



HEALTHY COMMUNITIES • SUSTAINABLE COMMUNITIES

August 11, 2017

Mr. Ken Petersen, RPP
Manager
Local Government and Planning Policy Division
Provincial Planning Policy Branch
Ministry of Municipal Affairs
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Bill 139 - (Schedule 3) – the proposed *Building Better Communities and Conserving Watersheds Act, 2017*: Amendments to the *Planning Act*

EBR Posting: 013-0590

Dear Mr. Petersen,

The Ontario Professional Planners Institute (OPPI) is the recognized voice of the Province's planning profession. Our almost 4,500 members work in government, private practice, universities, and not-for-profit agencies in the fields of urban and rural development, community design, environmental planning, transportation, health, social services, heritage conservation, housing, and economic development. Members meet quality practice requirements and are accountable to OPPI and the public to practice ethically and to abide by a Professional Code of Practice. Only Full Members are authorized by the *Ontario Professional Planners Institute Act, 1994*, to use the title "Registered Professional Planner" (or "RPP").

Please note that the following submission refers to Schedules 1, 2, 3 and 5 of Bill 139 which includes the repeal of the *Ontario Municipal Board Act* and replacement with the *Local Planning Appeal Tribunal Act, 2017*, the *Local Planning Appeal Support Centre Act, 2017* and amendments to the *Planning Act* and other associated Acts. OPPI has provided a separate submission in regards to Bill 139's proposed amendments to the *Conservation Authorities Act* (Schedule 4) <http://ontarioplanners.ca/Policy/Submissions>.

OPPI supports the Province's efforts to reform the Ontario Municipal Board (OMB). The OMB is one of the oldest adjudicative tribunals in the Province dating back to 1906 and while the role has evolved since its inception, there has not been a comprehensive reform of the processes, practices and over-arching principles guiding the OMB for some time. The OMB plays a vital role in Ontario's land use planning system. As an independent tribunal, the OMB provides a forum for resolving complicated and

controversial land use planning disputes in instances where councils, developers and citizens cannot come to an agreement.

As the recognized voice of the Province's planning profession, OPPI's members are engaged in all levels of land use planning, including matters that become the subject of appeals and adjudication before the OMB. Our members provide independent expert professional planning opinion to municipalities, the private sector, related land use planning tribunals and the OMB as part of their expert duty and responsibilities to the public and the profession. Given the wide range of legislative changes that have taken place over the last decade, we are encouraged by the government's decision to review the role of the OMB and believe that any reforms should ensure that the OMB's successor continues to support and uphold the principles of good planning and also helps to produce a more efficient, equitable, transparent and accountable planning regime.

The following are OPPI's comments on Bill 139:

1. **OPPI supports opportunities for more mediation.** OPPI understands that the Province is looking to provide greater opportunity for mediation in the appeals process. The proposed procedural changes should result in fewer hearings and mandatory case management should offer opportunities for conflict resolution where there exists an opportunity for compromise. In principle, OPPI supports the objective to have increased opportunities for mediation, provided professional planners are not excluded from that process and that the results will adhere to the principles of good planning.
2. **There are a number of proposed reforms that support the broader public interest in land use planning.** The proposed reforms include a number of positive elements that will support the practice of good planning and ultimately are in the public interest. OPPI supports the following aspects of the proposed reform:
 - Improving access to justice for all members of society is fundamental to our democratic system of government. The *Local Planning Appeals Support Centre Act, 2017*, which establishes the Local Planning Support Centre to provide free and independent advice to the public on land use planning appeals, should increase access to professional advice and ultimately improve access to one of the Province's important quasi-judicial institutions. The Local Planning Support Centre, if properly resourced, should support a more equitable approach to resolving land use planning conflicts.
 - Some cases involve complex technical data and divergent professional opinions covering a wide range of disciplines, such as land use planning, demographics, economics, municipal finance, environmental sciences, transportation planning,

urban design, aggregate extraction and engineering. In these cases, consistency with Provincial policy requires careful interpretation. Accordingly, we support multi-member panels and see this as a first step towards providing more balanced consideration of planning evidence, particularly on larger more complicated appeals. OPPI also supports any additional measures that would allow for consistent outcomes in planning decisions.

- The proposed limitations on appeals to official plans within Major Transit Station Areas (higher order transit stations and stops) align with Provincial planning objectives and recognize that the Province and municipalities invest significant resources and capital in the planning, design, construction and servicing of lands in Major Transit Station Areas. Similarly, OPPI supports the proposed two-year limitation on appeals to approved secondary plans.
- The abolition of *de novo* hearings for certain types of appeals represents one of the most significant proposed reforms. The significance of *de novo* hearings has meant that most cases that come before the OMB can be examined from the beginning to make the best planning decision within only limited regard for the prior decision of Council if there was one. In some instances, this has resulted in local decisions being overturned by the Board.

OPPI supports greater efficiencies in the hearings process including the limitation on or the abolition of *de novo* hearings; however, we do have some concerns that the abolition combined with the revised format of hearings and the limitations on the tests may have unintended consequences (see items 3, 4 and 5 below for additional details).

- A number of recent legislative changes require planning authorities to consider the impacts of climate change. OPPI understands and supports the proposed amendment to the *Planning Act* that requires municipal official plans to include policies, goals, objectives and actions to mitigate greenhouse gas emissions and provide for adaptations to climate change. The proposed changes should help to strengthen the basis for more robust approaches to addressing climate change at the local level. It is important to note that most official plans already include a number of policies that help to support adaptation and mitigation efforts (e.g. promotion of low-impact development forms, transit-oriented design, natural environment protection/enhancement, floodplain regulation, etc.). OPPI expresses its interest in working with the Province on any implementation tools that could help to guide municipalities on addressing climate change through policy.

- 3. OPPI is concerned about the potential for the broader public interest to be ignored in favour of the voices of a few who are able to influence Council decisions.** At this time, it remains unclear as to whether the proposed changes will support the principles of good planning and the broader public interest that guide the practice of professional planners – or whether these will increase political pressure on local councils to make decisions that serve the narrow interests of a minority of private property owners, developers, builders, neighbourhood or other interest groups. There is no doubt that the proposed reforms will increase the authority of local decision making – and while the tests for an appeal are conformity with Provincial policy/plans and local plans, these tools are often not distinct and typically provide minimal policy guidance on site specific matters. For example, most Provincial Plans and Official Plans do not provide sufficient guidance at the site level (e.g. building heights, density, built form, etc.) and it is possible that two drastically different development concepts could both conform with Provincial, Regional and local policy – but one may be more appropriate given the full consideration of planning matters. OPPI is specifically concerned that the broader public interest in building complete communities could be undermined at the site level, where short term concerns could undermine broader, long term, city building objectives. It is suggested that Bill 139 provide guidance for municipal councils on this matter and reiterate the importance to the public interest of the role of municipal planning staff in providing expert advice to their respective Councils.
- 4. There is a need to ensure that Municipal Councils give due consideration to comments received from public commenting agencies, such as conservation authorities.** OPPI is also concerned that the status of commenting agencies may be diminished or ignored through the proposed reforms. Often times, public agencies provide comments on planning matters which are based on technical standards/industry guidelines. For example, a railway may require a development setback for safety reasons where proposed development may be too close to a railway corridor. There are a wide range of industry guidelines/standards which are not included in official plans or provincial policy. The OMB has provided a useful forum for debating the merits of agency standards and it is an apprehension that the proposed reforms will significantly reduce the role of commenting agencies – in particular where Provincial policy and official plans are silent on a given matter. Bill 139 should provide status to public agencies that participate in and contribute to planning decision making (Please refer to the submission by OPPI regarding Schedule 4 changes to the *Conservation Authorities Act*).
- 5. There are opportunities to improve Bill 139 and any future regulations associated with the Bill.** OPPI offers the following additional suggestions for your consideration to be addressed through revisions to various Acts or through future regulations:

- The Local Planning Support Centre should have very broad-based eligibility criteria. A careful consideration of resources is also required. In addition to other professions, the Local Planning Support Centre should include Registered Professional Planners – this is of particular importance should the Centre be in a position to offer advice on a planning matter.
- Bill 139 appears to place a limit on the introduction of new planning evidence subsequent to the reports and submissions provided by Council. For some cases, this modification can save time, allowing for quicker decision-making. In other instances, particularly on complex planning matters, the introduction of new planning evidence recognizes that circumstances can change between the time a decision is made by Council and the time when an appeal is considered. Policies change, market trends evolve and local conditions change. Bill 139 should not limit the introduction of new planning evidence.
- Bill 139 places limitations on the format of hearings, effectively limiting the use of oral testimony and cross examination of expert witnesses. The use of oral testimony and cross examination allows opinions to be tested and validated. The proposed reforms should include criteria and guidance to allow the Tribunal to undertake a more comprehensive hearing process, where required. The hearing format(s) should not be limited and there should be flexibility for a range of different types of formats depending on the complexity of the case.
- It remains unclear why only the Minister can appeal Interim Control By-Laws. Given the power of this tool to temporarily restrict property rights, and the limited notice requirements to pass an Interim Control By-Law, the Province should continue to permit appeals of Interim Control By-Laws.
- The transitional format for the reforms remains unclear at this time. The Province should include very clear guidance on the implementation of the proposed reforms and how existing appeals which are brought forward before the effective date of the legislation will be adjudicated.
- Bill 139 and subsequent regulations should recognize that municipal planning in parts of Ontario beyond the Growth Plan Area, the Oak Ridges Moraine and the Greenbelt Plan Area will be different with respect to the nature of planning appeals.

Where there is an absence of special purpose provincial policy direction, tests of 'inconsistency', 'regard' and 'conformity' are not relevant. If local decision making is to be final and absolute within these parameters, acknowledgement of that circumstance is incumbent in the legislation as to the vesting of responsibility.

OPPI supports the Province's efforts to improve Ontario's land use planning system. OPPI would welcome the opportunity to meet with you and your staff to discuss its submission and answer any questions you may have. To further discuss our submission or to schedule a meeting, please have your staff contact me at 416-668-8469 or by email at l.ryan@ontarioplanners.ca

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Ryan', followed by a horizontal line.

Loretta Ryan, RPP, CAE
Director, Public Affairs
Ontario Professional Planners Institute