



**Ontario Professional Planners Institute
Deputation to the Standing Committee on Social Policy
Bill 139 - *Building Better Communities and
Conserving Watersheds Act, 2017*
October 16, 2017**

Good afternoon Chair and members of the Standing Committee. My name is Paul Stagl and I am a Past President of the Ontario Professional Planners Institute, better known as OPPI. I have with me today Mark Dorfman who is a member of our Planning Issues Strategy Group and also Loretta Ryan our Director of Public Affairs. All three of us are Registered Professional Planners.

Thank you for the opportunity to speak today on Bill 139 *Building Better Communities and Conserving Watersheds Act, 2017*.

Our more 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” – better known as RPP.

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 opinions 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 the OMB's successor continues to support and uphold the principles of good planning, supports the public interest, and also helps to produce a more efficient, equitable, transparent and accountable planning regime.

Our comments today are in two parts reflecting our two most recent related submissions with the first being about repealing the *Ontario Municipal Board Act* and replacing it with the *Local Planning Appeal Tribunal Act* along with comments also about the *Local Planning Appeal Support Centre Act* and the second part with regards to Bill 139's proposed amendments to the *Conservation Authorities Act*. These submissions are both available on our website: www.ontarioplanners.ca/policy

OPPI understands the Province is looking to provide greater opportunity for mediation in the appeals process. In principle, OPPI supports this objective, provided professional planners are not excluded from that process and the results adhere to the principles of good planning.

There are a number of proposed reforms that support the broader public interest in land use planning and 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 Appeal Support Centre Act, 2017*, which will establish 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 Appeal 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. 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.

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 important 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.

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.

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 Registered 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.

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 concerned that that the status of commenting agencies may be diminished or ignored through the proposed reforms. Often, public agencies provide comments on planning matters that are based on technical standards/industry guidelines. There are many industry guidelines/standards that 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 when Provincial policy and official plans are silent on a given matter. Bill 139 should provide status to public agencies that participate in planning decision making.

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 Appeal 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 Appeal 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 that 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.

And now we would like to turn our comments to Schedule 4 of Bill 139. In making these comments we use as background the companion document, “*Conserving Our Future - A Modernized Conservation Authorities Act*” and our earlier submissions regarding the Conservation Authorities Act Review. These are also available to the Committee on our website.

OPPI supports the regulatory and administrative changes that are intended to clarify the roles and responsibilities of the Conservation Authorities and the Provincial Ministries with regard to the implementation of the “conservation, restoration, development and management of natural resources in watersheds”.

OPPI has several comments with respect to the improvement of Conservation Authority practices in relation to municipal planning activities under the *Planning Act*. OPPI is prepared to work with the Ministry regarding the ongoing consultation in the establishment of regulations, standards and procedures relevant to *Planning Act* matters.

We support the Ministry's commitment to phase the implementation process over a four year period. It is reasonable that the fundamental structural changes to the watershed conservation process are carefully considered with open discussion among the various stakeholders.

OPPI offers its experience and expertise to participate in the proposed Service Delivery Review Committee.

OPPI supports that the focus of the objects of conservation authorities is to provide programs and services within their jurisdiction. OPPI recommends that the legislation include a specific object to protect and restore the ecological health of watersheds and reflect the conservation authority's role in flood remediation. [Section 20(1) - Schedule 4]

There needs to be clarification regarding the status, in legislation, of the conservation authority as a Local Board. [Part 1, Subsection 1 of Bill 139] This is important since the conservation authority performs its function as a commenting agency to municipalities that are considering *Planning Act* applications.

The proposed Act is silent on the role and responsibility of the conservation authority as a commenting agency to municipalities that are considering *Planning Act* applications. The conservation authority serves an important role as a third-party agency that has a role and responsibility under section 20 of the *Planning Act*. As stated above, OPPI believes that the conservation authority must provide comments that are consistent with *Provincial Policy Statement, 2014* (PPS) and in conformity with provincial plans, to the municipality. This focus will strengthen the importance and efficacy of the conservation authority's interests in the municipal planning process.

In the “Conserving Our Future” document, the Ministry commits to “Creating a new regulation outlining the roles and responsibilities of conservation authorities in reviewing planning documents for consistency with the PPS, including policies related to natural hazard policies and land use and development patterns that promote climate change adaptation and mitigation”.

OPPI recommends that this commitment be extended to include not only documents, such as official plan policies, but to comments by conservation authorities on planning applications and matters that are under consideration by municipalities, and to comments on applications under the *Ontario Building Code*, when requested by the Chief Building Official.

OPPI supports the legislative intent to replace Section 28 Regulations made by conservation authorities with Regulation(s) enacted by the Province. We anticipate that this approach may establish new section 28 prohibitions, exemptions and permit administration tailored to the implementation capacity of individual authorities.

In previous submissions, OPPI raised the concern that under the existing section 28 provisions, there is conflicting objectives regarding development as a responsibility of municipalities under the *Planning Act* and the prohibition of development under the *Conservation Authorities Act*.

OPPI encourages the Ministry to carefully consider the definition of “development activity” [Section 28(5)] in order that it does not conflict with the role and responsibility of the municipality to regulate and plan for “development” under the *Planning Act* and that is intended to be consistent with PPS2014. OPPI continues to be concerned that the prohibitions, exemptions and permits administration will take precedence over the municipality’s *Planning Act* statutory responsibilities and continue to create the conflict.

In our submission, dated October 19, 2015, OPPI recommended that the new legislation should include a definition of “conservation of land”. In proposed subsection 28.1(4)(b) of Bill 139, the

authority may attach conditions to a permit or refuse a permit if “the activity is likely to affect the control of flooding, erosion, dynamic beaches or pollution or the conservation of land”. This is unchanged from the existing Act and the Generic regulation. If there is no definition of “conservation of land” in the *Conservation Authorities Act* and consequently in the regulations, then we anticipate that the authority’s interpretation of the term “conservation of land” may continue to conflict with the municipality’s planning responsibilities regarding land use and development.

OPPI would be pleased to work with the Ministry in developing the regulations [Subsection 40(e) and (f)] for roles and responsibilities of conservation authorities in reviewing and commenting on planning documents and applications. OPPI continues to support the provincial initiative to update and improve the *Conservation Authorities Act*.

We would be remiss if we didn’t also comment on a related Bill 122, the *Registered Professional Planners Act, 2017*, that received all-party support at First and Second Reading this spring.

The importance of planning and the role of the planning profession in creating and fostering healthy communities - putting the public interest first - should not be overlooked. The government has updated much of the planning legislation in this province and it needs to now update the almost 25-year-old legislation that regulates planners as part of an overall modernizing the planning system in Ontario.

Mark and I were here the first time around when the *Ontario Professional Planners Institute Act, 1994* was passed all those years ago and I can assure you that times have changed. **Great Plans Need Great Planners.** The time is now to move Bill 122 forward.

The government must turn its attention to updating professional regulation legislation for the planners who they need to implement planning legislation. Renewed and strengthened legislation that supports professional planners and protects the public interest in Ontario is essential.

In summary, OPPI supports the Province's efforts to improve Ontario's planning system and we welcome changes as well to the legislation that regulates planners. We would be pleased to answer any questions that you may have of me today. Thank you.

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