



October 11, 2017

Councillor David Shiner
Members, Planning and Growth
Management Committee
City of Toronto
email: pgmc@toronto.ca

RE: PG 23.7 — City Response to Bill 139

Dear Councillor Shiner, Members,

We wish to state our support for the staff report's recommendation that City Council express its support for the reforms introduced by the province's Bill 139.

FONTRA strongly supports the creation of a new tribunal (the Local Planning Appeal Tribunal) to hear appeals of municipal planning decisions, the abolition of de novo hearings, and the introduction of hearing procedures that will put residents and property owners on more of an equal footing with developers in being able to make their concerns heard. We also support proposed changes that will have the effect of limiting the torrent of site-specific applications for official plan amendments that have overcome the municipal planning process in Toronto.

A copy of the FONTRA submission to the province regarding the proposed changes is attached.

We consequently support most (but not all) all of the staff recommendations regarding the Bill. Specific comments follow:

Two-stage hearing appeal process

FONTRA has major concerns regarding the proposed two-stage hearing appeal process. Of particular concern is the different proposed tribunal powers and hearing procedures set out for 'second round' appeals of municipal decisions that have been successfully appealed to the tribunal.

Our primary concern is with the allowance of a new form of 'de novo' hearing in the second round of the proposed process. Where a municipal council's response to a successful appeal does not, in the tribunal's judgment, respond adequately to the tribunal's first-round rejection of the council's initial decision, the hearing procedures are changed in two important respects:

1. The procedural reforms (reliance on written submissions, limitations on oral evidence, etc.) that apply in a first-round hearing no longer apply, permitting a reversion to practices currently followed by the OMB.
2. The LPAT tribunal is free to make a decision without regard for the municipal decision.

While we recognize the necessity of allowing for a second-round appeal, we are disturbed by the opportunities for game-playing opened up by the two-stage process. As is the case now, the tribunal will in this second round be empowered to override the decision of a municipal council. The only change will be that the expertise of 'expert' witnesses becomes transmogrified into testifying as to the conformity of a development with provincial policies rather than simply its consistency with a developer's notion of good planning.

FoNTRA recommends that, in order to provide a check on the powers of the tribunal, that Bill 139 be amended to allow a municipality to appeal an adverse LPAT second-round decision to the Minister. This would have two effects: (1) it would ensure that a final decision is made by a democratically elected representative, and (2) it would provide additional pressure on the tribunal to ensure that its overriding of a municipal decision is defensible.

FoNTRA also recommends that section 38 of the LPAT Act be changed to provide for the same hearing procedures followed in the first round.

For more on this, see sections 10 and 11 of the attached brief.

Moratoriums on privately initiated OPAs

FoNTRA supports staff recommendations 7 and 9-12 with respect to Official Plan amendments.

We believe Official Plans (whether municipality-wide or district secondary plans) should be evaluated as a holistic whole when adopted, and that objections raised by private interests on appeal should be evaluated in the context of the overall planning policies specified in such plans. Much of what we object to in the current planning process is the result of the plethora of site-specific OMB decisions that have too often been evaluated without regard for area-wide issues or the precedents such decisions create.

It is entirely appropriate that site-specific OPAs be proscribed between statutory reviews of area-wide Official Plans. We consequently support the staff recommendations supporting moratoriums on privately-initiated OPA applications and support the recommendation that the length of such moratoriums be extended from 2 to 5 years.

Moratoriums on rezoning applications

FoNTRA does not support the staff proposal in recommendation 9 that there be a moratorium on privately-initiated rezoning applications.

We view rezoning applications as a planning tool that expands the means available to the City to implement planning objectives, especially for mixed-use areas on the Avenues or surrounding major transit stations.

While the zoning by-law may (and should) allow for redevelopments such as envisaged by the Avenues study (6- or 7-storey buildings with setbacks that implement public realm objectives), higher towers may be appropriate and allowed by Official Plan policies that set out maximum heights and densities along with criteria to be applied in evaluating the

rezoning applications. Allowing privately-initiated rezoning applications provides a means by which additional criteria (such as provision of local parks and/or other public amenities) can be specified in Official Plan policies for larger developments.

Proscribing privately-initiated rezoning applications would mean that this useful planning tool would not be available, forcing zoning by-laws into a too-strict conformity with the maximum heights and densities set out in the Official Plan.

For more on this issue, see section 15 and Appendix 3 in the attached brief to the province.

Limitation on appeal rights

FONTRA believes as a fundamental principle that municipal planning decisions must be made by elected representatives and supports restrictions on grounds for appeal. However, we believe that Bill 139 goes too far.

First, we believe that grounds for appeal should include not only non-conformity to provincial planning policies or to a municipality's Official Plan, but also allow for appeals of failures in the municipal process such as lack of notice, inadequate review, or conflicts of interest.

Second, we oppose the prohibition of appeals on matters of provincial interest such as planning policies set out in area-wide secondary plans governing areas surrounding major transit stations. Such prohibitions go too far. As noted in section 13 of the attached brief, there are many local issues that arise in implementing provincial planning policies. The proposed LPAT tribunal can play a useful role in adjudicating these local issues.

The Official Plan is (and should be) a vehicle for defining area-wide planning policies, not a set of property-specific zoning by-laws. Accordingly, we support the disallowance of purely site-specific appeals to area-wide OPAs. However, we believe appeals should be allowed regarding area-wide planning policies, including the boundaries of areas to which specific policies are applied.

Implications for Toronto Official Plans

The adoption of Bill 139, with its implicit support for maximum height and density specifications in secondary plans, will need to be reflected in revisions of Toronto's Official Plan and associated secondary plans. In addition, the new provincial growth plan for the Toronto-centered area that came into effect July 1, 2017, will require modifications of the Official Plan to implement minimum and maximum growth targets for areas surrounding major transit stations (MTS areas) and the Avenues.

To absorb the anticipated increase in City population —an additional 700,000 inhabitants between now and 2041— it will be essential to specify and implement growth targets for different parts of the city that distribute the aggregate growth target for Toronto across those different specific areas. Doing so will require both changes to the overall Official Plan and revised secondary plans that set out appropriate planning policies for MTS areas and the Avenues in each part of the city.

FONTRA recommends that planning staff be requested to separately report on these issues, including, where appropriate, recommendations for moratoriums and/or interim holding by-laws that may be required in order to permit appropriate revisions to planning policies to be developed.

TLAB hearing procedures

TLAB hearing procedures currently mimic those of the OMB, much to the detriment of residents. FoNTRA believes that they are as much in need of reform as those of the OMB and consequently recommends that the City urge the province to require Local Appeal Body procedures to be changed to be based on those proposed for the new LPAT tribunal, including greater reliance on written submissions and evidence.

SUMMARY OF RECOMMENDATIONS

1. That staff be requested to comment on the FoNTRA concerns about the two-stage process and strengthen its recommendations to Council on this issue.
2. That staff recommendation 9 be amended to delete the proposed moratorium on privately-initiated rezoning applications.
3. That staff be requested to comment on the FoNTRA concerns regarding appeal rights.
4. That staff be requested to include recommendations urging that Bill 139 be amended to require that Local Appeal Body hearing procedures be brought into line with those to be specified for the LPAT tribunal.
5. That staff be requested to separately report on the implications of the adoption of Bill 139, together with the provincial Growth Plan, for Toronto's Official Plan and secondary plans and, where appropriate, recommend moratoriums on OPAs and rezonings until revised Official Plan policies and secondary plans have been adopted.
6. That, subject to these modifications, the staff recommendations be approved.

Respectfully submitted,

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The Federation of North Toronto Residents' Associations (FoNTRA) is a non-profit, volunteer organization comprised of more than 30 member organizations. Its members, all residents' associations, include at least 170,000 Toronto residents within their boundaries. The residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not *whether* Toronto will grow, but *how*. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.



4 August 2017

VIA E-MAIL: OMBReview@ontario.ca

Hon. Bill Mauro, Minister of Municipal Affairs
Hon. Yasir Naqvi, Attorney General

Provincial Planning Policy Branch
Ministry of Municipal Affairs
777 Bay Street, 13th floor
Toronto, Ontario, M5G 2E5

**Re: Bill 139 (Building Better Communities
and Conserving Watersheds Act, 2017)**

Dear Ministers:

The Federation of North Toronto Residents' Associations ("FoNTRA") is an umbrella organization representing over 30 residents' associations in central Toronto concerned with planning and development issues that affect our member organizations.

FoNTRA commends the Government for introducing Bill 139. We strongly support the creation of a new tribunal (the Local Planning Appeal Tribunal) to hear appeals of municipal planning decisions. We strongly support the abolition of de novo hearings and applaud the introduction of hearing procedures that will put residents and property owners on more of an equal footing with developers in being able to make their concerns heard. We also support proposed changes that will have the effect of limiting the torrent of site-specific applications for official plan amendments that have overcome the municipal planning process in Toronto.

While supporting the thrust of the proposed legislation, we have substantial concerns about some of the proposed changes. We attach a brief that summarizes our general support for the bill and specifies our concerns.

Of particular concern is the different proposed tribunal powers and hearing procedures set out for 'second round' appeals of municipal decisions that have been successfully appealed to the tribunal. We believe as a fundamental principle that municipal planning decisions must be made by elected representatives. If a municipal council's response to a successful appeal does not, in the tribunal's judgment, respond adequately to the tribunal's first-round rejection of the council's initial decision, then at a minimum the municipality should have the right to appeal the tribunal's second-round decision to the Minister so that elected representatives at the provincial level have the final say.

Beyond this, we also have concerns about the limitations on appeal rights set out in the proposed legislation. While we strongly favor the elimination of rights to make site-specific applications for official plan amendments that are not supported by the municipality, we do not support restrictions on the rights of citizens and developers to appeal municipal decisions.

These and other concerns are set out in detail in the attached brief. Recommendations for legislative changes to Bill 139 are set out in an appendix.

Once again, we support the general thrust of the reforms that would be introduced by Bill 139. The reforms are long overdue and can only be applauded.

Sincerely yours,

Federation of North Toronto Residents' Associations

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Mr. Patrick Brown, Leader of the Official Opposition, Leader, Progressive Conservative Party
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Mayor John Tory
Members, Toronto City Council
Ms. Jennifer Keesmaat, Chief Planner and Executive Director, City Planning Division
FoNTRA Members and Others

The Federation of North Toronto Residents' Associations (FoNTRA) is a non-profit, volunteer organization comprised of more than 30 member organizations. Its members, all residents' associations, include at least 170,000 Toronto residents within their boundaries. The residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not *whether* Toronto will grow, but *how*. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.



4 August 2017

COMMENTS ON BILL 139 (Building Better Communities and Conserving Watersheds Act, 2017) re OMB reform

The Federation of North Toronto Residents Associations ("FoNTRA") is an umbrella organization representing over 30 residents' associations in central Toronto concerned with planning and development issues that affect our member organizations. In December 2016, FoNTRA submitted its recommendations for change in response to the Government's request for comments on the Public Consultation Document on OMB reform. FoNTRA has long been concerned about the barriers residents face in having an effective voice in OMB hearings.

FoNTRA commends the Government for responding to these and other public comments by introducing legislation (Bill 139) to reform how the planning process works. This submission provides our comments on Bill 139, with recommendations for amendments. We do not comment on the changes affecting conservation authorities.

Bill 139, if enacted, will result in significant changes in the way in which planning decisions are made on appeal in Ontario. The most important are made in three interrelated pieces of legislation: amendments to the Planning Act, the Local Planning Appeal Tribunal ("LPAT") Act, and the Local Planning Appeal Support Centre ("LPAS Centre") Act.

The amendments to the Planning Act change the grounds for appeal, restrict rights of appeal, and introduce special provisions concerning matters of provincial interest. The LPAT Act replaces the Ontario Municipal Board ("OMB") with a new tribunal and establishes revised procedures for handling planning appeals that eliminate *de novo* hearings, at least on a first round. The LPAS Centre Act establishes an independent body that will provide advice and representation to eligible persons on matters before the proposed tribunal.

Together, the three pieces of legislation provide the basis for a material improvement in the planning process in Ontario.

The changes are complex and are evaluated in the sections that follow.

A. Changes FoNTRA supports (with some reservations)

1. Elimination of de novo hearings

The restriction of the tribunal's role to that of accepting or rejecting a municipal council's decision, eliminating its current power to substitute its judgment for that of the elected council, is a reform which is long overdue. FoNTRA recommended this reform in its December 2016 submission (Recommendation 2) and supports it without reservation.

It is important to provide an appeals tribunal that can, on appeal, review municipal decisions to ensure that the decisions conform to provincial planning policies and that the municipal council followed proper procedures of notice and public hearings. But it is totally inappropriate for a non-elected appeals body to have the power to do more than reject a municipal decision.

A MAJOR CONCERN: The proposed restriction only applies to the initial appeal of a municipal planning decision. As noted in Section 10 below, the tribunal is permitted to make a decision overriding that of a municipal council in the event that the municipality's response (or lack of response) to the tribunal's rejection of a municipal decision is appealed a second time by the original appellant. We comment on this issue further in Section 10.

2. Limitations on applications for official plan amendments

Several provisions added to the Planning Act limit applications for official plan and secondary plan amendments, prohibiting requests for such amendments

- within two years of the applicable plan coming into effect, or
- to modify protected major transit area policies

FoNTRA supports the thrust of these limitations, strongly advocating restrictions on the rights of private persons to initiate official plan amendments. The plethora of applications for site-specific official plan amendments that have ended up before the OMB has been a major cause of the breakdown of effective planning in the City of Toronto, overwhelming the City's planning resources, forcing the staff to spend their time defending against appeals instead of updating planning policies. Residents, developers, and other stakeholders should have the right to appeal policies set out in comprehensive revisions of official plans, but not to initiate subsequent official plan amendments except as provided in section 3 below.

FoNTRA would go further than Bill 139. We recommend that all applications for site-specific official plan amendments by persons other than public agencies be prohibited, at least within the period prior to the statutory requirement for review and updating of the official plan. There should be a sharp distinction in this respect between site-specific official plan applications and the updating of official plans. Official plans (including secondary plans) should set out area-wide policies that govern subsequent implementing decisions, restricting site-specific private applications to requests for rezonings permitted by the applicable official plan. The adequacy and appropriateness of criteria for permitted rezonings will necessarily be a potential issue in evaluating official plan policies.

A CONCERN: Limitations on applications should not affect rights of appeal. See Sections 12 and 13 below for more on this.

3. Appeals to require an update of an official plan

FONTRA recognizes that a prohibition of requests for site-specific official plan amendments implies a greater need to ensure that official plans are reviewed and updated with reasonable frequency and/or to reflect changes in provincial policies. We consequently favor allowing appeals against municipal failures to update the policies of an official or secondary plan, whether because the plan does not reflect a changed provincial planning policy or because it has not been subject to formal review within the statutory time frame.

In response to an appeal on these grounds, the tribunal should have the authority to require a municipality to update the policies of an official or secondary plan within a reasonable period (e.g. one year). If a municipality fails to do so, the original applicant should have the right to lodge a second appeal, handled in accordance with the 'second round' procedure discussed in Sections 10 and 11 below.

It should be noted that while amendments in response to a change in provincial policy should not be delayed, such response-specific amendments should not qualify as satisfying the statutory requirement for periodic review. A qualifying update should be comprehensive.

4. Emphasis on written submissions

The LPAT Act provides that the tribunal and/or the Minister may make regulations governing the practices and procedures to be followed in hearings, including regulations governing written or electronic submissions and tribunal decisions on whether to hold oral hearings. In addition, the Act provides for time limits on oral submissions and requires that the tribunal not allow additional evidence to be adduced in oral submissions or witnesses to be examined.

FONTRA welcomes these changes. The change to a hearing based primarily on written submissions is an important element of the procedural changes introduced by Bill 139, making hearings of the tribunal more like hearings before an appeal court. The change should reduce the time spent in hearings and, at least potentially, focus the tribunal's evaluation of the evidence on the quality of the written submissions rather than on the qualification of 'expert' witnesses and disqualification of 'unqualified' knowledgeable residents. The current standard of evidence creates a requirement for highly-paid legal counsel and experts that is necessarily biased against residents and resident associations who cannot afford them. It is also biased against municipalities whose pay scales do not match those met by the private sector.

5. Admission of parties, other changes in hearing procedures

The proposed changes include rules for the admission of parties other than the municipality and appellant, specifying that the tribunal shall determine whether other persons have party status based on written submissions that address how the municipal decision under appeal fails to conform with provincial policies and/or applicable official plans. In addition, the LPAT Act provides for government regulations governing

- the establishment of rules under which the tribunal can select one of a set of such parties to act as a class representative,
- the power to adopt alternatives to traditional adversarial procedures, and
- the establishment of multi-member panels.

FoNTRA supports these changes. As noted previously, an adversarial process is inevitably biased towards parties with unlimited funds, and mediation or other non-adversarial procedures can allow more balanced participation, particularly for residents and other stakeholders who have been effectively excluded from the OMB hearing process.

Moving to multi-member panels is of particular importance. We urge the government to ensure that such panels are not only multi-member but also multi-disciplinary in all hearings, including at least one member with community engagement experience. While the Support Centre discussed in the following section can help residents make more relevant submissions, the attitudes and understanding of the members assigned to the hearing panel is also important.

6. Support Centre for tribunal participants

The LPAS Centre Act establishes an independent agency to provide support to eligible persons on matters before the tribunal, such support to include legal and planning advice as well as potential representation before the tribunal.

FoNTRA welcomes this innovation and supports the way it is to be established. It is important the LPAS Centre be independent both of the tribunal and of the government, with an independent board and a mandate to aid in redressing the balance between residents and developers.

A CONCERN: The success of the LPAS Centre will of course depend on adequate funding. FoNTRA's strong preference would be for the Centre to be empowered to provide intervenor funding as well as staff services, if only so that staff shortages do not cause the Centre to refuse legitimate requests for support. In addition, there will be circumstances (complex cases, particular environmental issues) where expertise is required which cannot be provided by the Centre. The funding of the Centre should allow for hiring additional resources.

In addition, the eligibility criteria to be established will be crucial to the Centre's effect. It will be important to establish criteria and procedures that enable assistance to be provided to residents and resident associations at an early stage in the process, so that they can be assisted in the preparation of submissions to the tribunal.

7. Mandating conformity with provincial policies

The Planning Act currently mandates the conformity of municipal official plans with provincial planning policies. The proposed legislation does not change this. Whether the issue is climate change, inclusive zoning, densities around transit stations, or protection of the Greenbelt, this requirement is clearly appropriate and necessary.

A CONCERN: The proposed legislation goes beyond this mandated conformity to eliminate the right to appeal municipal official plans for which the Minister of Municipal Affairs is the approval authority. FoNTRA has substantial concerns about this, dealt with in Sections 12 and 13 below.

8. Extension of powers of local appeal bodies

FoNTRA has long favored the establishment of local appeal bodies to deal with appeals of minor variances and consents that were formerly appealed to the OMB. (December submission, Recommendations 8 and 9.) It is entirely appropriate that this be extended to add appeals relating to site plan approvals where a rezoning is not required.

9. Extension of times for council consideration

The proposed legislation increases the number of days before a failure to adopt a requested rezoning or official plan amendment can be appealed (from 120 to 150 days for rezonings not requiring official plan amendments, from 180 to 210 days for official plan amendments).

Subject to the limitations on applications for official plan amendments discussed in Section 2 above, FoNTRA supports these increases. The increases are necessary to allow time for staff review and public input in complex applications. The current time limits have too often been used by developers to get to the OMB without going through the normal municipal process.

B. Changes FoNTRA opposes

10. De novo hearings in 'second round' appeals

Where the tribunal finds on appeal that a municipal planning decision is inconsistent with a provincial planning policy statement, fails to conform to or conflicts with a provincial plan, or fails to conform to an applicable municipal official plan, the proposed legislation requires that the municipal council be provided with the reasons for the tribunal's decision and afforded an opportunity to make a new (second) decision. If the new decision is appealed, then the restriction on the tribunal's ability to substitute its own decision for that of the municipal council —the key element of the elimination of *de novo* hearings described in Section 1 above— is explicitly removed.

While FoNTRA recognizes that a modified process will be required to deal with appeals of a municipal response (or lack of response) to a tribunal's rejection of the municipal council's first decision, FoNTRA has serious concerns with the opportunities for game-playing this opens for developers. In effect, the proposed 'second round' process creates a wide-open back door for recreating the current process, subject only to the extra cost of waiting for a second council refusal. As now, the tribunal will be empowered to override the decision of a municipal council. The only change will be that the expertise of 'expert' witnesses becomes transmogrified into testifying as to the conformity of a development with provincial policies rather than simply its consistency with a developer's notion of good planning.

FoNTRA recommends that the 'second round' process be revised to provide (1) that, in order to decide in favor of a second appeal, the tribunal be required to find that a municipal council has not acted in good faith in responding to the reasons provided by the tribunal to the council for its rejection of the initial municipal decision, and (2) that the municipality be afforded the right to appeal the tribunal's decision to the Minister if the tribunal approves the second appeal.

The final decision on the substance of a municipal planning issue should not be made by an unelected tribunal. If the municipality is unwilling to accept the tribunal's decision on a second-round appeal, it should have the right to appeal that decision to a higher elected authority. Since the basis on which such an issue is to be resolved is conformity to provincial planning policies, the Minister is clearly the appropriate final approval authority.

11. Reversion to current process in hearings of 'second round' appeals

While FoNTRA objects to allowing planning decisions to be made by an unelected tribunal, we do recognize the potential need for a right of appeal from a second-round municipal decision and consequent need for a second-round hearing that can review new evidence put before the municipal council. We therefore now turn to the process to be followed by the tribunal in conducting such a hearing.

Section 38(1) of the proposed LPAT Act provides that the reformed procedures limiting oral submissions and excluding 'expert' witnesses from oral hearings do not apply to the hearing of an appeal of the new (second) decision. In effect, the proceedings of the tribunal are returned to those of a *de novo* resident-disqualifying hearing in the event that the municipal council contests the tribunal's decision on the initial appeal.

This proposed exemption of a 'second round' appeal from the procedural reforms governing the conduct of hearings seems both unnecessary and inappropriate. It is hard to see why an improved hearing process should not apply to all appeals, whether 'first round' or 'second round'. Written submissions can review new evidence, provided that all such evidence is made available to all parties prior to the deadline for submissions.

FoNTRA recommends that section 38(1) of the LPAT Act be revised to maintain the procedural reforms that the Act otherwise provides for the conduct of all hearings of appeals.

A similar issue arises with respect to the conduct of hearings in which the Minister intervenes to protect a matter of provincial interest (section 38(1)(b)). Here too, though the provincial interest needs to be protected, it is overkill to eliminate the procedural reforms —reliance on written submissions, limitations on oral argument, etc.— that are otherwise applicable to hearings on planning decisions.

12. Excessive restriction of grounds for appeal

The proposed legislation significantly reduces rights of appeal of municipal planning decisions and restricts the grounds on which allowable appeals can be made. In addition, special provisions apply to matters of provincial interest; these are discussed separately in Section 13 below.

An official plan or plan amendment can only be appealed on the basis that the part of the plan being appealed is inconsistent with provincial policies or does not conform to a provincial plan such as the 2017 Growth Plan. The tribunal must dismiss any appeal that does not convincingly set out how the plan or plan amendment is inconsistent or does not conform.

Similarly, a municipal zoning decision can only be appealed on the basis that it is inconsistent with provincial planning policies or fails to conform to an applicable municipal official plan.

FoNTRA applauds the specification of limited grounds for appeals. The proposed restrictions significantly bolster the primacy of the municipal role established by the partial elimination of *de novo* hearings.

However, FoNTRA has concerns that the restrictions go too far. We urge that, at a minimum, the possible grounds be expanded to include appeals based on failures in the municipal process such as lack of notice, inadequate review, or conflicts of interest.

The OMB has historically provided an avenue of appeal from arbitrary municipal decisions that has been of particular value for residents and small businesses in rural and northern municipalities, for whom appeals to the courts are prohibitively expensive. FoNTRA urges that this avenue not be closed.

13. Elimination of rights of appeal on provincial issues

The proposed amendments to the Planning Act sharply differentiate rights of appeal on official plan amendments between amendments subject to Ministerial approval and those exempt from such approval. The former may not be appealed and include the following:

- any plan or plan amendment that updates an official plan to bring it into conformity with provincial policies and plans
- a plan amendment that specifies major transit station areas and related policies
- any other official plan amendment that has not been exempted from Ministerial approval.

FoNTRA regards this prohibition of appeals as excessive and unnecessary. As it advocated in Recommendation 1 of its December 2016 submission, appeals should not be prohibited on matters of provincial interest. The LPAT tribunal can play a useful role in evaluating whether a municipal official plan conforms to provincial policies, regardless of whether the plan is exempt or not exempt from Ministerial approval. How a provincial policy is applied to a municipality can vary across the municipality. The variations can have significant impacts that should be carefully considered.

As noted in our December 2016 submission (p. 3), supporting public transit calls for a judicious distribution of population densities and hence a detailed allocation of development densities that clarifies where intensification is appropriate within an area surrounding a major transit station. Such detail can only benefit from the involvement of local residents and employers in the specification of secondary plans for such areas.

C. Additional issues

14. Achieving greater certainty and predictability in official plans

With respect to the content of official plans, FoNTRA applauds proposed provisions that would mandate additional specificity in official plans, such as those mandated for areas adjacent to

major transit stations. FoNTRA has consistently urged that official plans provide more certainty and predictability (see Recommendation 3, December submission, p. 5).

In our view, official plans should provide clear direction for how population increases are to be distributed over an urban area, establishing targets and implementing policies for subareas (such as areas around transit nodes) that accomplish an appropriate allocation of development within a municipality. Such policies should establish maximum as well as minimum density targets for new developments that conform in the aggregate to the population and jobs targets for each subarea.

Where secondary plans are used to provide more detail, they should be viewed as a tool for refining policies set out in a primary official plan, not as a substitute. In large rapidly growing municipalities (such as Ottawa and in the GTA), the primary municipality-wide official plan should be the key tool for allocating growth. As such, the primary official plan should specify policies governing maximum heights and densities with which the provisions of secondary plans are required to conform.

To encourage this, FoNTRA recommends that the Planning Act be amended to incorporate a requirement that official plans specify clear limits on the heights and densities that may be authorized through a rezoning.

15. Conformity of zoning with official plans

The relationship between zoning by-laws and official plan policies is a key component of official plans. When a new or updated plan is adopted, the zoning by-law is required to be updated, but this requirement does not specify how.

FoNTRA believes that zoning by-laws should not simply reflect current developed densities, thereby requiring a rezoning for every new development. The official plan should provide clear criteria for site plan controls as well as for rezonings, so that the former can become a more effective means of controlling site-specific requirements. Site plan controls and development permits provide potential tools for dealing with urban design issues without requiring the heavy overhead of a rezoning, allowing as-of-right zoning to permit most mid-rise developments where such built forms are to be permitted. Doing so is important to expedite the approval of new development that conforms to the plan.

Where additional densities beyond this as-of-right minimum may be appropriate, the official or secondary plan should be required to specify maximum densities and heights to govern developments that exceed the as-of-right zoning. The plan should specify criteria to be applied in evaluating applications for increases in permitted height and density to those maximums. Mandating greater specificity in official plans would go a long way towards eliminating the conflicts and perceived randomness of the current planning process.

16. Local appeal board procedures

FoNTRA recommends that local appeal boards (whether in Toronto or elsewhere) be required to adopt hearing procedures similar to those specified for LPAT hearings and discussed above in Sections 4 and 5.

17. Transitional issues

The tabling of Bill 139 will inevitably result in an acceleration of applications for site-specific official plan amendments in order that they be processed under the old rules, exacerbating the municipal planning problems which Bill 139 is meant to solve.

To deal with this, FoNTRA urges that the legislation should be amended (or regulations made) to provide (1) that the prohibition of new site-specific official plan applications should be effective as of the date of second reading of the Bill, and (2) that all appeals of applications made between the dates of first and second readings of Bill 139 be heard by the new LPAT tribunal in accordance with the new hearing procedures to be established by regulation and/or by the tribunal. Such provisions would be similar to those used in amendments of the Income Tax Act, where the effective date of an amendment is the date of the budget in which the change is announced.

There is an urgent need to implement the reforms expeditiously, particularly in the City of Toronto. Development in areas within Toronto is currently effectively out of control. Ensuring an expedited transition is consequently an essential element of the necessary reform.

CONCLUDING REMARKS

The reforms introduced by Bill 139 go a long way towards eliminating the deficiencies in the planning process created by the current role of the OMB. Though we have concerns about particular elements of the proposed changes, we strongly support the overall thrust of the reforms.

We have throughout this brief drawn attention to a number of issues where we believe the Bill should be amended. We urge the Government to act on these recommendations and would welcome an opportunity to discuss them.

The residents of Ontario urgently need a new appeal process that is fair to all, is efficient, and facilitates good planning. FoNTRA urges the Government to enact Bill 139 and to do so expeditiously.

APPENDIX 1:

Summary of key recommendations

In this appendix, we list the key legislative changes we recommend be made to Bill 139, along with references to the sections of our brief in which they are discussed.

Recommendation 1 [section 2]: That the proposed limitations on applications for official plan amendments be broadened to include all applications for site-specific official plan amendments by persons other than public agencies, at least within the period prior to the statutory requirement for review and updating of the official plan.

Recommendation 2 [section 3]: That grounds for appeal to the tribunal be expanded to include appeals against municipal failures to update the policies of its official plan, whether because the plan does not reflect a changed provincial planning policy or because it has not been subject to formal review within the statutory time frame.

Recommendation 3 [section 10]: That a municipality have the right to appeal the tribunal's decision on a second-round appeal to the Minister. The tribunal should not have the power to make a decision *de novo* that is not reviewed by a higher elected authority.

Recommendation 4 [section 11]: That section 38(1) of the LPAT Act be revised to maintain the procedural reforms the Act otherwise provides for the conduct of all hearings of appeals, including 'second-round' appeals and hearings on matters of provincial interest.

Recommendation 5 [section 12]: That grounds for appeal to the tribunal be broadened beyond inconsistency with provincial policies to include appeals based on failures in the municipal process such as lack of notice, inadequate review, or conflicts of interest.

Recommendation 6 [section 13]: That appeals of official plan policies for major transit station areas or other matters of provincial interest not be prohibited. Eliminating all appeal rights on how provincial policies are implemented goes too far.

Recommendation 7 [sections 14 and 15]: That the Planning Act be amended to incorporate a requirement that official plans specify maximum limits on heights and densities that may be authorized through a rezoning.

Recommendation 8 [section 16]: That local appeal boards be required to adopt hearing procedures similar to those specified for LPAT hearings.

Recommendation 9 [section 17]: That the prohibition of new site-specific official plan applications be effective as of the date of second reading of Bill 139.

Recommendation 10 [section 17]: That all appeals of applications made between the dates of first and second readings of Bill 139 be heard by the new LPAT tribunal in accordance with the new hearing procedures to be established by regulation and/or by the tribunal.

APPENDIX 2:

FoNTRA's December 2016 recommendations vs. Bill 139 proposal

In this appendix, FoNTRA's December 2016 recommendations, extracted from the executive summary of its submission, are compared with what is proposed in Bill 139. Section references in the descriptions of Bill 139's proposals are to sections in the preceding brief.

[1] OMB's jurisdiction and powers

FoNTRA recommendation 1: *Appeals should not be limited on so-called "matters of public interest", such as developments supporting public transit.* Citizens' rights of appeal should not be overridden merely because a proposed development "supports transit". The province should use its powers of Official Plan ("OP") approval to ensure that municipal OPs adhere to provincial policies regarding transit support and other matters of provincial interest. Abrogating citizen rights of appeal is neither necessary nor desirable.

Bill 139: Not accepted. Bill 139 provides that no person, whether developer or resident, should have any right of appeal from a municipal decision regarding matters specified as of provincial interest. FoNTRA has major concerns about these provisions. See section 13 in our brief.

FoNTRA recommendation 2: *The OMB should operate like a genuine appeal body that establishes precedents and no longer conducts de novo hearings.* The OMB should function like an appellate court, reviewing the process followed by a municipal council rather than second-guessing its decision.

Bill 139: Accepted for initial appeals (see section 1 in our brief). However, Bill 139 does not accept this recommendation in dealing with appeals of municipal decisions on matters returned to a municipal council as a result of a successful initial appeal. See sections 10 and 11 of our brief for our concerns.

FoNTRA recommendation 3: *Appeals should be limited by prohibiting amendments to the Official Plan initiated by persons or organizations other than public agencies.* Appeals by citizens or developers should be limited to amendments to the zoning by-law, plans of subdivision, and site plan approvals. The Planning Act should be changed to require OPs to provide density allocations to guide subsequent site-specific rezonings. Site-specific OP amendments should be prohibited in between periodic area-wide OP amendments; the Planning Act should require a regular updating of area-wide OPs.

Bill 139: Partly accepted (see section 2 in our brief). Applications for amendments are prohibited during the first two years after an official or secondary plan becomes effective, prohibited entirely for areas around major transit stations.

FoNTRA recommendation 4: *During transition periods, both provincial and municipal planning rules in existence at the time of an application should apply.* The Province needs to ensure effective integration of policies defined at each level.

Bill 139: Existing Planning Act provisions include adequate means of ensuring this.

[2] Citizen participation and local perspective

FoNTRA recommendation 5: *Access to publicly-funded legal and planning resources should be made available to Parties and Participants on a limited basis.* For specifics on how and when intervenor funding should be made available, see the complete FoNTRA brief.

Bill 139: Largely accepted (see section 6 in our brief). Support centre to be established to provide services to eligible persons. Whether this is sufficient to assist residents requiring access to such services will depend to a great extent on its staffing and administration as well as on its policies re eligibility.

FoNTRA recommendation 6: *Board hearings should be changed to ensure that public participation is meaningful and effective.* Making residents' participation effective will require a change in their status before the Board.

Bill 139: Partly accepted (see sections 4 and 5 in our brief). Restrictions on oral argument and emphasis on written submissions will reduce the role of 'expert' witnesses. Other procedural changes (notably the encouragement of non-adversarial procedures) will also help.

[3] Clear and predictable decision-making

FoNTRA recommendation 7: *In order to reduce personal biases and overreach, all appeals to the OMB should be heard by 3-member panels of qualified professionals.*

Bill 139: Largely accepted (see section 5 in our brief). Will depend on regulations.

[4] Modern procedures and faster decisions

FoNTRA recommendation 8: *Appeals of Minor Variances or Consents should be heard by Local Appeal Bodies operated by upper-tier or single-tier municipalities.* Such appeals should be heard by bodies familiar with local conditions rather than by a province-wide board.

Bill 139: Accepted with LAB powers extended to include site plans (see section 8 in our brief).

FoNTRA recommendation 9: *Procedures for appeals of Minor Variances or Consents should differ from those used by the OMB.* Such appeals should continue to be judged on the basis of the four tests now used.

Bill 139: Not dealt with.

[5] Alternative dispute resolution and fewer hearings

FoNTRA recommendation 10: *Mediation processes should be available strictly on a voluntary basis where all stakeholders agree.* Mediation should not be viewed as a substitute for changing the role and purpose of the OMB.

Bill 139: Largely accepted (see section 5 in our brief). Mediation is encouraged as an alternative to adversarial procedures.

APPENDIX 3:

Issues of particular importance in Toronto

In this appendix, we comment on additional issues that are not directly related to the changes introduced in Bill 139 but influence our recommendations.

1. Growth Plan implementation issues

The 2017 Growth Plan for the Greater Golden Horseshoe sets out population and employment targets for municipalities and specified growth centres to accommodate an expected 45% growth in total population to over 13 million by 2041. The targeted increase for the City of Toronto is another 700,000 inhabitants, increasing the City's population from 2.7 million to 3.4 million over the next twenty-five years.

To accommodate this expected population growth, the Growth Plan, like its 2006 predecessor, requires municipal official plans to be brought into conformity with targets specified for major growth centres such as downtown Toronto and Yonge-Eglinton as well as for areas surrounding transit stations. FoNTRA does not question the need for minimum targets, nor for requiring that official plans conform to them. The issue is how this is done.

The problem arises from specifying minimums with no upper limit. Allowing unrestricted height and density in growth centres creates a profit incentive for concentrating growth in such towers rather than distributing it throughout the city. Effectively, it sabotages the so-called 'avenues' strategy aimed at encouraging a more uniform mid-rise and pedestrian-friendly form of development along Toronto's principal avenues. In addition, in so doing, it contributes to the creation of excessive pressure on the currently inadequate infrastructure in the growth centres.

Official plans implementing the Growth Plan should be required to provide maximum as well as minimum population and employment targets for growth centres and areas surrounding transit stations. FoNTRA recommends that municipalities be empowered to suspend rezonings to higher densities in areas where maximum targets are exceeded.

2. Encouraging development outside growth centres

An ancillary issue is the appropriateness of as-of-right densities and heights in areas of potential development outside designated growth centres and areas surrounding high-order transit stations (in Toronto, the "avenues").

As noted in Section 15 above, FoNTRA recommends that official plans should be required to provide as-of-right densities for potential developments for which site plan approval can provide adequate control. The development of detailed policies for development on the "avenues" should include setbacks in the zoning by-law along with criteria for site plan approval that ensure enhancements of the public realm adjacent to such developments. It should not be necessary in Toronto for developments that conform to the "avenues" strategy to require a rezoning in addition to site plan control.