

Request for Decision

Bill 139: Building Better Communities and Conserving Watersheds Act

Presented To:	Planning Committee
Presented:	Monday, Aug 21, 2017
Report Date	Wednesday, Aug 02, 2017
Type:	Managers' Reports

Resolution

THAT the City of Greater Sudbury directs staff (General Manager of Growth and Infrastructure) to submit comments to the Ministry of Municipal Affairs on the proposed Bill 139 on behalf of the City of Greater Sudbury.

Relationship to the Strategic Plan / Health Impact Assessment

This report refers to proposed legislation which would alter the land use planning appeals system (OMB Reform).

Report Summary

This report provides a summary of changes to the province's land use planning appeals system proposed through Bill 139 – Building Better Communities and Conserving Watersheds Act, 2017, which has been posted on the Environmental Bill of Rights Registry for comment. The report also summarizes staff's comments in response to the proposed changes which are proposed to be forwarded to the Ministry of Municipal Affairs.

Financial Implications

There are no financial implications resulting from the submission of staff's response to the proposed "*Building Better Communities and Conserving Watersheds Act*".

Signed By

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Manager Review

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Recommended by the Division

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Financial Implications

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REPORT – TITLE – Bill 139 – *Building Better Communities and Conserving Watersheds Act, 2017*

BACKGROUND

In 2016 the Province initiated a review of the Ontario Municipal Board's scope and effectiveness to determine improvements with respect to how the Board works within Ontario's broader land use planning system. Through a report entitled "Ontario Municipal Board Reform" from the General Manager of Growth and Infrastructure, see Attachment 1, on November 21, 2016 Council endorsed key recommendations for changes to the land use planning and appeal system. This formed the submission to the Province on behalf of the City in response to its review process.

The result of the Province's review is Bill 139, which received first reading on May 30, 2017 and includes significant amendments to the land use planning appeal system in Ontario to intends to give communities a stronger voice in land use planning. Bill 139 would enact the *Local Planning Appeals Tribunal Act, 2017*, the *Local Planning Appeal Support Centre Act, 2017* which would establish a Local Planning Appeal Support Centre, and includes amendments to the *Planning Act*, the *Conservation Authorities Act* and various other Acts, and repeals the *Ontario Municipal Board Act*. To our knowledge no education sessions have been held by the Province or any further information released by the Province relating to the implications of this new legislation.

DISCUSSION

The purpose of this report is to identify how the most significant changes to land use planning appeals proposed by Bill 139 will potentially impact the delivery of planning services and to request Council to authorize Planning Services to submit the report as the City of Greater Sudbury's comments in response to the Ministry's public consultation process. While there are currently no Standing Committee dates scheduled, it is anticipated that second reading of Bill 139 will occur in the fall.

Local Planning Appeal Tribunal

The Bill proposes to replace the OMB with the Local Planning Appeal Tribunal (LPAT). The LPAT will be similar in nature to the OMB in that it will be an independent arms length tribunal with members appointed by the Province but its decision-making approach (see De Novo Hearings below) and methods of conducting hearings will be very different than under the current practice.

Under the LPAT practices and procedures for hearings will change. The LPAT may require a case management conference to be held on all appeals to identify issues and discuss opportunities for settlement, including possible mediation. Under the new two-stage process (Attachment 2), an appeal would be sent to the LPAT for review based only on whether the municipal decision conforms with provincial and municipal policy and legislation. This would reinforce the importance of the municipal official plan and their policies. If the LPAT decides that the decision conforms, then the appeal is dismissed. If non-conformity is determined, the LPAT will send their determination back to the municipal council for reconsideration. Council will have 90 days to reconsider the matter and make a new decision. If municipal council fails to correct the non-conformity after reconsidering its decision,

then a second appeal would proceed through the phase 2 LPAT process at which time the tribunal has the power to modify the official plan or zoning by-law to resolve the matter.

During the second process, the LPAT can determine the format of the hearing. Oral hearings are no longer “as of right” and hearings may occur in another format, such as written. Additionally, matters that proceed to a hearing will have time limits for arguments by parties (there are no specifics yet) and no examination or cross examination of witnesses will be permitted. The Minister will also have the opportunity to issue additional regulations regarding the conduct of hearings but there are no specifics provided to date.

Staff Comments: Staff are supportive of this change. Over the past 4.5 years, the City has spent approximately \$130,000 annually on external legal fees and disbursements for OMB hearings. This does not include staff preparation time, including the preparation of the exhibit book, which averages between 2-3 days in most cases, but in certain cases can be considerably longer. Under the new process, there is potential for a number of the smaller hearings to be resolved through the mandatory case conference or mediation and time that was previously devoted to hearing preparation will be replaced by participation in the mediation process. With respect to the more complex hearings, there is potential that the length of the hearing itself will be shortened because of the scoping of issues, the inability to cross examine witnesses and other measures that may be implemented through regulation. Because the LPAT has wide discretion on how proceedings before the LPAT will be conducted, it is difficult to generalize how hearings will occur. The LPAT can determine which manner of proceeding would best provide for a fair, just and expeditious resolution for each case, ranging from proceeding entirely in writing or electronic communication, to combining hearings, and to oral hearings. Regarding the 90 days for reconsideration by Council after a decision has been made by the LPAT during the first phase, the timelines are very tight in consideration of the need to prepare a new report, have the report considered by Planning Committee and decision ratified by Council.

Policy Statements

Modifications have been made to Section 3 of the *Act* (s.3(1.1) and s.3(8), Item 3) which speak to approval of and deeming policy statements. Two new subsections are proposed to be added which identify that policy statements under the *Metrolinx Act*, the *Resource Recovery and Circular Economy Act*, and possible future policy statements would need to be considered when the LPAT is determining a matter based on the proposed new conformity/consistency standard. At this time, no policy statements have been issued under either act. A discussion paper has been released to support the Strategy for a Waste-Free Ontario: Building a Circular Economy. The release of a policy statement on food and organic waste is being considered as part of this initiative, under the *Resource Recovery and Circular Economy Act*.

Staff Comments: Staff questions whether the proposed additions are an indication that the Province intends to move away from a single comprehensive policy statement (Provincial Policy Statement, 2014) to a series of policies statements as there were prior to the Sewell Commissions 1993 report “New Planning for Ontario” and would not be supportive of such a change. A single comprehensive policy

statement reduces the need to consult multiple sources for policies and leads to more consistent application of such policies.

Provincial Plans

The Bill proposes to expand the definition of a provincial plan to include policies referred to in three acts, *Lake Simcoe Act*, which does not impact CGS, and the *Clean Water Act* and the *Great Lakes Protection Act* which do.

Staff Comments: The Greater Sudbury Source Protection Plan has been approved in accordance with the *Clean Water Act* and policies have been implemented in the official plan. No specific policies issued under the *Great Lakes Protection Act* would require changes to Greater Sudbury policies or processes. In the future, there may be targets set and designated policies which relate to the protection or restoration of natural heritage and hydrological features or the prohibition and/or restriction of land-uses, or structures within designated areas.

Climate Change

The *Planning Act* is proposed to be amended to require that official plans “contain policies that identify goals, objectives and actions to mitigate greenhouse gas emissions and to provide for adaptation to a changing climate, including through increased resiliency”.

Staff Comments: The Phase 1 draft of the official plan includes climate change policies which encourage urban design solutions that minimize non-renewable resource consumption and maximize the use of renewable energy taking into account climate change. The new legislative tests are more specific which will require refinement of the currently proposed official plan policies. Amendments will be required as part of Phase 2 of the Official Plan review to add specific goals, objectives and actions related to climate change.

Approval Timelines

Bill 139 proposes to increase the approval timelines for official plans, official plan amendments from 180 days to 210 days, applications for zoning by-law amendment from 120 days to 150 days, before an appeal for a non-decision can be triggered.

Staff Comments: Under the present approval requirements, on average of 83% of Greater Sudbury’s applications are processed within the timeframes required. While the vast majority of applications are currently processed within the required timeframes, the average would be brought closer to 100% with the proposed change. Staff support this change. With the proposed changes, Greater Sudbury’s MNBCan indicators would improve.

Limiting Certain Appeals

The proposed amendments to Section 17 of the *Planning Act* would not allow appeals to decisions on Official Plans or Official Plan Amendments where the approval authority is the Province. In Greater Sudbury, the approval authority for official plan amendments, such as the Five Year Review of the official plan is the Province.

Staff Comment: Staff are in partial agreement with the proposed restrictions. Staff does generally support the restriction of appeals of official plan amendments to implement provincial plans that have been subject to extensive consultation and may have come into effect under other legislation (eg Source Water Protection Plans). Staff are concerned regarding the restriction of appeals to Provincial decisions on an official plan, including modifications, official plan amendment to implement matters of provincial interest (eg the designation of prime agricultural areas), and feel the right to appeal these types of decisions by the public and municipalities should be maintained.

De Novo Hearings

The present practice at OMB hearings is to hold a de novo hearing where the matter is considered anew as though it had not previously been heard or a decision made by a municipal council or other authority. Under the proposed amendments, the Local Appeal Tribunal would be limited to assessing whether the municipal decision is consistent or conforms with provincial or local plans, rather than having the ability to evaluate a range of options to reach the best decision. De novo hearings would be one potential process during a phase 2 appeal process, with some limitations.

Staff Comment: Additional scoping mechanisms are proposed to be introduced, including mandatory case conference and mediation, which in the City's view would make hearings more hearings more effective and efficient. As discussed above under the Local Planning Appeal Tribunal heading, the LPAT has discretion to determine how a hearing will proceed. An oral hearing is an option, but limitations or regulations would be placed on the hearing procedures such as no cross examination of witnesses.

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 Comments: The Province is urged to undertake public consultation on the draft transition regulations expeditiously in order to provide information with respect to how applications under appeal during this transition period are to be dealt with.

Local Planning Appeal Support Centre

Bill 139 also enacts the *Local Planning Appeals Support Centre Act, 2017*, which would establish the Local Planning Appeal Support Centre which would be mandated to provide free and independent advice and representation to the public on land use planning appeals. The objectives of the new centre are: to administer a cost-effective and efficient system for providing services to eligible persons respecting matters governed by the *Planning Act* that are under the jurisdiction of the LPAT; and to establish policies and priorities for the provision of the support services based on its financial resources. In order to achieve its objectives, the Centre will provide support services related to information on land use planning, guidance on LPAT procedures, advice or representation, and any other services prescribed by the regulations. The Centre will be required to establish criteria for determining the eligibility of persons to receive support services from the Centre.

Staff Comments on Website Improvements

In keeping with the theme of having a more open and transparent appeals system and given that the Environmental and Lands Tribunals Ontario (ELTO) website is one of the primary communication vehicles for the OMB (proposed to be LPAT), the ELTO's website should be improved to make information more accessible to both the public and stakeholders through changes such as the use of interactive mapping of decisions and appeals.

SUMMARY

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 staff generally supported the changes. The proposed new legislation would establish a new Local Planning Appeal Tribunal to replace the current OMB and aims to ensure that planning decisions are made in a more open and transparent process by local councils.

Planning Services is generally supportive of the changes proposed through Bill 139, as the majority of proposed amendments reflect the comments made in the City's prior submission on the public consultation document. Though the previous CGS comments recommended maintaining the OMB, but add additional rules and guidelines and given that the OMB has been replaced, the new Tribunal and the powers associated with it largely reflect the recommendations of City staff.

RESOURCES CITED

City of Mississauga, Corporate Report on Bill 139

<http://www.mississauga.ca/portal/cityhall/planninganddevelopment>

Conservation Ontario

http://conservationontario.ca/images/CA_Act_Review/June_29_2017_FINAL_CO_Submission_CAA_Review.pdf

Conservation Ontario <http://conservationontario.ca/about-us/conservation-authorities/conservation-authorities-act-review>

Commission on Planning and Development Reform in Ontario, "New Planning for Ontario: Final Report of the Commission on Planning and development Reform in Ontario",

https://archive.org/stream/newplanningforon00comm/newplanningforon00comm_djvu.txt

Legislative Assembly of Ontario, Bills from the Current Session,

http://www.ontla.on.ca/web/bills/bills_current.do?locale=en

Legislative Assembly of Ontario, How an Ontario Bill Becomes Law,
<http://www.ontla.on.ca/lao/en/media/laointernet/pdf/bills-and-lawmaking-background-documents/how-bills-become-law-en.pdf>

Ministry of Municipal Affairs, Ministry of Housing, Ontario Municipal Board Review,
<http://www.mah.gov.on.ca/Page14965.aspx>

Ministry of Municipal Affairs, Ministry of Housing, The Planning Act,
<http://www.mah.gov.on.ca/Page1760.aspx>

Province of Ontario, Environmental Bill of Rights Registry, Number: 013-0590 ,
<https://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTMyNjM2&statusId=MjAxNDY1&language=en>