ADVOCATES FOR EFFECTIVE OMB REFORM

August 11, 2017

HAND DELIVERED

The Honourable Bill Mauro
Minister of Municipal Affairs
College Park
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Toronto, ON M5G 2E5

The Honourable Yasir Naqvi
Attorney General
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Dear Ministers:

RE: ***Building Better Communities and Conserving Watersheds Act, 2017*** **(Bill 139)**
Submission on behalf of the Advocates for Effective OMB Reform

We have now had an opportunity to review Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017*, which received first reading on May 30th, 2017. We are pleased to have the opportunity to provide comment on this important Bill. As lawyers with extensive experience in legislative interpretation and land-use planning matters, we have reviewed this Bill in detail. As set out in this letter and the enclosed table, we believe Bill 139, as written, has a number of significant issues that need to be addressed. As we explain further below, the unintended consequences of these issues is that, in large part, the policy objectives behind the introduction of this Bill will not be achieved. As such, we believe Bill 139 requires extensive re-drafting before any further steps are taken to enact this legislation.

ADVOCATES FOR EFFECTIVE OMB REFORM

First, we would like to introduce our group, Advocates for Effective OMB Reform (the "**Advocates**"). We are a group of over 20 senior municipal and land-use planning lawyers with extensive experience concerning a wide array of land-use planning matters. Our group members have a wide range of clients, including municipalities, other public authorities, land owners, agencies, developers, citizen and ratepayer groups, special interest groups and individual residents. Although all of our members are currently in private practice, a number of us have also previously practiced in-house with municipalities. We appear regularly before municipal councils, committees of adjustment and, inevitably, before the Ontario Municipal Board (the "**OMB**") with respect to a wide variety of land-use planning appeals made under the *Planning Act* and other legislation. In fact, the Advocates collectively have over 400 years of experience practicing before the OMB and have represented various parties on many of the leading OMB cases over

the past 40 years. The group also includes 2 recipients of the Ontario Bar Association's Award of Excellence in Municipal Law.

It should be noted that a number of our members have previously made submissions, either on their own or as part of other groups, on OMB reform. Also, many members of the Advocates have met with senior Provincial staff regarding OMB reform to present our thoughts and ideas on how the government should be proceeding with these reforms either as part of the formal public consultation process or through informal meetings that have been organized following the formal process. It would seem that despite the information and advice that members of our Group have provided, the Province has chosen to go in a different direction with OMB reform as Bill 139 goes against a number of the principles that were lauded by our group as important considerations for OMB reform.

Although various members of our group are typically on opposite sides on many land-use planning matters, the Advocates are all in agreement that there are some serious fundamental flaws in Bill 139 which need to be addressed before the Province moves forward with the enactment of the final legislation for OMB reform.

We would also note that these submissions are not being made on behalf of our clients nor any group or collection of interests; these are our views, and our views alone.

OVERVIEW OF FUNDAMENTAL CONCERNS WITH BILL 139

To be clear, the Advocates are not against OMB reform. Our group recognizes the important and vital role the OMB has and continues to play in the land-use planning approval process in Ontario. That being said, we also acknowledge that there are a number of ways the current process could be enhanced and made better.

In terms of enhancements to the current system, the Advocates believe broadening the scope of mediation, which has been an effective tool for the Board in recent years in resolving a number of controversial OMB appeals without the need for a contested hearing, is a significant improvement that should be pursued. Unfortunately, as discussed in more detail below, the proposed amendments to the process in Bill 139 do little to promote or enhance mediation and, in fact, serve to undermine much of the tension that pushes the various parties toward a negotiated settlement. Arguably the proposed reforms will lessen the need for mediation, as an interested party's ability to appeal certain matters to the Board will be eliminated and, in some cases, where an appeal right continues to exist, the tests to be applied on those appeals are so restrictive that an opposing party would likely opt to have a contested hearing rather than proceeding to mediation.

Any lawyer or party who has participated in an OMB mediation will attest to the importance of having a healthy level of tension between various parties' positions, which plays an important factor in reaching a resolution. In other words, if one party holds all of the cards, then there is no need for that party to be reasonable in seeking a mediated resolution. Alternatively, there is no reason to mediate when a municipality can dictate the outcome.

That is one, but by no means the only, of Bill 139's failings. Enclosed with this letter is a table outlining detailed concerns with the various amendments in Bill 139 and its proposed impacts on various stakeholders including municipalities, land owners, developers, residents and resident's associations. As you can see from the sheer length of this document, there are numerous problems with the proposed legislation. Three major fundamental issues can be summarized as follows:

(1) In seeking to "give communities a stronger voice in development,"[1] Bill 139, as drafted, instead takes away important appeal rights from landowners, residents and other interested parties. The process established in Bill 139 removes an essential check and balance to the land-use planning system. In its oversight role (particularly for all decisions relating to Official Plans and Zoning By-laws including, but not limited to, decisions made by the Province and decisions relating to policies and provisions for "protected major transit station areas"), the OMB ensures that all of the participants in the land-use planning process – politicians, municipal staff, applicants and consultants – are accountable. It is the only decision-maker that considers planning above politics. In its current form, Bill 139 hands the bulk of power to municipalities, potentially to the detriment of Provincial imperatives like intensification or housing affordability pressures in the face of increasing demand. Eliminating appeal rights unreasonably interferes with the fundamental right to procedural fairness owed to all stakeholders and removing rights and limiting the opportunity to be heard never results in better decisions.

(2) In seeking to reduce the "length and cost of hearings and create a more level playing field for all participants,"[2] the proposed procedure for hearings before the Local Planning Appeal Tribunal (the "**Tribunal**") appears to be contrary to the rules governing procedural fairness and the principles of natural justice, particularly the ability to have one's case heard, that all courts and administrative tribunals should have to adhere to. Bill 139 explicitly prevails over the *Statutory Powers Procedure Act* (the "**SPPA**"), the cornerstone legislation ensuring procedural fairness for Administrative Tribunals in the province of Ontario. The proposed procedure is not fair, just and will not lead to the expeditious resolution of the merits of an appeal. Further, the elimination of oral evidence at a hearing is prejudicial to an appellant's or party's ability to present a proper and fair case before the Tribunal. Also, forcing the Tribunal to remit the matter back to municipal council where it finds that the council did not make a decision that was consistent with the Provincial Policy Statement, conformed to Provincial Plans and/or conformed to Official Plan(s), at its best, only delays a final determination, and could in many cases result in a second appeal, unduly lengthening the appeal process and increasing costs, unintended consequences that would result in the opposite of some of the policy objectives informing Bill 139.

(3) The new two part test on appeals of Official Plan Amendment and Zoning By-law Amendment application appeals is unfair and demonstrates a lack of understanding of the planning principles and process. It requires appellants to not only show that the proposed amendments are consistent with provincial policy statements and conform to relevant provincial plans and municipal official plans but also that the existing policies or provisions that are affected by the proposed amendments are not consistent with provincial policy statements or do not conform to relevant provincial plans or municipal official plans. This latter test could be interpreted in such a way to make it virtually impossible to meet especially in those cases where official plans were recently adopted by municipal council or approved by the OMB or the new Tribunal as they would be deemed to be consistent with the provincial policy statement and conform to provincial plans and municipal official plans by their adoption or approval. This test fails to consider the importance of site specific impacts or whether a blanket Official Plan policy or zoning by-law provision that applies to a broad area should be appropriately amended on a site specific basis to

[1] Government of Ontario. "Giving Communities A Stronger Voice in Development." News Release. May 16, 2017.
[2] Government of Ontario. "Ontario's Proposed Changes to the Land Use Planning Appeal System." Backgrounder. May 16, 2017.

better respond to provincial and/or municipal policies. Specific details for our concerns and the impacts on various stakeholder groups are once again set out in the attached table.

These fundamental issues are discussed in further detail below. These issues, and all of the other issues with Bill 139 as drafted identified by the Advocates, are contained in the enclosed table.

LIMITING TRIBUNAL OVERSIGHT AND LIMITING PROCEDURAL FAIRNESS

General Practice and Procedural Powers of the Local Planning Appeal Tribunal:

Section 31(2) of the proposed Local Planning Appeal Tribunal Act, 2017 (the "**LPATA**") states that the Tribunal shall "adopt any practices and procedures provided for in its rules or that are otherwise available to the Tribunal that in its opinion offer the best opportunity for a fair, just and expeditious resolution of the merits of the proceedings".

The natural presumption is that the intent of the legislation is to ensure fundamental rules of natural justice and procedural fairness will be the cornerstone of the Tribunal's powers. However, in reviewing the procedures set out and allowed for in Part VI of the LPATA, it is abundantly clear this is not achieved. Subsection 31(b) of the LPATA states clearly that the SPPA, where it "conflicts with this Act, a regulation under this Act or the Tribunal's rules" will not apply. The SPPA has long been established as the cornerstone legislation ensuring procedural fairness for Administrative Tribunals in the province of Ontario. While the *Planning Act*, specifically excludes the applicability of the SPPA in very limited circumstances, such as 45(15)[3], the new legislation provides a broad general rule that the Tribunal's practices and procedures, whether granted by this statute, regulations or rules, will prevail over the fundamental protections of procedural fairness enshrined in the SPPA.

Further, section 31 states that the Tribunal shall dispose of proceedings in accordance with any practices and procedures that are required under this Act or a regulation made under this Act. At present no regulations, nor the Tribunal's rules have been released to determine whether procedural fairness will be achieved.

Section 32 of the LPATA grants authority to the Tribunal to make rules governing its practices and procedures, such as the holding of hearings or other proceedings in writing. The Tribunal is also protected in subsection 32(5) from failing to comply with its own rules if failure to comply with the rules did not cause a substantial wrong that affected the final disposition of a matter.

Planning Act Appeals: Denial of the Right to Be Heard and to Test the Evidence

Sections 38 through 42 of the LPATA specifically deals with the Tribunal's practices and procedures concerning *Planning Act* appeals of a decision or failure to make a decision by a municipality in respect of an official plan or zoning by-law and the failure of an approval authority to make a decision respecting official plans and plans of subdivision.

[3] Section 45(15) of the *Planning Act*, R.S.O. 1990, c. P 13 (the **"Act"**) states "[d]espite the SPPA, the Municipal Board may dismiss all or part of an appeal without holding a hearing, on its own initiative or on the motion of any party". In order to dismiss an appeal under this section or similar sections of the Act, the Board will hold a Motion to determine if the appeal does not disclose any apparent land use planning ground, or if the appeal is not made in good faith or is frivolous or vexatious or only made for delay. The appellant is given an opportunity to verbally argue the proposed dismissal and must file affidavit material to support his/her arguments. Therefore a fulsome opportunity to defend the appeal does exist which ensures procedural fairness.

Who may participate in a hearing

If a person, other than the appellant or municipality, wishes to participate in an appeal, they must submit a written submission to the Tribunal. In certain appeals, those wishing to participate in an appeal must serve a copy of their submission on the municipality or approval authority. Pursuant to subsections 40(4) and 41(3) of the LPATA, the Tribunal may determine whether they may participate on such terms as the Tribunal may determine. No explanation is provided as to how the Tribunal will make the determination whether a person can participate as a party or otherwise. As a result, it is possible that planning appeals could become less accessible than under the current process.

Oral Hearings

Subsection 42(3) of the LPATA stipulates that at an oral hearing held under subsection 38(1) or (2), each party or person may make an oral submission that does not exceed the time provided under the regulations and "no party or person may adduce evidence or call or examine witnesses".

The Supreme Court of Canada in *Baker v. Canada* described procedural fairness as follows:

> "[T]he purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision maker."[4]

If a party or person to an oral hearing is not allowed to adduce evidence or call or examine witnesses, is there a denial of procedural fairness and natural justice? The threshold question is whether a duty of fairness is owed by the decision maker. The courts will not lightly assume that the legislator intended for procedures to run contrary to fairness even when express statutory language may oust the common law principles of natural justice.[5] However, a "general right" to procedural fairness can arise independent of the operation of a statute, depending on the factual context.[6]

The Supreme Court in *Knight v Indian Head School Division No. 19*, organized this analysis around three determinative facts: the nature of the decision, the relationship between the decision maker and the affected individual, and the impact of the decision.

(a) Nature of the Decision:
While decisions of a "legislative and general nature" generally do not warrant the duty of fairness, those of a more administrative, specific, and final nature do engage it.

(b) Nature of the relationship:
The relationship between the decision maker and the individual generally concerns how "public" in nature it is. A "public" or "statutory" flavour to the nexus between the parties weighs in favour of finding a duty of fairness. If the powers exercised by the Tribunal are delegated statutory powers, they should be put only to a legitimate use. As stated in

[4] *Baker v Canada (Minister of Citizenship & Immigration)*, [1999] 2 SCR 817 at para 22, [1999] SCJ No 39 [*Baker*].
[5] See *Ocean Port Hotel Ltd v British Columbia (General Manager, Liquor Control & Licensing Branch)*, 2011 SCC 52, [2001] 2 SCR 781 [*Ocean Port*].
[6] *Knight v Indian Head School Division No 19*, [1990] 1 SCR 653 at para 26, [1990] SCJ No 26 [*Knight*].

Knight, "the public has an interest in the proper use of delegated power by administrative bodies".[7]

(c) Importance of the decision:
Lastly, the impact of the decision on the affected individual relates to the significance and importance of the affected rights and interests. The jurisprudence has generally regarded property rights and the right to the enjoyment of one's property as an important interest that engages the duty of fairness.[8]

The Tribunal is an administrative body and the decisions rendered, although appealable under limited circumstances, are final. Tribunal decisions directly impact the right to the enjoyment of one's property and a duty of fairness is clearly owed to all persons involved in a proceeding. The public has a right to ensure that the delegated power to the Tribunal is properly applied.

In addition to the principles enunciated by the Supreme Court in *Knight*, the Supreme Court of Canada decision in *Baker* enumerated five factors that inform the determination of the content of procedural fairness:

1. The nature of the decision being made and the process followed in making it: the more the prescribed process, the function of the tribunal, the nature of the decision-maker, and the decision itself resemble judicial decision making, the greater the amount of procedural protections that are required by procedural fairness.
2. The nature of the statutory scheme: the role the decision plays within the statutory scheme helps determine the content of the duty – for instance, greater protections are owed when there is no right of appeal and the decision is final.
3. The importance of the decision to the individuals affected: the more important the decision and the greater its impact is to those affected, the more stringent the procedural protections that are required.
4. The legitimate expectations of the person challenging the decision: without independently creating substantive rights, a legitimate expectation that a certain procedure will be followed militates in favour of requiring such a procedure.
5. The choices of procedure made by the decision maker itself: particularly when the statute gives the decision maker the ability to determine its own procedures, the duty of fairness should respect the procedural choices made by the decision maker itself.

In summary, the more the decision resembles judicial decision making the greater the amount of procedural protections are required by procedural fairness.[9]

In line with the common law rule of *audi alteram partem* ("listen to the other side"), the Court in *Baker* described the heart of participatory rights as "whether, considering all the circumstances, those whose interests were affected had a meaningful opportunity to present their case fully and fairly."[10] This may

[7] *Ibid.*
[8] Sara Blake, *Administrative Law in Canada*, 5th ed (Markham, Ont: LexisNexis, 2011) at 20; see *Homex Realty & Development Co v Wyoming (Village)*, [1980] 2 SCR 1011, [1980] SCJ No 109 [*Homex*].
[9] *Nicholson v Haldimand-Norfolk (Regional Municipality) Commissioners of Police* (1978), [1979] 1 SCR 311, 88 DLR (3d) 671 [*Nicholson*].
[10] *Baker*, *supra* note 4 at para 30.

entail the right to make written submissions, an oral hearing, cross-examination, present evidence, or other procedures. In all cases, what is fair depends on the circumstances.[11]

Meaningful participation and the opportunity to present one's case fully and fairly may require the right to an oral hearing before the decision maker, particularly in situations where an individual's credibility is pivotal to the decision. This is premised on the notion that, in the pursuit of better decision making, any adverse finding with respect to credibility ought not to occur without affording the impugned individual the opportunity to be directly heard. Borrowing from the *Charter* s. 7 principle of fundamental justice, the Court of Appeal for Ontario in *Khan* cited *Singh v Canada*:

> "[W]here a serious issue of credibility is involved, fundamental justice requires that credibility be determined on the basis of an oral hearing. Appellate courts are well aware of the inherent weakness of written transcripts where questions of credibility are at stake and thus are extremely loath to review the findings of tribunals which have had the benefit of hearing the testimony of witnesses in person."[12]

Writing for the majority, Laskin JA thus held that as the appellant's credibility was the "central issue" in the case at bar, the decision maker was obligated to hear her explanation in-person. Disbelieving her without doing so "amounted to a denial of procedural fairness, which by itself fatally flawed the proceedings before the Committee."[13]

Similarly, meaningfully and fully presenting one's case may entail the right to submit evidence. A decision cannot be fairly made in the absence of accurate facts, and thus a decision maker must find the facts and these findings must be based on evidence.[14] This requirement is particularly strong where there is not an opportunity for an oral hearing.[15]

As subsection 42(3)(b) denies a party or person the right to adduce evidence or call or examine witnesses the only materials before the Tribunal would appear to be the public record that was before the municipality or approval authority at the time of decision or appeal where there has been a failure to make a decision. Although the municipality allows participation from both the applicant and the public there are many constraints imposed on the level of participation. For example, most municipal councils or committees allow a deputation of only five minutes and certainly do not allow either the applicant or the public to cross examine any authors of expert reports at its meetings. In the current process, the only opportunity to truly test the evidence of the authors of the various expert reports is at a hearing before the Ontario Municipal Board. Under Bill 139, this opportunity to adduce evidence and examine witnesses to test the evidence on record is removed from the process.

Where the evidence upon which the decision is to be made has not been tested at either the municipal council nor at the Tribunal there is a denial of natural justice. A decision cannot be fairly made in the absence of accurate facts and therefore it is critical in any proceeding for the decision maker to find the facts and these findings must be based on evidence that has been tested.

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[11] *Blake*, *supra* note 8 at 12.
[12] *Singh v Canada (Minister of Employment & Immigration)*, [1985] 1 SCR 177 at para 105, [1985] SCJ No 11.
[13] See *Khan v University of Ottawa*, 34 OR (3d) 535 at para 23, [1997] OJ No 2650 [*Khan*].
[14] *Blake*, *supra* note 8 at 60.
[15] *Ibid* at 65.

Impact on Stakeholders

In reviewing the Tribunal's practices and procedures as set out in Part VI of the LPATA as presently drafted, the Advocates believe applicants, residents and lower tier municipalities will not be afforded a "fair, just and expeditious resolution on the merits of the proceedings" as envisioned in section 31(2). The protections afforded to all citizens of the province of Ontario when appearing before provincial tribunals will not, generally, apply to the Local Planning Appeal Tribunal. Although oral hearings are permitted, it is only with respect to very limited appeals, no party or person will be allowed to adduce evidence or call or examine witnesses on a first appeal albeit it may be allowed if a second appeal is required. Based on Supreme Court jurisprudence, we believe participants in the land-use planning process are owed a common law duty of fairness by the Local Planning Appeal Tribunal. The provisions in Bill 139 amount to a denial of a general right to procedural fairness. We agree with the Supreme Court of Canada in *Blake* that a good decision may not be reached in the absence of evidence that has been properly tested through cross-examination. As the process before the Tribunal will generally not allow evidence to be adduced or permit cross examination, we believe the Tribunal will be hampered in its decision-making and may not be able to arrive at good decisions if the evidence has not been tested through cross-examination.

CHANGING MEDIATION DYNAMICS BETWEEN THE PARTIES AND REDUCING LIKELIHOOD OF NEGOTIATED SETTLEMENTS

Why is Mediation Important

The OMB's mediation program gives stakeholders the necessary forum to reach a co-operative resolution which has achieved partial or complete resolution of many contentious OMB appeals often involving numerous parties. In a mediation process the issues of all parties are discussed and evaluated in a non-confrontational manner, with the assistance of a mediator, in an effort to find a common ground position. Ultimately the parties to a successful mediation feel empowered knowing they played an important role in the resolution of the planning dispute instead of having a decision imposed on them. Mediations succeed when parties marshal creativity, skill, and a willingness to compromise. Since the Board may only endorse settlements that meet provincial policies, success at the mediation table translates into the achievement of provincial objectives. Unfortunately, the proposed reforms undermine this process just as it is gaining momentum.

Bill 139 proposes a narrow test on appeal that ignores many of the issues that are most often in contention. In our experience, people are rarely opposed to development writ-large; rather, they are concerned about how certain heights, densities, traffic engineering, urban designs, and landscaping will change their communities. In a nutshell, communities are concerned about the "felt impacts" of specific development applications. These impacts, rather than broad and esoteric policy interpretations, are what the OMB's experienced mediators most often resolve. Achieving party-to-party resolution advances intensification objectives with the hands-on involvement of those who are most likely to be impacted by them.

The pre-eminence of municipal decision-making proposed in Bill 139 would further undermine the potential of the OMB's mediation program.

The prevailing mediation style in Ontario is the Harvard Law School's "principled negotiation" or interest-based model. A pillar of that (and most negotiation) is the importance of each party's "Best Alternative to a Negotiated Agreement", or BATNA.

The party with the best BATNA enjoys the most power in a negotiation. Mediation at the OMB flattens power imbalances by giving parties the incentive of certainty of an outcome they craft together. Each party's BATNA is generally a long and costly hearing with the risk of failure. This BATNA has proven to be a very effective incentive in negotiation as some 90% of the OMB's mediations conclude in settlements of all or some of the issues under appeal. In some cases, parties emerge from mediation observing their development application is better than when it began.

The proposed changes would, in almost every case, equip municipalities with the best BATNA irrespective of the strength or weakness of their case. Currently, experienced Board members leverage the OMB's power to nudge all parties to make concessions. However, the proposed legislation would remove a mediator's influence and any incentive for municipalities to compromise with ratepayers, environmental groups and/or proponents, because municipal councils would have the ultimate power to refuse or accept mediated settlements. The proposed changes would undermine the level playing field now enjoyed in OMB mediation.

We maintain unequivocally that the very best possible reform in land use planning adjudication would have been a full-hearted expansion and enhancement of the OMB's mediation program. In its current form, Bill 139 disempowers the very communities whose voices it sought to strengthen.

Impact on Stakeholders

Ratepayer Groups
The proposed legislation engrains the mistaken assumption that municipalities are the sole defenders of the public interest. The result will be the voice of ratepayer groups will be diminished. In many cases, ratepayer groups describe OMB-led mediation as "the first time I was truly heard." They are given an opportunity to sit with and meet proponents with their own experts in tow to support their views. It is not uncommon for ratepayer groups to retain traffic, planning and urban design experts to assist in mediation. Proponents are often called upon to pay for ratepayer groups' retained professionals. The threat of the cost, delay and risk of a contested hearing is an incentive for each party to compromise and reach agreement. Ratepayer groups will be ill-equipped in mediation under the proposed format in Bill 139, because it is not clear what, if any, expertise they may bring to bear in the process.

Environmental Groups
Environmental groups very often initiate planning appeals either when they allege a municipality has mistakenly relied on a proponent's inadequate environmental reports, or when they allege proposed measures to protect natural heritage are insufficient. Appeals concerning Natural Heritage are rare in the GTA and are more likely to occur in many smaller municipalities. Smaller municipalities are sometimes ill-equipped to scrutinize reports concerning natural heritage policies. In these circumstances, the environmental and ratepayer groups play an important role in defending the natural environment through the planning process. Preventing groups from challenging inadequate or poor environmental reports, and proffering their own on appeal, removes one of the most important checks and balances of the current planning appeals process in defending the environment.

Proponents
Businesses value certainty. Proponents enter mediation for the opportunity at certainty of the outcome of an appeal. Proponents will have little incentive to look to mediation if they feel there is an irregular playing field. In its current form, mediation has given proponents an incentive to marshal their resources towards better understanding and addressing local concerns with their projects. It also gives them the opportunity

to argue for the optimization of their development proposal, while balancing the needs of the local community, in a direct party-to-party relationship with their neighbours.

PRESCRIPTIVE AND NOT TIMELY SUPPORT FOR CITIZEN INVOLVEMENT

Schedule 2 of Bill 139 contains the provisions for the *Local Planning Support Centre Act*, which establishes the Local Planning Appeal Support Centre. The Ministry of the Attorney General suggests the Human Rights Legal Support Centre (the "**HRLSC**") is a model for the proposed Local Planning Support Centre (the "**LPSC**"). This comparison is especially useful in pointing out why the LPSC, as established through Bill 139, would fail to serve the needs of appellants and respondents that would appear before the new Tribunal. In our opinion, the HRLSC's success in supporting applicants in human rights-related hearings and mediation is not translatable to supporting citizen involvement in *Planning Act* appeals.

The HRLSC determines a *lis* between parties based on a complete and established code, the *Ontario Human Rights Code*. On the other hand, *Planning Act* appeals concern competing visions of the public interest, relying on a wide range of policies and opinions. Articulating these competing views in land-use planning requires expert evidence and lawyers with broad experience representing different types of clients.

The Human Rights Commission makes findings of fact based on *viva voce* lay evidence tested through cross-examination. Most findings of fact concern the alleged conduct of an individual or corporation. HRLSC lawyers and their clients rely on an ability to conduct examinations to establish the factual underpinnings of their cases.

Findings of fact in planning appeals are largely based on expert opinions contained in reports. Under the current proposal, the authors of those reports will generally not be allowed to be cross-examined and their opinions will not be tested. Parties to planning appeals are often balancing wide ranging interests, including public and private interests. LPSC lawyers will be hampered and disadvantaged in their ability to properly assist clients if they are only involved in a matter after it has been appealed. The proposed changes require ratepayer groups to expend resources during the pre-decision phase of an application to ensure they will have the necessary evidentiary record in the event of an appeal. It is not clear the LPSC will be equipped to advise ratepayers or ratepayer associations in respect of these matters as they arise across Ontario municipalities.

Further, unlike some areas of law, where lawyers represent only one type of client (for example, in labour law, lawyers tend to represent either labour or management, but do not have clients from both sides), most experienced municipal lawyers are valued for their experience representing a wide range of clients, including proponents, opponents, municipalities and public agencies. Most members of the municipal bar in Ontario have represented at least one of each of these types of clients at some point in their careers. This unique aspect of the municipal bar gives its members a breadth of experience, knowledge and perspective that are invaluable to clients and decision-makers. Such experience will be unattainable to most LPSC lawyers.

The subject-matter of the Human Rights Commission lends itself to the restorative benefits of mediation. Where a violation has likely occurred, the threat of a financial penalty and stigma are powerful incentives to resolve the matter through a negotiated settlement.

LPSC lawyers will not enjoy the same success in mediation as their HRLSC colleagues without the same "carrot and stick" incentives.

Impact on Stakeholders

Typically, different ratepayer organizations prefer to use different lawyers and/or consultants. To presume that a centralized agency can better determine the needs of the various residents' associations, simply put, is unfair. In addition, instead of requiring the associations to seek permission for funding, as set out in Bill 139, these groups ought to be automatically entitled to funding as part of a fee the applicant pays at the outset, where a certain amount of money is placed in trust for residents' associations to ensure they have the opportunity to be well represented depending upon the significance of the development application being proposed. Responding to *Planning Act* appeals trigger public and private interests. It is not clear how the LPSC would be able to balance those roles as a publicly funded agency.

CONCLUSION

For the reasons outlined above, we believe there are numerous significant issues with Bill 139. Unfortunately, Bill 139 in its current form will not achieve the objectives that the Province has set out for OMB reform. In many respects, the proposed amendments run counter to these objectives in trying to establish a Tribunal appeals process that is fair, just, accessible to the general public and more expeditious than the current OMB process. It is our strong recommendation that a major overhaul of this legislation is required before it proceeds to second reading and to a Standing Committee for public hearings.

As we have done throughout this process to date, the Advocates would be pleased to offer our expertise and to assist the Province in addressing the concerns that have been raised in this submission, including meeting with Ministerial staff to discuss alternative solutions which will improve the current OMB appeals process.

If you have any questions regarding any of the above or would like to schedule a meeting with us, please do not hesitate to contact Jason Park, Scott Snider, or Mary Flynn-Guglietti, as follows:

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Thank you.

Yours very truly,

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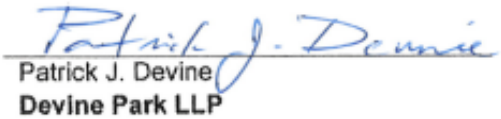

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Schedule 1, Part VI	Replaces *Ontario Municipal Board Act*, Part VI with *Local Planning Appeal Tribunal Act, 2017*, Part VI, ss. 31-43		
Schedule 1, Sections 31(1) and (3)		Provides that the new Act, any regulations, or any rules of the Tribunal override the *Statutory Powers Procedure Act* ("SPPA"). The SPPA sets out basic principles of procedural fairness that apply to a tribunal which is required to hold a hearing before making a decision. The Tribunal owes a duty of fairness to all persons involved in a proceeding. As the proposed regulations and rules have not been introduced, the Act cannot be evaluated to determine its impact on procedural fairness.	Any amendments that interfere with the right to procedural fairness impacts all stakeholders including municipalities, land owners, applicants, and other interested persons.
Schedule 1, Section 31(2)		Provides that the Tribunal shall adopt any practices and procedures for each proceeding, as provided for in its rules or that are "otherwise available". No information has been provided as to what practices and procedures will be "otherwise available".	Any amendments that interfere with the right to procedural fairness impacts all stakeholders including municipalities, land owners, applicants, and other interested persons.
Schedule 1, Section 33(1)		Governs case management conferences ("CMC"). The content of a CMC is no different than the Board's current practice of holding prehearing conferences and issuing procedural orders. However, a number of the items to be discussed at a CMC, which will be mandatory for all appeals under the *Planning Act*, no longer apply to the most complex appeals under the *Planning Act*.	There is a significant disconnect between the complexity of a matter and the achievement of procedural fairness. The more complex proceedings now attract limited procedural fairness, contrary to the rules of natural justice. This will negatively impact all stakeholders.
Schedule 1, Section 33(2)		Grants power to the Tribunal to examine a party or person that makes submissions to the Tribunal, to require a party or person who makes submissions to produce evidence for examination, and require a	Any amendments that interfere with the right to procedural fairness impacts all stakeholders including municipalities, land owners, applicants, and other interested persons.

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		party to produce a witness for examination. While these powers are appropriate, the Bill removes these rights with respect to the most complex *Planning Act* appeals as per s. 42(3)(b).	
		Existing power to enforce Board orders as orders of the Superior Court has been removed. Power to enforce orders now limited to contempt orders to be enforced under the *Statutory Powers Procedures Act*.	
		Different processes and procedures are set out for different types of *Planning Act* appeals. The proposed changes to *Planning Act* appeals limit procedural fairness in the most complex appeals, while continuing to provide for more fulsome hearings for relatively minor matters – creating a significant and unreasonable imbalance contrary to natural justice.	Any amendments that interfere with the right to procedural fairness impacts all stakeholders including municipalities, land owners, applicants, and other interested persons.
Schedule 1, Sections 33(1)5 and 39(2)	New *Local Planning Appeal Board Act*, ss. 39(2) and 33(1)5.	Undermines the nascent and highly successful interest-based party-to-party mediation model used at the Ontario Municipal Board. Currently, 90% of Board mediations lead to settlements (either partial or full). The only constraint in mediation is the availability of experienced Board mediators. The Board's current model promotes compromise where the failure to settle is a contested hearing with all sides risking failure at a hearing. The concept of the Best Alternative to a Negotiated Agreement (BATNA) is at the heart of interest-based negotiation. Municipalities will have little to no incentive to compromise, thereby unbalancing BATNAs in favour of municipalities and preventing compromise.	*Ratepayer Groups* Disempowers rather than strengthens community voices. In many cases, ratepayer groups describe OMB led mediation as "the first time I was truly heard". Currently, ratepayers with their own experts in tow, sit with proponents and municipalities to resolve disputes co-operatively. Ratepayer groups often retain traffic, planning and urban design experts to assist in mediation. It is also common for proponents to pay the associated fees. *Environmental Defence Groups* Environmental Groups very often initiate planning appeals either when they allege a municipality has

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		On occasion, Board mediators will use the mediation technique called “evaluation”, which is to deliver to one or all parties a candid assessment of how their matter might be determined in a contested context. Delivered at an appropriate time, evaluations are ethical and effective ways to nudge parties towards compromise and agreement. Experienced Board mediators use this tool to benefit the fairness of settlements. The proposed amendments removes this important mediation tool. The narrow test for appeal excludes detail issues that are ripe for the foundation of a settlement such as, height, urban design, traffic, shadows and landscaping *inter alia*.	mistakenly relied on a proponent’s inadequate environmental reports, or when they allege proposed measures to protect natural heritage are insufficient. Appeals concerning Natural Heritage are rare in the GTA and are more likely to occur in many smaller municipalities. Smaller municipalities are sometimes ill-equipped to scrutinize reports concerning natural heritage policies, so environmental and ratepayer groups play an important role in defending the natural environment through the planning process. Preventing groups from challenging inadequate or poor environmental reports, and proffering their own on appeal, removes one of the most important checks and balances of the current planning appeals process in defending the environment. *Proponents* Businesses value certainty. Proponents enter mediation for the opportunity at certainty of the outcome of an appeal. Proponents will have little incentive to look to mediation if they feel there is an irregular playing field giving municipalities so much power that “holding the line” comes without any risk. In its current form, mediation has given proponents an incentive to marshal their resources towards collaboration with a variety of interests. It also gives them the opportunity to argue for the optimization of their development

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			proposals in creative ways that some ratepayer groups may find persuasive.
Schedule 1, Section 39		CMCs are mandatory. This adds unnecessary time and expense to the majority of proceedings which are minor in nature and could have been resolved by a one day or less proceeding. Minimum time period has been doubled for the majority of appeals to the Tribunal.	Requiring a CMC for minor variances and consents and other appeals that are minor in nature will have a disproportionate impact on costs, particularly on home owners.
Schedule 1, Section 40		A person wishing to participate in an appeal of: • An official plan; • An application to amend an official plan; • A zoning by-law; • An application to amend a zoning by-law, must make a written submission to the Tribunal at least 30 days prior to the CMC that the decision or failure to make a decision: • was inconsistent with a policy statement • fails to conform with or conflicts with a provincial plan • fails to conform with an applicable official plan This does not apply to: • new decisions of a municipality or approval authority (after an initial Tribunal proceeding) • where there is a provincial interest • a failure to make a new decision • other types of appeals It is unclear whether there can be any parties or participants in such cases, and if so, how they may be allowed to participate	Written submissions are now imposed regardless of whether there is a clear interest or any objection from approval authorities or appellants to the request for party or participant status. This will increase costs in many instances, particularly impacting individual home owners and rate payer associations.

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		It is unclear how a person requesting to participate can address the proposed test in the case of a non-decision No opportunity for reply has been provided	
Schedule 1, Section 41		Persons wishing to participate in an appeal of a non-decision of an approval authority respecting an official plan, or a non-decision regarding a plan of subdivision, must also make a written submission, however the content and timing is unknown. There is no clear rationale for why these appeals are treated any differently or the test to be applied to other types of appeals. There is also no clear principles upon which the Tribunal will determine who may participate in a proceeding.	Written submissions where there is a clear interest or any lack of any objection from approval authorities or appellants to the request for party or participant status will increase costs in many instances, particularly impacting individual home owners and rate payer associations.
Schedule 1, Section 42		Only parties can participate in oral hearings respecting, • An official plan; • An application to amend an official plan; • A zoning by-law; • An application to amend a zoning by-law.	The ability to participate in a hearing as a "participant" has been limited. This will have the most significant impact on individuals and rate payer associations who generally prefer this role as it reduces their cost and risk.
		Participants are only permitted on appeal of a non-decision of an approval authority respecting an official plan, or a non-decision regarding a plan of subdivision. No rational basis for the distinction has been set out.	The ability to participate in a hearing as a "participant" has been limited. This will have the most significant impact on individuals and rate payer associations who generally prefer this role as it reduces their cost and risk.
		Participation in any other proceeding, such as a minor variance, consent, or interim control by-law, has been omitted.	
Schedule 1, Section 42(3)		Section 42(3) does not apply to: • New decisions • Where there is a provincial interest • A failure to make a new decision	Any amendments that interfere with the right to procedural fairness impacts all stakeholders including municipalities, land owners, applicants, and other interested persons.

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		• Minor variance appeals • Consent appeals • Site plan appeals • Holding by-law appeals • Interim control by-law appeals • Appeals of conditions of subdivision approval No rational basis has been provided for the distinction between types of appeals. No clarity has been provided as to whether these hearings will still be oral. The greatest impact on procedural fairness has occurred in the most complex proceedings.	
		Regulations are to govern the practices and procedures of the Tribunal, including prescribing the conduct and format of hearings, the admission of evidence and format of decisions. No regulations have been proposed in order to evaluate the impact and fairness of the proposed amendments.	Any amendments that interfere with the right to procedural fairness impacts all stakeholders including municipalities, land owners, applicants, and other interested persons.
		Transition is to be provided for by regulation, providing no information and certainty for existing applications, proceedings and orders.	
Schedule 1, Section 42(3)(a)		Time periods for oral hearings to be set out in the regulations, rather than determined on a case by case basis given the complexity of the matter, the number of issues, or number of parties.	Any amendments that interfere with the right to procedural fairness impacts all stakeholders including municipalities, land owners, applicants, and other interested persons.
Schedule 1, Section 42(3)(b)		No party or person may adduce evidence or call or examine witnesses in certain proceedings. This restriction is contrary to the duty of procedural fairness and natural justice which requires the right to call evidence and cross-examine witnesses.	Any amendments that interfere with the right to procedural fairness impacts all stakeholders including municipalities, land owners, applicants, and other interested persons.

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		Contrary to the creation of a local planning appeal support centre, by the time a resident obtains assistance from the support centre it is too late as no evidence may be adduced.	Limits on adducing evidence will have the greatest impact on residents and rate payer associations who will not have submitted expert reports in advance of a decision by an approval authority.
Schedule 1 (*Local Planning Appeal Tribunal Act, 2017*), Part VII	Replaces *Ontario Municipal Board Act*, Part VII with *Local Planning Appeal Tribunal Act*, *2017*, VII, ss. 44-47	Existing *Ontario Municipal Board Act* and regulations are repealed. The Act comes into force on a day to be named by proclamation of the Lieutenant Governor. No clear transition provisions have been provided to govern existing proceedings or prior orders issued by the Ontario Municipal Board.	Uncertainty impacts all stakeholders.
Schedule 2	New *Local Planning Support Centre Act*	When read in conjunction with the *Local Planning Appeal Board Act*, it is not clear what evidentiary basis Local Planning Support Centre (LPSC) lawyers will have to assist their clients. If they only become involved when a matter is brought before the Tribunal, they will neither have supporting evidence, nor the ability to cross-examine on the available record. While this handicap is proposed for all parties, it is unclear what benefit LPSC advocates will offer late in the process. Comparisons to the success of the Human Rights Legal Support Centre (HRLSC) do not support the objectives of the LPSC, but rather underlie its limitations: • HRLSC defends individuals in a *lis* based on a unified code; • LPSC would represent disparate interests in a public policy decision-making process involving numerous and competing policies; • Where there is no settlement, HRLSC lawyers call evidence and examine witnesses;	*Ratepayer Groups* Typically, different ratepayer organizations prefer to use different lawyers and/or consultants, and to presume that a centralized agency can better determine the needs of the various residents associations, simply put, is unfair. Ratepayer groups are unique clients, they are often composed of different people with broad interests that may be direct private interest in respect of one property owner, private in respect of collective neighbourhood interests not subject to municipal regulation and public. Private members of the bar have the flexibility to determine with their clients the best way of balancing interests that may compete or concur at any given stage in a matter before the OMB. The LPSC with a public mandate will be ill-equipped to balance private and public interests in a way that is fair to all those they would presumably represent. The availability of LPSC representation may dissuade the incorporation of ratepayer groups.

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		• HRLSC settle matters relying on the threat of monetary sanctions and stigma against the responding party; • LPSC advocates will have few options to propose to clients to increase their leverage in negotiations or a hearing context; Unlike some areas of law where lawyers represent only one type of client (plaintiff/defendant; labour/management) most experienced municipal lawyers are valued for their experience representing a wide range of clients, including proponents, opponents, municipalities and public agencies. Most members of the municipal bar in Ontario have represented at least one of each of these types of clients at some point in their careers. This unique aspect of the municipal bar gives its members a breadth of experience, knowledge and perspective that is invaluable to clients and decision-makers. Such experience will be unattainable to most LPSC lawyers. While criteria remain to be drafted, it is unclear how the LPSC will choose between citizens with interests that are predominantly private (impacts on their property), public or a mix of both.	Incorporated ratepayer groups have a legal mechanism to make decisions, collect funds and share risk. It is not clear if the LPSC will be equipped to assist appellants who wish to take their matter to the courts, which will be the only remaining forum to argue concerns about procedural fairness and natural justice.
Schedule 3, Section 4(1)	*Planning Act*, s. 8.1(6)	Local Appeal Bodies are given expanded jurisdiction over site plan approval and motions relating to site plan approval	The Board/Tribunal retains jurisdiction over site plan appeals where it is seized of a related appeal, which is appropriate in order to avoid the need for a multiplicity of proceedings for the same subject matter. However, insofar as the Toronto Local Appeal Body ("TLAB") and the Board are both considering site plan appeals, there is a

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			greater chance for inconsistency in decisions, including on legal determinations made under s.114 (7) of the City of Toronto Act.
Schedule 3, Section 4(1)	*Planning Act*, s. 8.1(6)	Local Appeal Bodies are given jurisdiction to determine whether an application for a consent under Section 53 of the Act is a "complete application"	Providing jurisdiction to local appeal bodies to determine "complete applications" risks inconsistency with the OMB/LPAT's determination of the same thing for other applications based on the same statutory language.
Schedule 3, Section 4(1)	*Planning Act*, s. 8.1(6.1) 2. *new*	Reference to "appellant" in this subsection (9) includes a reference to the person making a motion for directions regarding site plan approval and regarding "complete applications" for consents	Intention of reference to "person or public body making a motion for directions" is unclear, and may be read to suggest that an expansion of persons now entitled to make such motions. Under site plan provisions [41(4.2) of the Planning Act and 114(7) of the City of Toronto Act], the right to make a motion is currently limited to the owner of land and the municipality. Under the consent provisions [53(4.1) of the Planning Act], the right to make a motion is currently limited to the applicant, the Council and the Minister. The reference to "persons or public body" would appear to expand the category of persons with standing to bring motions. This may in turn add to further delays in the process and add to the complexity of application filings. As it relates to site plan specifically, it is unclear how this may impact the general principle that site plan approval is a private application between the owner of land and the municipality.
Schedule 3, Section 4(4)	*Planning Act*, ss. 8.1(13)(a) and (b)	Site plan appeals no longer included in list of "related appeals" for which Tribunal (i.e. Municipal Board) retains jurisdiction Tribunal (i.e. Municipal Board) retains jurisdiction over "related appeals" where Local Appeal Body has	It would appear that the intention of this section is to generally provide that a "related appeal" is one that goes to the OMB/LPAT. If a LAB has been authorized to deal with minor variance, but has not been authorized to deal with Site Plans by a municipality, then a minor variance appeal related

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		Planning Act jurisdiction, but has not been empowered by municipal by-law "Related appeals" include Official Plan Amendment, Zoning By-law Amendment, Holding By-law, Interim Control By-law, Draft Plan of Subdivision, Development Permits, and – where a municipal by-law empowering a Local Appeal Body has not been enacted – Site Plan Approval, Minor Variances, and Consents	to a site plan appeal will go to the OMB/LPAT. However, if this is the intention, the language in 13(b) is unclear and should be revised.
Schedule 3, Section 4(6)	*Planning Act*, s. 8.1(26) 2.	New transition for consent appeals: the Local Appeal Body provisions do not apply to consent appeals if the approval authority's decision is made before the day a by-law empowering a Local Appeal Body to hear consent appeals comes into force	The transition rules may need to be revised to account for logistical issues (e.g. appointment of members, securing of space, internal pedagogical needs to prepare members for expanded issues, particularly as it relates to site plan jurisdiction).
Schedule 3, Section 4(6)	*Planning Act*, s. 8.1(26) 3.	New transition for site plan appeals and motions regarding site plan: the Local Appeal Body provisions do not apply to site plan appeals and motions regarding site plan if the appeal is made before the day a by-law empowering a Local Appeal Body to hear site plan appeals and motions regarding site plan comes into force. New transition for "complete application" motions for consents and appeals of consents where the approval authority failed to make a decision: the Local Appeal Body provisions do not apply to such motions or appeals, as the case may be, if the **appeal [sic]** is made before the day a by-law empowering a Local Appeal Body to hear such motions or appeals comes into force	See comments above under changes to s. 8.1 (26) of the Planning Act.
Schedule 3, Section 4(6)	*Planning Act*, s. 8.1(27) *new*	An existing by-law empowering a Local Appeal Body to hear consent appeals is deemed to empower a	See comments above under changes to s. 8.1 (26) of the Planning Act.

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		Local Appeal Body to hear **appeals** regarding "complete applications" for consents	
Schedule 3, Section 6(1)	New 17(24.0.1) of Planning Act, (and by incorporation into s.21) ***Basis for appeal*** *(24.0.1) An appeal under subsection (24) 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 issued under subsection 3 (1), fails to conform with or conflicts with a provincial 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.* [Note: This subsection applies to appeals of a decision of council to adopt an OP that is exempt from approval. This subsection applies to appeals of an OPA that is exempt from approval, through s.21. The same grounds for appeal of OP/OPAs that are not exempt are set out under s.17(36.0.1)]	Bill 139 gives the appearance that an appeal process is available. However, the language establishing the ground rules for appeals effectively precludes the vast majority of appeals, irrespective of planning merit. **OPs/OPAs adopted by single-tier municipalities:** The basis on which an appeal of an adoption of an OP/OPA is very narrow. For single tier municipalities, an appeal of an adoption of an OP/OPA (exempt from approval) may only be made in instances where a decision is: (i) inconsistent with provincial policy statements or (ii) fails to conform with or conflicts with provincial plans. The third ground of appeal (fails to conform with the upper tier official plan) has no application as there is no applicable upper tier OP. The requirement to conform / be consistent with provincial policies / plans, is more illusory than real. These provincial documents are intended to apply to a very large geographic area which is comprised of a range of urban and rural municipalities with different planning and development circumstances. Therefore, the policies are broadly worded, with very little application on an area- or site-specific basis. The broad based provincial policies/plans are inadequate to deal with site-specific local issues in a municipality. In many instances, they were not	**Affected Landowners/Residents:** Can no longer appeal a council's decision on the basis of valid planning issues that could affect the use and enjoyment of their property or community. Valid planning reasons that are no longer available include reasons such as impact on adjacent property (traffic, sun, shadow, privacy) and conformity with the objectives and policies of lower-/single-tier official plan. For instance, if the City of Toronto decided to designate several blocks near Davenport and Avenue Road, currently consisting of low density residential dwellings, to permit high density residential apartments up to 45 storeys, the residents of those stable low density neighbourhoods would have no right to appeal such a dramatic change to the OP. The perverse result is that residents can appeal a minor variance decision which would permit their neighbour to build a deck, but they can no longer appeal an OP which would permit a 45-storey building on that same neighbouring property. **Affected Landowners/Residents:** Given the generality of the provincial policies/plans, it will be easier for municipalities to amend OPs without challenge. This is problematic where the OP provisions raise planning issues that have a direct effect on landowners and residents.

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		intended to deal with the multitude of planning issues that can arise in an area- or site-specific context. For example, traffic, servicing, urban built form impacts (i.e. height, bulk/ mass, sun/shadows, parking, traffic impacts on the street system, etc.). As a result, establishing a failure to conform / be consistent with the provincial policies/plans is likely to be very difficult, even in instances where there are legitimate site specific planning issues that need to be resolved. The logical conclusion is that a single tier municipality (Toronto/London/Barrie etc.) can change its OP without any real testing in an appeal process. First, there is no effective appeal mechanism whereby the appropriateness of the OP amendment can be tested *after* adoption. Second, the process mandated by the Planning Act *prior* to adoption does not require municipalities to conduct a rigorous approvals process which would provide a genuine opportunity to test the appropriateness of a proposed official plan change. In practice, the municipal process does not allow for a meaningful debate/examination of a proposed OP/OPA. For instance, councils are only required to hold public meetings, not public hearings. Experience in Ontario is that these meetings do not offer the opportunity for a probing investigation of	**Affected Landowners/Residents:** Given that appeals of OP/OPAs are severely limited, and appeals of zoning by-law amendments are also limited to conformity to OPs, this could encourage municipalities to make OPs more prescriptive and regulatory, as opposed to policy documents as intended. **Appellants:** The appeal process would be available to only the most sophisticated appellants who are able to frame an appeal in the context of lack of conformity/consistency with provincial policies/plans.

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		proposed official plan amendments (and municipal staff responses) which a hearing provides. People can be severely limited in their ability to make submissions, regardless of their merit. This process was acceptable as long as there remained a place (i.e. the OMB) where such a probing examination of the planning merits of a proposal, in a hearing setting, could take place. Once an effective appeal process is removed, the failings of the existing municipal approval process are highlighted. True reform requires that the entire approvals process, including the municipal process, be examined and reformed; not just the appeal process. **Provincial Policies/Plans** Furthermore, provincial policies/plans are produced with very little transparency and without any effective way to challenge them. This Planning Act process is an example. Bill 139 is not a logical outgrowth of the province's initial public consultation document. Provincial policies/plans permit/encourage municipalities to adopt policies that exceed the minimum policy requirements of provincial plans/policies. The implication is that OP policies which exceed the requirements in the provincial policies/plan cannot be challenged no matter how unreasonable they may be.	
		OPs/OPAs adopted by upper tier municipalities (exempt from Minister approval) The issues above also apply to OPs/OPAs of upper tier municipalities (exempt from Ministerial approval).	Same potential impacts as above. Additional potential impacts:

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		Furthermore, most upper tier OPAs are exempt from Ministerial approval. Accountability of an upper tier municipality to a lower tier municipality is limited to lack of consistency/conformity with provincial policies/plans. As a result, the limited rights of appeal restrict a lower tier municipality's ability to appeal an upper tier OP/OPA that adversely affects a lower tier municipality. The implication is that the planning autonomy of lower tier municipalities is severely limited.	**Lower Tier Municipalities**: The limited grounds of appeal significantly limit the ability of lower tier municipalities to challenge upper tier OPAs that affect lower tier planning decisions. As there is limited right of appeal, there is little incentive for upper tier municipalities to take the issues identified by lower tier municipalities into account. **Lower Tier Municipalities:** The limitation on appeals, considered within the context of the requirement to that a lower tier OP must conform to an upper tier OP, results in a significant reduction in the planning autonomy of lower tier municipalities.
		OPs/OPAs adopted by lower tier municipalities (exempt from approval): The issues identified above in respect of single-tier OP/OPAs generally apply to lower tier OPs/OPAs. However, in the case of a lower tier OP/OPA, the third ground of appeal (underlined below) also applies. Appeals of an OP/OPA (exempt from approval) can only be made in instances where a decision is (i) inconsistent with provincial policy statements (ii) fails to conform with or conflicts with provincial plans or <u>(iii) fails to conform with the upper tier OP</u>.	Same potential impacts as single-tier OPs/OPAs. **Affected Landowners/Residents:** If the policies of the upper-tier OP are broad/general, it would be difficult to establish that a lower-tier OP/OPA did not conform to the upper tier OP, This is particularly so where the upper tier OP is silent on the site specific issues that are the subject of the appeal of the lower-tier OP/OPA. For example, upper-tier OPs do not typically contain policies respecting urban design.
Schedule 3, Section 6(2)	Replaces 17(25)(b) of the Planning Act ***Notice of Appeal*** *(25) The notice of appeal filed under subsection (24) <u>must</u>…*	Currently the Planning Act has a broad requirement that notices of appeal "set out the reasons for the appeal". This amendment is a counterpart to section 17(24.0.1) that requires an explanation of the basis for appeal, referring to one or more of the three grounds of appeal.	**Affected Landowners/Residents:** The requirements of the notice of appeal further emphasizes that appeals are geared only towards the most sophisticated stakeholders who are able to frame the appeal in the context of lack of consistency/conformity to provincial policies/plans.

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	(b) explain how the part of the decision to which the notice of appeal relates is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial 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;		
Schedule 3, Section 6(5)	New 17(36.0.1) of the Planning Act: ***Basis for Appeal*** *(36.0.1) An appeal under subsection (36) 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 issued under subsection 3 (1), fails to conform with or conflicts with a provincial 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.* [Note: This subsection applies to appeals of an approval	**Single Tier and Upper Tier OPA (other than s.26 OPAs) subject to approval by Minister:** The Minister may approve, modify or refuse to approve an OPA. A municipality can only appeal the Minister's decision where the decision lacks conformity/consistency with the provincial policies/plans. (Note: The Minister's decision on an OP or a section 26 OPA is not appealable (section 17(36.5 and 21(3)). The issues regarding section 17(24.0.1) apply. **Lower Tier OP/OPA subject to approval by Upper Tier Municipalities:** An upper tier municipality may approve, modify or refuse a lower tier OPA. A lower tier municipality can only appeal the upper tier municipality's decision where the decision lacks conformity/consistency with the provincial policies/plans. The issues regarding section 17(24.0.1) apply.	Same potential impact as 17(24.0.1). Additional potential impacts: **Single Tier and Upper Tier Municipalities:** This significantly limits a single or upper tier municipality's ability to appeal a decision by the Minister regarding its OP/OPA. This takes a significant remedy away from the municipalities where there's a disagreement with the Minister regarding planning policies. For instance, if Parry Sound adopted a secondary plan, the Minister could modify it in a manner that could not be appealed if the modification did not relate to a lack of consistency/conformity to provincial policies/plans. This undermines the planning autonomy of municipalities. **Lower Tier Municipalities:** This significantly limits a lower tier municipality's ability to appeal a decision by the upper tier approval authority on a

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	authority's decision to approve, modify or refuse an OP/OPA (that is not exempt from approval). Similar grounds for appeal of OP/OPAs that are exempt are set out under s.17(24.0.1)]		lower tier OP/OPA. This takes a significant remedy away from lower tier municipalities where there is a disagreement with the upper tier municipality regarding planning policies.
Schedule 3, Section 6(6)	*Planning Act* new subsections 17(36.1.4) to (36.1.7)	The proposed amendment prohibits appeals of certain policies respecting major transit station areas, even on the basis of inconsistency or non-conformity with provincial policy statements or provincial plans, or non-conformity of a lower-tier official plan with an upper-tier official plan, including: 1. policies that identify a protected transit station area in accordance with subsection 16(15) or (16); 2. mandatory policies regarding protected transit station areas in a single or upper-tier official plan described in clauses 16(15)(a), (b) or (c) or (16)(a) or (b); 3. mandatory policies regarding protected transit station areas in a lower tier official plan described in subclause 16(16)(b)(i) or (ii); and 4. policies that identify minimum and maximum densities and heights in protected transit station areas. There is no justifiable rationale for prohibiting appeals of policies that establish minimum or maximum heights and densities in protected transit station areas. Allowing appeals of maximum heights	Owners of sites that can accommodate development or redevelopment within major transit station areas will not be able to ensure that municipalities allow development opportunities to be appropriately maximized in accordance with Provincial policy. Residents within or adjacent to major transit station areas will have less protection from incompatible development.

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		and densities will help ensure implementation of provincial policy requiring the number of potential transit users within walking distance of major transit station areas is maximized. For similar reasons there is no justifiable rationale for prohibiting appeals of lower-tier official plans pertaining to protected transit station areas on the basis of non-conformity with upper-tier official plans. The prohibition against appeals of minimum height and density provisions will also restrict the ability of landowners to ensure that an appropriate scale of development and transition of built form is maintained within built-up areas. Certain of the above policies require the approval of the Minister, which is not subject to appeal pursuant to subsection 17(36.5), and therefore the prohibition against appeals in respect of such policies in this subsection appears redundant.	

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Schedule 3, Section 6(8)	New 17(36.5) of the Planning Act ***No appeal re decision by Minister*** *(36.5) Despite subsection (36), there is no appeal in respect of a decision of the approval authority under subsection (34), if the approval authority is the Minister.* [Note: 17(36.5) applies to both a new Official Plan and a s.26 OPA (as per s.21(3)). 17(36.5) does not apply to OPAs that are not s.26 OPAs]	**Single Tier and Upper Tier OP/s.26 OPA subject to approval by Minister:** Section 17(36.5) removes the ability to appeal a Minister's decision regarding an OP/section 26 OPA. A non-Section 26 OPA is still appealable under section 17(36) (section 21(3)). **Lower Tier OP/OPAs:** This would only apply in the rare instances where the Minister has removed the approval authority of the upper-tier municipality (section 17(6)).	**All:** No one, including a municipality, has the ability to appeal any decision of the Minister, including modifications, regarding an OP/section 26 OPA. This represents a very significant restriction on the ability to challenge planning policies. **Municipalities:** The removal of the right to appeal the Minister's decision takes a significant remedy away from municipalities where there is a disagreement with the Ministry regarding planning policies. **Municipalities:** If a municipality does not have an ability to appeal a decision, it has no leverage to influence the decision of the Minister. The Minister has absolute power. **All:** There is no public process required by the Minister in exercising its power to approve, modify or refuse an OP/OPA. It is a black box. Therefore, there is no accountability or transparency or obligation to be fair.
Schedule 3, Section 6(9)	Amends 17(37)(b) of the Planning Act ***Contents of notice*** *(37) The notice of appeal under subsection (36) must…* *(b) explain how the part of the decision to which the notice of appeal relates is inconsistent with a policy*	Currently the Planning Act has a broad requirement that notices of appeal "set out the reasons for the appeal". This amendment is a counterpart to 17(36.0.1) that requires an explanation of the basis for appeal, referring to one or more of the three grounds of appeal.	Same potential impacts as 17(36.0.1). Additional impact: **Affected Landowners/Residents:** The requirements of the notice of appeal further emphasizes that appeals are geared only towards the most sophisticated stakeholders who are able to frame an appeal in the context of a lack of consistency/conformity to provincial policies/plans or upper-tier OPs.

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	statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial 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;		
Schedule 3, Sections 6(11) and (12)	Amends 17(40) and (40.1) of the Planning Act ***Appeal to O.M.B.*** *(40) If the approval authority fails to give notice of a decision in respect of all or part of a plan within 210 days after the day the plan is received by the approval authority, or within the longer period determined under subsection (40.1), any person or public body may appeal to the Municipal Board Tribunal with respect to all or any part of the plan in respect of which no notice of a decision was given by filing a notice of appeal with the approval authority, subject to subsection (41.1).*	In 2015, the Province in section 17(40.1) gave the approval authority (upper tier municipality or Minister) the ability to extend the 180 day approval period by 90 days (total 270 days). Bill 139 has extended the approval period by 30 days with the result that the total approval period can be 300 days. This results in a 120-day increase since 2015.	**Municipalities:** The approval authority can delay the approval or implementation of an OP/OPA by the better part of a year. This is excessive given that approval authorities are consulted during the preparation/adoption process of the OP/OPA. **Applicants/Appellants:** This causes a further unwarranted delay of OPAs.

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	Extension of time for appeal *(40.1) The 210-day period referred to in subsection (40) may be extended in accordance with the following rules:* *1. In the case of an amendment requested under section 22, the person or public body that made the request may extend the period for up to 90 days by written notice to the approval authority.* *2. In all other cases, the municipality may extend the period for up to 90 days by written notice to the approval authority.* *3. The approval authority may extend the period for up to 90 days by written notice to the person or public body or to the municipality, as the case may be.* *4. The notice must be given before the expiry of the 180-day period.* *5. Only one extension is permitted. If both sides give a notice extending the period,*		

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	the notice that is given first governs. *6. The person, public body, municipality or approval authority that gave or received a notice extending the period may terminate the extension at any time by another written notice.* *7. No notice of an extension or of the termination of an extension need be given to any other person or entity.* [Note: This applies to the timing of an appeal where OP/OPA adopted and the approval authority fails to make a decision]		
Schedule 3, Sections 6(13) and 6(14)	Amends 17(40.2) and 17(40.4) of the Planning Act ***Exception, non-conforming lower-tier plan*** *(40.2) Despite subsection (40), there is no appeal with respect to any part of the plan of a lower-tier municipality if, within 210 days after receiving the plan, the approval authority states that the plan or any part of it does*	This extends the timing within which an approval authority may state that the lower-tier OP does not conform with the upper tier OP.	**Applicants/Lower Tier Municipalities**: In order to facilitate dialogue and resolve non-conformity issues, a lack of conformity to upper tier official plans should be identified as soon as possible.

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	not, in the approval authority's opinion, conform with, *(a) the upper-tier municipality's official plan;* *(b) a new official plan of the upper-tier municipality that was adopted before the 210th day after the lower-tier municipality adopted its plan, but is not yet in effect; or* *(c) a revision of the upper-tier municipality's official plan that was adopted in accordance with section 26, before the 210th day after the lower-tier municipality adopted its plan, but is not yet in effect.* ***Time for appeal*** *(40.4) If the approval authority states an opinion as described in subsection (40.2), the 210-day period mentioned in subsection (40) does not begin to run until the approval authority confirms that the non-conformity is resolved.* [Note: As set out in s.21(2), s.17(40.2) does not apply to amendments, other than s.26 OPAs]		

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Schedule 3, Sections 6(15) and 6(16)	Repeals 17(44.3) to 17(44.6) of the Planning Act and removes references to these subsections in 17(44.7) of the Planning Act	No explanation has been provided for the deletion of these subsections. ~~***New evidence at hearing** (44.3) (44.4)*~~ ~~***Notice to council** (44.5)*~~ ~~***Council's recommendation** (44.6)*~~	
Schedule 3, Section 6(17)	Replaces 17(45) of the Planning Act ***Dismissal without hearing*** *(45) Despite the Statutory Powers Procedure Act and subsection (44), the Tribunal shall dismiss all or part of an appeal without holding a hearing on its own initiative or on the motion of any party if, any of the following apply:* *1. The Tribunal is of the opinion that,* *i. the explanation required by clause (25) (b) or (37) (b), as the case may be, does not disclose that the part of the decision to which the notice of appeal relates is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan, or in the case of the*	There is a change in language from "the Municipal Board may dismiss" to "the Tribunal shall dismiss". This is a substantive change to the powers of the appellate body. The Tribunal has an obligation to dismiss an appeal if one of the tests is met. This appears to require that the Tribunal examine every appeal to determine whether it is required to be dismissed. As a result, the Tribunal would have to set up an administrative process to screen appeals and dismiss them where the test is not met. This emphasizes that every notice of appeal must be properly drafted to meet the requirements of section 17(25)(b) or section 17(37)(b). Case law permits appellants to supplement the reasons in their appeal after the appeal is filed. This opportunity appears to remain given that appellants still have the opportunity to make representations on a proposed dismissal (17(46)).	**Appellants:** This further emphasizes that appeals are geared only towards the most sophisticated stakeholders who are able to frame appeal in the context of lack of conformity/consistency with provincial policies/plans. **Applicants/Municipalities:** The increased ability to dismiss appeals encourages applicants/municipalities to bring motions to dismiss appeals in order to avoid hearings.

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	official plan of a lower-tier municipality, fails to conform with the upper-tier municipality's official plan, *ii. the appeal is not made in good faith or is frivolous or vexatious,* *iii. the appeal is made only for the purpose of delay, or* *iv. the appellant has persistently and without reasonable grounds commenced before the Tribunal proceedings that constitute an abuse of process.* *2. The appellant has not provided the explanations required by clause (25) (b) or (37) (b), as applicable.* *3. The appellant has not paid the fee charged under the Local Planning Appeal Tribunal Act, 2017 and has not responded to a request by the Tribunal to pay the fee within the time specified by the Tribunal.* *4. The appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal.*		

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Schedule 3, Section 6(19)	Amends 17(49) of the Planning Act ***Transfer*** *(49) If a notice of appeal under subsection ~~(24), (36) or~~ (40) is received by the Tribunal, the Tribunal may require that a municipality or approval authority transfer to the Tribunal any other part of the plan that is not in effect and to which the notice of appeal does not apply.* [Note: This applies to when an approval authority fails to give notice of a decision under 17(40)]	The Tribunal can only take jurisdiction over (transfer) parts of the adopted OP that are not subject to an appeal and are not in effect, where the appeal is from the approval authority's failure to issue a decision within the required time (section 17(40)). The OMB/Tribunal can no longer take such jurisdiction over (transfer) parts of an OP in stances where the appeal is made pursuant to 17(24) (adoption) or (36) (approval, modification or refusal).	
Schedule 3, Section 6(20)	New 17(49.1) of the Planning Act ***Powers of L.P.A.T. - appeals under subss.(24) and (36)*** *(49.1) Subject to subsections (49.3) and (49.5), on an appeal under subsection <u>(24) or (36)</u>, the Tribunal <u>shall dismiss the appeal</u>.* [Note: This only applies to appeals under 17(24) and 17	Section 17(49.1) establishes that the Tribunal is required to dismiss all appeals except in the narrow instances where: (a) it refers the matter back to council for new a decision or (b) it makes a decision on an appeal of a new decision (second appeal). See comments under 17(49.3) and 17(49.5).	**Applicant/Appellants:** This emphasizes that a person can no longer appeal a council's decision on the basis of valid planning issues that could affect the use and enjoyment of his/her property or community. Valid planning reasons that are no longer available include reasons such as impact on adjacent property (traffic, sun, shadow, privacy) and conformity with the objectives and policies of lower-/single-tier official plan.

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	(36) of a decision. This does not apply to a non-decision of private application, addressed in 22. Appeals under 17(40) are addressed in 17(50)]		
	New 17(49.3) of the Planning Act ***Refusal and notice to make new decision*** *(49.3) Except as provided in subsection (49.5), if the Tribunal determines that a part of a decision to which a notice of appeal under subsection (24) or (36) relates is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial 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,* *(a) the Tribunal shall refuse to approve that part of the plan; and* *(b) the Tribunal shall notify the clerk of the municipality that adopted the official plan that the municipality is being given an opportunity to make*	If the basis of appeal is not established, the Tribunal is required to dismiss the appeal. If the basis of appeal is established, the Tribunal is required to refuse to approve the OP/OPA and to send it back to the municipality for an opportunity to make a new decision. This is the exception to the Tribunal's requirement to dismiss an appeal (17(49.1)) of a first decision. The only circumstance in which the Tribunal does not dismiss an appeal is if the decision regarding an OP/OPA is inconsistent with the PPS, fails to conform with or conflicts with provincial plans or, in the case of lower tier municipalities, fails to conform with the upper tier OP. There is no ability for Tribunal to modify an OP/OPA on a first decision.	**All:** This sets up a very lengthy, cumbersome, and expensive approval process. It is inefficient use of public and private resources. It will not lead to better planning decisions. **Individual Appellants:** This process is overwhelming for individual appellants. They may be faced with the requirement to participate in a multiplicity of planning proceedings (initial consideration by council, appeal to Tribunal, new consideration by council, second appeal to Tribunal). In addition, the costs of retaining legal and professional assistance throughout this process is potentially prohibitive for all but the wealthiest of individuals.

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	a new decision in respect of the matter.		
	New 17(49.4) of the Planning Act ***Rules that apply if notice is received*** *(49.4) If the clerk has received notice under clause (49.3) (b), the following rules apply:* *1. The council of the municipality may prepare and adopt another plan in accordance with this section, subject to the following:* *i. Subsections (16) and (17.1) do not apply.* *ii. If the plan is not exempt from approval,* *A. the reference to "within 210 days" in subsection (40) shall be read as "within 90 days",* *B. subsection (40.1) does not apply,* *C. references to "210 days" and "210th day" in subsection (40.2) shall be read as "90 days" and "90th day", respectively, and* *D. the reference to "210-day period" in subsection (40.4)*	Where the Tribunal refers the matter back to the municipality, the council may, but is not required to, process a new OP/OPA. There are reduced timeframes in regard to the approval of an adopted OP by an approval authority. Timeframes are also reduced for a council's new consideration of the adoption of privately initiated OPAs. (see also 22(11.0.9)) Where the OPA/OP is initiated by the municipality, there is no obligation on the municipality to restart the planning process as there is no timeframe for a lower-tier or single-tier municipality to make a new decision after receiving notification from the Tribunal under section 17(49.3)(b).	**Municipalities**: Upon notification under 17(49.3)(b), the entire municipal planning process is recommenced. This is a very lengthy, cumbersome, and expensive approval process. It is an inefficient use of public resources. It will not lead to better planning decisions. **Residents/Landowners:** There is added uncertainty where a municipally-initiated OP/OPA is refused by the Tribunal and the council is given the opportunity to make a new decision. There is no timeline or even any requirement that council make a new decision. **Applicant:** Overall length of time can be onerous for privately-initiated OPAs - up to 210 days for the original decision to adopt, plus up to 300 days for approval authority's approval (if OPA is not exempt), plus time for Tribunal process of first appeal, plus 90 days for Council's second opportunity to make a new decision, plus 90 days for approval (if OPA not exempt), plus time for Tribunal processing of second appeal.

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	shall be read as "90-day period". *2. If the decision referred to in subsection (49.3) was in respect of an amendment adopted in response to a request under subsection 22 (1) or (2), the references to "within 210 days after the day the request is received" in paragraphs 1 and 2 of subsection 22 (7.0.2) shall be read as "within 90 days after the day notice under clause (49.3) (b) was received".*		
	New 17(49.5) of the Planning Act ***Second Appeal*** *(49.5) On an appeal under subsection (24) or (36) that concerns a new decision that the municipality was given an opportunity to make in accordance with subsection (49.4) or 22 (11.0.10), the Tribunal may 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, if the Tribunal determines that*	On an appeal of a new decision (second appeal), the Tribunal has broader powers to approve, modify, or refuse all or part of the OP/OPA, but only in instances where the Tribunal has determined that there is a lack of consistency/conformity with provincial policies /plans or applicable OPs and only with respect those issues. Notwithstanding that the Tribunal has broader decision making powers (i.e. approve/modify/refuse), the grounds upon which the Tribunal may give that relief are not expanded. The Tribunal's consideration on a second appeal brings finality to the process (subject to a court appeal).	**Municipalities:** If a municipality fails to address issues of lack of consistency/conformity issues in a new decision, the Tribunal can modify the OP/OPA on a second appeal. **Affected Landowners/Residents:** Can no longer appeal a council's decision on the basis of valid planning issues that could affect the use and enjoyment of their property or community. Valid planning reasons that are no longer available include reasons such as impact on adjacent property (traffic, sun, shadow, privacy) and conformity with the objectives and policies of lower-/single-tier official plans. **Affected Landowners/Residents:** Given the generality of the provincial policies/plans, it will be easier for municipalities to amend OPs without

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	the decision is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial 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.		challenge. This is problematic where the OP provisions raise planning issues that directly affect landowners and residents. **Affected Landowners/Residents:** Given that appeals of OP/OPAs are severely limited, and appeals of zoning by-law amendments are also limited to conformity to OPs, this could encourage municipalities to make OPs more prescriptive and regulatory, as opposed to policy documents as intended. **Appellants:** the appeal process would be available to only the most sophisticated appellants who are able to frame an appeal in the context of lack of conformity/consistency with provincial policies/plans. **Lower Tier Municipalities:** The limited grounds of appeal significantly limit the ability of lower tier municipalities to challenge upper tier OPAs that affect lower tier planning decisions. As there is limited right of appeal, there is little incentive for upper tier municipalities to take the issues identified by lower tier municipalities into account. **Lower Tier Municipalities:** The limitation on appeals, considered within the context of the requirement that a lower tier OP must conform to an upper tier OP, results in a significant reduction in the planning autonomy of lower tier municipalities.

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Schedule 3, Section 6(21)	Amends 17(50) of Planning Act ***Powers of the L.P.A.T*** *(50) On an appeal under subsection (40) or a transfer, 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.* [Note: This applies to a non-decision of an approval authority where OP/requested OPA not exempt from approval]	A non-decision of an approval authority is the only instance where a Tribunal has wide discretion with regard to the subject matter of the OP/OPA.	
	Amends 17(51) of the Planning Act ***Matters of provincial interest*** *(51) Where an appeal is made to the Tribunal under this section, the Minister, if he or she is of the opinion that a matter of provincial interest is, or is likely to be, adversely affected by the plan or the parts of the plan in respect of*	Notice of a provincial interest must be given no later than 30 days after the Tribunal's notice of hearing. Previously, notice was required to be given 30 days before the commencement of the hearing. If notice is given 60 days before the hearing, there is effectively no change. If notice is given less than 60 days before the hearing, there is effectively less notice of provincial interest. In more complicated matters where there are prehearings, there is likely to be more than 60 days'	

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	which the appeal is made, may so advise the Tribunal in writing not later than 30 days after the day the Tribunal gives notice under subsection (44) and the Minister shall identify, *(a) the provisions of the plan by which the provincial interest is, or is likely to be, adversely affected; and* *(b) the general basis for the opinion that a matter of provincial interest is, or is likely to be, adversely affected.*	notice and, therefore, greater notice of a provincial interest. This change appears to be a sensible one. Clarification is required regarding the meaning of "hearing" in section 17(44); that is, does it include prehearings?	
Schedule 3, Section 6(23)	Amends 17(53) of the Planning Act ***Applicable rules if notice under subs. (51) received*** *(53) If the Tribunal has received a notice from the Minister under subsection (51), the following rules apply:* *1. Subsections (49.1) to (50) do not apply to the appeal.* *2. 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*	If the Minister identifies a provincial interest affected by the parts of the OP under appeal, he or she can give notice to the Tribunal. In that case, none of the new provisions related to processing appeals under 17(24), 17(36) and 17(40) apply. The Tribunal is not required to dismiss 17(24) and 17(36) appeals on the grounds of lack of consistency/conformity. The Tribunal has the power to approve/modify/refuse all or part of the plan that is identified by the Minister, without making a determination that there is a lack of consistency/conformity.	

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	as an official plan or refuse to approve all or part of the plan. 3. The decision of the Tribunal is not final and binding in respect of the provisions identified in the notice unless the Lieutenant Governor in Council has confirmed the decision in respect of the provisions.		
Schedule 3, Section 7	New 21(3) of the Planning Act ***Exception*** *(3) Subsection 17 (36.5) applies to an amendment only if it is a revision that is adopted in accordance with section 26.* [Note: The Minister is the only approval authority for upper tier and single tier municipalities for s.26 OPAs. There is no right to appeal these s.26 OPAs]	**Single Tier and Upper Tier section 26 OPA subject to approval by Minister:** 17(36.5) removes the ability to appeal a Minister's decision regarding a section 26 OPA. However, a non-section 26 OPA is still appealable. **Lower Tier OPAs:** Since there are only rare instances in which the Minister has approval authority over lower-tier OPAs, these remain appealable.	**All:** No one, including a municipality, has the ability to appeal any decision of the Minister, including modifications regarding a section 26 OPA. This represents a very significant restriction on the ability to challenge planning policies. **Municipalities:** The removal of the right to appeal the Minister's decision takes a significant remedy away from municipalities where there is a disagreement with the Ministry regarding planning policies. **Municipalities:** If a municipality does not have an ability to appeal a decision, it has no leverage to influence the decision of the Minister. The Minister has absolute power. **All:** There is no public process required by the Minister in exercising its power to approve, modify or refuse an OPA. It is a black box. Therefore, there is no accountability or transparency or obligation to be fair.

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Schedule 3, Section 8(1)	New 22(2.1.1) to (2.1.2) of the Planning Act ***Same, secondary plans*** *(2.1.1) No person or public body shall request an amendment to a secondary plan before the second anniversary of the first day any part of the secondary plan comes into effect.*	"Secondary plan" is defined by 22(2.1.2) to apply to multiple contiguous parcels of land, which may differ from what a municipality considers to be a secondary plan. This definition could be interpreted to apply to an OPA for a proposed development that includes multiple parcels of land.	**Applicants:** Unless council allows otherwise, a developer/landowner is restricted from making an application to amend a Secondary Plan, even in instances where there are meritorious planning issues. **Applicants:** The more detailed the Secondary Plan, the more likely the need to make amendments to deal with reasonable changes. This will delay the process for making these reasonable changes.
Schedule 3, Section 8(2)	Amends s.22(2.2) of the Planning Act ***Exception*** *(2.2) If the council has declared by resolution that a request described in subsection (2.1), (2.1.1) or (2.1.3) is permitted, which resolution may be made in respect of a specific request, a class of requests or in respect of such requests generally, the relevant subsection does not apply.*	Council may, by resolution, allow a request for an amendment to a new official plan, a secondary plan before the second anniversary of any part of those plans coming into effect, or major transit station area policies.	
Schedule 3, Section 8(3)	New 22(7.0.0.1) of the Planning Act ***Basis for appeal*** *An appeal under subsection (7) may only be made on the basis that,*	This provision creates a very high appeal threshold, which requires an appellant to meet two tests: (a) that the parts of the existing OP that are affected by the requested amendment lack consistency/conformity with provincial policies/plan and upper-tier OPs, and (b) that the requested	**Applicants:** It is almost impossible to meet the threshold test regarding the existing affected OP, unless the municipality has not yet updated its OP. **Applicants:** The appeals are so restricted that they may not be possible even where council

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	(a) the existing part or parts of the official plan that would be affected by the requested amendment are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or, in the case of the official plan of a lower-tier municipality, fail to conform with the upper-tier municipality's official plan; and *(b) the requested amendment is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and, in the case of a requested amendment to the official plan of a lower-tier municipality, conforms with the upper-tier municipality's official plan.* [Note: This section applies to appeals of the failure to adopt the requested amendment within 210 days [(7.0.2) para 1] or of a decision of council to refuse to adopt an OPA[(7.0.2) para 3]]	amendment achieves consistency/conformity with provincial policies/plan and upper tier OPs. Since the basis for the appeal (as a result of paragraph (a)) is nearly impossible to meet, municipalities can unreasonably refuse or fail to make decisions on requests for amendments, even where the amendment has significant planning merit. Instead of strengthening the policy-led planning system, this amendment would enable decisions made on planning applications for purely political reasons to go unchallenged. **Paragraph (a)** In instances where the municipality has recently undertaken an OP update in accordance with section 26 or section 27, it would be very difficult, if not impossible, to establish that the existing OP lacks consistency/conformity with provincial policies/plan and/or upper-tier OPs. Even in instances where there has not been a recent OP update, given the broad policy nature of both OPs and provincial policies/plans, it would be very difficult to establish a lack of consistency/conformity with provincial policies/plan and/or upper-tier OPs, even where a genuine planning issue arises.	ignores the advice of the municipal planning staff and makes a political decision. **Applicants:** An application may never go through a public meeting or hearing process. If council refuses an application before any public meeting or meaningful processing, the applicant is denied an opportunity to have its application considered. Similarly, if the municipality fails to take any action in respect of a complete application, and there is no basis for appeal, the applicant is denied an opportunity to have its application considered. **Applicants:** There is no incentive for Councils to process applications within a reasonable time frame if there is no reasonable prospect of an appeal. **Applicants/General Public:** Without Council support, good planning applications that conform with provincial policies, plans and upper tier OPs cannot be implemented unless the base OP has inconsistency/nonconformity issues

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Schedule 3, Section 8(4)	New 22(7.0.0.2) of the Planning Act ***Exception*** *(7.0.0.2) Subsection (7.0.0.1) and clauses (8) (a.1) and (a.2) do not apply to an appeal under subsection (7) brought in accordance with paragraph 1 or 2 of subsection (7.0.2) that concerns a request in respect of which the municipality or planning board was given an opportunity to make a new decision in accordance with subsection (11.0.10) or subsection 17 (49.4).* [Note: This addresses second appeals regarding a non-decision]	The limitations on the basis for appeal do not apply where an application has been appealed and the Tribunal has given the municipality notice of an opportunity to make a new decision, and the municipality fails to make a new decision.	
	Amends 22(7.02) of the Planning Act	This amendment adds 30 days to the time period for council adoption. However, it is questionable whether this increase in time is meaningful since the right of appeal has been so severely limited.	**Applicants**: This adds further potential delay in the processing of applications.
Schedule 3, Section 8(5)	New 22(7.0.2.1) of the Planning Act ***Same*** *(7.0.2.1) For greater certainty, a condition set out in subsection (7.0.2) is not met if the council or the planning*	This clarifies that if council adopts an amendment different than the requested amendment, an applicant cannot appeal under 22(7). The implication is that an applicant may then be able to appeal the adoption under section 17 (assuming you meet the threshold tests). The basis for appeal under section 17 differs from the basis for appeal under section 22.	

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	board adopts an amendment in response to a request under subsection (1) or (2), even if the amendment that is adopted differs from the requested amendment	The basis for appeal of OPAs is the same whether initiated by the municipality or as a result of an application.	
Schedule 3, Section 8(6)	Amends 22(8) of the Planning Act ***Contents*** *(8) A notice of appeal under subsection (7) shall…* *(a.1) explain how the existing part or parts of the official plan that would be affected by the requested amendment are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or, in the case of the official plan of a lower-tier municipality, fail to conform with the upper-tier municipality's official plan;* *(a.2) explain how the requested amendment is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and, in the case of a requested*	Whereas there is currently no requirement to provide reasons for appealing a failure to adopt or refusal of a requested amendment, this provision requires a Notice to provide an explanation of the basis for appeal set out in 22(7.0.0.1).	**Applicants:** When read in conjunction with Section 22(11.0.4) (dismissal without a hearing), appeals made by applicant appellants may be dismissed if the notice of appeal does not set out the basis for appeal as required.

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	amendment to the official plan of a lower-tier municipality, conforms with the upper-tier municipality's official plan; and …		
Schedule 3, Section 8(7)	Adds new 22(11.0.4) of the Planning Act ***Dismissal without hearing*** *(11.0.4) Despite the Statutory Powers Procedure Act and subsection (11), the Tribunal shall dismiss all or part of an appeal without holding a hearing on its own initiative or on the motion of any party if any of the following apply:* *1. The Tribunal is of the opinion that the explanations required by clauses (8) (a.1) and (a.2) do not disclose both of the following:* *i. That the existing part or parts of the official plan that would be affected by the requested amendment are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or, in the case of the official plan of a lower-tier municipality, fail to*	There is a change in language from "the Municipal Board <u>may</u> dismiss" to "the Tribunal <u>shall</u> dismiss". This is a substantive change to the powers of the appellate body. The Tribunal has an obligation to dismiss an appeal if one of the tests is met. This appears to require that the Tribunal examine every appeal to determine whether it is required to be dismissed. As a result, the Tribunal would have to set up an administrative process to screen appeals and dismiss them where the test is not met. This emphasizes that every notice of appeal must be properly drafted to meet the requirements of section 22(8). Case law permits appellants to supplement the reasons in their appeal after the appeal is filed. This opportunity appears to remain given that appellants still have the opportunity to make representations on a proposed dismissal (22(11.0.6)).	**Appellants:** This further emphasizes that appeals are geared only towards the most sophisticated stakeholders who are able to frame an appeal in the context of lack of conformity/consistency with provincial policies/plans. **Applicants/Municipalities:** The increased ability to dismiss appeals encourages applicants/ municipalities to bring motions to dismiss appeals in order to avoid hearings.

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	conform with the upper-tier municipality's official plan. *ii. That the requested amendment is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and, in the case of a requested amendment to the official plan of a lower-tier municipality, conforms with the upper-tier municipality's official plan.* *2. The Tribunal is of the opinion that,* *i. the appeal is not made in good faith or is frivolous or vexatious,* *ii. the appeal is made only for the purpose of delay, or* *iii. the appellant has persistently and without reasonable grounds commenced before the Tribunal proceedings that constitute an abuse of process.* *3. The appellant has not provided the explanations required by clauses (8) (a.1) and (a.2).*		

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	4. The appellant has not paid the fee charged under the Local Planning Appeal Tribunal Act, 2017 and has not responded to a request by the Tribunal to pay the fee within the time specified by the Tribunal. *5. The appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal.* [Note: Proposed 22.(11.0.4) has the same effect as 17(45), as proposed to be amended, save and except the change from "may" to "shall" as noted under "Issues with Proposed Amendment"]		
	Adds new 22(11.0.8) of the Planning Act ***Powers of L.P.A.T. – appeals under subs. (7)*** *(11.0.8) Subject to subsections (11.0.9) and (11.0.11), on an appeal under subsection (7), the Tribunal shall dismiss the appeal.*	Section 22(11.0.8) establishes that the Tribunal is required to dismiss all appeals except in the narrow instances where: (a) it refers the matter back to council for a new decision or (b) it makes a decision on an appeal of a new decision (second appeal).	**Applicant/Appellants:** This emphasizes that a person can no longer appeal a council's decision on the basis of valid planning issues that could affect the use and enjoyment of his/her property or community. Valid planning reasons that are no longer available include reasons such as impact on adjacent property (traffic, sun, shadow, privacy) and conformity with the objectives and policies of lower-/single tier official plans.
	Adds new 22(11.0.9) of the Planning Act	If the bases of appeal are not established, the Tribunal is required to dismiss the appeal.	**All:** This sets up a very lengthy, cumbersome, and expensive approval process. It is an

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	Notice re opportunity to make new decision *(11.0.9) On an appeal under subsection (7) and except as provided in subsection (11.0.11), the Tribunal shall notify the clerk of the municipality or the secretary-treasurer of the planning board, as the case may be, that received the request for an official plan amendment that the municipality or planning board 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 official plan that would be affected by the requested amendment are inconsistent with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or, in the case of the official plan of a lower-tier municipality, fail to conform with the upper-tier municipality's official plan; and*	If the bases of appeal are established, the Tribunal is required to notify municipality that it is being given an opportunity to make a new decision in respect of the matter. This is the exception to the Tribunal's requirement to dismiss an appeal (section 22(11.0.8)) of a first decision. The bases on which a Tribunal is not required to dismiss an appeal have been significantly limited to instances where (a) the parts of the existing OP that are affected by the requested amendment lack consistency/conformity with provincial policies/plan and upper-tier OPs, and where (b) the requested amendment achieves consistency/conformity with provincial policies/plan and upper tier OPs. There is no ability for Tribunal to approve or modify an OPA on a first decision.	inefficient use of public and private resources. It is questionable whether this will lead to better planning decisions. **Appellants/Parties:** This process is overwhelming for all parties. They may be faced with the requirement to participate in a multiplicity of planning proceedings (initial consideration by Council, appeal to Tribunal, new consideration by Council, second appeal to Tribunal). In addition, the costs of retaining legal and professional assistance throughout this process is potentially prohibitive for all but the wealthiest of individuals.

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	(b) the requested amendment is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and, in the case of a requested amendment to the official plan of a lower-tier municipality, conforms with the upper-tier municipality's official plan.		
	Adds new 22(11.0.10) of the Planning Act ***Rules that apply if notice received*** *(11.0.10) If the clerk or secretary-treasurer has received notice under subsection (11.0.9), the following rules apply:* *1. The council of the municipality or the planning board may prepare and adopt an amendment, subject to the following:* *i. Subsections 17 (16) and (17.1) do not apply.* *ii. If the amendment is not exempt from approval,* *A. the reference to "within 210 days" in subsection 17 (40)*	Where the Tribunal refers the matter back to the municipality, the council may, but is not required to, process, prepare and adopt another OPA. There are reduced timeframes in regard to the adoption/approval of the new OPA. This provision does not specify whether the preparation and adoption of the new OPA must be done in accordance with section 17 (whereas 17(49.4) specifies "in accordance with this section"). It is unclear whether this is intended to be a substantive difference. This should be clarified.	**Applicants:** Potentially very lengthy approvals process (210 days at lower-tier + 210 days at upper-tier + 90 days + Tribunal time + 90 days for a new Council decision + further appeal to Tribunal + Tribunal time) where there are appeals.

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	shall be read as "within 90 days", *B. subsection 17 (40.1) does not apply,* *C. references to "210 days" and "210th day" in subsection 17 (40.2) shall be read as "90 days" and "90th day", respectively, and* *D. the reference to "210-day period" in subsection 17 (40.4) shall be read as "90-day period".* *2. The references to "within 210 days after the day the request is received" in paragraphs 1 and 2 of subsection (7.0.2) shall be read as "within 90 days after the day notice under subsection (11.0.9) was received".*		
	Adds new 22(11.0.11) to (11.0.13) of the Planning Act ***Second appeal*** *(11.0.11) Subsections (11.0.12) and (11.0.13) apply with respect to an appeal under subsection (7) that concerns a request in respect of which the municipality or planning board was given an*	On an appeal of a non-decision or refusal (second appeal), the Tribunal has broader powers to approve, modify, or refuse all or part of the plan. On a refusal, the Tribunal must determine that (a) the parts of the existing OP that are affected by the requested amendment lack consistency/conformity with provincial policies/plan and upper-tier OPs, and (b) the requested amendment achieves consistency/conformity with provincial policies/plan and upper tier OPs.	**Municipalities:** If a municipality fails to make a new decision, the Tribunal has power to approve. modify or refuse without needing to establish inconsistency/lack of conformity in existing OP. **Applicants/Appellants:** Can no longer appeal a council's decision on the basis of valid planning issues that could affect the use and enjoyment of their property or community. Valid planning reasons that are no longer available including reasons such as impact on adjacent property

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	opportunity to make a new decision in accordance with subsection (11.0.10) or subsection 17 (49.4). ***Same*** *(11.0.12) In the case of an appeal brought in accordance with paragraph 1 or 2 of subsection (7.0.2), 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.* ***Same*** *(11.0.13) In the case of an appeal brought in accordance with paragraph 3 or 4 of subsection (7.0.2), the Tribunal may approve all or part of a requested amendment as an official plan amendment, make modifications to all or part of*		(traffic, sun, shadow, privacy) and conformity with the objectives and policies of lower-/single tier official plan.

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	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 issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or, in the case of the official plan of a lower-tier municipality, fail to conform with the upper-tier municipality's official plan; and* *(b) the requested amendment is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and, in the case of a requested amendment to the official plan of a lower-tier municipality, conforms with the upper-tier municipality's official plan.*		

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Schedule 3, Section 8(8)	Amends 22(11.1) of the Planning Act ***Matters of provincial interest*** *(11.1) Where an appeal is made to the Tribunal under this section, the Minister, if he or she is of the opinion that a matter of provincial interest is, or is likely to be, adversely affected by the amendment or any part of the amendment in respect of which the appeal is made, may so advise the Tribunal in writing not later than 30 days after the day the Tribunal gives notice under subsection (11) and the Minister shall identify,* *(a) the provisions of the amendment or any part of the amendment by which the provincial interest is, or is likely to be, adversely affected; and* *(b) the general basis for the opinion that a matter of provincial interest is, or is likely to be, adversely affected.*	Notice of a provincial interest must be given no later than 30 days after the Tribunal's notice of hearing. Previously, notice was required to be given 30 days before the commencement of the hearing. If notice is given 60 days before the hearing, there is effectively no change. If notice is given less than 60 days before the hearing, there is effectively less notice of provincial interest. In more complicated matters where there are prehearings, there is likely to be more than 60 days' notice and, therefore, greater notice of a provincial interest. This change appears to be a sensible one. Clarification is required regarding the meaning of "hearing" in section 22(11); that is, does it include prehearings?	
Schedule 3, Section 8(9)	Amends 22(11.3) of the Planning Act	If the Minister identifies a provincial interest affected by the parts of the Plan under appeal, he or she can	

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	Applicable rules if notice under subs. (11.1) received *(11.3) If the Tribunal has received a notice from the Minister under subsection (11.1), the following rules apply:* *1. Subsections (11.0.8) to (11.0.13) do not apply to the appeal.* *2. The Tribunal may approve all or part of a 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.* *3. The decision of the Tribunal is not final and binding in respect of the provisions of the amendment or the provisions of any part of the amendment identified in the notice unless the Lieutenant Governor in Council has confirmed the*	give notice to the Tribunal. In that case, none of the new provisions related to processing appeals apply. Nor is the Tribunal required to dismiss appeals on the grounds of lack of consistency/conformity with provincial policies/plans. The Tribunal has the power to approve/modify/refuse all or part of the plan that is identified by the Minister, without making a determination that there is a lack of consistency/conformity.	

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	decision in respect of those provisions.		
Schedule 3, Section 10(1)	Amends 34(11) of the Planning Act ***Appeal to L.P.A.T.*** *(11) Subject to subsection (11.0.0.0.1), where an application to the council for an amendment to a by-law passed under this section or a predecessor of this section is refused or the council fails to make a decision on it within 150 days after the receipt by the clerk of the application, any of the following may appeal to the Tribunal by filing with the clerk of the municipality a notice of appeal, accompanied by the fee charged under the Local Planning Appeal Tribunal Act, 2017:* *1. The applicant.* *2. The Minister.* New 34(11.0.0.0.1) of the Planning Act ***Same, where amendment to official plan required***	The appeal period for a non-decision on a zoning application has been extended from 120 to 150 days, potentially extending the processing time for an application. The processing time could be significantly extended in instances where an applicant files a companion request for an official plan amendment, in which case the appeal period for a non-decision is further extended to 210 days.	**Applicants:** The processing time for zoning applications has been extended, and is significantly longer in instances where a companion application for an official plan amendment has been made.

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	(11.0.0.0.1) If an amendment to a by-law passed under this section or a predecessor of this section in respect of which an application to the council is made would also require an amendment to the official plan of the local municipality and the application is made on the same day as the request to amend the official plan, an appeal to the Tribunal under subsection (11) may be made only if the application is refused or the council fails to make a decision on it within 210 days after the receipt by the clerk of the application.		
	New 34(11.0.0.0.2) of the Planning Act ***Basis for appeal*** *(11.0.0.0.2) An appeal under subsection (11) may only be made 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 issued under subsection 3 (1), fail to*	This creates a very high appeal threshold, which requires an appellant to meet two tests: (a) that the parts of the existing Zoning By-law that are affected by the requested amendment lack consistency/conformity with provincial policies/plan and applicable OPs, and (b) requested amendment achieves consistency/conformity with provincial policies/plan and applicable OPs. Since the basis for the appeal is nearly impossible to meet (as a result of paragraph (a)), municipalities can unreasonably refuse or fail to make decisions on applications for zoning by-law amendments, even where the amendment has significant planning	**Applicants:** It is almost impossible to meet threshold test regarding the existing affected by-law, unless the by-law has not yet been updated to conform with the OP. **Applicants:** The proposed legislation removes the right of appeal of a council refusal; there is no remedy if council acting against staff recommendations or not acting in public interest **Applicants/General Public:** Without Council support, good planning applications that conform with provincial policies, plans and OPs can not be

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	conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and *(b) the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans.* [Note: This section applies to appeals of the refusal to pass or failure to make a decision on the requested ZBA within 150 days]	merit. Instead of strengthening the policy-led planning system, this amendment would enable decisions made on planning applications for purely political reasons to go unchallenged. **Paragraph (a)** In instances where the municipality has recently updated its zoning by-law, it would be very difficult, if not impossible, to establish that the existing zoning by-law lacks consistency/conformity with provincial policies/plan and/or applicable OPs. Section 24(4) of the Planning Act provides that by-laws are "conclusively deemed to be in conformity with the official plan" once they come into effect. Therefore it would be impossible to demonstrate that the inforce by-law does not conform with the applicable OP. Even in instances where there has not been a recent OP update, given the broad policy nature of both OPs and provincial policies/plans, it would be very difficult to establish a lack of consistency/conformity with provincial policies/plan and/or applicable OPs, even where a genuine planning issue arises.	implemented unless the base by-law has inconsistency/nonconformity issues.
	New 34(11.0.0.0.4) of the Planning Act ***Notice of Appeal*** *(11.0.0.0.4) A notice of appeal under subsection (11) shall,*	Whereas there is currently no requirement to provide reasons for appealing a failure to make a decision or refusal of an amendment, this provision requires a Notice to provide an explanation of the bases for appeal set out in 34(11.0.0.0.2).	**Applicants:** When read in conjunction with Section 34(25) (dismissal without a hearing), appeals made by applicant appellants may be dismissed if the notice of appeal does not set out the basis for appeal as required.

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	(a) explain 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 issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and *(b) explain how the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans.*		
	New 34(11.0.0.0.5) of the Planning Act ***Exception*** *(11.0.0.0.5) Subsections (11.0.0.0.2) and (11.0.0.0.4) do not apply to an appeal under subsection (11) that concerns the failure to make a decision on an application in respect of which the municipality was given an*	The limitation on the basis for appeal do not apply where an application has been appealed and the Tribunal has given the municipality notice of an opportunity to make a new decision, and the municipality fails to make a new decision.	

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	opportunity to make a new decision in accordance with subsection (26.3).		
Schedule 3, Section 10(2)	Repeals 34(11.0.2) of the Planning Act ~~***Appeal to O.M.B.*** *~~(11.0.2)~~* [Note: Powers of the Tribunal are addressed at 34(26)]	The existing section provides the general powers of the Board on hearing an appeal. It has been repealed and the general power of the Tribunal on an appeal are found in sections 34(26), which provides that the Tribunal shall dismiss the appeal, subject to the lengthy and complicated process set out in sections 34 (26.1), (26.2) and (26.4) to (26.6).	**All:** This sets up a very lengthy, cumbersome, and expensive approval process. It is an inefficient use of public and private resources. It is questionable whether this will lead to better planning decisions.
Schedule 3, Section 10(5)	Amends 34(19.0.1) and (19.0.2) of the Planning Act ***Basis for appeal*** *(19.0.1) An appeal under subsection (19) may only be made on the basis that the by-law is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan.* ***Notice of Appeal*** *(19.0.2) A notice of appeal under subsection (19) shall explain how the by-law is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with*	An appeal of an enacted by-law may only be made in instances where by-law is: (i) inconsistent with provincial policy statements, (ii) fails to conform with or conflicts with provincial plans, or (iii) fails to conform with an applicable OP.	**Landowners/Residents:** The appeal process would be available to only the most sophisticated appellants who are able to frame an appeal in the context of non-conformity/inconsistency.

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	a provincial plan or fails to conform with an applicable official plan.		
Schedule 3, Section 10(7)	Adds new 34(19.5) to (19.8) of the Planning Act	The proposed amendment prohibits appeals of certain zoning by-law provisions respecting major transit station areas, even on the basis of inconsistency or non-conformity with provincial policy statements or provincial plans, or non-conformity with a lower-tier official plan or an upper-tier official plan, including: 1. The parts of a by-law that establish permitted uses or the minimum or maximum densities with respect to buildings and structures on lands in a protected major transit station area that is identified in accordance with subsection 16(15) or (16); or 2. The parts of a by-law that establish minimum or maximum heights with respect to buildings and structures on lands in a protected major transit station area that is identified in accordance with subsection 16(15) or (16). There is no justifiable rationale for prohibiting appeals of policies that establish minimum or maximum heights and densities in protected transit station areas. Allowing appeals of maximum heights and densities will help ensure implementation of provincial policy requiring the number of potential transit users within walking distance of major transit station areas is maximized.	Owners of site that can accommodate development or redevelopment within major transit station areas will not be able to ensure that municipalities allow development opportunities to be appropriately maximized in accordance with Provincial policy. Residents within or adjacent to major transit station areas will have less protection from incompatible development.

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		For similar reasons, there is no justifiable rationale for prohibiting appeals that establish permitted uses for such areas. The prohibition against appeals of minimum height and density provisions will also restrict the ability of landowners to ensure that an appropriate scale of development and transition of built form is maintained within built-up areas.	
Schedule 3, Sections 10(9) and 10(10)	Repeals 34(24.3) to (24.6) of the Planning Act and removes references to these subsections in 34(24.7) of the Planning Act	Same issue as 17(44.3) to (44.7). No explanation has been provided for the deletion of these subsections. ~~***New information and material at hearing*** *(24.3)* *(24.4)*~~ ~~***Notice to council*** *(24.5)*~~ ~~***Council's recommendation*** *(24.6)*~~	
Schedule 3, Section 10(11)	Amends 34(25) of the Planning Act ***Dismissal without hearing*** *(25) Despite the Statutory Powers Procedure Act and subsection (24), the Tribunal shall dismiss all or part of an appeal without holding a hearing on its own initiative or on the motion of any party if any of the following apply:* *1. The Tribunal is of the opinion that the explanations required by subsection*	Similar issues as 17(45) and 22(11.04): There is a change in language from "the Municipal Board <u>may</u> dismiss" to "the Tribunal <u>shall</u> dismiss". This is a substantive change to the powers of the appellate body. The Tribunal has an obligation to dismiss an appeal if one of the tests is met. This appears to require that the Tribunal examine every appeal to determine whether it is required to be dismissed. As a result, the Tribunal would have to set up an administrative process to screen appeals and dismiss them where the test is not met.	**Appellants:** This further emphasizes that appeals are geared only towards the most sophisticated stakeholders who are able to frame an appeal in the context of lack of conformity/consistency with provincial policies/plans. **Applicants/Municipalities:** The increased ability to dismiss appeals encourages applicants/ municipalities to bring motions to dismiss appeals in order to avoid hearings.

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	(11.0.0.0.4) do not disclose both of the following: *i. That 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 issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan.* *ii. The amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans.* *2. The Tribunal is of the opinion that the explanation required by subsection (19.0.2) does not disclose that the by-law is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan.*	This emphasizes that every notice of appeal must be properly drafted to meet the requirements of section 22(8). Case law permits appellants to supplement the reasons in their appeal after the appeal is filed. This opportunity appears to remain given that appellants still have the opportunity to make representations on a proposed dismissal (22(11.0.6)).	

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	3. The Tribunal is of the opinion that, *i. the appeal is not made in good faith or is frivolous or vexatious,* *ii. the appeal is made only for the purpose of delay, or* *iii. the appellant has persistently and without reasonable grounds commenced before the Tribunal proceedings that constitute an abuse of process.* *4. The appellant has not provided the explanation required by subsection (11.0.0.0.4) or (19.0.2), as applicable.* *5. The appellant has not paid the fee charged under the Local Planning Appeal Tribunal Act, 2017 and has not responded to a request by the Tribunal to pay the fee within the time specified by the Tribunal.* *6. The appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal.*		

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Schedule 3, Section 10(14)	Replaces 34(26) of the Planning Act ***Powers of L.P.A.T.*** *(26) Subject to subsections (26.1), (26.2) and (26.4) to (26.6), on an appeal under subsection (11) or (19), the Tribunal shall dismiss the appeal.*	Same issues as 22(11.0.8) This section establishes that the Tribunal is required to dismiss all appeals except in the narrow instances (a) it refers the matter back to the municipality for a new decision or (b) it makes a decision on a second appeal.	
	Adds new 34(26.1) of the Planning Act ***Notice re opportunity to make new decision – appeal under subs. (11)*** *(26.1) On an appeal under subsection (11) and except as provided in subsections (26.4) and (26.5), the Tribunal shall notify the clerk of the municipality that received the application 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*	Same issues as 22(11.0.9) If the bases for appeal of a refusal or non-decision are not established, the Tribunal is required to dismiss the appeal. If the bases for appeal are established, the Tribunal is required to send it back to the municipality for an opportunity to make a new decision. This is an exception to the Tribunal's requirement to dismiss an appeal (section34(26)) of a first decision.	**All:** This sets up a very lengthy, cumbersome, and expensive approval process. It is inefficient use of public and private resources. It is questionable whether this will lead to better planning decisions. **Appellants/Parties:** This process is overwhelming for all parties. They may be faced with the requirement to participate in a multiplicity of planning proceedings (initial consideration by Council, appeal to Tribunal, new consideration by Council, second appeal to Tribunal). In addition, the costs of retaining legal and professional assistance throughout this process is potentially prohibitive for all but the wealthiest of individuals.

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	with a policy statement issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and *(b) the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with applicable official plans.* [Note: This section relates to appeals of refusals and failures to make a decision on by-law application.]		
	Adds new 34(26.2) of the Planning Act ***Same – appeal under subs. (19)*** *(26.2) On an appeal under subsection (19) and except as provided in subsection (26.6), if the Tribunal determines that a part of the by-law to which the notice of appeal relates is inconsistent with a policy statement issued under subsection 3 (1), fails to*	If the basis for appeal of an enacted by-law is established, the Tribunal is required to repeal the by-law and to send it back to the municipality for an opportunity to make a new decision. This is an exception to the Tribunal's requirement to dismiss an appeal (34(26)) of a first decision. The only circumstance in which the Tribunal is not required to dismiss an appeal is if the decision regarding a by-law is inconsistent with the PPS, fails to conform with or conflicts with provincial plans or, fails to conform with an applicable OP.	**All:** This sets up a very lengthy, cumbersome, and expensive approval process. It is inefficient use of public and private resources. It will not lead to better planning decisions. **Individual Appellants**: This process is overwhelming for individual appellants. They may be faced with the requirement to participate in a multiplicity of planning proceedings (initial consideration by council, appeal to Tribunal, new consideration by council, second appeal to Tribunal). Given the requirement of appellants, the costs of retaining legal and professional

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	conform with or conflicts with a provincial plan or fails to conform with an applicable official plan, *(a) the Tribunal shall repeal that part of the by-law; and* *(b) the Tribunal shall notify the clerk of 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.*		assistance throughout this process is potentially prohibitive for all but the wealthiest of individuals.
	Adds new 34(26.3) of the Planning Act ***Rules that apply if notice received*** *(26.3) If the clerk has received notice under subsection (26.1) or (26.2), the following rules apply:* *1. The council of the municipality may prepare and pass another by-law in accordance with this section, except that clause (12) (b) does not apply.* *2. In the case of a notice under subsection (26.1), the reference to "within 150 days after the receipt by the clerk of the application" in*	Where the Tribunal refers the matter back to the municipality, the council may, but is not required to, prepare and pass another by-law. However, if the by-law that was passed and repealed (section 34(26.2)(a)) was not initiated by the municipality, but resulted from an application, it is unclear whether the original application is still active. It would not be reasonable to expect an applicant to submit a new application in the circumstances. This needs to be clarified. There are reduced timeframes in regard to the enactment of a new by-law.	**Municipalities:** Upon notification under section 34(26)(b), municipalities are required to commence the public process again. This is a very lengthy, cumbersome, and expensive approval process. It is an inefficient use of public resources. It will not lead to better planning. **Residents/Landowners:** There is added uncertainty about a by-law that is enacted, then repealed by the Tribunal, where council is given the opportunity to make a new decision, since there is no timeline or even any requirement that council makes a new decision. **Applicant:** Overall length of processing time can be onerous.

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	subsection (11) shall be read as "within 90 days after the day notice under subsection (26.1) was received". *3. In the case of notice under subsection (26.2), if the by-law referred to in that subsection was passed in response to an application, the reference to "within 150 days after the receipt by the clerk of the application" in subsection (11) shall be read as "within 90 days after the day notice under clause (26.2) (b) was received".*		
	Adds new 34(26.4) of the Planning Act ***Second appeal – subs. (11), refusal*** *(26.4) On an appeal under subsection (11) that concerns the refusal of an application in respect of which the municipality was given an opportunity to make a new decision in accordance with subsection (26.3), the Tribunal may amend the by-law in such manner as the Tribunal may determine or direct the council of the*	In practice, this section would only apply in the context of an application to amend the by-law, and not an amendment initiated by the municipality. On the appeal of a refusal to enact the new by-law, the Tribunal has the power to amend the by-law, but only in instances where the Tribunal has determined that the two bases for appeal have been established. Notwithstanding that the Tribunal has broader decision making powers (i.e. amend the by-law) the grounds upon which the Tribunal may give that relief remain extremely limited.	**All:** This sets up a very lengthy, cumbersome, and expensive approval process. It is an inefficient use of public and private resources. It will not lead to better planning decisions. **Applicants/Appellants:** Appeals will only be possible in extremely limited circumstances, even if there are meritorious planning issues to be addressed.

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	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 issued under subsection 3 (1), fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan; and* *(b) the amendment that is the subject of the application is consistent with policy statements issued under subsection 3 (1), conforms with or does not conflict with provincial plans and conforms with all applicable official plans.*		
	Adds new 34(26.5) of the Planning Act ***Same, subs. (11) – failure to make decision*** *(26.5) On an appeal under subsection (11) that concerns the failure to make a decision on an application in respect of*	This is the only instance where a Tribunal will have a wide discretion with regard to amending the by-law, without establishing the bases for appeal.	

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	which the municipality was given an opportunity to make a new decision in accordance with subsection (26.3), the Tribunal may 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.		
	Adds new 34(26.6) of the Planning Act ***Same, subs. (19)*** *(26.6) On an appeal under subsection (19) that concerns a new decision that the municipality was given an opportunity to make in accordance with subsection (26.3), 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 repeal the by-law in whole or in part or to amend the by-law in accordance with the Tribunal's order, if the Tribunal determines that the decision is inconsistent with*	An appeal of a new decision to enact a by-law must be based on the grounds of appeal set out in section 34(19), namely: (i) inconsistent with provincial policy statements, (ii) fails to conform with or conflicts with provincial plans, or (iii) fails to conform with an applicable OP. If the basis for appeal is not established, the Tribunal has the power to dismiss the appeal (section 34(26)). If one of the bases for appeal is established, the Tribunal can repeal or amend the by-law or direct the Council to do so.	**Affected Landowners/Residents:** The appeal process would be available to only the most sophisticated appellants who are able to frame an appeal in the context of non-conformity/inconsistency.

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	policy statements issued under subsection 3 (1), fails to conform with or conflicts with provincial plans or fails to conform with an applicable official plan.		
Schedule 3, Section 10(15)	Amends 34(27) of the Planning Act ***Matters of provincial interest*** *(27) Where an appeal is made to the Tribunal under subsection (11) or (19), the Minister, if he or she is of the opinion that a matter of provincial interest is, or is likely to be, adversely affected by the by-law, may so advise the Tribunal in writing not later than 30 days after the day the Tribunal gives notice under subsection (24) and the Minister shall identify,* *(a) the part or parts of the by-law by which the provincial interest is, or is likely to be, adversely affected; and* *(b) the general basis for the opinion that a matter of provincial interest is, or is*	Same issues as set out in 17(51) Notice of a provincial interest must be given no later than 30 days after the Tribunal's notice of hearing. Previously, notice was required to be given 30 days before the commencement of the hearing. If notice is given 60 days before the hearing, there is effectively no change. If notice is given less than 60 days before the hearing, there is effectively less notice of provincial interest. In more complicated matters where there are prehearings, there is likely to be more than 60 days' notice and, therefore, greater notice of a provincial interest. This change appears to be a sensible one. Clarification is required regarding the meaning of "hearing"; that is, does it include prehearings?	

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	likely to be, adversely affected.		
Schedule 3, Section 10(16)	Amends 34(29) of the Planning Act ***Applicable rules if notice under subs. (27) received*** *(29) If the Tribunal has received a notice from the Minister under subsection (27), the following rules apply:* *1. Subsections (26) to (26.6) do not apply to the appeal.* *2. 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 or amend the by-law in whole or in part.* *3. The Tribunal shall not make an order in respect of the part or parts of the by-law identified in the notice.*	Same issues as set out in 17(53) If the Minister identifies a provincial interest affected by the by-law under appeal, he or she can give notice to the Tribunal. In that case, none of the new provisions related to processing apply. The Tribunal is not required to dismiss the appeals on the grounds of lack of consistency/conformity. The Tribunal has the power to approve/amend/refuse all or part of the by-law that is identified by the Minister, without making a determination that there is a lack of consistency/conformity.	
Schedule 3, Section 11(1)	Subsection 36(3) of the *Planning Act*	Timeframe for Council to make a decision on an application to remove the Holding symbol has been increased from 120 days to 150 days	Landowners could be delayed by a further 30 days in filing their appeal to the new Tribunal to have the Holding symbol lifted.
Schedule 3, Section 12(1)	Subsection 38(4) of the *Planning Act*, which deals with appeal rights relating to	The Minister is the only person who can now appeal the initial passing of the interim control by-law. Any other stakeholder would only be allowed to appeal	Any landowner whose lands are subject to an interim control by-law would have no appeal rights and therefore would have to automatically wait a one-year period despite the fact a municipality

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	interim control by-laws passed by a municipality	the extension of an interim control by-law passed under subsection 38(2) of the *Planning Act*.	may have adopted an interim control by-law for inappropriate purposes, not necessarily to conduct a review or study of land use planning policies in the municipality or in a defined area of the municipality. There are no checks and balances in place which would force a municipality to conduct its review or study in an expeditious manner and for appropriate purposes. The municipality could just wait out a year before commencing its study and then pass an amending by-law which extends the interim control by-law for a further one year and only then would an aggrieved landowner be able to appeal the matter to the Tribunal.
Schedule 3, Section 13(2)(b)	*Planning Act*, s. 41(12.1)	Provision indicating that the decision of the Tribunal (i.e. Municipal Board) on site plan appeals is "final" has been deleted	The intention of the deletion to the decision being "final" is unclear.
Schedule 3, Section 15(2)	Section 47 of the *Planning Act*, which deals with the power of the Minister to make orders exercising zoning powers pursuant to Sections 34, 38 or 39 of the *Planning Act* and also deeming plans of subdivision not to be registered for the purposes of Section 50 of the *Planning Act*	Under Bill 139, the new tribunal will only have the ability to make a written recommendation to the Minister, stating whether the Minister should approve the requested amendment or revocation, in whole or in part, make modifications and approve the requested amendment or revocation as modified or refuse the requested amendment or revocation, in whole or in part, and giving reasons for the recommendation. This recommendation could be rejected by the Minister without the Minister providing any reasons for its decision.	Under the current legislation, the OMB can make a decision to either amend or revoke the Order, in whole or in part, or refuse to amend or revoke the Order, in whole or in part, and the Minister shall give effect to the Order of the Board. The current system has much more transparency than the proposed amendments. This could impact all stakeholders, including landowners, developers, residents' groups, and municipalities.
Schedule 3, Section 16	Subsection 51(52.4) of the *Planning Act*, which deals with new evidence at a	Currently, if there is new evidence introduced at a hearing, the OMB, on a motion, can determine whether the information or material could have	The new provisions could further delay the appeal proceedings and a municipality could just arbitrarily decide to have the information remitted

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	hearing of an appeal for draft plan of subdivision approval.	materially affected the approval authority's decision. Only if the Board determines that such new evidence could have done so will such new evidence not be admitted by the Board until the approval authority has been given the opportunity to review it and to make a written recommendation to the Board. The Bill 139 amendment now only requires the approval authority to request that the Tribunal not admit the new information and material into evidence, at which point it would then have to provide an opportunity to the approval authority to reconsider its decision in light of the new information and material, and to make a written recommendation to the Tribunal.	back to the approval authority, even though the new information and material would not be material to the approval authority's decision. It could impact developers, landowners, residents' groups and any party proposing draft plan of subdivision approval as it could unduly delay the appeals process, thereby making the process longer and more costly.
Schedule 3, Section 17	Section 70.8 of the *Planning Act*, dealing with regulations for the transitional matters for the 2017 amendments	It is not unusual to have provisions which allow the Minister to make regulations for transitional matters with respect to proposed amendments; however, in light of the broad-reaching scope of the proposed amendments, the proposed regulations for the transitional matters should be released as soon as possible and should not be retroactive for any development applications that were filed on or before the final proposed amendments receive Royal Assent.	The transitional provisions will have impacts on all stakeholders, including developers, landowners, residents' groups and municipalities.
Schedule 3, Section 18(5)	*City of Toronto Act*, s. 114(16)	Substitution of "Tribunal" in place of "Municipal Board" regarding jurisdiction over site plan appeals, and deletion of the provision that the decision of the Tribunal (i.e. Municipal Board) is "final"	The intention of the deletion to the decision being "final" is unclear.
Schedule 3, Section 19(1)	*City of Toronto Act*, s. 115(5)(a)	Toronto Local Appeal Body is given expanded jurisdiction over site plan approval and motions relating to site plan approval	The Board/Tribunal retains jurisdiction over site plan appeals where it is seized of a related appeal, which is appropriate in order to avoid the

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			need for a multiplicity of proceedings for the same subject matter. However, insofar as TLAB and the Board are both considering site plan appeals, there is a greater chance for inconsistency in decisions, including on legal determinations made under s.114 (7) of the City of Toronto Act.
Schedule 3, Section 19(1)	*City of Toronto Act*, s. 115(5)(c)	Toronto Local Appeal Body is given jurisdiction to determine whether an application for a consent under Section 53 of the Act is a "complete application"	Providing jurisdiction to Toronto Local Appeal Body to determine "complete applications" risks inconsistency with the OMB/LPAT's determination of the same thing for other applications based on the same statutory language.
Schedule 3, Section 19(1)	*City of Toronto Act*, s. 115(5.1) 1. *new*	Reference to "appeal" to the Toronto Local Appeal Body in this section includes a reference to a motion for directions regarding site plan approval and regarding "complete applications" for consents (does not apply to appeals to Divisional Court)	See comments above under changes to 115(5)(a) of the City of Toronto Act.
Schedule 3, Section 19(1)	*City of Toronto Act*, s. 115(5.1) 2. *new*	Reference to "appellant" in this subsection (9) includes a reference to the person making a motion to the Toronto Local Appeal body for directions regarding site plan approval and regarding "complete applications" for consents	Intention of reference to "person or public body making a motion for directions" is unclear, and would appear to contemplate an expansion of persons now entitled to make such motions. Under site plan provisions [41(4.2) of the Planning Act and 114(7) of the City of Toronto Act], the right to make a motion is currently limited to the owner of land and the City. Under the consent provisions [53(4.1) of the Planning Act], the right to make a motion is currently limited to the applicant, the Council and the Minister. The reference to "persons or public body" would appear to expand the category of persons with standing to bring motions. This may in turn add to further delays in the process and add to the complexity of application filings. As it relates to site plan specifically, it is unclear how this may impact the general principle that site plan approval

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			is a private application between the owner of land and the City.
Schedule 3, Section 19(3)	*City of Toronto Act*, s. 115(11)(a) and (b)	Site plan appeals no longer included in list of "related appeals" for which Tribunal (i.e. Municipal Board) retains jurisdiction Tribunal (i.e. Municipal Board) retains jurisdiction over "related appeals" where the Toronto Local Appeal Body has *Planning Act* jurisdiction, but has not been empowered by municipal by-law "Related appeals" include Official Plan Amendment, Zoning By-law Amendment, Holding By-law, Interim Control By-law, Draft Plan of Subdivision, Development Permits, and – where a City by-law empowering the Toronto Local Appeal Body has not been enacted – Site Plan Approval, Minor Variances, and Consents	It would appear that the intention of this section is to generally provide that a "related appeal" is one that goes to the OMB/LPAT. If a LAB has been authorized to deal with minor variance, but has not been authorized to deal with Site Plans by a municipality, then a minor variance appeal related to a site plan appeal will go to the OMB/LPAT. However, if this is the intention, the language in 11(b) is unclear and should be revised.
Schedule 3, Section 19(6)	*City of Toronto Act*, s. 115(22) 1.	Previous transition rules repealed. New transition for minor variance applications: the Toronto Local Appeal Body provisions do not apply to minor variance appeals if a committee of adjustment's decision is made before the day a by-law empowering a Local Appeal Body to hear minor variance appeals comes into force	The transition rules may need to be revised to account for logistical issues (e.g. appointment of members, securing of space, internal pedagogical needs to prepare members for expanded issues, particularly as it relates to site plan jurisdiction).
Schedule 3, Section 19(6)	*City of Toronto Act*, s. 115(22) 2. *new*	New transition for consent appeals: the Toronto Local Appeal Body provisions do not apply to consent appeals if the approval authority's decision is made before the day a by-law empowering a Local Appeal Body to hear consent appeals comes into force	See comments above under changes to s. 115(22) of the City of Toronto Act.
Schedule 3, Section 19(6)	*City of Toronto Act*, s. 115(22) 3. *new*	New transition for site plan appeals and motions regarding site plan: the Toronto Local Appeal Body	See comments above under changes to s. 115(22) of the City of Toronto Act.

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		provisions do not apply to site plan appeals and motions regarding site plan if the appeal is made before the day a by-law empowering the Toronto Local Appeal Body to hear site plan appeals and motions regarding site plan comes into force. New transition for "complete application" motions for consents and appeals of consents where the approval authority failed to make a decision: the Toronto Local Appeal Body provisions do not apply to such motions or appeals, as the case may be, if the **appeal [sic]** is made before the day a by-law empowering the Toronto Local Appeal Body to hear such motions or appeals comes into force	
Schedule 3, Section 19(6)	*City of Toronto Act*, s. 115(23) *new*	An existing by-law empowering the Toronto Local Appeal Body to hear consent appeals is deemed to empower the Toronto Local Appeal Body to hear **appeals** regarding "complete applications" for consents	See comments above under changes to s. 115(22) of the City of Toronto Act.