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Bill 139 - Government of Ontario's Proposed Changes to Overhaul the Land Use Planning Appeal System and Conserve Watersheds

On 30 May 2017, the Government introduced Bill 139, An Act to enact the Local Planning Appeal Tribunal Act, 2017 and the Local Planning Appeal Support Centre Act, 2017 and to amend the Planning Act, the Conservation Authorities Act and various other Acts. The short title of the proposed Act is the *Building Better Communities and Conserving Watersheds Act, 2017*.

Following first reading of Bill 139, Hon. Bill Mauro, Minister of Municipal Affairs, made the following statement to the House:

The proposed Building Better Communities and Conserving Watersheds Act would, if passed, replace the Ontario Municipal Board with the Local Planning Appeal Tribunal. The new tribunal would give greater weight to the decisions of local communities and the bill would also support the conservation of Ontario's watersheds, increase clarity of roles and responsibilities for conservation authorities, and strengthen oversight through modern governance.

If passed in its current form, Bill 139 will make sweeping changes to the land use planning approvals processes in Ontario. For a bill to become law it goes through several stages, including second reading debate, referral to Committee, third reading, and Royal Assent.

Bill 139 consists of 5 Schedules, which are summarized in the following articles in this Bulletin:

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LOCAL PLANNING APPEAL TRIBUNAL ACT, 2017 (SCHEDULE 1)

The *Local Planning Appeal Tribunal Act, 2017* (the “*LPAT Act*”), if enacted, will repeal the *Ontario Municipal Board Act* (the “*OMB Act*”) and continue the Ontario Municipal Board (the “Board”) under the name **Local Planning Appeal Tribunal** (the “Tribunal”).

While a number of provisions of the proposed *LPAT Act* are substantively similar to the *OMB Act*, there are significant changes to the practices and procedures that would apply to proceedings before the Tribunal and the manner in which certain appeals will be conducted.

Some of the key provisions of the proposed *LPAT Act* are summarized below.

GENERAL JURISDICTION AND POWERS

- While the *OMB Act* specifically provides that the Board has the powers of the court for the purposes of the Act, the *LPAT Act* does not include similar language relating to the powers of the Tribunal.

RULES AND PRACTICES AND PROCEDURES

- The *LPAT Act* provides that the Tribunal may make rules that, among other things:
 - provide for and require the use of hearings or of practices and procedures that are alternatives to traditional adjudicative or adversarial procedures;
 - provide for and require notice to be provided in a particular manner;
 - authorize the Tribunal to hold hearings or other proceedings in writing or by any electronic or automated means;
 - authorize the Tribunal to combine two or more proceedings or any part of them, or hear two or more proceedings at the same time;
 - authorize the Tribunal to appoint a person from among a class of parties to a proceeding to represent the class where, in the opinion of the Tribunal, the parties have a common interest; and
 - provide for when and how the Tribunal may hear from a person other than a party.
- With respect to each proceeding before it, the Tribunal is directed to adopt practices and procedures that would

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offer the best opportunity for a fair, just and expeditious resolution of the merits of the proceeding.

- The failure of the Tribunal to comply with the rules, or to exercise its discretion under the rules in a particular manner, is not a ground for setting aside a decision of the Tribunal on a judicial review application or an appeal, unless the failure or exercise of discretion caused a substantial wrong that affected the final disposition of the matter.

CASE MANAGEMENT CONFERENCE

- The *LPAT Act* gives the Tribunal the power to direct parties to a proceeding to participate in a case management conference prior to a hearing.
- Among other things, the case management conference will be used to identify additional parties, to identify or narrow the issues, to identify facts or evidence that may be agreed upon, to provide directions for disclosure of information, and to discuss opportunities for settlement, including the possible use of mediation or other dispute resolution processes.
- A case management conference is mandatory for certain *Planning Act* appeals as indicated below.

PLANNING ACT APPEALS RELATING TO OFFICIAL PLANS, ZONING BY-LAWS, AND PLANS OF SUBDIVISION

- The *LPAT Act* will significantly affect the manner in which hearings relating to the following *Planning Act* matters will be conducted, **effectively eliminating “de novo” hearings** relating to these appeals:
 - official plans, official plan amendments and requests to amend official plans;
 - zoning by-laws, zoning by-law amendments and applications to amend zoning by-laws;
 - plans of subdivision, where the approval authority has failed to make a decision relating to the plan of subdivision.
- For these matters, the *LPAT Act* sets out practices and procedures relating to:
 - mandatory case management;
 - participation by other persons; and
 - oral hearings (section).

Mandatory Case Management (*LPAT Act*, section 39)

- The Tribunal will be required to conduct a mandatory case management conference relating to the above-noted *Planning Act* appeals.
- The participants in the mandatory case management conference will be the appellant and the municipality or

approval authority whose decision or failure to make a decision is the subject of the appeal. Participation by other persons is discussed below.

- The case management conference must include a discussion of opportunities for settlement, including the possible use of mediation or other dispute resolution processes.

Participation by Other Persons (*LPAT Act*, sections 40 & 41)

- For appeals under subsections 17(24) and (36), 22(7) and 34(11) and (19) of the *Planning Act*, section 40 of the *LPAT Act* provides that the Tribunal may permit other persons to participate as an additional party or otherwise, on the basis of written submissions to be made by the person at least 30 days before the case management conference. These submissions must address whether the decision or failure to make a decision:
 - was inconsistent with a policy statement issued under the *Planning Act*;
 - fails to conform with or conflicts with a provincial plan; or
 - fails to conform with an applicable official plan.

- For appeals under subsections 17(40) and 51(34) of the *Planning Act* (the failure of an approval authority to make a decision in respect of an official plan or plan of subdivision), section 41 of the *LPAT Act* provides that the Tribunal may permit other persons to participate in an appeal as an additional party or otherwise, on the basis of written submissions to be made by the person in accordance with timing that will be provided in the Tribunal's rules.

Oral Hearings (*LPAT Act*, section 42)

- The most significant restrictions relating to the *Planning Act* appeals mentioned above relate to how oral hearings will be conducted, if the Tribunal decides to hold an oral hearing.
 - At the oral hearing, each party or person identified by the Tribunal as a person who may participate in the oral hearing may make an oral submission that does not exceed a time that will be provided under the regulations.
 - At the oral hearing, **no party or person may adduce evidence or call or examine witnesses**.
- For appeals under subsections 17(24) and (36), 22(7) and 34(11) and (19) of the *Planning Act*, the only persons who may participate in the oral hearing are the parties.
- For appeals under subsections 17(40) and 51(34) of the *Planning Act*, the only persons who may participate in the oral hearing are the parties and the persons identified by

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the Tribunal as persons who may participate in the oral hearing.

Exceptions

- The practices and procedures set out in sections 39, 40 and 42 of the *LPAT Act* relating to appeals under subsections 17(24) and (36), 22(7) and 34(11) and (19) of the *Planning Act* will not apply:
 - in respect of a new decision that the municipality or approval authority was given an opportunity by the Tribunal to make, where the Tribunal determined that the decision is inconsistent with a policy statement issued under the *Planning Act*, fails to conform with or conflicts with a provincial plan, or fails to conform with an applicable official plan;
 - where the Minister has provided notice that a matter of provincial interest is, or is likely to be, adversely affected; or
 - to an appeal under subsection 22(7) or 34(11) of the *Planning Act* in respect of the failure of a municipality to make a new decision that it was given an opportunity by the Tribunal to make.

REGULATIONS

- The *LPAT Act* provides that the Minister may make regulations regarding:
 - the practices and procedures of the Tribunal, including the conduct and format of hearings, the admission of evidence and the format of decisions;
 - multi-member panels;
 - timelines applicable to proceedings on *Planning Act* appeals;
 - transitional matters.

TRANSITION

- The *LPAT Act* provides that transitional matters will be addressed through regulations, which will be released at a later date. There is no indication currently as to how matters commenced before the effective date of the legislation will be continued and disposed of under the new legislation, if passed.

LOCAL PLANNING APPEAL SUPPORT CENTRE ACT, 2017 (SCHEDULE 2)

Schedule 2 would enact new legislation, the *Local Planning Appeal Support Centre Act, 2017*. This legislation, if passed, establishes a new **Local Planning Appeal Support Centre** (the “Centre”). The Centre will provide free support, advice and representation to eligible persons who want to participate in matters that are under the jurisdiction of the Tribunal.

THE CENTRE

- The Centre will be a corporation without share capital.
- The Centre will not be a Crown agency and will be independent from the Government.
- The Centre will be accountable to the Government.
- The Centre will be composed of the members of its board of directors, who will be appointed by the Lieutenant Governor in Council.

OBJECTS OF THE CENTRE

- The Centre will establish and administer a cost-effective and efficient system for providing support services to eligible persons respecting matters governed by the *Planning Act* that are under the jurisdiction of the Tribunal.
- The Centre will establish policies and priorities for the provision of support services.

SUPPORT SERVICES

- The Centre will provide the following support services to eligible persons:
 - information on land use planning
 - guidance on Tribunal procedures
 - advice or representation
 - any other services prescribed by regulation
- The Centre will establish criteria for determining the eligibility of persons to receive support services, subject to any rules prescribed by regulation.
- The support services provided by the Centre must be available throughout the Province.

AMENDMENTS TO THE PLANNING ACT (SCHEDULES 3 & 5)

DEFINITIONS / TERMS (SECTION 1)

- The defined term “Tribunal”, which means the **Local Planning Appeal Tribunal**, is added and the defined term “Municipal Board”, which means the Ontario Municipal Board, is deleted. (1(1))
- The term “Tribunal” replaces the term “Municipal Board” throughout the Act.

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PROVINCIAL PLANS AND POLICY STATEMENTS (SECTIONS 1 & 3)

- a decision in respect of the exercise of any authority that affects a planning matter shall conform with, or shall not conflict with, the following **additional provincial plans**:
 - a designated policy as defined in the *Lake Simcoe Protection Act, 2008*;
 - a designated policy as defined in the *Great Lakes Protection Act, 2015*; and
 - a designated Great Lakes policy or a significant threat policy, as those terms are defined in the *Clean Water Act, 2006*. (1(1))
- A decision in respect of the exercise of any authority that affects a planning matter shall be consistent with the following **additional deemed policy statements**:
 - a policy statement issued under the *Metroinx Act, 2006*;
 - a policy statement issued under the *Resources Recovery and Circular Economy Act, 2016*; and
 - a policy statement that is prescribed for the purpose of this subsection. (3(8))
- The additional deemed policy statements are not subject to Ministerial approval or determination, conferring with interested persons or public bodies or notice to interested persons or public bodies, nor the requirement for the Minister to review the policy statement every 10 years. (3(9))

HAVING REGARD FOR MUNICIPAL DECISIONS (SECTION 2.1)

- When an **approval authority for a non-exempt official plan amendment makes a decision** on a plan, it shall have regard to any decision by a municipal council that relates to the same planning matter, and any information and material the municipal council considered in making the decision (2.1(1)).
- When the **Tribunal makes a decision in respect of any of the following appeals**, it shall have regard to any decision by a municipal council or approval authority that relates to the same planning matter and to any information and material the municipal council or approval authority considered in making the decision:
 - a second appeal (appeal of a municipal council's new decision) regarding an official plan or zoning by-law;
 - a matter of provincial interest (official plan or zoning by-law);
 - an appeal of an interim-control by-law;

- an appeal of a site plan matters;
- an appeal of subdivision control or consent. (2.1(1))

LOCAL APPEAL BODIES - SITE PLAN APPROVAL (SECTION 8.1)

- Council may by by-law empower a local appeal body to hear **appeals or motions for direction in connection with site plan approval** matters. (8.1(6)(b))
- The local appeal body has all of the powers and duties of the Tribunal under the relevant provisions of this Act, and all references to the Tribunal in the Act in connection with appeals shall be read as references to the local appeal body. (8.1(7)(a)(b))

OFFICIAL PLAN POLICIES (SECTION 16)

- Official plans must include 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. (16(14))
- Official plans (single and upper-tier) may include policies that identify areas surrounding and including an existing or planned higher order transit station or stop as a protected **major transit station area** and that delineate the area's boundaries. "Higher order transit" is defined to mean "transit that operates in whole or in part in a dedicated right of way, including heavy rail, light rail and buses." (16(15)(16) & 1(1))
- For single-tier municipalities, if the official plan includes policies protecting **major transit stations areas**, it must also contain policies that:
 - identify the **minimum number of residents and jobs**, collectively, per hectare that are planned to be accommodated within the area;
 - identify the **authorized uses of land** in the major transit station area and of buildings or structures on lands in the area; and
 - identify the **minimum densities** that are authorized with respect to buildings and structures on lands in the area. (16(15))
- The Minister may not by order exempt from approval a single-tier municipality official plan amendment that adds all of the above-noted policies, or revokes or amends same. (16(18))
- For upper-tier municipalities, if the official plan includes policies protecting **major transit stations areas**, it must also contain policies that:
 - identify the **minimum number of residents and jobs**, collectively, per hectare that are planned to be

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- accommodated within the area; and
- require lower-tier municipalities to include policies that:
 - identify the **authorized uses of land** in the major transit station area and of buildings or structures on lands in the area; and
 - Identify the **minimum densities** that are authorized with respect to buildings and structures on lands in the area. (16(16))
- The Minister may not by order exempt from approval:
 - an upper-tier municipality official plan amendment that identifies the minimum number of residents and jobs, collectively, per net hectare that are to be accommodated within the area, or revokes or amends same. (16(18))
 - a lower-tier municipality official plan amendment that:
 - identifies the **authorized uses of land** in the major transit station area and of buildings or structures on lands in the area; and
 - identifies **minimum densities** that are authorized with respect to buildings and structures od lands in the area, or revokes or amends same. (16 (18))

OFFICIAL PLAN APPROVALS (SECTIONS 17 & 21)

- If the Minister is the approval authority for an official plan/amendment, there is **no right of appeal** in respect of the Minister's decision in respect of that official plan (17(36.5)) or amendment made pursuant to Section 26. (21(3))
- As such, **none of the following official plans/amendments are appealable:**
 - any official plan/amendment that revises/updates an official plan to ensure that such plan:
 - conforms with a provincial plan (for example, the Growth Plan);
 - is consistent with a provincial statement (for example, the Provincial Policy Statement); and
 - has regard for matters of provincial interest listed in Section 2 of the Planning Act; (26(1))
 - all upper-tier official plans except in instances where the Minister removes its power to approve such plan (17(2) & (6)); and
 - any other official plan amendment that has not been exempted from Ministerial approval.
- Subject to certain limitations, there is **no appeal in respect of an official plan amendment to identi-**

fy major transit stations areas and related policies, including policies establishing minimum and maximum densities and heights. (17(36.1.4))

- In the case of an official plan/amendment that is exempt from Ministerial approval (17(24)), **an appeal of a decision of council to adopt all or part of a plan** may only be made on the basis that the part of the decision to which the notice of appeal relates is inconsistent with a policy statement (for example, the Provincial Policy Statement), fails to conform with or conflicts with a provincial plan (for example, the Growth Plan) **or**, in the case of the official plan of a lower-tier municipality, fails to conform with the upper-tier municipality's official plan. (17 (24.0.1))
 - the **notice of appeal** must explain how the decision is inconsistent / fails to conform (17(25)(b))
 - if the Tribunal is of the opinion that the explanation described above does not disclose an inconsistency / lack of conformity, it shall **dismiss the appeal** (17 (45)(1)(i))
- In the case of an official plan/amendment that is not exempt from Ministerial approval (17(36)), **an appeal of a decision of the approval authority to approve, modify or refuse the plan** may only be made on the basis that the part of the decision to which the notice of appeal relates is inconsistent with a policy statement (for example, the Provincial Policy Statement), fails to conform with or conflicts with a provincial plan (for example, the Growth Plan) **or**, in the case of the official plan of a lower-tier municipality, fails to conform with the upper-tier municipality's official plan. (17(36.0.1))
 - the **notice of appeal** must explain how the decision is inconsistent / fails to conform (17(37)(b))
 - If the Tribunal is of the opinion that the explanation described above does not disclose an inconsistency / lack of conformity, it shall **dismiss the appeal** (17 (45)(1)(i))
- In the case of an **approval authority failing to make a decision** in respect of the official plan/amendment within **210 days** (extended from 180 days), any person or public body may appeal to the Tribunal. (17(40.1))

SECTION 17 APPEALS—AT THE TRIBUNAL

- **The Tribunal must dismiss all appeals of council decisions** to adopt an official plan/amendment (Section 17(24)) and decisions of an approval authority to approve, modify, or refuse an official plan/amendment (Section 17(36)), **subject to** the following:

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- if the Tribunal determines that part of the decision is inconsistent with a policy statement (for example, the Provincial Policy Statement), fails to conform with or conflicts with a provincial plan (for example, the Growth Plan) or, in the case of the official plan of a lower-tier municipality, fails to conform with the upper-tier municipality's official plan, the Tribunal shall
 - refuse to approve that part of the plan; and
 - notify the municipality that adopted the plan that the municipality is being given an opportunity to make a **new decision** in respect of the matter.

(17 (49.1) & 17 (49.3))
- If the municipality receives notice from the Tribunal that it is being given an opportunity to make a new decision, the **council of the municipality may prepare and adopt another plan**. No further open house ~~or public meeting~~ is required. If the official plan/amendment is not exempt from Ministerial approval, an appeal right arises for a failure to make a decision after **90 days**. (17 (49.4))
- If after receiving the Tribunal's notice, the **municipality fails to make a new decision** on the matter within 90 days, a **second appeal** lies with the Tribunal. On such appeal, the Tribunal may approve all or part of the plan as all or part of an official plan, make modifications to all or part of the plan and approve all or part of the plan as modified as an official plan or refuse to approve all or part of the plan. (17(50))
- If after receiving the Tribunal's notice, the **municipality makes a new decision** on either an exempt or non-exempt plan/amendment, a **second appeal** lies with the Tribunal. On such appeal, the Tribunal may make modifications to all or part of the plan and approve all or part of a plan as modified as an official plan or refuse to approve all or part of the plan, if the Tribunal determines that the decision is inconsistent with a policy statement (for example, the Provincial Policy Statement), fails to conform with or conflicts with a provincial plan (for example, the Growth Plan) or, in the case of the official plan of a lower-tier municipality, fails to conform with the upper-tier municipality's official plan. (17(49.5))

MATTERS OF PROVINCIAL INTEREST (SECTION 17)

- Where an appeal is made to the Tribunal, and the Minister has identified a **matter of provincial interest**, the Tribunal may approve all or part of the plan as all or part of an official plan, make modifications to all or part of the plan and approve all or part of the plan as modified

as an official plan or refuse to approve all or part of the plan. The decision of the Tribunal is not final and binding unless the Lieutenant Governor in Council has confirmed the decision. (17(53))

REQUEST FOR OFFICIAL PLAN AMENDMENT (SECTION 22)

- Unless a council declares otherwise by resolution (22 (2.2)), the following **requests are prohibited**:
 - a request to **amend a secondary plan** before the second anniversary of the first day any part of the secondary plan comes into effect (22(2.1.1)); and
 - a request to **amend protected major transit station area** policies. (22(2.1.3))
- An applicant may only **appeal council's failure to adopt a requested amendment** within **210 days** (extended from 180 days) after receipt of the application, or **council's refusal to adopt a requested amendment** on the basis that:
 - (a) the existing part or parts of the official plan that would be affected by the requested amendment are inconsistent with a policy statement (for example, the Provincial Policy Statement), fails to conform with or conflicts with a provincial plan (for example, the Growth Plan) or, in the case of the official plan of a lower-tier municipality, fails to conform with the upper-tier municipality's official plan; and
 - (b) the requested amendment is consistent with policy statements, conforms with or does not conflict with provincial plans, and in the case of the official plan of a lower-tier municipality, conforms with the upper-tier municipality's official plan. (22(7.0.0.1))
 - The notice of appeal must explain how (a) and (b) above are met. (22(8))
 - If the Tribunal is of the opinion that the explanation described above does not disclose both (a) and (b) above, it shall dismiss the appeal. (22(11.0.4))

SECTION 22 APPEALS—AT THE TRIBUNAL

- **The Tribunal must dismiss all appeals** of council's failure to adopt a requested amendment within 210 days, or council's refusal to adopt a requested amendment, subject to the following: (22(11.0.8))
 - if the Tribunal determines that:
 - (a) the existing part or parts of the official plan that would be affected by the requested amendment are inconsistent with a policy statement (for example, the Provincial Policy Statement), fails to conform with or conflicts with a provincial plan (for example, the Growth Plan) or, in the case of the official plan of a lower-tier municipality, fails

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to conform with the upper-tier municipality's official plan; and

(b) the requested amendment is consistent with policy statements, conforms with or does not conflict with provincial plans, and in the case of the official plan of a lower-tier municipality, conforms with the upper-tier municipality's official plan,

then the Tribunal shall notify the municipality that it is being given an opportunity to make a **new decision** in respect of the matter. (22(11.0.9))

- If the municipality receives notice from the Tribunal that it is being given an opportunity to make a new decision, the **council of the municipality may prepare and adopt an amendment**. No further open house ~~or public meeting~~ is required. An appeal right arises for a failure to make a new decision after **90 days**. (22 (11.0.10))
- If after receiving the Tribunal's notice, the **municipality fails to make a new decision on the requested amendment**, a **second appeal** lies with the Tribunal. On such appeal, the Tribunal may approve all or part of the requested amendment as an official plan amendment, make modifications to all or part of the requested amendment and approve all or part of the requested amendment as modified as an official plan amendment or refuse to approve all or part of the requested amendment. (22 (11.0.12))
- If after receiving the Tribunal's notice, the **municipality refuses to adopt the requested amendment**, a **second appeal** lies with the Tribunal. On such appeal, the Tribunal may approve all or part of the requested amendment as an official plan amendment, make modifications to all or part of the requested amendment and approve all or part of the requested amendment as modified as an official plan amendment or refuse to approve all or part of the requested amendment, if the Tribunal determines that:
 - (a) the existing part or parts of the official plan that would be affected by the requested amendment are inconsistent with a policy statement (for example, the Provincial Policy Statement), fails to conform with or conflicts with a provincial plan (for example, the Growth Plan) or, in the case of the official plan of a lower-tier municipality, fails to conform with the upper-tier municipality's official plan; and
 - (b) the requested amendment is consistent with policy statements, conforms with or does not conflict with provincial plans, and in the case of the official plan of a lower-tier municipality, conforms with the upper-tier municipality's official plan. (22 (11.0.13))

MATTERS OF PROVINCIAL INTEREST (SECTION 22)

- Where an appeal is made to the Tribunal under Section 22, and the Minister has identified a **matter of provincial interest**, the Tribunal may approve all or part of the plan as all or part of an official plan, make modifications to all or part of the plan and approve all or part of the plan as modified as an official plan or refuse to approve all or part of the plan. The decision of the Tribunal is not final and binding unless the Lieutenant Governor in Council has confirmed the decision. (22(11.1) & 22 (11.3))

ZONING BY-LAWS (SECTION 34)

- Subject to certain limitations, there is **no appeal** in respect of parts of a by-law that establish permitted uses or minimum or maximum densities with respect to buildings and structures within **major transit stations areas**, nor of by-laws that establish minimum or maximum heights with respect to such buildings or structures. (34(19.5))
- An **appeal of council's passing of a zoning by-law** may only be made on the basis that the by-law is inconsistent with a policy statement (for example, the Provincial Policy Statement), fails to conform with or conflicts with a provincial plan (for example, the Growth Plan) or fails to conform with an applicable official plan. (34 (19.0.1))
 - the **notice of appeal** of the passing of a by-law must explain how the by-law is inconsistent with policy statements, fails to conform with provincial plans, or fails to conform with applicable official plans (34 (19.0.2))
 - if the Tribunal is of the opinion that the explanation described above is not disclosed it shall **dismiss the appeal** (34(35)(2))
- An applicant may only **appeal council's failure to make a decision on a zoning by-law amendment application** within **210 days** (extended from 180 days) after the receipt of the application, or **council's refusal of a zoning by-law amendment application** on the basis that:
 - (a) the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement (for example, the Provincial Policy Statement), fails to conform with or conflicts with a provincial plan (for example, the Growth Plan) or fails to conform with an applicable official plan; and
 - (b) the amendment that is the subject of the application is consistent with policy statements, conforms with or

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- does not conflict with provincial plans, and conforms with applicable official plans. (34(11.0.0.0.2))
- The **notice of appeal of a failure to make a decision or of a refusal of an application** must explain:
 - (a) how the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement (for example, the Provincial Policy Statement), fails to conform with or conflicts with a provincial plan (for example, the Growth Plan) or fails to conform with an applicable official plan; and
 - (b) how the amendment that is the subject of the application is consistent with policy statements, conforms with or does not conflict with provincial plans, and conforms with applicable official plans. (34(11.0.0.0.4))
- If the Tribunal is of the opinion that the explanation described above is not disclosed it shall **dismiss the appeal**. (34(35)(1))

SECTION 34 APPEALS – AT THE TRIBUNAL

- The **Tribunal must dismiss all appeals** pursuant to subsections 34(11) (refusal or failure to make a decision) and 34(19) (passing by-law), subject to the following: (34(26))
 - on an **appeal of a refusal or failure to make a decision**, the Tribunal shall notify the municipality that the municipality is being given an opportunity to make a **new decision** in respect of the matter, if the Tribunal determines that:
 - (a) the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement (for example, the Provincial Policy Statement), fails to conform with or conflicts with a provincial plan (for example, the Growth Plan) or fails to conform with an applicable official plan; and
 - (b) the amendment that is the subject of the application is consistent with policy statements, conforms with or does not conflict with provincial plans, and conforms with applicable official plans.
 - on an **appeal of the passing of a by-law**, if the Tribunal determines that a part of the by-law that relates to the notice of appeal is inconsistent with a policy statement, fails to conform with or conflicts with a provincial plan, or fails to conform with an applicable official plan:
 - the Tribunal shall repeal that part of the by-law;

- and
- the Tribunal shall notify the municipality that passed the by-law that the municipality is being given an opportunity to make a **new decision** in respect of the matter.
- If the municipality receives a notice from the Tribunal that it is being given an opportunity to make a new decision in respect of the matter, the municipality may **prepare and pass another by-law** within **90 days**. (34(26.3))
 - If the **municipality prepares and passes a new by-law in respect of a new decision**, a **second appeal** lies with the Tribunal. On such appeal, the Tribunal may repeal the by-law in whole or in part or amend the by-law in such manner as the Tribunal may determine or direct the council of the municipality to amend the by-law in accordance with the Tribunal's order, if the Tribunal determines that the decision is inconsistent with a policy statement, fails to conform with or conflicts with a provincial plan, or fails to conform with an applicable official plan. (34(26.6))
 - If the **municipality refuses the application in respect of a new decision**, a **second appeal** lies with the Tribunal. On such appeal, the Tribunal may amend the by-law in such manner as the Tribunal may determine or direct the council of a municipality to amend the by-law in accordance with the Tribunal's order if the Tribunal determines that:
 - (a) the existing part or parts of the by-law that would be affected by the amendment that is the subject of the application are inconsistent with a policy statement (for example, the Provincial Policy Statement), fails to conform with or conflicts with a provincial plan (for example, the Growth Plan) or fails to conform with an applicable official plan; and
 - (b) the amendment that is the subject of the application is consistent with policy statements, conforms with or does not conflict with provincial plans, and conforms with applicable official plans. (34(26.4))
 - If the **municipality fails to make a new decision** on the matter within **90 days**, a **second appeal** lies with the Tribunal. On such appeal, the Tribunal may amend the by-law in such manner as the Tribunal may determine or direct the council of a municipality to amend the by-law in accordance with the Tribunal's order. (34(26.5))

MATTERS OF PROVINCIAL INTEREST (SECTION 34)

- Where an appeal is made to the Tribunal, and the Minister has identified a **matter of provincial interest**, that

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AMENDMENTS TO THE PLANNING ACT

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is or is likely to be, adversely affected by the by-law, the Tribunal may make a decision as to whether the appeal should be dismissed or the by-law should be repealed or amended in whole or in part or the council of the municipality should be directed to repeal the by-law in whole or in part. The Tribunal, however, shall not make an order in respect of the part or parts of the by-law identified by the Minister. (34(27) & 34(29)).

HOLDING PROVISION BY-LAW (SECTION 36)

- The timeline for filing a non-decision appeal for a municipality's failure to make a decision on an application to lift an "H" holding symbol is extended from 120 days to **150 days**. (36(3))

INTERIM CONTROL BY-LAW (SECTION 38)

- Only the **Minister may appeal the passing of an interim control by-law** within 60 days after the date of passing of the by-law (38 (4.0))
- Any **person/public body may appeal** the passing of a by-law **extending the period of the interim control by-law** within 60 days after the date of passing of the extending by-law (38 (4.1))

SITE PLAN CONTROL (SECTION 41)

- Amended to clarify that section 41 of the *Planning Act* does not apply to the City of Toronto.

POWERS OF MINISTER RE ZONING & SUBDIVISION CONTROL (SECTION 47)

- Previously where the Minister made a zoning and/or subdivision control order, and an application was made to the Minister to amend and/or revoke the order in whole and/or part, the Minister could refer the application to the Ontario Municipal Board and the Ontario

Municipal Board would make a decision on the application that the Minister would give effect to. Now, when such an application is referred to the Tribunal, the Tribunal makes a recommendation to the Minister, and the Minister after considering that recommendation makes its decision. (47(13))

MINOR VARIANCES, CONSENTS AND PLANS OF SUBDIVISIONS (SECTIONS 45 & 51)

- Appeals and motions for directions are made to the Tribunal.

REGULATIONS RE TRANSITIONAL MATTERS, 2017 AMENDMENTS (SECTION 70.8)

- The Minister may make regulations providing for transitional matters respecting matters or proceedings that were commenced before or after the effective date. (70.8(1)) "Effective date" means the date on which section 17 of Schedule 3 to the *Building Better Communities and Conserving Watershed Act, 2017* comes into force. There is no indication currently as to how matters commenced before the effective date of the legislation will be continued and disposed of under the new legislation, if passed.

AMENDMENTS TO THE CITY OF TORONTO ACT (SCHEDULE 3)

LOCAL APPEAL BODIES - SITE PLAN APPROVAL (SECTION 115)

- Council may by by-law empower a local appeal body to hear appeals of **site plan approval** matters (115(5)(b)).
- The local appeal body has all of the powers and duties of the Tribunal under the relevant provisions of this Act (115(6)(a)).

AMENDMENTS TO THE CONSERVATION AUTHORITIES ACT (SCHEDULE 4)

AMALGAMATION OF AUTHORITIES (SECTION 11)

- If two or more authorities propose amalgamation, the public must be given **notice of the meeting** at which the matter will be considered at least 14 days prior to the meeting. (11(1.2))
- The notice must be published in a newspaper of general circulation in the area, or if there is no newspaper of general circulation, be posted in the municipality in a prominent place and on its website. (11(1.2)(a), (b))
- No vote on amalgamation may take place unless the public has an **opportunity to make representations** on the issue at the meeting. (11(1.3))
- A Resolution to amalgamate must be approved by the Minister of Natural Resources and Forestry. (11(4.2))

DISSOLUTIONS (SECTION 13)

- Notice of a meeting** where dissolution of an authority will be considered must be published in a newspaper of general

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AMENDMENTS TO THE CONSERVATION AUTHORITIES ACT

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circulation in the area, or if there is no newspaper of general circulation, be posted in the municipality in a prominent place and on the municipality's website at least 14 days prior to the meeting. (13.1(1.1))

GOVERNANCE (SECTIONS 15 & 19.1)

- Every meeting held by the authority must be open, subject to exceptions specified in the by-laws of the authority. (15(3))
- An authority **may make by-laws** to address various matters including:
 - calling of and procedures at meetings;
 - delegating some powers to the executive committee;
 - designating officers to sign agreements, contracts and other agreements on behalf of the authority;
 - requiring accountability and transparency;
 - establishing a code of conduct for members of the authority;
 - respecting such other matters as may be prescribed by regulation (19.1(1))
- If a by-law conflicts with any provision of the *Municipal Conflict of Interest Act* or the *Municipal Freedom of Information and Privacy Act* or regulations thereto, the act or regulation prevails over the by-law. (19.1(2))
- By-laws must be made available to the public and reviewed at regular intervals for compliance with the *Municipal Conflict of Interest Act* and the *Municipal Freedom of Information and Privacy Act* and other relevant laws. (19.1(3), (4))
- By-laws required for proper administration of an authority must be made within one year of Bill 139 coming into force. (19.1(5))
- The Minister of Natural Resources and Forestry may direct an authority to make or amend a by-law. If the authority fails to comply with such direction, the Minister may make regulations to address the matter and the regulation prevails over by-laws adopted by the authority. (19.1(6) - (9))

PROGRAMS AND SERVICES (SECTION 21.1)

- An authority is required or permitted, as the case may be, to provide the following programs and services within its area of jurisdiction:
 - mandatory programs and services required by regulation;
 - municipal programs and services that are provided to municipalities within the authority's jurisdiction that are provided pursuant to a memorandum of understanding; and
 - such other programs and services as the authority may

determine are advisable to further its objectives (21.1 (1))

FEES

- The Minister of Natural Resources and Forestry may determine and publish a list of classes of services and programs for which an authority may charge a fee and an authority may only charge a fee if it is set out in the Minister's list. The amount of the fee will be set out in a regulation. (21.2(1), (2))
- Authorities **shall adopt a written policy regarding the fees** they charge and shall adopt a process for review of the fees. If there are changes to the fees, the public must be advised in a manner the authority considers appropriate. (21.2(7),(10))
- A person **may appeal a fee** charged and upon consideration, the authority may order the person to pay the fee, vary the amount charged or order that no fee be charged. (21.2(11),(12))

REGULATION OF AREAS OVER WHICH AUTHORITIES HAVE JURISDICTION (SECTION 28)

- Currently, authorities have discretionary power to make regulations applicable in their jurisdictions:
 - prohibiting, regulating or requiring permission for straightening, changing and diverting of watercourses in their areas of jurisdiction;
 - restricting, and regulating the use of water from rivers, streams, inland lakes, ponds, wetlands and naturally or artificially constructed depressions in rivers or streams; and
 - prohibiting, regulating or requiring permission for development if the control of flooding, erosion, dynamic beaches or pollution or the conservation of land might that could be affected by the development.
- Bill 139 makes the **restrictions and prohibitions part of the Act** rather than allowing authorities to enact regulations at their discretion (28.1)
- The prohibitions listed above do not apply to activities approved under the *Aggregate Resources Act* after December 18, 1998, activities approved by regulation or in areas approved by regulation. (28(2) - (4))

CANCELLATION OF PERMITS (SECTION 28.3)

- Permits **may be cancelled by an authority** if the conditions have not been met or circumstances prescribed by regulation exist. (28.3(1))
- Before cancelling a permit, a permit holder must be advised of the authority's intention to cancel the permit. (28.3(2))

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AMENDMENTS TO THE CONSERVATION AUTHORITIES ACT

(Continued from page 10)

- A permit holder **may request a hearing** within 15 days of receiving a notice of intention to cancel a permit and such hearing must be held within a reasonable time after the authority receives the request. (28.3(3), (4))
- Subsequent to the hearing, the authority may confirm, rescind or vary the decision to cancel a permit. (28.3(5))

REGULATIONS AFFECTING NATURAL RESOURCES (SECTION 28.5)

- The Lieutenant Governor in Council may make regulations applicable to one or more authorities:
 - identifying activities that may impact the conservation, restoration, development or management of natural resources;
 - regulating those activities; and
 - prohibiting those activities or requiring a permit to engage in those activities. (28.5(1))
- Regulations that require a permit to engage in certain activities may also provide for the manner, content and form of permit applications, provide for the issuance, expiration, renewal and cancellation of permits and provide for hearings with respect to decisions regarding same. (28.5(2))

ENFORCEMENT (SECTION 30.3)

- An enforcement officer may issue an order that a person **stop engaging in certain activities** and a person who is served an order may, within 30 days, request a hearing before the authority who may confirm, amend or remove the order with or without conditions by way of a written decision. (30.3(1), (6))
- A person **may appeal the authority's decision** to the Minister of Natural Resources and Forestry who may confirm, amend or remove the order with or without conditions by way of a written decision. (30.3(7))

OFFENCES (SECTION 30.4)

- **Fines have increased** as follows:
 - a person who interferes with rivers, creeks, streams, watercourses, engages in development in prohibited areas or contravenes the conditions of a permit or a stop order is liable for a fine of up to \$50,000, or a term of imprisonment up to 3 months and an additional fine of \$10,000 for each day the offence continues (30.4(2)(a))
 - a corporation is liable for a fine of up to \$1,000,000 and an additional fine of up to \$200,000 per day for each day the offence continues (30.4(2)(b))
 - a court may increase the fine it imposes on a person upon conviction by an amount equal to the amount of

the monetary benefit that was acquired by the person, or that accrued to the person, as a result of the commission of the offence (30.4(3))

REGULATIONS (SECTION 40)

- The Lieutenant Governor in Council may make regulations:
 - governing the composition of conservation authorities and prescribing qualification of members of the authority;
 - governing advisory boards;
 - governing programs and services provided by authorities, including standards and requirements to mitigate the impacts of climate change;
 - governing apportionment of an authority's capital costs and reviews of same, including prescribing a body that may conduct such reviews instead of the Ontario Municipal Board or the Mining and Lands Commissioner; and
 - respecting anything that is necessary for the proper administration of the Act. (40(1))
- The Minister of Natural Resources and Forestry may make regulations:
 - prescribing matters that may be the subject of by-laws;
 - respecting the amount of any fee that may be charged in relation to a program or service;
 - governing consultations that an authority must carry out with respect to programs and services it provides;
 - regarding information that authorities must provide to the Minister in relation to their operations, including the programs and services they provide;
 - prescribing limits on river stream valleys;
 - prescribing activities or types of activities that are not prohibited under section 28
 - prescribing areas to which the prohibitions in section 28 do not apply;
 - defining development activity, hazardous land, watercourse and wetland for the purpose of section 28;
 - governing issuance of permits;
 - defining pollution for purposes of the Act; and
 - governing delegation of authority. (40(3))

OTHER MATTERS

- There are a number of other matters dealt with in Bill 139 including:
 - recovery and apportionment of capital costs and appeals related to same;
 - recovery and apportionment of operating costs and appeals related to same; and
 - various housekeeping amendments.

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Wood Bull LLP is a law firm that focuses on municipal, planning and development law and approvals, including environmental approvals and development charges, from both the private sector and public sector perspective.

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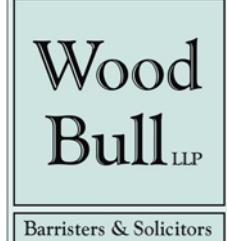
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AMENDMENTS TO VARIOUS ACTS CONSEQUENTIAL TO THE ENACTMENT OF THE LOCAL PLANNING APPEAL TRIBUNAL ACT, 2017 (SCHEDULE 5)

AGGREGATE RESOURCES ACT, CONSOLIDATED HEARINGS ACT, EXPROPRIATIONS ACT, HOUSING DEVELOPMENT ACT, MUNICIPAL ARBITRATIONS ACT, ONTARIO HERITAGE ACT, ONTARIO WATER RESOURCES ACT, PUBLIC TRANSPORTATION AND HIGHWAY IMPROVEMENT ACT, RETAIL BUSINESS HOLIDAYS ACT, SHORTLINE RAILWAYS ACT

- Sections referencing the Ontario Municipal Board have been amended or repealed and replaced by references to the Local Planning Appeal Tribunal.
- References to the *Ontario Municipal Board Act* have been repealed and replaced with references to the *Local Planning Appeal Tribunal Act*.

CITY OF TORONTO ACT, MUNICIPAL ACT

- Sections referencing the Ontario Municipal Board have been amended or repealed and replaced by references to the Local Planning Appeal Tribunal.
- References to the *Ontario Municipal Board Act* have been repealed and replaced with references to the *Local Planning Appeal Tribunal Act*.
- Repealed a provision that prohibited applications to the Ontario Municipal Board regarding fees imposed by the City or local boards on the grounds that such fees were unjust or unfair.

ONTARIO PLANNING AND DEVELOPMENT ACT, CONSERVATION AUTHORITIES ACT

- Sections referencing the Ontario Municipal Board have been amended or repealed and replaced by references to the Local Planning Appeal Tribunal.

DRAINAGE ACT

- References to the *Ontario Municipal Board Act* have been repealed and replaced with references to the *Local Planning Appeal Tribunal Act*.

This **Wood Bulletin** is intended to provide general information, updates and commentary, and should not be relied upon as legal advice.

For more information, please feel free to contact any of the lawyers or our main office line at 416-203-7160.

WEBSITE LINKS

- Proposed Bill 139, First Reading: http://www.ontla.on.ca/bills/bills-files/41_Parliament/Session2/b139_e.pdf
- Environmental Registry for Bill 139: <http://www.ebr.gov.on.ca/>
 - Schedule 3 (proposed *Planning Act* amendments): [EBR Registry Number 013-0590](#), 14 August 2017 deadline for public to comment
 - Schedule 4 (proposed *Conservation Authority Act* amendments): [EBR Registry Number 013-0561](#), 30 June 2017 deadline for public to comment
- Wood Bull Publications, including Comparison Tables of (1) the *LPAT Act* with the *OMB Act* and (2) the *Planning Act* with Proposed Bill 139 Amendments: <http://woodbull.ca/resources>
- Wood Bull Blogs, on topics of planning and development law and practice, development charges, heritage preservation and environmental law and practice: www.woodbull.ca/blog