



Staff Report for Committee of the Whole

Date of Meeting: July 4, 2017

Report Number: SRPRS.17.129

Department: Planning and Regulatory Services

Division: Planning Policy Division

Subject: Update on OMB Review and Draft Comments on Proposed Bill 139 – the *Building Better Communities and Conserving Watersheds Act, 2017* (EBR Registry number 013-0590) (SRPRS.17.129) File No. D10-CO

Purpose:

The purpose of this staff report is to update Council on the OMB Review initiated by the Province of Ontario in June 2016 and to provide comments and recommendations in response to proposed Bill 139 – the *Building Better Communities and Conserving Watersheds Act, 2017* as it relates to proposed changes to the *Planning Act*.

Recommendation(s):

- a) That Staff Report SRPRS.17.129 be received;
- b) That the recommendations contained in Staff Report SRPRS.17.129, in response to the Province EBR Posting # 013-0590, be endorsed;
- c) That a copy of SRPRS.17.129, a copy of the Council resolution and all additional comments submitted to the Town Clerk by noon on July 4, 2017 be forwarded by the Town Clerk to the Province EBR Posting # 013-0590, and the Minister of Municipal Affairs and Housing and the Attorney General of Ontario for consideration; and
- d) That the above documents also be forwarded to York Region for information and consideration.

Contact Person:

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Submitted by:

Kelvin Kwan
Acting Commissioner of Planning and Regulatory Services

Approved by:

Neil Garbe
Chief Administrative Officer

Background:

The Ontario government launched a review of the scope and effectiveness of the Ontario Municipal Board (OMB) in June 2016. On October 5, 2016, the Province commenced its formal consultation regarding the OMB Review by releasing a public consultation document. The document discussed the need to improve Ontario's land use planning appeal system by making it more transparent and inclusive, and by exploring improvements to the OMB's role within the broader system. The Province organized the consultation around five key themes which frame the structure of the OMB Review as follows:

- Theme 1 – OMB's Jurisdiction and Powers;
- Theme 2 – Citizen Participation and Local Perspective;
- Theme 3 – Clear and Predictable Decision-Making;
- Theme 4 – Modern Procedures and Faster Decisions; and,
- Theme 5 – Alternative Dispute Resolution and Fewer Hearings.

Town Council provided comments in response to these five themes in December 2016 (refer to Staff Report SRPRS.16.190), and urged the Province to give priority to the following key recommendations:

1. Remove all appeal rights as they relate to Official Plans (OPs), Secondary Plans and OP amendments, while providing the right for the Minister or approval authority to modify such a document to ensure conformity/consistency with provincial or regional policies;
2. Limit the role of the OMB so that it focuses on the validity of decisions made by Councils and Approval Authorities, and not be a forum for substituting those decisions. Where the OMB finds an "error" in a Council decision, it should render

a decision which explains the error, and direct Council to correct it thereby leaving the remedy in Council's hands – as a court would do;

3. Limit the OMB's overarching authority over all planning matters to only approve, modify or refuse planning matters for the purpose of ensuring conformity and/or consistency with provincial policies and plans and local OP's, as appropriate; and
4. The Province should consider amending Section 2 of the *Planning Act* to ensure that Council decisions are given due weight in an OMB hearing even if the Council decision occurs after an appeal is filed.

On May 30, 2017, the Province introduced the proposed *Building Better Communities and Conserving Watersheds Act, 2017* (Bill 139), which proposes to overhaul Ontario's land use planning appeals system, currently administered by the OMB. Bill 139 proposes the following "transformative changes":

- Replacing the OMB with the "Local Planning Appeal Tribunal" - a new Tribunal which would be mandated to give greater weight to the decisions of local communities, while ensuring that development and growth occurs in a way that is good for Ontario and its future;
- Making planning appeals more accessible to the public by creating the "Local Planning Appeal Support Centre", a new agency that would provide free legal and planning advice, as well as representation to eligible citizens who may want to participate in local planning appeals;
- Limiting the authority of the OMB by:
 - i. Giving more weight to local and provincial decisions by changing the standard of review – the grounds for appeal on major matters would be limited to their failure to conform or be consistent with provincial and local policies; and
 - ii. Giving municipal elected officials greater control over local planning by exempting a broader range of municipal land use decisions from appeal;
- Supporting clearer and more timely decision making; and
- Supporting government priorities on climate change.

Bill 139 includes 5 components, namely:

1. Enactment of the *Local Planning Appeal Tribunal Act, 2017*;
2. Enactment of the *Local Planning Appeal Support Centre Act, 2017*;
3. Amendments to the *Planning Act*, the *City of Toronto Act*, and the *Ontario Planning and Development Act*;
4. Amendments to the *Conservation Authorities Act*;
5. Amendments to various Acts consequential to the enactment of the *Local Planning Appeal Tribunal Act, 2017*

A summary of the proposed legislative changes as it relates to the new Tribunal and Support Centre, and proposed changes to the *Planning Act* (i.e. Item #1, 2 and 3 above) is outlined below. The recommendations provided in this staff report focus on responding to EBR Posting # 013-0590 (Appendix A), which deals only with the proposed changes to the *Planning Act*.

Key Changes to the OMB Proposed through Bill 139:

The key changes outlined below are organized by themes related to the “transformative changes” outlined above and provide commentary on how the changes address Council’s four key recommendations on the OMB Review from December 2016 (SRPRS.16.190).

Replacing the OMB with a new Local Planning Appeal Tribunal

Of central importance to the proposed changes outlined in Bill 139 is the proposal to replace the OMB with a new body, the Local Planning Appeal Tribunal (the “Tribunal”), which is proposed to give greater weight to the decisions of local communities. The proposed enactment of a new *Local Planning Appeal Tribunal Act, 2017* continues the OMB’s function under a new Tribunal, repealing the *Ontario Municipal Board Act*. Many provisions in the new *Act* and the old *Act* are substantively the same. Changes relate primarily to the practices and procedures applicable to proceedings before the Tribunal.

The Tribunal is required to hold case management conferences to identify issues, parties and opportunities for settlement. This up-front disclosure is currently not required under the OMB’s procedures (although it is often ordered by the OMB for longer or more complex hearings). While it may require more staff time and resources at the front-end of a hearing process, it may have the effect of limiting the amount of actual hearing time required by identifying issues and areas of agreement early in the process. The Tribunal is also given active powers to compel the production of evidence and examine any party or person making submissions to the Tribunal at any point in a proceeding.

Currently, appeals to the OMB are conducted in an “oral” hearing (unless otherwise requested by the parties) where parties may call witnesses to provide oral evidence which can be tested through cross-examination, as well as make submissions/arguments. Bill 139 provides that oral hearings are no longer as of right, but instead must be authorized by the Tribunal. Where an oral hearing is permitted, only the parties and persons permitted by the Tribunal may participate. For hearings in the first instance, only submissions are permitted—no witnesses are permitted to be called and no party or person may adduce evidence, and submissions must not exceed the time prescribed in the regulations. To this end, Bill 139 also authorizes the Minister to make regulations regarding the conduct and format of hearings, including new requirements applicable if an oral hearing is held (these regulations are still to come).

This is a significant procedural change from the current OMB hearing process. These changes may save a significant amount of time and resources when the Town

participates in future hearings adjudicated by the Tribunal. At the time when this report was prepared, no EBR posting on this matter had been released.

Establishing the Local Planning Appeals Support Centre

The Bill proposes to establish a Local Planning Appeals Support Centre (LPASC), a support centre operated independently from but accountable to the Ontario government. The LPASC would provide legal and planning support to eligible citizens. The LPASC is modelled after the Human Rights Legal Support Centre. Services would include legal and planning representation in certain cases. At the time when this report was prepared, no EBR posting on this matter had been released.

Limiting the Authority of the OMB

The Bill proposes to amend the *Planning Act* to eliminate “de novo” hearings for certain planning appeals related to Official Plan and Zoning By-law matters where a decision has been rendered by Council. A de-novo hearing is a hearing that starts as if there was no Council consideration of what was proposed. The proposed changes would significantly re-frame the nature of appeals before the Tribunal by proposing to only allow appeals to the Tribunal where the Council decision is inconsistent with or fails to conform with Provincial or upper-tier plans/policy statements. Where a local decision is found to be inconsistent with or not in conformity with Provincial or upper-tier plans/policy statement by the new Tribunal, such a decision would be returned to Council to make a new decision on the application.

The changes appear to limit the Tribunal to primarily consider conformity, which represents a significant change to the scope of the new Tribunal’s powers. Currently the OMB has considerable discretion to overturn a municipal decision where it finds that Council did not make an “optimal” planning decision. It appears that Bill 139 seeks to significantly reduce the Tribunal’s discretion to overturn an approval authority’s decisions, as the Tribunal’s power would be limited to determining whether the Council’s decision is or is not consistent with or in conformity with Provincial and upper-tier plans/policy statements, and in the case of OP amendment (OPA) or Zoning By-law amendment applications, conformity with the local OP (i.e. not whether, in the OMB’s discretion, the “optimal” planning decision was made).

Additionally, in the event the Tribunal determines that Council’s decision does not meet the conformity/consistency test, the Tribunal’s decision goes back to Council for Council to reconsider the proposal and rectify the error identified by the Tribunal, and the Council has a second opportunity to make a new decision within 90 days. If the subsequent Council decision is appealed and the Tribunal again determines that the proposal does not meet the new conformity/consistency test (that is, Council did not rectify the conformity/consistency error identified by the Tribunal in the first decision), the Tribunal is then given the authority to substitute its decision for Council’s to approve, refuse or modify the proposal.

The proposed changes outlined above that would establish a new Local Planning Appeal Tribunal to replace the OMB, a new Local Planning Appeals Support Centre, and a new conformity/consistency test to limit the authority of the new Tribunal generally address Council's 2016 Recommendations #2 and #3 on the OMB Review consultation document for certain planning matters. Additional recommendations to further these proposed changes are outlined in the "Key Recommendations" section of this staff report.

Removing Appeal Rights for Certain *Planning Act* Applications

Council's 2016 Recommendation #1 on the OMB Review consultation document urged the Province to remove appeal rights for OP, Secondary Plan, and OPAs. The proposed changes outlined in Bill 139 do not remove appeal rights for all OP, Secondary Plan and OPA applications. Rather, the Bill proposes a more surgical approach by removing appeal rights in certain instances for OPs, Secondary Plans, Zoning By-laws and Interim Control By-laws as follows:

- a) No appeal of an OP if the approval authority is the Minister (Section 17 and 21 of the *Planning Act*) - New subsections are added providing that there is no appeal in respect of an OP or an amendment to an OP adopted in accordance with Section 26, if the approval authority is the Minister. It is staff's understanding that this change would not apply to any of the Town's OP amendments as the approval authority is the Region of York.
- b) Certain OP/Zoning By-law appeals subject to new test (Section 17, 22 and 34 of the *Planning Act*) - Section 17 governs the adoption or approval of OPs. Currently, OPs can be appealed to the OMB. Bill 139 amends section 17 to limit the grounds on which appeals of the adoption or approval of an OP are made to issues of consistency or conformity with Provincial plans and policy statements and, as applicable, conformity with the upper-tier plan (the Regional Official Plan), as discussed previously in this report.

Similar amendments are made to Section 22 (OP amendments) with respect to appeals for requests to amend OPs and to Section 34 (Zoning By-laws) with respect to appeals related to Zoning By-laws. These matters are subject to an additional ground of appeal, being lack of conformity with the OP.

In all cases, the Tribunal may dismiss an appeal where the appellant has not provided an explanation of how the existing policy regime is not consistent with or not in conformity with Provincial and upper-tier plans/policy statements. Together, these changes add an additional "conformity" hurdle that must be met before an appeal to the Tribunal in the first instance may be made. Currently, the OMB may substitute its decision for that of Council's where it finds that the proposed OP, OP amendment or Zoning By-law is good planning and in the public interest, and otherwise conforms to the applicable policy regime. Under Bill 139, an appellant must demonstrate that the decision of Council to which the

application relates does not conform to or is inconsistent with the higher-order policies and plans (Provincial, regional and local, as applicable).

- c) Two-year moratorium on amendments in new Secondary Plan areas at Council's discretion (Section 22 of the *Planning Act*) - A new subsection provides that during the two-year period following any part of a new Secondary Plan coming into effect, applications for amendment are permitted only with Council approval (i.e. through a formal Council resolution).
- d) Major Transit Station Areas – appeal limitations (Section 16, 17 and 34 of the *Planning Act*) - A new section is added to allow OPs to include policies relating to development around higher order transit stations and stops. A new definition is also added to the *Act* for the term “higher order transit”. These changes would allow York Region to establish policies identifying major transit station areas in the Regional Official Plan (ROP), including delineating the boundary and assigning a minimum people and jobs per hectare density target for the area, and to have these policies approved by the Minister and not be subject to appeal.

The Town would then have 1 year to amend its OP to identify the uses of land, buildings, and structures within the identified major transit station areas, and to establish minimum/maximum densities and heights for the area. Decisions on these policies cannot be appealed except by the Minister and requests to amend the policies can only be made with Council approval. When these policies are in place, Zoning By-laws that establish permitted uses, minimum and maximum densities and, except in certain circumstances, minimum and maximum heights cannot be appealed except by the Minister.

The Town's OP currently includes a number of designations along the Centres and Corridors reflecting the major transit station areas along the existing/planned Yonge Street and Highway 7 Bus Rapid Transit (BRT) stations/stops. The BRT meets the definition of “higher order transit” as it operates “in whole or in part in a dedicated right of way”.

- e) No appeal of portions of a Zoning By-law applying to Major Transit Station Areas (Section 34 of the *Planning Act*) - New subsections are added prohibiting the appeal of the portions of a Zoning By-law that establish permitted uses or the minimum and maximum densities and heights with respect to buildings and structures in Major Transit Station Areas identified in an OP. The only exception (i.e. when an appeal may be allowed) is where the maximum height permitted would result in the building or structure not satisfying the minimum density required of that parcel.
- f) No appeal of refusal or lack of decision regarding a request to amend the Official Plan (Section 22) or to amend the Zoning By-law (Section 22 and 34 of the *Planning Act*), where the Official Plan and/or Zoning by-law are up to date

Bill 139 also prescribes that greater weight be given to OPs that are up to date with Provincial/upper-tier plan/policies and to Zoning By-laws that are updated to conform with OPs/Secondary Plans that implement current Provincial/upper-tier plans/policy statements. Where an OP or Zoning By-law is up to date, the ability to appeal an application to amend such an OP or Zoning By-law is no longer permitted in instances where Council decides to refuse the application or for a lack of decision within the statutory timeframe.

- g) Allowing only the Minister to appeal an Interim Control By-law (ICBL) when first passed (Section 38 of the *Planning Act*) - Currently, the *Planning Act* allows anyone who is given notice of the passing of an ICBL to appeal the By-law within 60 days after it is passed. Amendments are proposed to allow only the Minister to appeal an ICBL when it is first passed. Any person or public body who is given notice of the extension an ICBL can still appeal the extension.

Support Timely Decision Making

The proposed changes to Bill 139 indirectly address Council's 2016 Recommendation #4 on the OMB Review consultation document regarding the need to give Council decisions more weight by providing additional time for Council to make a decision on OP and Zoning By-law amendment applications. Timelines for making decisions related to OP and Zoning By-law amendments are extended by 30 days (210 days and 180 days, respectively). For applications to amend Zoning By-laws submitted concurrently with requests to amend a local municipality's OP, the timeline is extended to 210 days.

Supporting Provincial Priorities on Climate Change

To further the recently enacted changes to the Growth Plan for the Greater Golden Horseshoe, Oak Ridges Moraine Conservation Plan, and Greenbelt Plan related to climate change, a new subsection is added to the *Planning Act* requiring OPs to contain policies relating to climate change, specifically policies that identify goals, objectives and actions to mitigate greenhouse gas (GHG) emissions and to provide for adaptation to a changing climate, including through resiliency. The Town's OP currently includes an Environment section with specific direction related to Sustainable Design and the Town currently utilizes the award-winning Sustainability Metrics as a means to ensure development aids in mitigating GHG emissions and adapting to a changing climate.

Transition

With respect to issues around transition, the Bill currently provides that the Minister is charged with preparing regulations at some future date to address how matters will be resolved that were commenced before the date that the new legislation takes effect. Staff will monitor this matter and report back on Transition Regulations when they are released by the Province.

Key Recommendations:

The Province is commended for bringing forward the proposed changes outlined in Bill 139 to overhaul Ontario's land use planning appeals system. The proposed changes represent a bold step in the right direction, introducing a number of transformational changes that will make Ontario's land use planning appeals system more transparent and inclusive, along with providing more clear and predictable decisions for both citizens and developers and heightened municipal accountability in the planning process, as requested by Town Council. Below are 7 key recommendations that would help to further this direction:

Recommendation #1

That the Province **considers tightening the basis of appeal for a non-decision on an OP under 17(40) of the *Planning Act*** to ensure that appeals for a non-decision do not begin to undermine the new "conformity/consistency" test that would otherwise apply where a Council decision has been rendered.

The proposed changes outlined in Bill 139 provide clear guidance with respect to the basis of appeal and new conformity/consistency test for appeals of OP and Zoning By-law amendments (ZBLAs) for which a Council decision has been rendered (i.e. applications under Section 22 or 34 of the *Planning Act*). In these instances, the reasons for an appeal are limited to matters of conformity to/consistency with Provincial/upper-tier plans/policies and the local OP. However, the proposed legislation appears to maintain a "business as usual" approach for appeals of an OP under Section 17(40) of the *Act* where the approval authority has not rendered a decision within the statutory timeframe (i.e. appeals for a "non-decision"). This is the situation that the Town has recently experienced with the appeals to the new OP. The powers of the Tribunal for appeals of a non-decision on an OP appear to continue as they currently exist before the OMB with the new Tribunal appearing to be able to approve, modify or refuse an application.

As noted in the Town's December 2016 comments on the OMB Review, the Province should re-visit the concept of appeals of a non-decision by the approval authority on an OP to ensure that appeals for a non-decision do not begin to undermine the new conformity/consistency test otherwise applicable where a Council decision has been rendered.

While it appears that Bill 139 proposes that appeals of a decision on a privately-initiated OPA be held to the new conformity/consistency test, appeals for a non-decision on a municipally-initiated OP under Section 17 of the *Planning Act* do not seem to have the same treatment. The Province should consider limiting the basis of appeal for a non-decision on an OP under Section 17(40) by directing that, in such circumstances, the Tribunal must first determine whether there are good reasons why the approval authority has failed to render a decision on the OP within the statutory timeframe. If there is a good reason for no decision having been rendered yet, the Tribunal should be required to remit the matter back to the approval authority for a decision, stipulating a

reasonable timeframe under the circumstances. In this manner, the matter could be returned to the Tribunal after Council has made a decision, and the appeal and review of the matter would be based on grounds related to whether or not Council's decision conforms with and/or is consistent with provincial and local policy.

The above noted approach would ensure that OP amendments initiated under either Section 17 or Section 22 of the *Planning Act* are dealt with consistently by the new legislation.

Additionally, a further tightening of Section 17(40) appeals is required to ensure consistency with the direction in the proposed Bill for the Minister's decision on upper-tier or single-tier OP or OPAs to be unappealable, as it would close the Section 17(40) loophole that currently allows a third party to appeal these documents after the statutory timeframe has lapsed.

Recommendation #2

That the Province considers **providing additional flexibility around the identification of density targets for Major Transit Station Areas** by simply requiring that density targets be established for the area (rather than prescribing a density target measured specifically in people and jobs per hectare, as proposed).

The proposed changes outlined in Bill 139 limit appeals with respect to height and density around Major Transit Station Areas provided certain matters are outlined in both the upper-tier ROP and the local OP. This is a bold overhaul to the appeals system as it may help to streamline the realization of transit-supportive intensification around areas where transit infrastructure investments are being made. These changes represent a positive step in the right direction for Secondary Plans the Town is undertaking along the OP's Centres and Corridors. However, it appears that the proposed legislation requires that in order for appeal limitations to apply, two matters need to be identified first in the ROP for Major Transit Station Areas:

- i. the boundary of the area; and
- ii. a density target for the area measured specifically in people and jobs per hectare (versus Floor Space Index (FSI), which is the manner the ROP currently uses to direct density around major transit areas along the centres and corridors).

The proposed legislation should be expanded to enable the density target required in the upper-tier plan to be based on either a "people and jobs per hectare" target and/or a minimum/maximum density target (i.e. an FSI or Urban and Peri-urban Horticulture (UPH) target). By providing greater flexibility in the legislation on how the density target is able to be articulated for Major Transit Station Areas, the Province may be able to further streamline the appeals process for ongoing Secondary Plan projects like the Town has initiated for its Centres and Corridors. For example, if the proposed legislation required that Major Transit Station Areas need to have a density target identified, the current ROP could be interpreted to already implement the new legislation.

This may enable the new Secondary Plans the Town has in process to benefit from the restrictive appeal rights for proposed height and density policies being proposed by Bill 139, aiding the Province in bringing housing and other development around Major Transit Station Areas to the market in a timely and cost efficient manner. If the appeal process around Major Transit Station Areas was able to be streamlined further through the forthcoming legislation or transition regulations, housing and other development around Major Transit Station Areas would be subject to less uncertainty, creating an opportunity for the timely provision of transit-supportive development.

Recommendation #3

Expand the proposed legislation to limit appeal rights for all municipally initiated OP/OPAs from appeal (rather than only those Provincially approved OP/OPAs initiated by an upper-tier/single-tier municipality under Section 26 of the *Planning Act*, as proposed).

Under the current system, it is the experience of the Town that the OMB serves to bypass and displace local decision-making. Residents, elected officials and other members of the community have all expressed a sense of disenfranchisement with the OMB and the broader planning appeals system. There is a sense that the consequences of decisions on appeals are not fully understood by the people making the decisions, and that at any time local decision-making can be undone at the OMB. While the proposed changes outlined in Bill 139 address these trends and perceptions for Provincially approved OP/OPAs initiated by upper-tier/single-tier municipalities, it maintains a certain amount of authority for the new Tribunal over appeals to OP/OPAs undertaken by a lower-tier municipality (albeit limiting such authority to matters related to the new conformity/consistency test).

When a municipality initiates an OP/OPA, it is generally to either: 1) conform to Provincial or upper-tier plans/policy statements; 2) to implement local OP direction (i.e. preparing a Secondary Plan or Tertiary Plan for an area); or 3) to respond to an emerging planning issue or trend. If “planning” by its definition is to lay a course of action and set a series of expectations, enabling appeals of certain municipally-initiated OP/OPAs and not others has the potential to set up an unbalanced appeal system before the new Tribunal. Citizens as well as the development industry desire a reasonable level of predictability. Ontario planning legislation requires municipalities to undertake planning decisions that provide vision, direction and certainty. To support a consistent approach to local decision-making, whether it be that of an upper-tier, single-tier, or lower-tier municipality, the Province is urged to expand the proposed legislation to limit appeal rights for all municipally initiated OP/OPAs, ensuring a less complicated and lengthy process to bring new planning directions into full force and effect. At a minimum, the Province is urged to consider exempting any new OP/OPAs initiated to conform to Provincial or upper-tier plans/policies from appeal (as is proposed for OPs and OPAs initiated by upper-tier and single-tier municipalities approved by the Province).

Recommendation #4

That the Province considers **clarifying that in the case of an appeal with multiple planning applications** (i.e. OPA/ZBLA/Site Plan or ZBLA/Draft Plan of Subdivision), **the appeal test is the same as that required for an OP or Zoning By-law Amendment** (e.g. does the decision conform to/is it consistent with Provincial/upper-tier and local policy?)

The majority of appeals to the OMB within the Town include an OP or Zoning By-law amendment application and either a Site Plan or Draft Plan of Subdivision application. The proposed changes in Bill 139 are unclear as to what the test will be for Site Plan, Draft Plan or even Committee of Adjustment applications before the new Tribunal. The Province is urged to address this matter in the final legislation, including considering applying the same conformity/consistency test as is proposed for OPA and ZBLA appeals.

Recommendation #5

Transition for appeals being reviewed against the new conformity/ consistency test before the Tribunal should be swift. Applications that are in process and have not yet had a Hearing date scheduled before the OMB should be heard before the new Tribunal.

As noted above, the proposed Bill currently provides that the Minister is charged with preparing regulations at some future date to address how matters will be resolved that were commenced before the date that the new legislation takes effect. The Province is urged to undertake public consultation on the draft transition regulations expeditiously.

Recommendation #6

Members of the new Tribunal should be required to have certain minimum qualifications and training to ensure decisions of the new Tribunal are well-reasoned and justified.

The proposed legislation does not address many of the matters that were raised during the 2016 consultation on the OMB Review regarding Tribunal members' qualifications and training. The Province is urged to undertake public consultation on the proposed qualifications and training required for an individual to be selected as a member of the new Tribunal to ensure members have the appropriate skills and qualifications to properly manage and issue decisions for those matters brought before the new Tribunal.

Recommendation #7

That the Province prepares and consults on guidance materials to help individuals participating in the new appeals process understand how the changes outlined in Bill 139 are intended to be operationalized.

As noted above, the proposed Bill authorizes the Minister to make regulations regarding the conduct and format of hearings, including new requirements applicable if an oral hearing is held. Future regulations could also help to clarify how the new conformity/consistency test is to be operationalized for each of the different types of appeals before the new Tribunal. At the time when this report was prepared, no EBR posting on this matter had been released. Given that the changes outlined in the proposed Bill would create a significant procedural change from the current OMB hearing process, the Province is urged to prepare and consult on guidance materials to help individuals participating in the new appeals process understand how the changes outlined in Bill 139 are intended to be operationalized.

Next Steps:

As noted above, Bill 139 proposes to enact new legislation and amend existing legislation to build better communities and conserve the Province's watersheds. Presently, the Province is consulting on proposed amendments to the *Planning Act*. Staff will continue to monitor the EBR should there be consultation regarding the proposed *Local Planning Appeals Tribunal Act*, which replaces the *Ontario Municipal Board Act*, or the proposed *Local Planning Appeals Support Centre Act*, which proposes a framework for the Centre but will require future regulations to fully establish its operations.

Through further review over the summer, should there be additional technical matters identified by staff for which clarification is required or for which modifications should be considered by the Province, a separate staff comment letter could be submitted to the Province in advance of the August 14, 2017 deadline. Should this be the case, staff will provide a memo advising Council of these additional comments at a later date. Following the consultation period(s), the Province will bring Bill 139 to second reading. Staff will continue to monitor this matter and should there be consultation on other aspects of the proposed legislation, staff will advise Council and report back accordingly.

Financial/Staffing/Other Implications:

There are no financial/staffing/other implications.

Relationship to the Strategic Plan:

Input into the OMB Review and providing a response to proposed Bill 139 – the *Building Better Communities and Conserving Watersheds Act, 2017* fulfills Goals 1 to 4 of the Strategic Plan by supporting the Province's proposed overhaul of Ontario's land use planning appeals system, specifically the OMB, including the transformative changes outlined in this report. By providing local decisions more weight and deference in the land use planning and appeals process, the Province will help the Town ensure stronger connections, better choice and better quality options, a more vibrant identity and place, and wise management of resources.

Conclusion:

Bill 139 has been posted by the Province for a 75 day public review and comment period starting May 31, 2017. Comments received prior to August 14, 2017 will be considered as part of the decision-making process by the Ministry if they are submitted in writing or electronically referencing EBR Registry # 013-0590.

Overall, the proposed overhaul of Ontario's land use planning appeals system outlined in Bill 139 seeks to improve the current OMB appeal process and is generally supported. The proposed legislation would establish a new Local Planning Appeal Tribunal to replace the current OMB. The proposed legislation creates fundamental changes to the role and function of the Tribunal so that it operates as a true appeal body, ensuring that planning decisions are made in a more open and transparent process by local councils. Municipal councils must give due regard for approved and in effect Provincial and upper-tier plans/policies as well as input received from the public when making decisions. The proposed changes represent a shift towards heightened municipal accountability in the planning process, as requested by Town Council in its December 2016 comments on the OMB Review.

As noted in this report, there are many proposed changes that are supported; however, there are matters that could be further improved. To better realize the goal of a clear and predictable appeals process, and a swift transition between the "old" appeals system and the proposed new system, the Province is urged to give priority to the following key recommendations:

Recommendation #1

That the Province **considers tightening the basis of appeal for a non-decision on an OP under 17(40) of the *Planning Act*** to ensure that appeals for a non-decision do not begin to undermine the new "conformity/consistency" test that would otherwise apply where a Council decision has been rendered.

Recommendation #2

That the Province considers **providing additional flexibility around the identification of density targets for Major Transit Station Areas** by simply requiring that density targets be established for the area (rather than prescribing a density target measured specifically in people and jobs per hectare, as proposed).

Recommendation #3

Expand the proposed legislation to limit appeal rights for all municipally initiated OP/OPAs (rather than only those Provincially approved OP/OPAs initiated by an upper-tier/single-tier municipality under Section 26 of the *Planning Act*, as proposed).

Recommendation #4

That the Province considers **clarifying that in the case of an appeal with multiple planning applications** (i.e. OPA/ZBLA/Site Plan or ZBLA/Draft Plan of Subdivision), **the appeal test is the same as that required for an OP or Zoning By-law Amendment** (e.g. does the decision conform to/is it consistent with Provincial/upper-tier and local policy?)

Recommendation #5

Transition for appeals being reviewed against the new conformity/ consistency test before the Tribunal should be swift. Applications that are in process and have not yet had a Hearing date scheduled before the OMB should be heard before the new Tribunal.

Recommendation #6

Members of the new Tribunal should be required to have certain minimum qualifications and training to ensure decisions of the new Tribunal are well-reasoned and justified.

Recommendation #7

That the Province prepares and consults on guidance materials to help individuals participating in the new appeals process understand how the changes outlined in Bill 139 are intended to be operationalized.

Attachments:

The following attached document may include scanned images of appendices, maps and photographs. If you require an alternative format please call the contact person listed in this document.

- **Appendix A** EBR Posting #013-0590 (Bill 139 – the *Building Better Communities and Conserving Watersheds Act, 2017*)