (Environmental Bill of Rights Registry Number: 013-0590).

York Region Council endorsed comments will be submitted following September 21 meeting

This submission represents staff comments on Bill 139. These comments will be submitted to Regional Council for endorsement at Committee of the Whole on September 7, 2017. Any additional comments made by Regional Council will be communicated to the Ministry in late September, 2017, following the Council meeting on September 21. It is requested that the Ministry consider any supplementary comments from Council as a part of this submission.

Bill 139 proposes significant positive changes to the land use planning appeal system that address many of the issues York Region advocated strongly for during the review of the OMB in 2016. The OMB review and the proposed legislation demonstrate an understanding of the wide range of issues and challenges arising from the existing OMB jurisdiction, practices and procedures. Overall, we believe the proposed legislation will assist in ensuring that the new Local Planning Appeal Tribunal becomes a review body used in limited cases to confirm the validity of a council decision.

In particular, Regional staff would like to congratulate the Province on the proposal to shelter provincially approved Official Plans, Official Plan Amendments and Municipal Comprehensive Reviews from appeal, and the elimination of de novo appeals for the majority of council decisions. These two recommendations were highlighted in the Region's response to the OMB review in December 2016, and when implemented should reduce the time, effort and expense of appeals of council decisions and keep land use planning decisions in the hands of elected municipal councils.

The Region also supports the sheltering from appeal of official plan policies and zoning by-laws that implement municipally identified and approved Major Transit Station Areas (MTSA) to protect the significant infrastructure investments made by both the Province and municipalities.

Written hearings for the majority of appeals is supported by Regional staff. The documents submitted to council for consideration should form the basis of the case.

In addition to the proposed changes that are supported by Regional staff, there are several proposed changes that require revision. For example, 90 days may not be sufficient time to allow council to reconsider a decision when the Tribunal has found an appealed council decision to be inconsistent or not in conformity with provincial policy or plans, or with municipal plans. York Region staff recommends increasing the time limit on these decisions to accommodate public notice and a formal public meeting, and to account for council schedules and the possibility of full agendas.

Issues requiring clarification

Bill 139 does not address plans for appeals currently in the OMB system, or the transition to the new Tribunal. Further clarification of this issue is required. York Region encourages the Province to find a method of transition that will minimize the period in which two parallel appeal systems operate simultaneously.

Several of the proposals in Bill 139 may be useful in ensuring local planning decisions are respected, but require further clarification in terms of implementation. The two-year moratorium on applications to amend a Secondary Plan would provide time to implement the plan as written and demonstrate whether any adjustments are justified to effect successful build-out. However, it remains unclear how the exception for council approval to apply for an amendment within that two-year period would work. For example, it is unclear whether the Region, as the approval authority on a local OP, would have a say in whether or not applications should be permitted within the two-year moratorium period. Would the applicant be required to make a request of council to get permission to apply for the amendment, and if so, what supporting documentation would be required in order to justify the need for an amendment? Would pre-consultation with staff be required prior to approaching council with a request to permit an amendment application to be made? Would every request for permission to apply to amend a Secondary plan require a council resolution, or could this power be delegated to staff?

Staff is not convinced of a situation that would require more than two tribunal members, and therefore question the need for a rule requiring an odd number of tribunal members if more than two are required. Most hearings are currently presided over by one board member, and only the most complex hearings are presided over by two members. Rather than a requirement for an odd number of members on any panel beyond two, staff would like to reiterate the Region's recommendation that multi-member panels should consist of members with local knowledge and/or expertise in the issues that an appeal is based on.

Staff do not oppose the proposed 30 day extension for decisions related to official plans and zoning by-laws, which may help in the case of routine applications. However, the 210 days (seven months) permitted for consideration of OPA applications may still represent a challenge to evaluate and render a decision on complex applications.

York Region recommendations that have not been addressed in Bill 139

The Region recommended that local OPs be exempt from appeal, once approved by the upper-tier municipality. As local OPs have not been sheltered from appeal in the same manner as upper- and single-tier OPs, the Region reiterates its recommendation that Official Plan Amendment applications should not be permitted for the entire period of the OP prior to the provincially mandated review (e.g. 10 years for a new OP, 5 years for an updated OP), rather than the two-years currently provided for in the Planning Act. Once through the appeal process, the local OP would be protected from OPA applications for the entire period of the plan, unless the municipal council chooses to allow applications.

York Region comments that should be addressed through Regulations or updated Rules of Practice and Procedure

The case management process should include pre-screening to identify the planning merit of an appeal and ensure early dismissal of cases without merit; scoping to identify areas of agreement, specific issues in dispute, and feasibility of mediation; and minimize duplication of evidence and the introduction of evidence not relevant to the scope of the appeal.

As mediation and alternative dispute resolution is explored for all cases before the Tribunal, the need to provide ways for citizen participants to remain engaged during the mediation process will be greater. Currently, mediation between a municipality and appellant excludes most citizen participants.

Appellants should be required to include the alternative policy wording or mapping requested as part of the appeal.

The Local Planning Appeal Support Centre should provide citizens with educational videos and documentation, as well as online or in-person training courses to inform citizens of the process and procedures followed at the Tribunal, and to help them understand the planning basis and merits of an appeal. Eligibility for access to legal or planning assistance should be based on the merits of a citizen's or citizen group's appeal or position, as assessed during the scoping process, and should be based on demonstrated need.

The Tribunal's website should make case documents and case record, affidavits, document books, exhibits, etc. available online so citizens can stay informed during the process. The website should also include an improved search function and decisions should be posted in a timely manner.

Written decisions must be prepared in plain language, based on a standard format, and include a summary or abstract for long or complex decisions.

Significant new information must be defined so that councils and applicants can predict what sort of information would send an application back to the municipality.

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A standard case book and document book should be developed, rather than submitting copies of the same legislation and policies for every hearing.

As Bill 139 will permit different fees for different proceedings, the Region reiterates the recommendation that appeal fees be increased, and be based on the type and complexity of application being appealed, to reflect the work required to administer the appeal.

Recruitment of Tribunal members must place greater emphasis on planning experience and knowledge of planning related legislation and policy, especially given the basis of appeals under Bill 139 is consistency and conformity with Provincial policy and plans, and municipal plans. In addition, better compensation is needed for board members in order to attract experienced, senior-level professionals. Performance reviews for members are also needed.

The Province should consider implementing Council's recommended sunset clause on privately-initiated applications which receive development approvals through Tribunal rulings. A lapsing clause would give certainty to municipalities and citizens that developments would either be built within a reasonable timeframe, or a new application would be required which would be evaluated under the legislation and plans in place at the time.

Other items for consideration

Infrastructure master plans are developed by municipalities in conformity with official plans to ensure both the forecast population and jobs, and the planned urban structure, can be adequately serviced. The Region recommends that the Tribunal take into account master plans that conform to OP policy and forecasts, when considering appeals.

Again, staff at York Region congratulates the Province on a thorough and comprehensive review of the current OMB, and proposed legislation that addresses many of the Region's recommendations and comments.

If you have any questions or require additional information, please contact Valerie Shuttleworth, Chief Planner, Planning and Economic Development by email valerie.shuttleworth@york.ca or telephone 1-877-464-9675, extension 71525; or Paul Freeman, Director, Long Range Planning by email paul.freeman@york.ca or telephone at extension 71534.

Sincerely,

Valerie Shuttleworth, MCIP, RPP
Chief Planner, Planning & Economic Development, Corporate Services
Regional Municipality of York

**DRAFT Comparison of York Region Recommended Changes to OMB
Vs. Bill 139 Proposed Changes**



Theme 1: OMB’s Jurisdiction and Powers

York Region Recommendation December 2016	Addressed	Bill 139 Proposal
No appeal of municipally initiated OP or OPA after approved by approval authority (including local OP, OPA).	~	No appeal of OP or OPA after approval by Province. No appeal re: OPA application unless the existing plan does not conform to provincial policies and plans or upper-tier municipal plans. Local municipal OP, OPA remain appealable.
Protect municipally identified transit supportive development.	✓	No appeal of OP policies or Zoning By-laws re: Major Transit Station Area (MTSA) except by the Minister. Requests for amendments to MTSA policies not permitted in the absence of a Council resolution permitting either specific request or class of requests.
Eliminate de novo hearings.	✓	De novo hearings eliminated for majority of appeals of decisions.
Require Councils to make a decision where an appeal for non-decision is made.	*	In the case of non-decision appeals, the Tribunal retains traditional approval powers.
Should province not protect all OPs (i.e. local OPs) from appeal, the blackout period on appeals of Council’s refusal to amend OPs and Secondary Plans should be extended to cover the entire period in advance of the scheduled comprehensive review period (5 or 10 years). Non-decision on such applications should not be subject to appeal.	~	2 year moratorium on secondary plan amendment applications.
Eliminate right of appeal of interim control by-laws.	~	No appeal of interim control bylaw by anyone other

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		than the Minister. All people entitled to receive notice of passing of interim control bylaw may appeal extension of the period of time an interim control bylaw will be in effect.
Consider eliminating right of appeal of holding by-laws.	✘	Not addressed.
Expand powers of local appeal body to include site plans.	✓	Powers of local appeal body expanded to include site plan.
Limit OMB's authority to matters that are part of municipal council's decision. Limit decision to whether council decision was reasonable, based on the information available to council at the time the decision was rendered.	~	For official plans and zoning bylaw appeals the Tribunal is restricted to deciding whether or not a decision of council is consistent with or in conformity with provincial plans and policies and applicable official plans. No apparent change to the basis for decision on other appeals of other applications.
Require OMB to send significant new information back to municipal council. Define "significant". Give timelines for reconsideration by council.	✓	Significant new information must be sent back to municipal council, at the municipality's request. Council will have 90 days to reconsider their original decision, in the event that the Tribunal finds council's decision is not in conformity with provincial policies and plans or upper-tier municipal plans.
Transition provisions should be phased out of other legislation (e.g. Places to Grow Act, Oak Ridges Moraine Conservation Act, and Greenbelt Act).	✘	Transition provisions for other legislation not addressed.
Better case management.	✓	Case management is mandatory. See Theme 5.
Where significant changes to Provincial policy are introduced, transition provisions for municipally	✘	Not addressed.

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initiated comprehensive planning underway at the time (OPs, Secondary Plans, and comprehensive OPAs) should be clearly communicated and take into consideration the planning, consultation and investment already committed.		
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Theme 2: Citizen Participation and Local Perspective

York Region Recommendation	Addressed	Bill 139 Proposal
Citizen Liaison Office (CLO) not a well-known resource. Increase awareness of its existence.	✓	New Local Planning Appeal Support Centre to be created under the <i>Local Planning Appeal Support Centre Act</i> .
Set up an independent body to provide legal and planning advice to citizen participants and ensure they are able to identify and articulate a planning rationale for their appeal or their participation in a case.	✓	Local Planning Appeal Support Centre will provide legal and planning advice for citizens who want to participate in Tribunal appeals.
Increased appeal fees, based on the type and complexity of application being appealed, could be used to fund citizen participation at the OMB.	~	Bill 136 permits different fees for different kinds of proceedings. Fees may be waived in full or in part, for individuals who are considered “low income” in accordance with the rules. No direct indication that the difference in fees will be funneled to the LPASC.
Funding should not fall to municipalities.	✓	Centre to be funded by Province.
Plain language for decisions and other documentation related to the hearing process. Standard format should be used for all written decisions. Lengthy decisions should have a summary or abstract.	✘	Written decisions not specifically addressed. May be addressed in regulations or rules of practice and procedure.

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<p>Create a more user-friendly website.</p> <p>Provide educational videos, pamphlets and other materials.</p> <p>Make case documents and case record, affidavits, documents books, exhibits, etc. available on the website so citizens can stay informed.</p>	<p>✘</p>	<p>Not specifically addressed. May be addressed by the Local Planning Appeal Support Centre, once established.</p>
<p>Create educational videos.</p> <p>Consider an online or in-person training course for citizens wishing to participate in the appeals process.</p>	<p>✘</p>	<p>May be addressed by the Local Planning Appeal Support Centre, once established.</p>
<p>Improve search function to make documents and decisions easier to locate.</p>	<p>✘</p>	<p>Not specifically addressed. May be addressed in rules of practice and procedure.</p>
<p>Funding could be provided based on the planning merits of the appeal, as assessed during the scoping process, and should be limited to citizens or citizen groups and based on demonstrated need.</p>	<p>~</p>	<p>Eligibility criteria for services will be established by the Local Planning Appeal Support Centre.</p>
<p>Decisions should be posted online in a timely manner.</p>	<p>✘</p>	<p>Not specifically addressed. May be addressed in rules of practice and procedure.</p>

Theme 3: Clear and Predictable Decision-Making

York Region Recommendation	Addressed	Bill 139 Proposal
<p>Use multi-member panels appropriate where hearings are larger or more complex.</p>	<p>~</p>	<p>Multi-member panels of more than 2 members to be made up of an odd number of members.</p>
<p>Multi-member panels should include subject matter experts on complex hearings.</p>	<p>✘</p>	<p>Not addressed.</p>
<p>Greater emphasis on planning experience and</p>	<p>✘</p>	<p>Not specifically addressed.</p>

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knowledge of planning-related legislation and policy as additional qualifications for members.		
Members should have some knowledge/experience of the geographic areas they are hearing cases in, for context.	✘	Not specifically addressed.
Decisions should include the justification for the decision (e.g. why one set of evidence was preferred over another).	✓	Decisions of the Tribunal will be in written format, and will provide the basis upon which the council decision has been found not in conformity with provincial policies/plans or local plans.
Board members should receive better compensation, in order to attract experienced professionals.	✘	Not specifically addressed.
Performance review practices should be instituted for members.	✘	Not specifically addressed.
A standard case book and document book should be established, rather than submitting copies of the same legislation and policies for every hearing.	✘	Not specifically addressed. Could be addressed through updated rules of procedure and practice, and new case management procedure.

Theme 4: Modern Procedures and Faster Decisions

York Region Recommendation	Addressed	Bill 139 Proposal
Allow the OMB to adopt less complex and more accessible tribunal procedures.	✓	Tribunal may adopt appropriate practices and procedures in respect of each proceeding before it, that in its opinion offer the best opportunity for a fair, just and expeditious resolution of the merits of the proceedings.
Allow active adjudication	✓	Active adjudication required/encouraged under provisions in respect of the new rules
Introduce maximum days allowed for hearings However, timelines less important than good case	✓ ✘	Strict timelines will be set for timelines for oral hearings, when these are necessary.

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<p>management. Timelines must accommodate council schedules to allow staff to receive direction from council.</p> <p>Increase flexibility for how evidence can be heard (e.g. video-conference, written hearings, etc.) Support.</p> <p>For written hearings, documents submitted for council consideration should form basis of case.</p> <p>Establish clear rules for issues lists to ensure hearings are focused and conducted in the most cost-effective way possible.</p>	<p>✓</p> <p>~</p> <p>~</p>	<p>Timelines do not appear to accommodate council schedules.</p> <p>Most hearings to be conducted in writing.</p> <p>May be addressed through new case management procedures.</p> <p>May be addressed through new case management procedures.</p>
<p>Early scoping of issues.</p>	<p>✓</p>	<p>Basis for appeal has been significantly reduced. Further scoping of issues may be addressed through new case management procedures.</p>
<p>Require appellant to submit the alternative policy wording or mapping requested through the appeal.</p>	<p>✗</p>	<p>Not addressed.</p>
<p>Introduce docket scheduling.</p>	<p>✗</p>	<p>May not be necessary with new procedures.</p>
<p>Empower municipalities to reject appeals without forwarding to the OMB where no written or oral decision was made prior to council decision.</p>	<p>✗</p>	<p>May be addressed by regulations.</p>
<p>Schedule early like-expert meeting as part of scoping exercise.</p>	<p>✗</p>	<p>May not be necessary. Hearings will primarily be in writing. Could be addressed through new case management procedures.</p>

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Theme 5: Alternative Dispute Resolution and Fewer Hearings

York Region Recommendation	Addressed	Bill 139 Proposal
Actively promote mediation.	✓	Mediation will be explored for all cases.
Mediation should not be mandatory. In some cases the sides are not willing to move from their positions. In these cases mediation can waste time and resources for all participants.	✓	Mediation will be explored for all cases, but not mandatory.
Strengthen case management. Include pre-screening to identify planning merit and ensure early dismissal of cases without merit. Scope identified areas of agreement, specific issues in dispute, and opportunities for mediation.	✓	Case management enabled in legislation. Particulars to be addressed in regulations or new rules of practice and procedure for LPAT.
Create timelines and targets for scheduling cases, including mediation	✗	Timelines not specifically addressed, but may be prescribed by regulation.
Current OMB mediation process excludes citizens or citizen groups who are participants rather than parties. If mediation is to play an increasingly important role in the appeals process, it is important to ensure citizens can remain involved and informed in the mediation process.	✗	May be addressed in updated rules of practice and procedure, or through assistance provided by the Local Planning Appeal Support Centre
OMB should sanction and recognize the use of ADR by willing parties, in order to reduce the caseload on OMB mediators, and costs.	✗	Not specifically addressed. Bill 73 affords municipalities extra time to attempt ADR prior to forwarding appeal to the OMB.

Additional Questions and Comments

York Region Recommendation	Addressed	Bill 139 Proposal
To reduce appeals lacking in planning merit, appellants could be required to apply for leave to appeal to OMB. Motion for leave to appeal would have to specify the reason council's decision was not reasonable or valid.	✓	Notice of appeal must include explanation of how council's decision fails to conform to or is inconsistent with provincial policy or regional plan.

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Review and update fee structure.	✓	LPAT fee structure can be based on type of proceeding.
Case management should minimize the duplication of evidence, and presentation of evidence not relevant to the scope of the appeal.	✓	Written hearing is a more efficient hearing process, where witness statements make up the majority of materials.
Update rules of practice and procedure.	✓	Bill 139 permits the creation of updated rules of practice and procedure.
Reduce backlog of files awaiting resolution.	✗	Not specifically addressed. Provisions to be enacted by regulation will address transition from OMB procedures to Tribunal procedures.