



REPORT FOR ACTION

Bill 139 - Proposed Transition Regulation Associated with the Amendments to the Province's Land Use Planning Appeal System

Date: January 10, 2018

To: Planning and Growth Management Committee

From: Acting Chief Planner and Executive Director, City Planning Division and the City Solicitor

Wards: All

SUMMARY

This report comments and provides recommendations for Council's consideration on the proposed transition regulation associated with Bill 139, the Building Better Communities and Conserving Watersheds Act, 2017, which was given Royal Assent on December 12, 2017 and which is expected to be proclaimed in the first quarter of this year.

RECOMMENDATIONS

The Acting Chief Planner and Executive Director, City Planning Division and the City Solicitor recommend that:

1. City Council express their appreciation to the Province with regard to advancing the changes to the Planning Act.
2. City Council request that the Province proclaim Bill 139, Building Better Communities and Conserving Watersheds Act, 2017 to be in force at the earliest possible date.
3. City Council request the OMB to prioritize the disposition of municipally initiated official plan and zoning by-law amendments still subject to the existing *Planning Act* regime.
4. This report be forwarded to the Minister of Municipal Affairs and the Attorney General for their information.

FINANCIAL IMPACT

There are no direct financial implications arising from the recommendations in this report.

DECISION HISTORY

On October 5, 2016, the Province of Ontario released its Public Consultation Document in support of its review of the scope and effectiveness of the OMB. The City Planning Division submitted a report for Council's consideration which provided recommendations for legislative change in response to the questions posed in the Consultation Document. On November 10, 2016, City Council adopted item PG16.6, "Response to Provincial Consultation on Reforming the Ontario Municipal Board (OMB)".

<http://www.toronto.ca/legdocs/mmis/2016/pg/bgrd/backgroundfile-98408.pdf>

On May 30, 2017, Bill 139, the Building Better Communities and Conserving Watersheds Act, 2017 received 1st Reading in the provincial legislature. Among other measures, Bill 139 expressed the government's desire to reform the land use planning appeal system in Ontario.

On November 7, 2017, City Council adopted item PG23.7, "Bill 139 - Proposed Amendments to the Planning Act and the Province's Land Use Planning Appeal System". The item consisted of a Report and recommendations from the City's Planning Division, with regard to the proposed legislation and legislative changes to existing Acts in furtherance of reforming the Province's land use planning appeal system.

<https://www.toronto.ca/legdocs/mmis/2017/pg/bgrd/backgroundfile-107629.pdf>

In adopting item PG23.7, City Council requested the City Solicitor to report to Planning and Growth Management Committee in the event that Bill 139 was given Royal Assent, with recommendations for any potential changes in the City's processes and procedures that would be required to implement the legislation. An inter-divisional staff team has been established to address potential issues related to implementation of Bill 139 in anticipation of its proclamation.

ISSUE BACKGROUND

On December 12, 2017, Bill 139 received Royal Assent. Bill 139 is an omnibus Bill which replaces or amends a number of existing Acts, including the *Planning Act*, the *City of Toronto Act* and the *Ontario Municipal Board Act*. It should be noted that while the Bill contains minor technical changes which were made prior to 3rd Reading and Royal Assent, no substantive changes were introduced to the Bill at that time.

The Bill has not yet been proclaimed in force and no such date has yet been announced. The legislative amendments will come into force on a day to be named by proclamation by the Lieutenant Governor. Once the legislation is proclaimed in force,

new legislative provisions will be in place to deal with land-use appeals before a new tribunal, the Local Planning Appeal Tribunal ("Tribunal").

On December 7, 2017 the Province posted the proposed transition regulation that will set out the rules for appeals of planning matters in process, at the time of proclamation of the Bill. The Province has given the public 45 days to comment on the proposed transition regulation through the Environmental Bill of Rights Regulatory Registries. With the exception of the transition regulation, the release of Bill 139 has not been accompanied by any of the other proposed regulations which will contain many of the details regarding the implementation of the proposed changes to the appeal system and the function of the Tribunal. Ultimately, the transition and other regulations that form part of the Bill, will take effect upon the date of filing on the Government of Ontario's e-Laws website.

Transition Regulation - Summary:

The Province proposes that the application of Bill 139 changes be transitioned as follows:

- Removal of appeals of provincial approvals of official plans and official plan updates, including for conformity exercises to provincial plans, the new legislative provisions will apply to those provincial approvals where notice is given after the Bill comes into force;
- Restriction on the ability to amend secondary plans for 2 years following their approval, unless allowed by council, will apply to applications for amendments to secondary plans that came into effect after the Bill comes into force;
- Removal of appeals of interim control by-laws (when first passed for a period of up to 1 year) will apply to decisions made after the Bill comes into force;
- Appeals that are already before the OMB as of the date of Royal Assent will be subject to the existing legislation and will continue to be heard by the OMB;
- Privately initiated appeals of matters between the date of Royal Assent and the date the Bill comes into force will be:
 - heard by the OMB if the planning matter began (i.e. if the City had received a complete application) before the date of Royal Assent;
 - heard by the new Tribunal if the planning matter began (i.e. if the City received a complete application) after the date of Royal Assent.
- Privately initiated appeals made after the Bill comes into force will be subject to the new legislative provisions and heard by the new Tribunal; and
- Restricting appeals, of a decision relating to municipally initiated official plan or zoning by-law amendments, to grounds of consistency with provincial plans and/or

conformity with provincial and/or local plans, will apply to municipally initiated official plan or zoning by-law amendments that are adopted after the date of Royal Assent.

COMMENTS

Likely as an inevitable consequence of the "uncertainty" created by the initial introduction of any new legislation, since Bill 139's introduction in May of 2017, the City has received approximately 140 appeals of projects relating to privately initiated official plan and/or zoning by-law amendment applications. By way of comparison over the same general period in 2016, the City received approximately 50 such appeals. This represents an increase in appeals of about 180 percent.

As of December 2017, the City was in receipt of approximately 350 privately initiated development projects that, in accordance with the proposed transition regulation, could potentially be appealed and adjudicated under the existing legislative regime. If the Bill is not proclaimed until April of 2018, the number of existing applications that could potentially be adjudicated through the old regime could rise to 380. Based on the transition regulation, the number of privately initiated official plan and/or zoning applications that could be appealed under the old regime, would then continue to rise until June 12, 2018, unless Bill 139 is proclaimed at an earlier date.

From a housing delivery standpoint the 380 applications represent approximately 130,000 proposed residential units and a net total of over 11 million square meters of residential gross floor area and a net total of 4 million square meters of non-residential gross floor area.

The marked increase in appeals since May 2017 will negatively impact the level of resources that the City (in particular City Planning, Legal Services and the City Clerk) will need to commit to OMB related matters in order to address the increased number of planning appeals. Delaying proclamation will only compound this issue and will also potentially impact the scheduling of complex hearings currently being adjudicated by the OMB, and in particular municipally initiated official plan amendments and zoning by-laws.

It is in the broader public interest to prioritize the adjudication of municipally initiated official plan amendments and rezonings and to ensure timely proclamation of Bill 139.

CONTACT

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SIGNATURE

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