

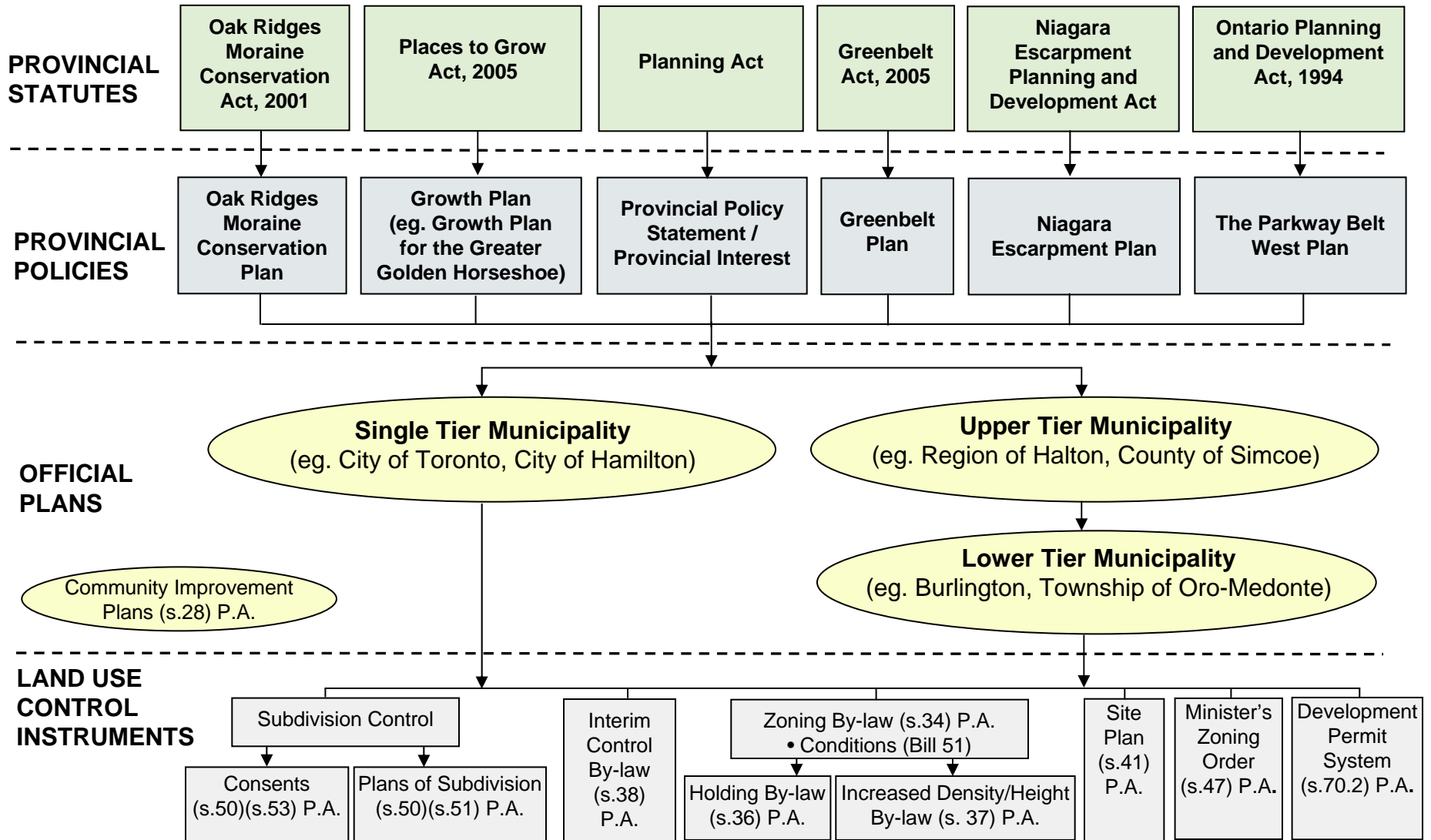
Wood
Bull_{LLP}

Barristers & Solicitors

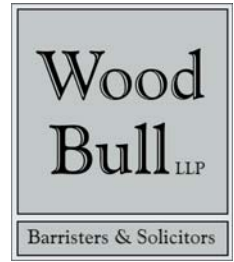
MUNICIPAL, PLANNING & DEVELOPMENT LAW

Municipal Role in Planning

Provincial / Municipal Planning Structure

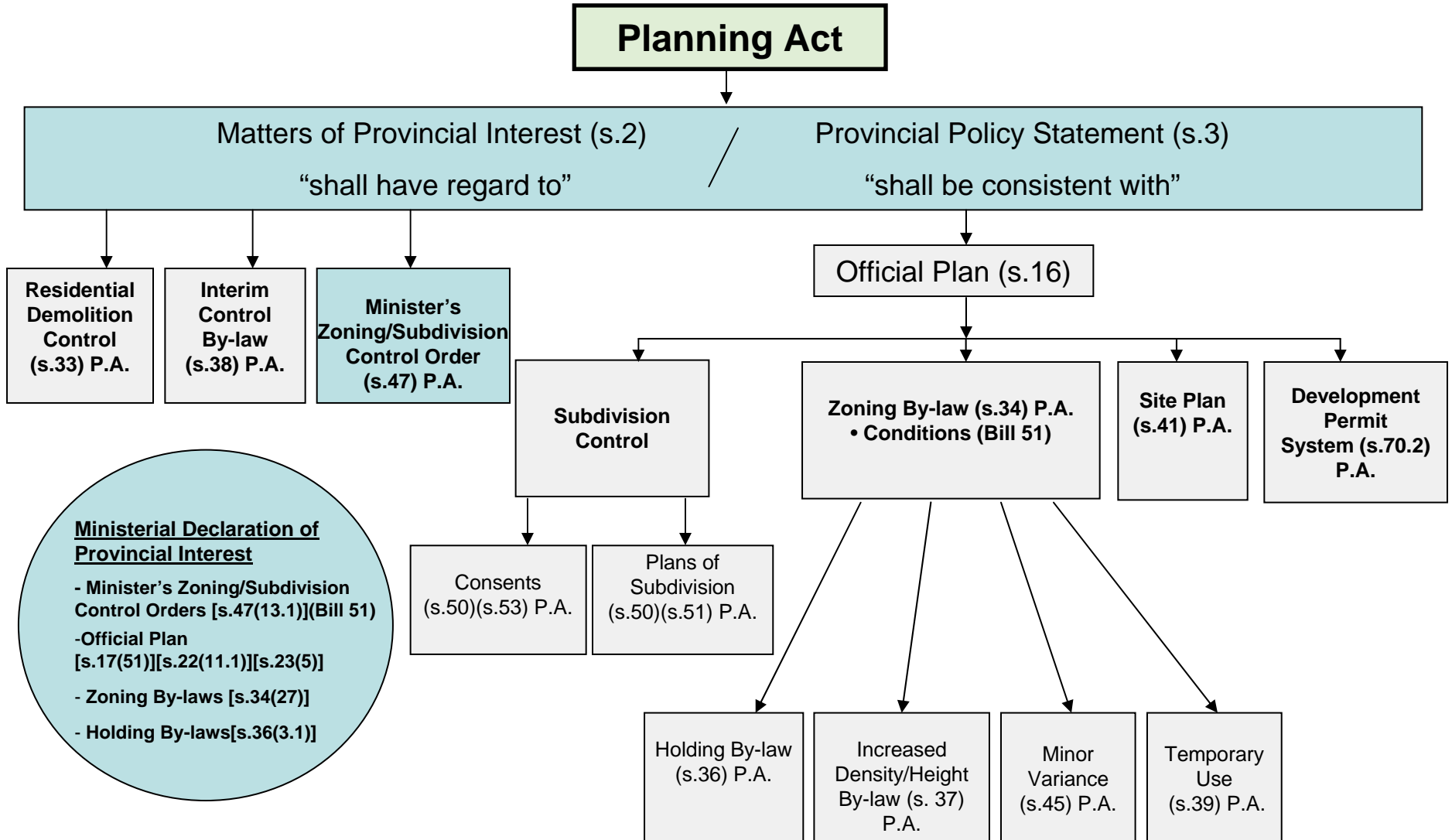


Legislative Framework

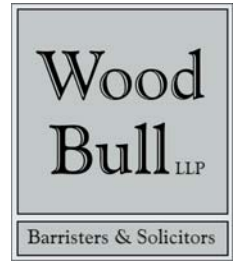


- *Planning Act*
- Significant reforms in the 1990s (Bill 163 and Bill 20)
- Reforms in 2004 (Bill 26)
- Most recent proposed reforms (Bill 51)
- Regulations made under the *Planning Act*

Planning Act: Legislative Framework

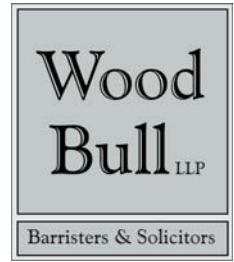


Provincial Policy Statement



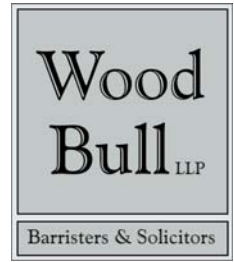
- Issued under Section 3 of the *Planning Act*
- Approved by the Lieutenant Governor in Council, Order in Council No. 140/2005
- New PPS came into effect on March 1, 2005
- Applies to all applications, matters or proceedings commenced on or after March 1, 2005

Provincial Policy Statement



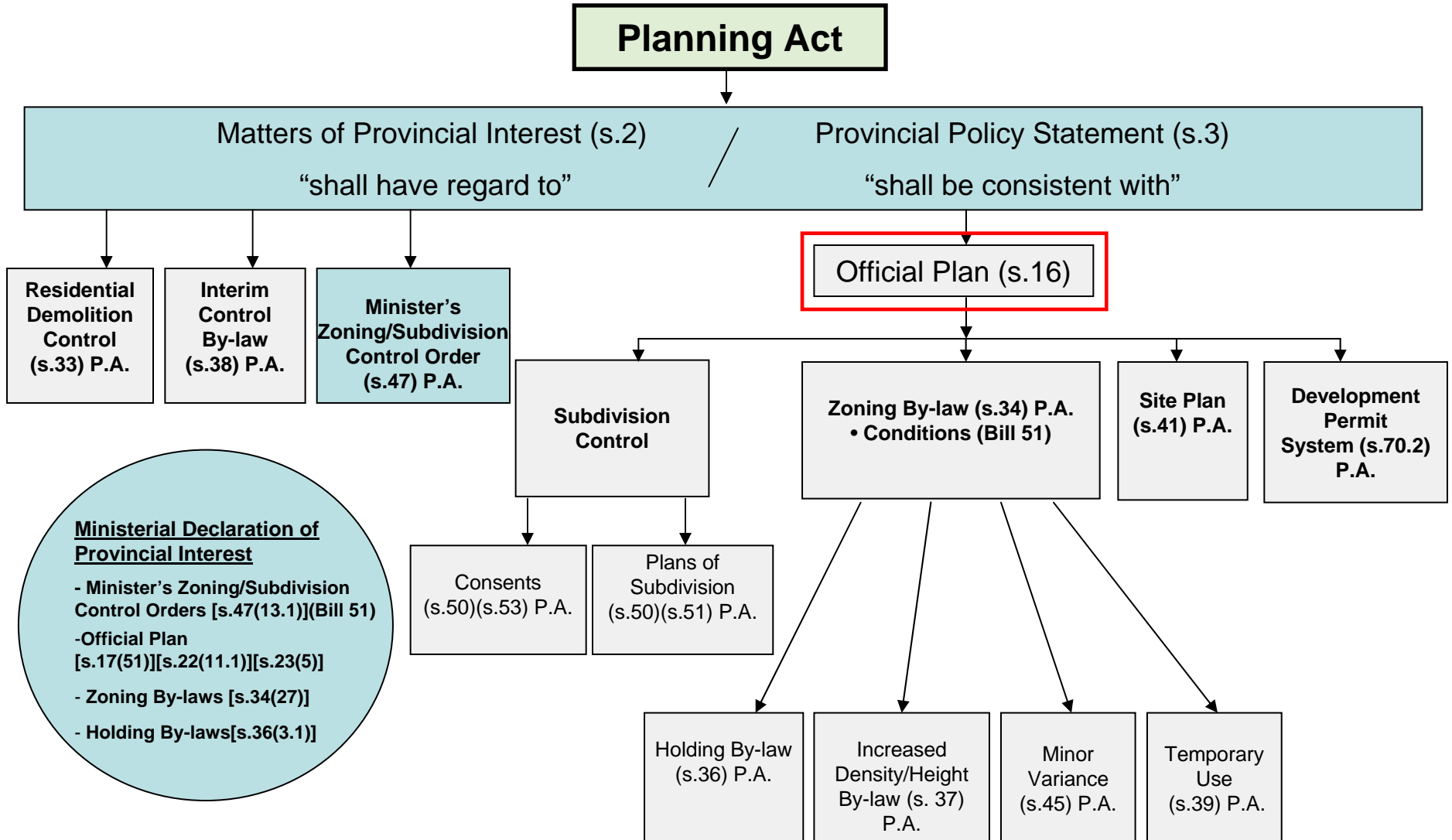
- PPS provides policy direction on matters of provincial interest related to land use planning and development
- Section 3(5) of the *Planning Act* requires that decisions affecting planning matters “shall be consistent with” policy statements issued under the *Act*
- Section 3(6) of the *Planning Act* requires that comments, submissions and advice that affect a planning matter “shall be consistent with” policy statements issued under the *Act*

Provincial Policy Statement

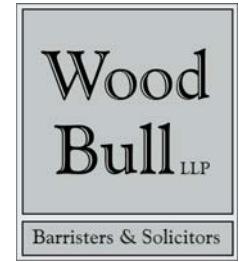


- Notes that the official plan is the most important vehicle for implementation of this Provincial Policy Statement (policy 4.5)

Planning Act: Legislative Framework

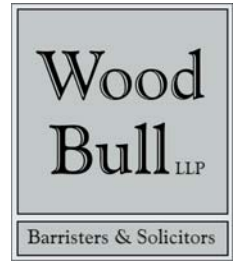


Official Plan



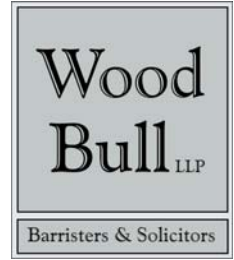
- Single Tier (eg. City of Toronto)
- Upper tier official plan (eg. Region of Halton)
- Lower tier official plan (eg. City of Burlington)
- Lower tier official plan must conform with upper tier official plan [s.27(1)-(4)]

Official Plan



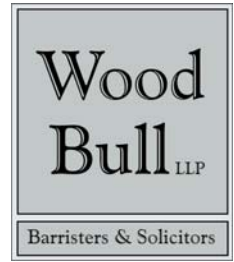
- Section 16 of the *Planning Act*
 - Content of an official plan
 - “shall contain goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality...” [s.16(1)(a)]
 - “shall contain such other matters as may be prescribed.” [s.16(1)(b)] **(Bill 51)**
 - Procedural provisions

Official Plan



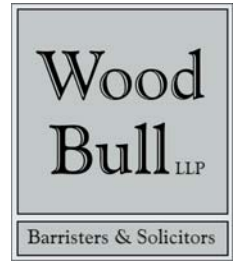
- Land use policy document
 - Goals
 - Objectives
 - Policies
 - Schedules (land use maps, road network maps, environmental areas etc.)

Official Plan



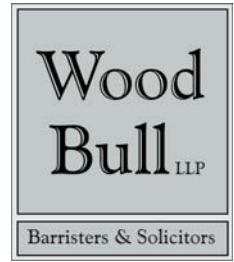
- Significance of official plan
 - Zoning by-laws must conform [s.24(1)]
 - All other by-laws must conform [s.24(1)]
 - Public works must conform [s.24(1)]
 - Prerequisite for community improvement plans [s.28(2)]
 - Provisions relating to the use of the holding symbol [s.36(2)]
 - Increased height/density provision: bonus [s.37(2)]
 - Proposed site plan control areas [s.41(2)]
 - Identifying public transit rights of way [s.41(9.1)]
 - Identifying highway widenings [s.41(9)]
 - Parkland dedication greater than standard [s.42(4)]/[s.51.1(2)]

Official Plan



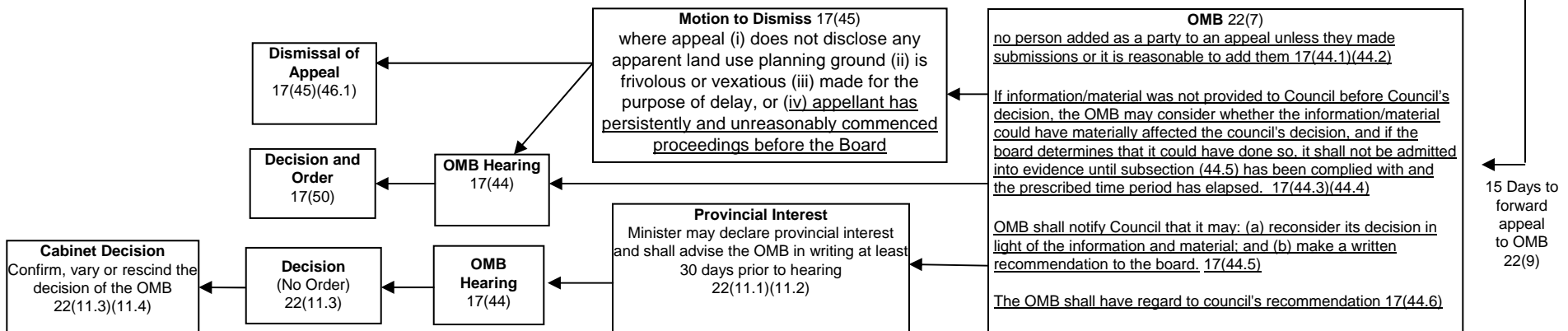
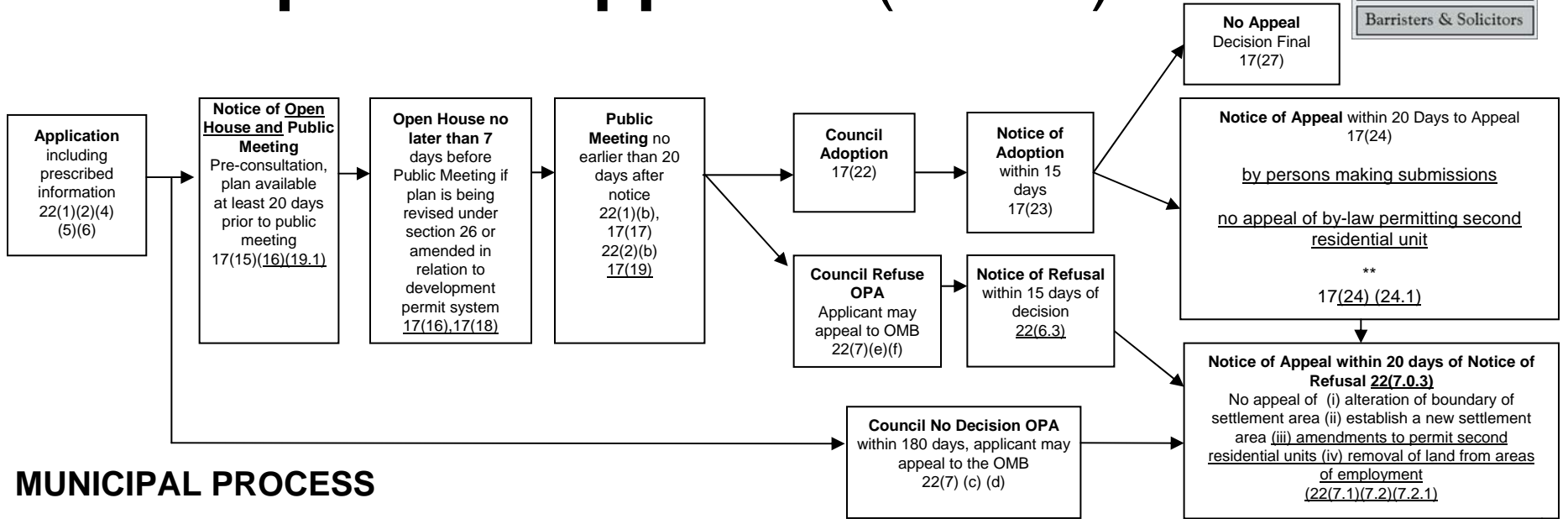
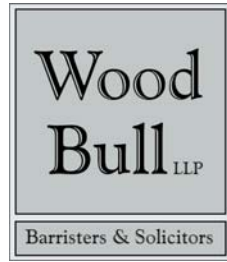
- Significance of official plan (cont'd)
 - Minor variance [s.45(1)]
 - Subdivision Control
 - Plans of Subdivision [s.51(24)(c)]
 - Consents [s.53(12)/s.51(24)(c)]

Official Plan



- Required procedure for processing an official plan or an official plan amendment is set out in
 - the *Planning Act*, and
 - the regulations to the *Planning Act*

OPA Initiated by Applicant and Exempt from Approval (Bill 51)

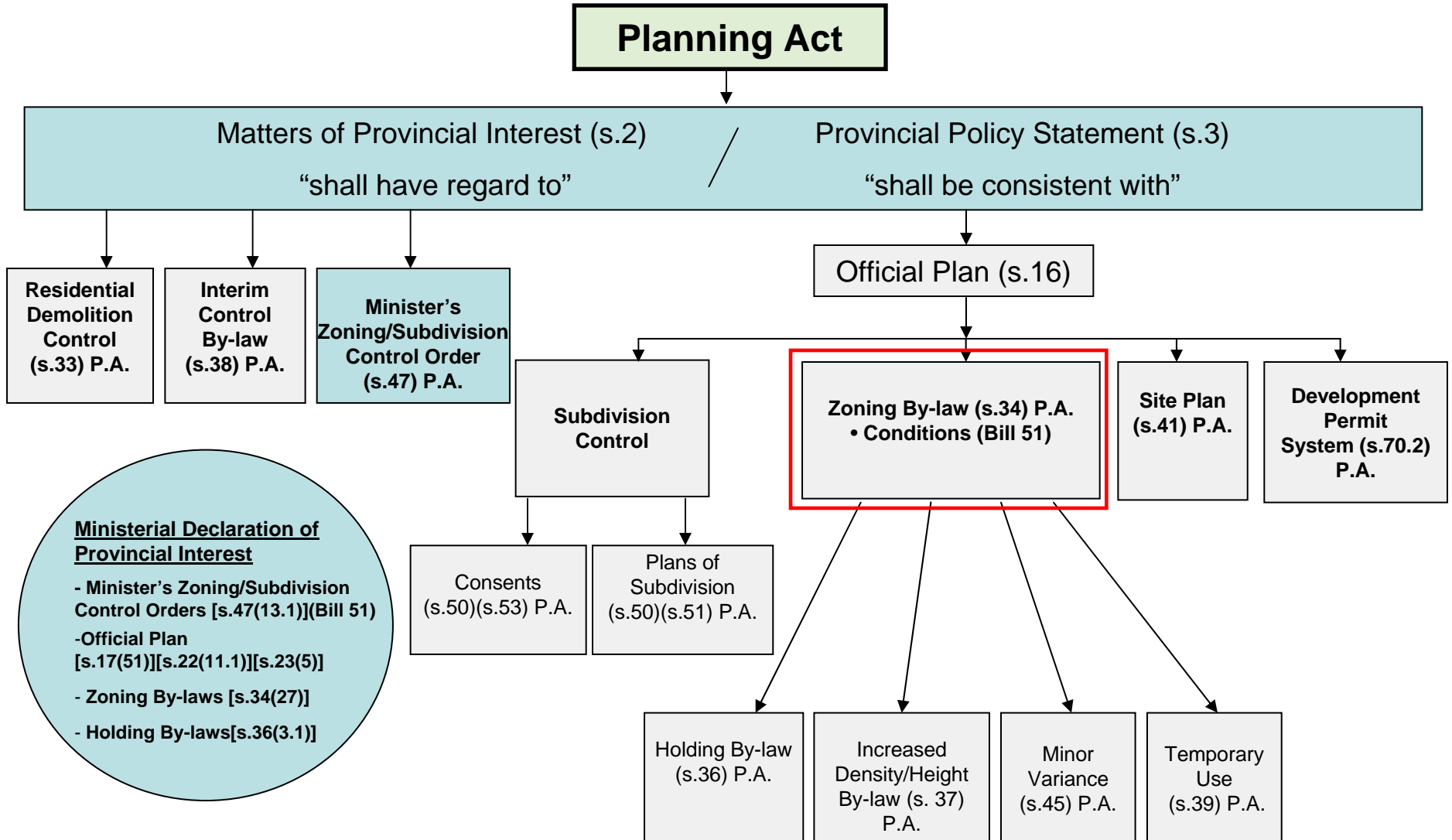


Legend

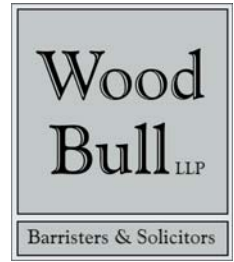
Underlined text represents proposed Bill 51 amendments.

OMB PROCESS

Planning Act: Legislative Framework

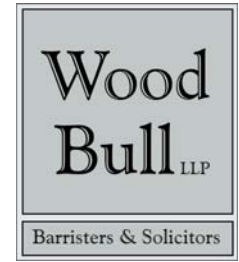


Zoning By-laws



- Zoning by-laws provide the more detailed controls regarding the use of land
- The matters that can be controlled in a zoning by-law are set out in section 34(1) to 34(7) of the *Planning Act*:
 - Restricting the use of land
 - Restricting the erecting, locating or using of buildings or structures
 - Regulating the construction of buildings or structures

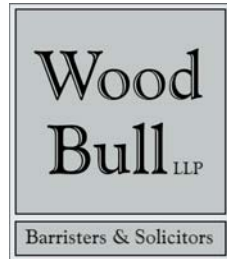
Zoning By-laws



- A building permit will not be issued unless the proposed development complies with the zoning by-law
- Important issues:
 - permitted uses
 - definitions of permitted uses and other terms (gross floor area)
 - regulations: maximum/minimum gross floor area, setbacks, etc.

Zoning By-law

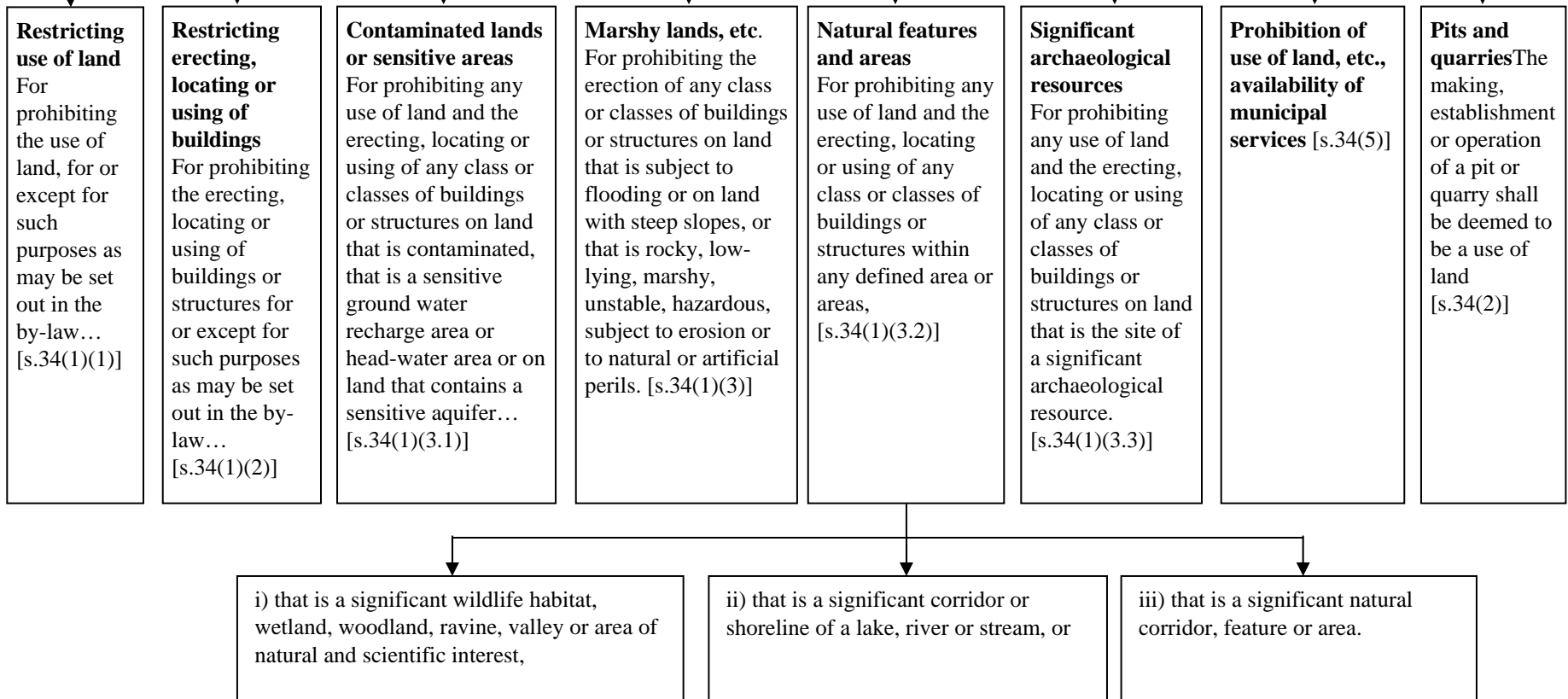
(If Bill 51 is enacted)



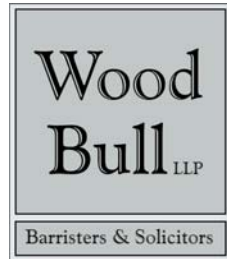
Zoning By-laws

Uses

Zoning By-laws may be passed by the councils of local municipalities:



Zoning By-law (If Bill 51 is enacted)



Zoning By-laws

Regulations

Zoning By-laws may be passed by the councils of local municipalities:

Construction of buildings or structures [s.34(1)(4)]

- type of construction
- height
- bulk
- location
- size
- floor area
- spacing
- character
- use of buildings or structures
- minimum frontage
- depth of the parcel, and
- the proportion of the area thereof that any building or structure may occupy...

Area, density and height [s.34(3)]

The authority to regulate provided in paragraph 4 of subsection (1) includes and, despite the decision of any court, shall be deemed always to have included the authority to regulate the minimum area of the parcel of land mentioned therein and to regulate the minimum and maximum density and the minimum and maximum height of development in the municipality or in the area or areas defined in the by-law...

(Proposed amendments by Bill 51)

Minimum elevation of doors, etc. [s.34(1)(5)]

For regulating the minimum elevation of doors, windows or other openings in buildings or structures or in any class or classes of buildings or structures to be erected or located within the municipality or within any defined area or areas of the municipality...

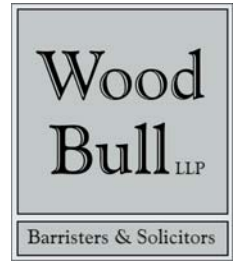
Loading or parking facilities [s.34(1)(6)]

For requiring the owners or occupants of buildings or structures to be erected or used for a purpose named in the by-law to provide and maintain loading or parking facilities on land that is not part of a highway...

Certificates of occupancy [s.34(6)]

A by-law passed under this section may provide for the issue of certificates of occupancy without which no change may be made in the type of use of any land covered by the by-law or of any building or structure on any such land, but no such certificate shall be refused if the proposed use is not prohibited by the by-law...

Zoning By-laws: Conditions



Conditions (Bill 51)

(16) If the official plan in effect in a municipality contains policies relating to zoning with conditions, the council of the municipality may, in a by-law passed under this section, permit a use of land or the erection, location or use of buildings or structures and impose one or more prescribed conditions on the use, erection or location.

Same

(16.0.1) The prescribed conditions referred to in subsection (16) may be made subject to such limitations as may be prescribed.

Same

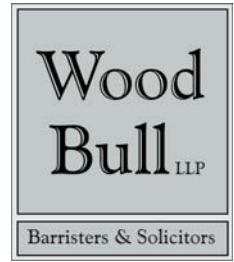
(16.1) When a prescribed condition is imposed under subsection (16),

- (a) the municipality may require an owner of land to which the by-law applies to enter into an agreement with the municipality relating to the condition;
- (b) the agreement may be registered against the land to which it applies; and
- (c) the municipality may enforce the agreement against the owner and, subject to the Registry Act and the Land Titles Act, any and all subsequent owners of the land.

City of Toronto

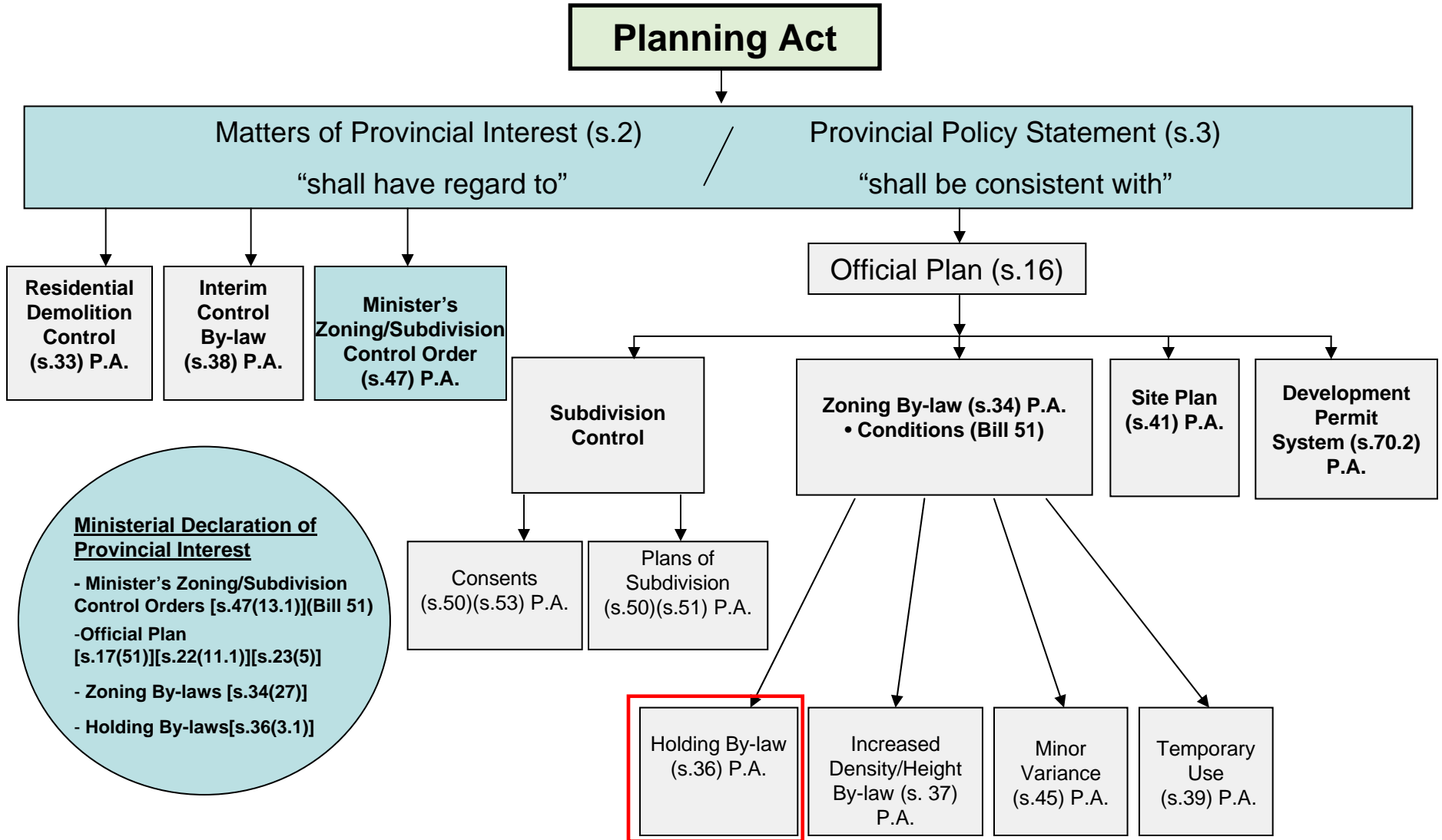
(16.2) Subsections (16) and (16.1) do not apply with respect to the City of Toronto.

Zoning By-laws

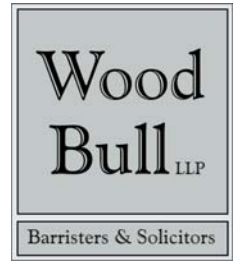


- By-laws to conform with official plan (section 24(1) of the *Planning Act*)
- Deemed conformity with the official plan (sections 24(2) and 24(4) of the *Planning Act*)

Planning Act: Legislative Framework

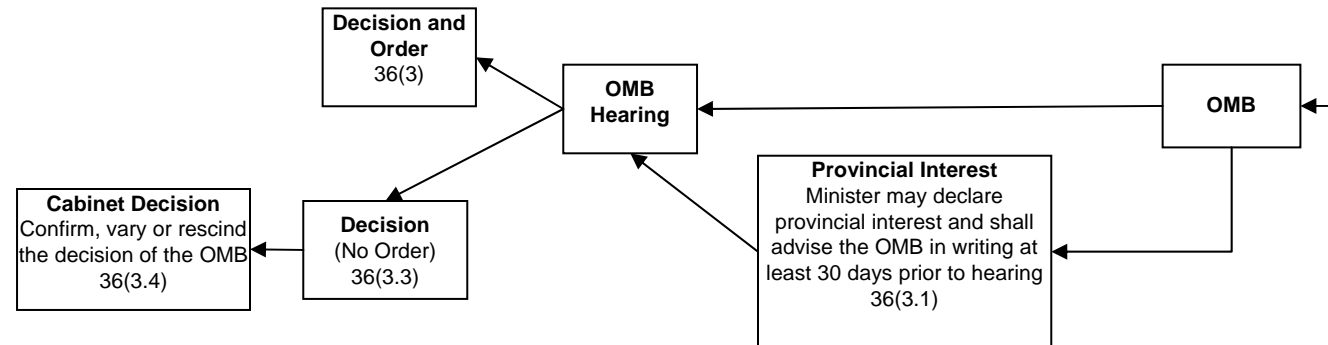
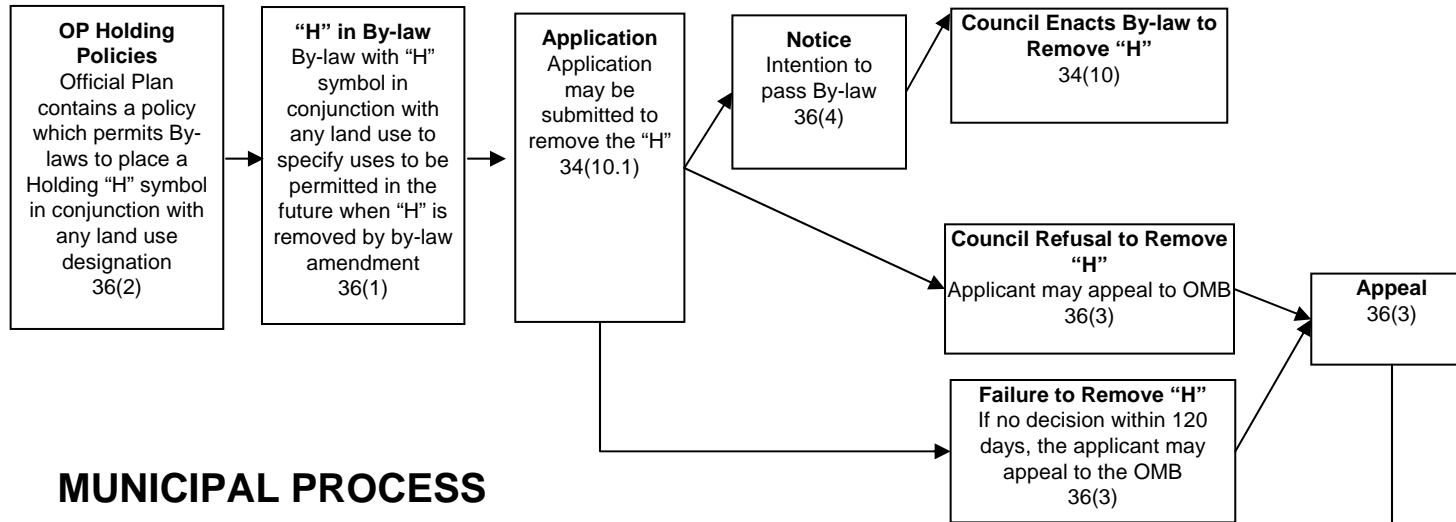


Holding Provision By-law

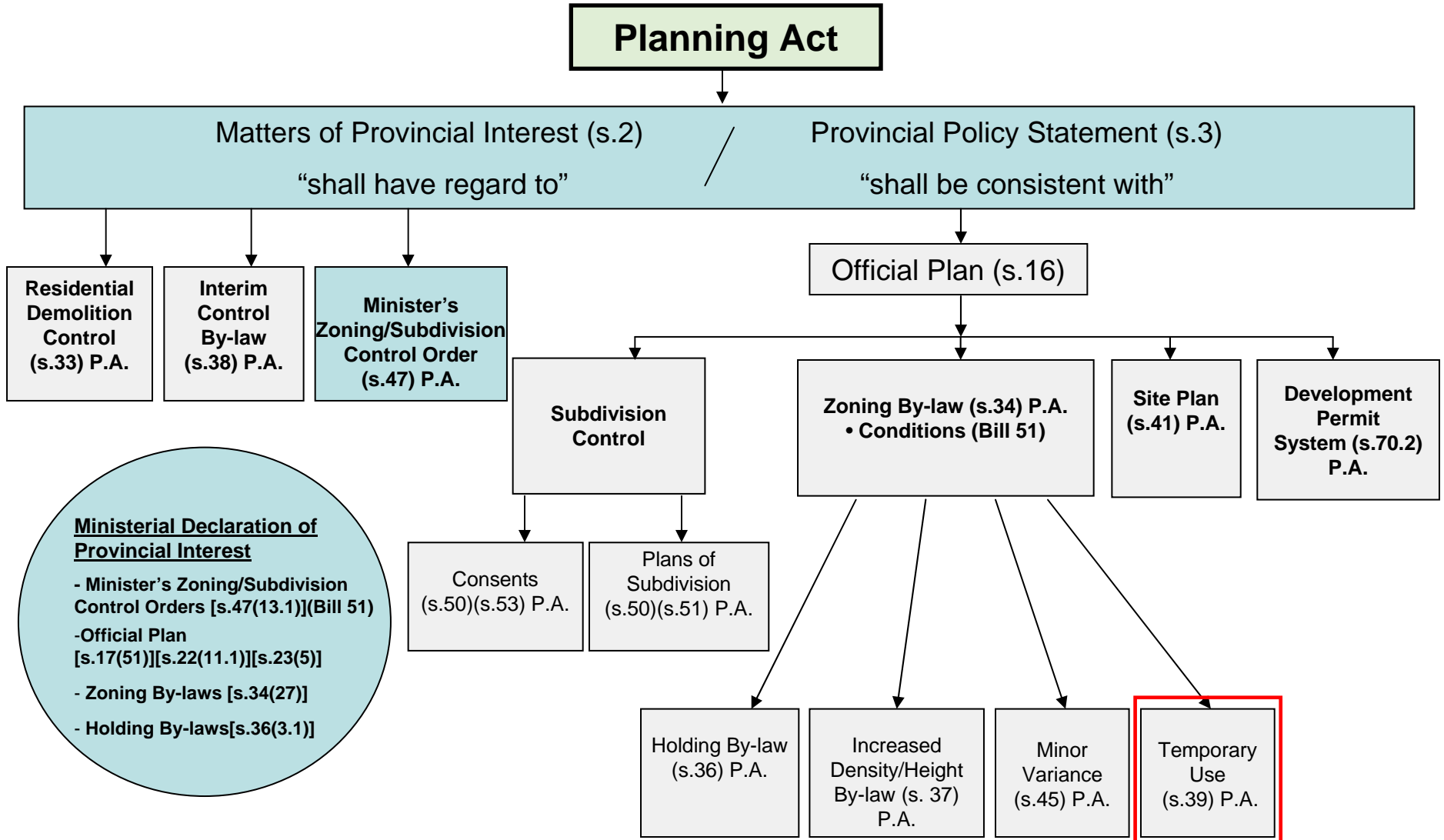


- Section 36 of the *Planning Act*
 - The purpose of the holding provision is to identify uses of land in the future when certain conditions are met
 - Almost like conditional zoning (conditions usually relate to servicing and traffic)
 - Allows a landowner to obtain a level of certainty as to how land may be used provided the condition was met
 - Requires an official plan that contains provisions relating to the use of the holding symbol (Stratford Official Plan, section 15.4.3)

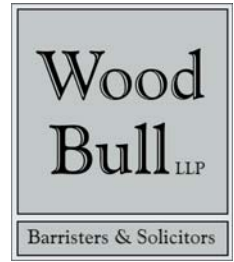
Holding Provision By-law



Planning Act: Legislative Framework

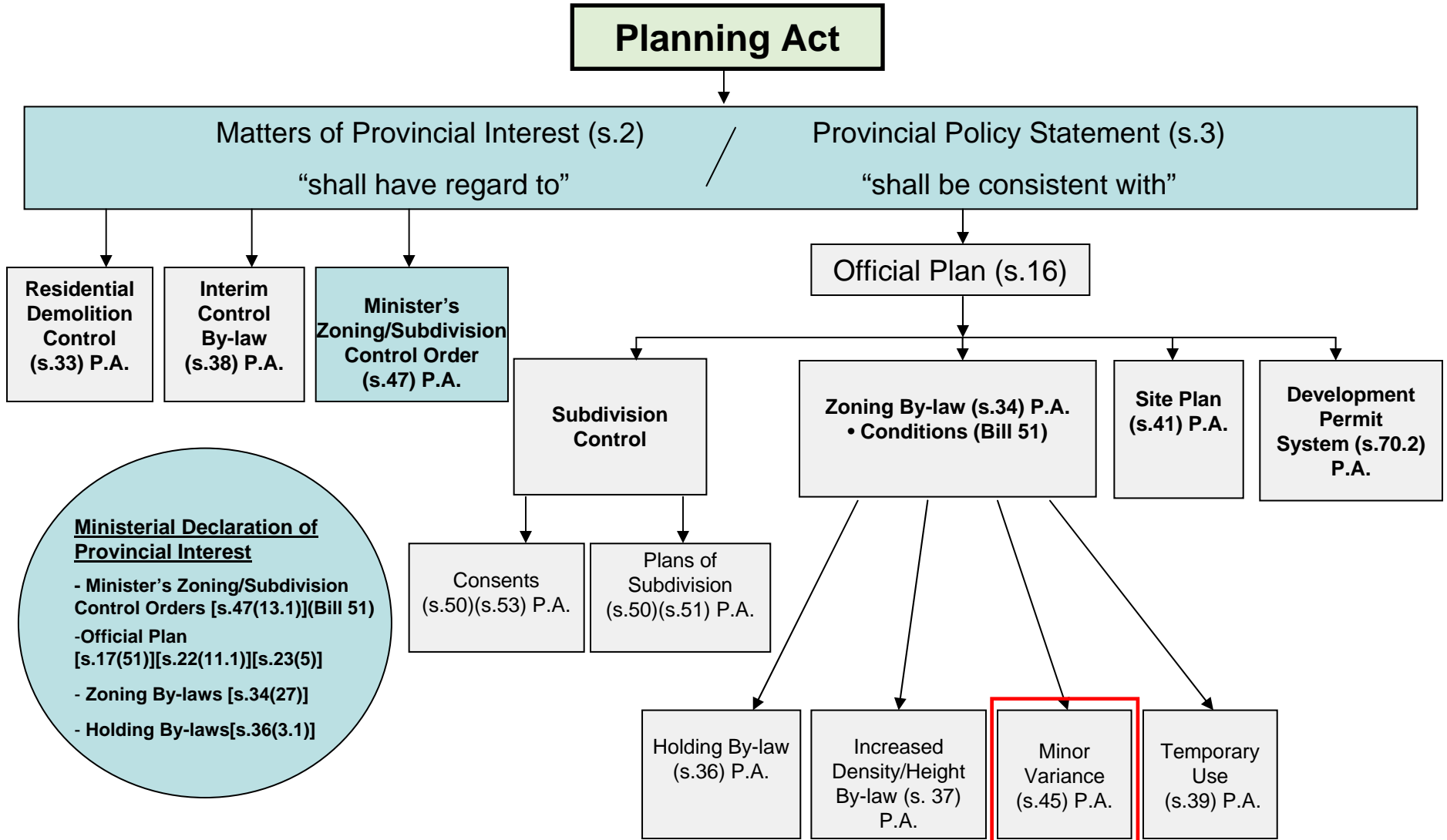


Temporary Use Provisions



- Section 39 of the *Planning Act*
- Authorizes the temporary use of land, buildings or structures
- Shall not exceed three years
- Council may by by-law grant further extensions

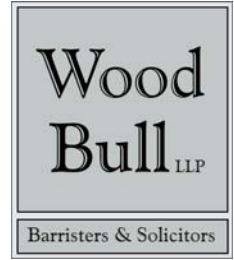
Planning Act: Legislative Framework



Minor Variance

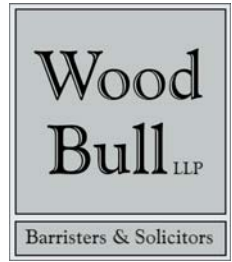
- Minor variances permit a landowner to obtain relief from the provisions of the zoning by-law with a process that is faster, and less complicated, than amending the by-law
- Minor variances are granted by a Committee of Adjustment which may be composed of private citizens or by members of Council

Minor Variance



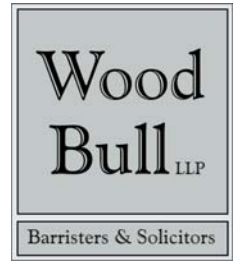
- Test:
 - variance must be minor
 - variance must be desirable in the opinion of the Committee for the appropriate development or use of the land, building or structure
 - general intent and purpose of the by-law must be maintained
 - general intent and purpose of the official plan, if any, must be maintained

Minor Variance



“A minor variance is, according to the definition of "minor" given in the Concise Oxford Dictionary, one that is "lesser or comparatively small in size or importance". This definition is similar to what is given in many other authoritative dictionaries and is also how the word, in my experience, is used in common parlance. It follows that a variance can be more than a minor variance for two reasons, namely, that it is too large to be considered minor or that it is too important to be considered minor. The likely impact of a variance is often considered to be the only factor which determines whether or not it qualifies as minor but, in my view, such an approach incorrectly overlooks the first factor, size. Impact is an important factor but it is not the only factor. A variance can, in certain circumstances, be patently too large to qualify as minor even if it likely will have no impact whatsoever on anyone or anything. This can occur, for example, with respect to the first building on a property in a new development or in a remote area far from any other occupied properties.” (DeGasperis, Divisional Court, 2004)

Minor Variance

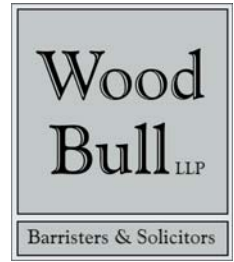


“14 The second test requires the committee to consider and reach an opinion on the desirability of the variance sought for the appropriate development or use of the land, building or structure. This includes a consideration of the many factors that can affect the broad public interest as it relates to the development or use.

15 Accordingly, in my view the Board was required to consider each variance sought and reach an opinion as to whether or not it, either alone or together with the other variances sought, was desirable for the appropriate use of the subject property. The issue was not whether the variance was desirable from the perspective of the DeGasperis' plans for their home but, rather, whether it was desirable from a planning and public interest point of view.

[para 26 - The second test requires consideration of "desirability" and not "compatibility"...]" (DeGasperis, Divisional Court, 2004)

Minor Variance



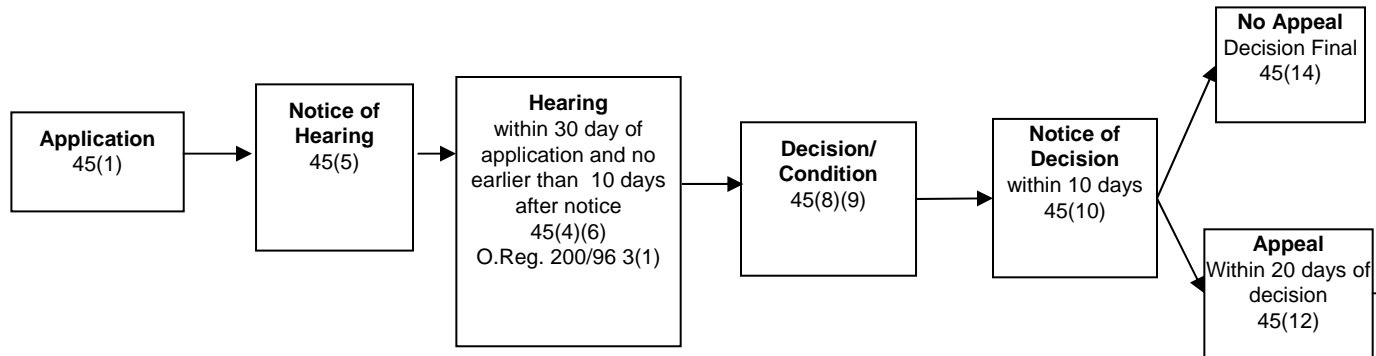
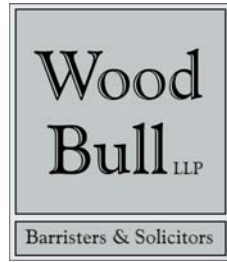
“16 The third test requires the committee to consider and reach an opinion on whether or not the variance sought would maintain the general intent and purpose of the zoning by-law.

17 Accordingly, in my view the Board was required to engage in an analysis of the zoning by-law to determine its general intent and purpose and to consider whether the variance sought would maintain that general intent and purpose.

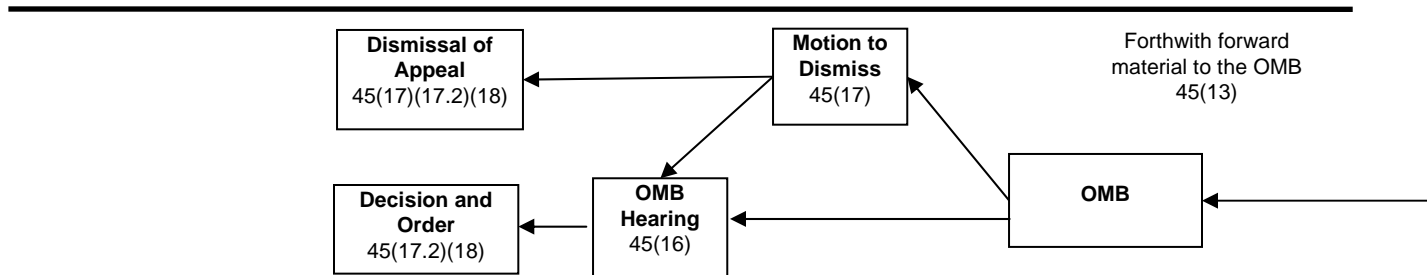
18 The fourth test requires the committee to consider and reach an opinion on whether or not the variance sought would maintain the general intent and purpose of the official plan.

19 Accordingly, in my view the Board was required to engage in an analysis of the official plan to determine its general intent and purpose and to consider whether the variance sought would maintain that general intent and purpose.” (DeGasperis, Divisional Court, 2004)

Minor Variance

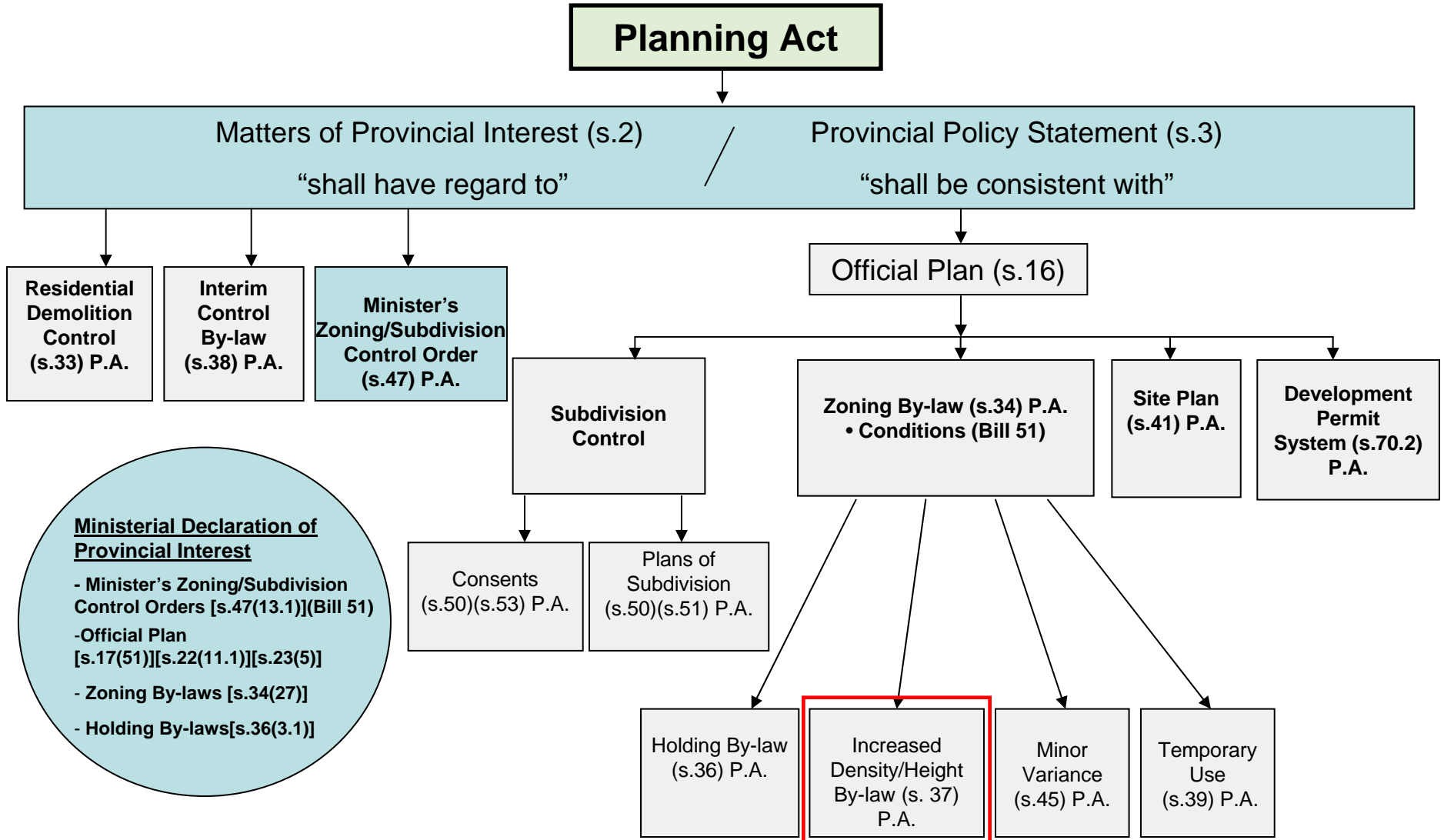


MUNICIPAL PROCESS



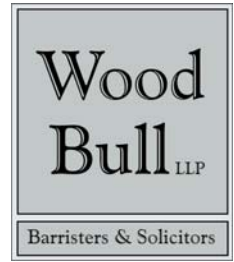
OMB PROCESS

Planning Act: Legislative Framework



Increased Height/Density

Section 37

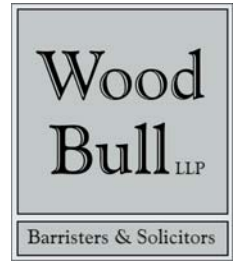


37. (1) *The council of a local municipality may, in a by-law passed under section 34, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law.*

Condition

(2) *A by-law shall not contain the provisions mentioned in subsection (1) unless there is an official plan in effect in the local municipality that contains provisions relating to the authorization of increases in height and density of development.*

Increased Height/Density Section 37



Agreements

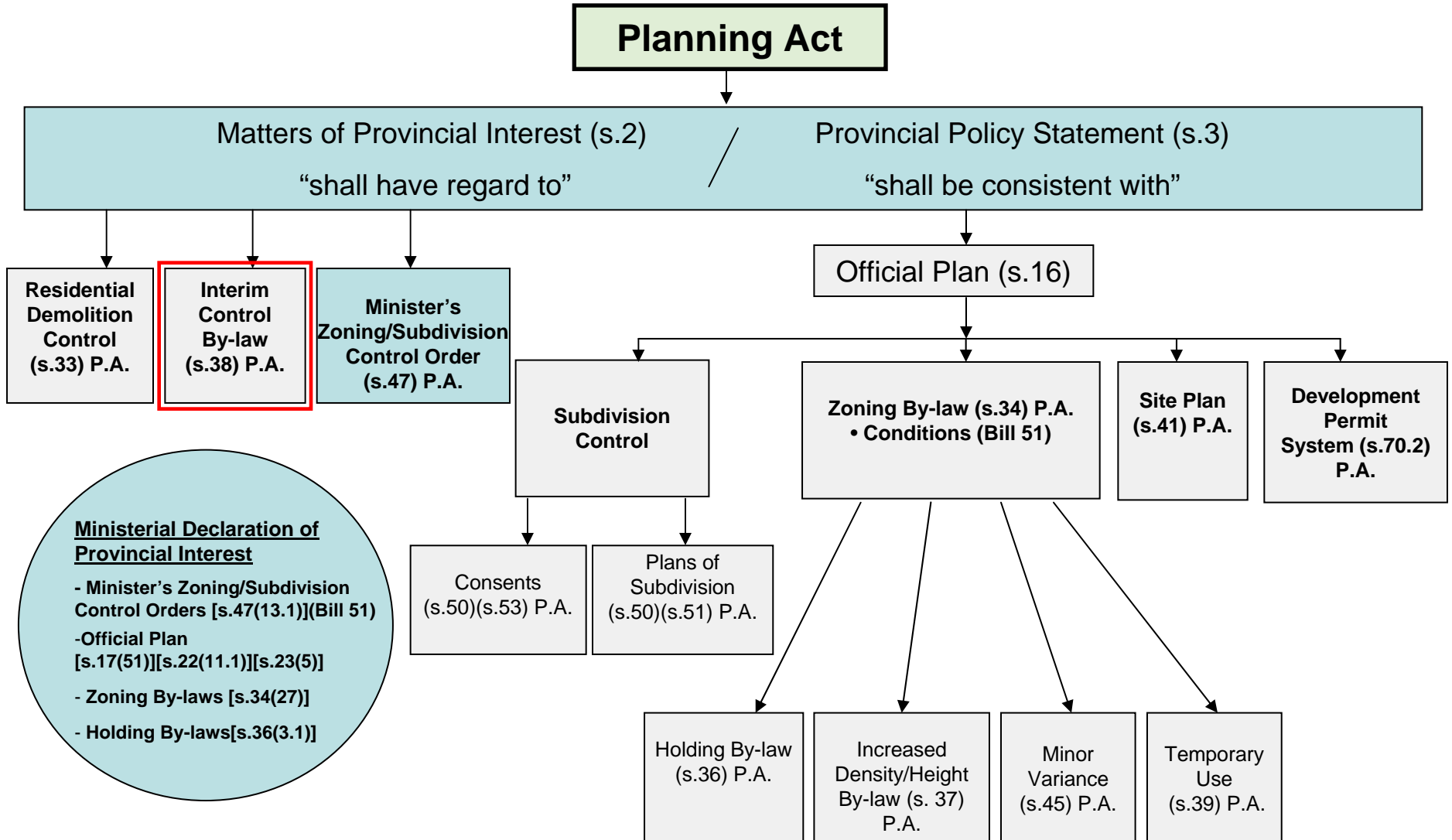
(3) Where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services or matters.

Registration of agreement

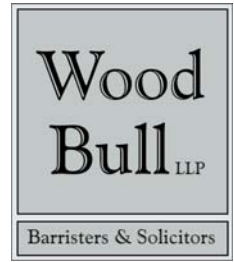
(4) Any agreement entered into under subsection (3) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions thereof against the owner and, subject to the provisions of the Registry Act and the Land Titles Act, any and all subsequent owners of the land. R.S.O. 1990, c. P.13, s. 37.

Eg. Toronto District School Board case

Planning Act: Legislative Framework

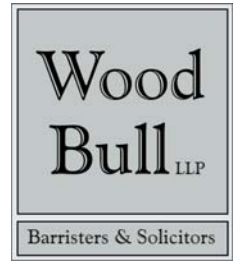


Interim Control By-law



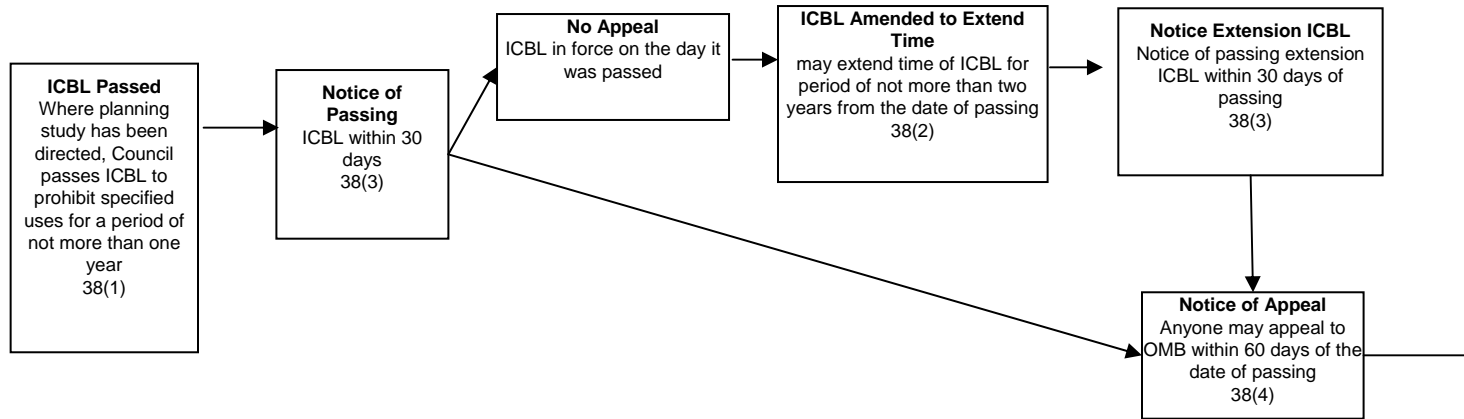
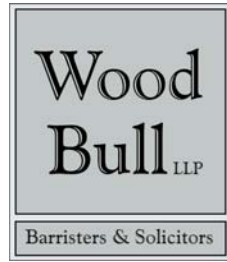
- Section 38 of the *Planning Act*
- Prerequisite – a by-law or resolution directing a review or study
- Interim control by-law shall not be in effect for a period exceeding one year
- Extension of period of time, provided it does not exceed two years

Interim Control By-law

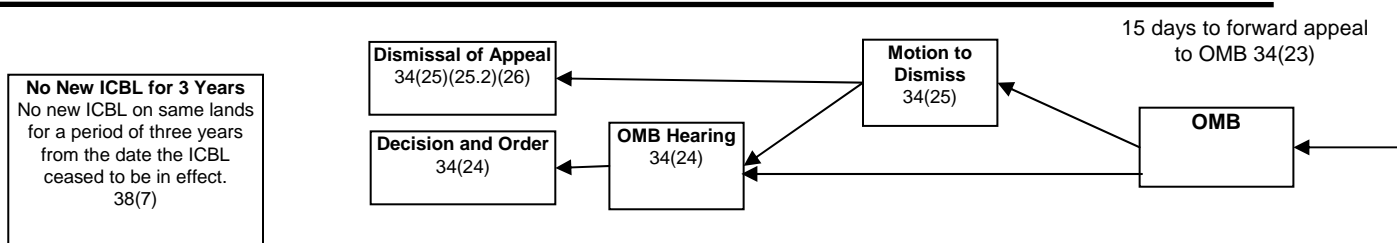


- No advance notice required
- Grounds to overturn interim control by-law
 - no planning basis for the by-law
 - not enacted in good faith
 - clearly targeted at one owner
 - not proceeding expeditiously with planning study

Interim Control By-law (ICBL)

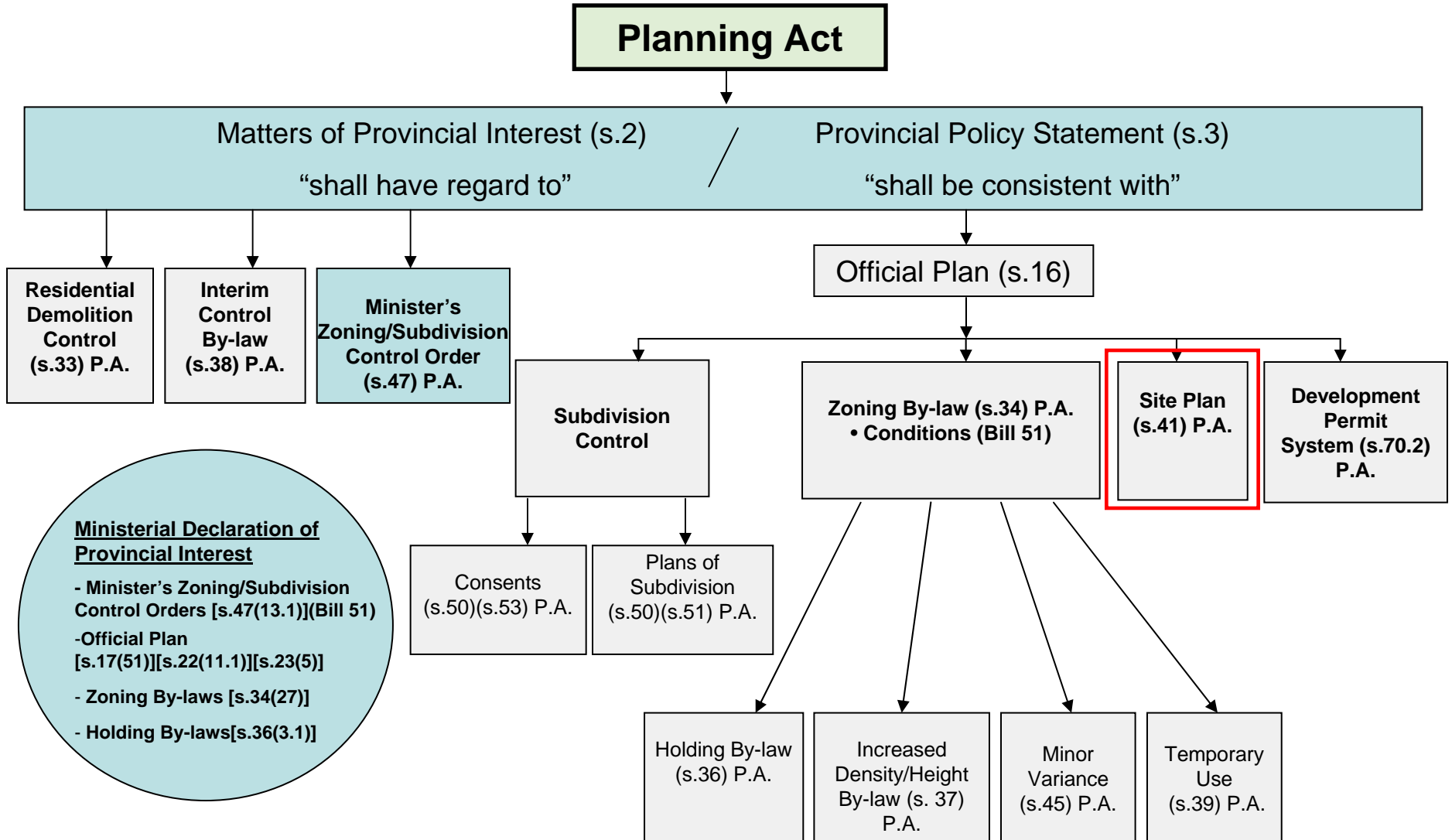


MUNICIPAL PROCESS



OMB PROCESS

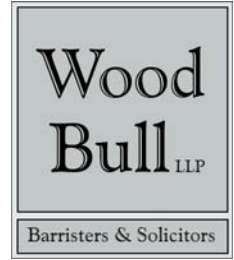
Planning Act: Legislative Framework



Site Plan Control

- Section 41
- Site plan approval required for lands within an area identified in by-law
- Control related to:
 - approval of plans and drawings
 - requirements of approval
- Site plan related requirements are set out in the *Planning Act* (section 41(7))
- Stratford Official Plan, section 15.5

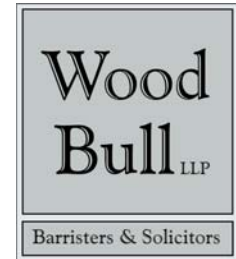
Site Plan Control



Approval of plans or drawings

- (4) No person shall undertake any development in an area designated under subsection (2) unless the council of the municipality or, where a referral has been made under subsection (12), the Municipal Board has approved one or both, as the council may determine, of the following:
1. Plans showing the location of all buildings and structures to be erected and showing the location of all facilities and works to be provided in conjunction therewith and of all facilities and works required under clause (7) (a).
 2. Drawings showing plan, elevation and cross-section views for each building to be erected, except a building to be used for residential purposes containing less than twenty-five dwelling units, which drawings are sufficient to display,
 - (a) the massing and conceptual design of the proposed building;
 - (b) the relationship of the proposed building to adjacent buildings, streets, and exterior areas to which members of the public have access; and

Site Plan Control



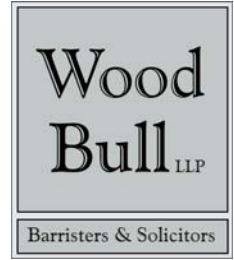
(c) the provision of interior walkways, stairs, elevators and escalators to which members of the public have access from streets, open spaces and interior walkways in adjacent buildings. R.S.O. 1990, c. P.13, s. 41 (4); 2002, c. 9, s. 56 (1).

(d) matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design, but only to the extent that it is a matter of exterior design, if an official plan and a by-law passed under subsection (2) that both contain provisions relating to such matters are in effect in the municipality. **(Bill 51)**

(e) the sustainable design elements on any adjoining highway under a municipality's jurisdiction, including without limitation trees, shrubs, hedges, plantings or other ground cover, permeable paving materials, street furniture, curb ramps, waste and recycling containers and bicycle parking facilities, if an official plan and a by-law passed under subsection (2) are in effect in the municipality; and **(Bill 51)**

(f) facilities designed to have regard for accessibility for persons with disabilities. **(Bill 51)**

Site Plan Control



Exclusions from site plan control

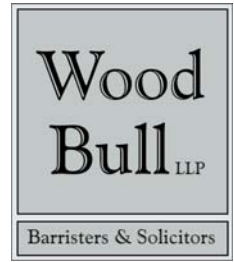
(4.1) The following matters relating to buildings described in paragraph 2 of subsection (4) are not subject to site plan control:

1. Interior design.
2. The layout of interior areas, excluding interior walkways, stairs, elevators and escalators referred to in subparagraph 2 (c) of subsection (4).
3. The manner of construction and standards for construction. **(Bill 51)**

Dispute about scope of site plan control

(4.2) The owner of land or the municipality may make a motion for directions to have the Municipal Board determine a dispute about whether a matter referred to in paragraph 1 or 2 of subsection (4) is subject to site plan control. **(Bill 51)**

Site Plan Control



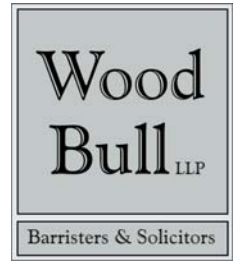
Final determination

(4.3) The Municipal Board's determination under subsection (4.2) is not subject to appeal or review. **(Bill 51)**

Proviso

(6) Nothing in this section shall be deemed to confer on the council of the municipality power to limit the height or density of buildings to be erected on the land.
R.S.O. 1990, c. P.13, s. 41 (6).

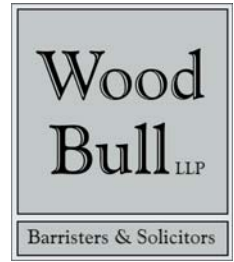
Site Plan Control



Conditions to approval of plans

- (7) As a condition to the approval of the plans and drawings referred to in subsection (4), a municipality may require the owner of the land to,
- (a) provide to the satisfaction of and at no expense to the municipality any or all of the following:
1. Subject to the provisions of subsections (8) and (9), widenings of highways that abut on the land.
 2. Subject to the *Public Transportation and Highway Improvement Act*, facilities to provide access to and from the land such as access ramps and curbings and traffic direction signs.
 3. Off-street vehicular loading and parking facilities, either covered or uncovered, access driveways, including driveways for emergency vehicles, and the surfacing of such areas and driveways.
 4. Walkways and walkway ramps, including the surfacing thereof, and all other means of pedestrian access.
 5. Facilities for the lighting, including floodlighting, of the land or of any buildings or structures thereon.

Site Plan Control



Conditions to approval of plans

(7) As a condition to the approval of the plans and drawings referred to in subsection (4), a municipality may require the owner of the land to,

(a) provide to the satisfaction of and at no expense to the municipality any or all of the following:

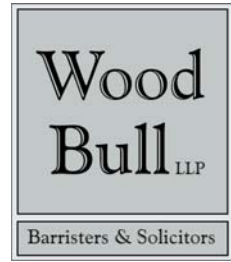
6. Walls, fences, hedges, trees, shrubs or other groundcover or facilities for the landscaping of the lands or the protection of adjoining lands.

7. Vaults, central storage and collection areas and other facilities and enclosures for the storage of garbage and other waste material.

8. Easements conveyed to the municipality for the construction, maintenance or improvement of watercourses, ditches, land drainage works, sanitary sewage facilities and other public utilities of the municipality or local board thereof on the land.

9. Grading or alteration in elevation or contour of the land and provision for the disposal of storm, surface and waste water from the land and from any buildings or structures thereon;

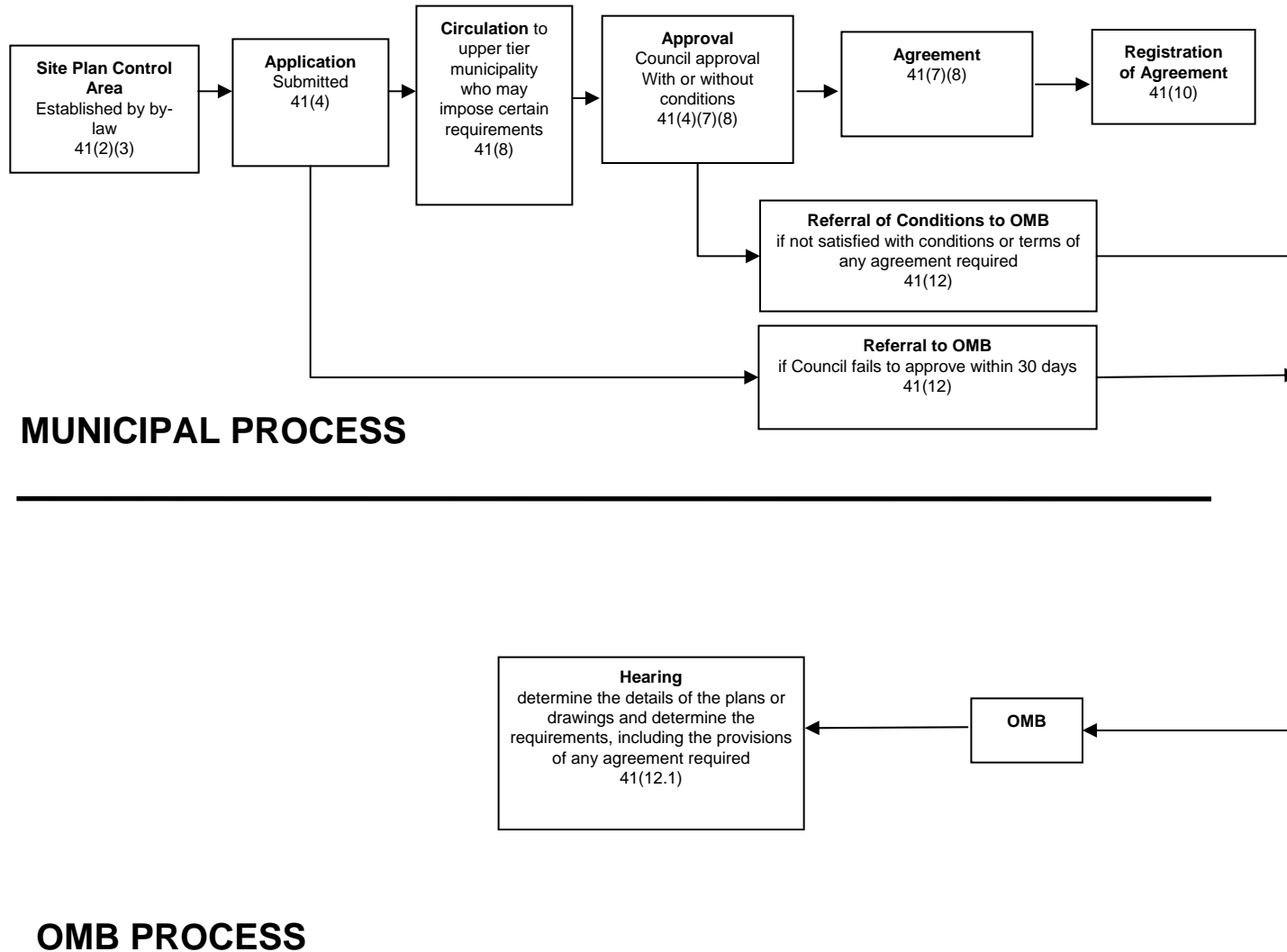
Site Plan Control



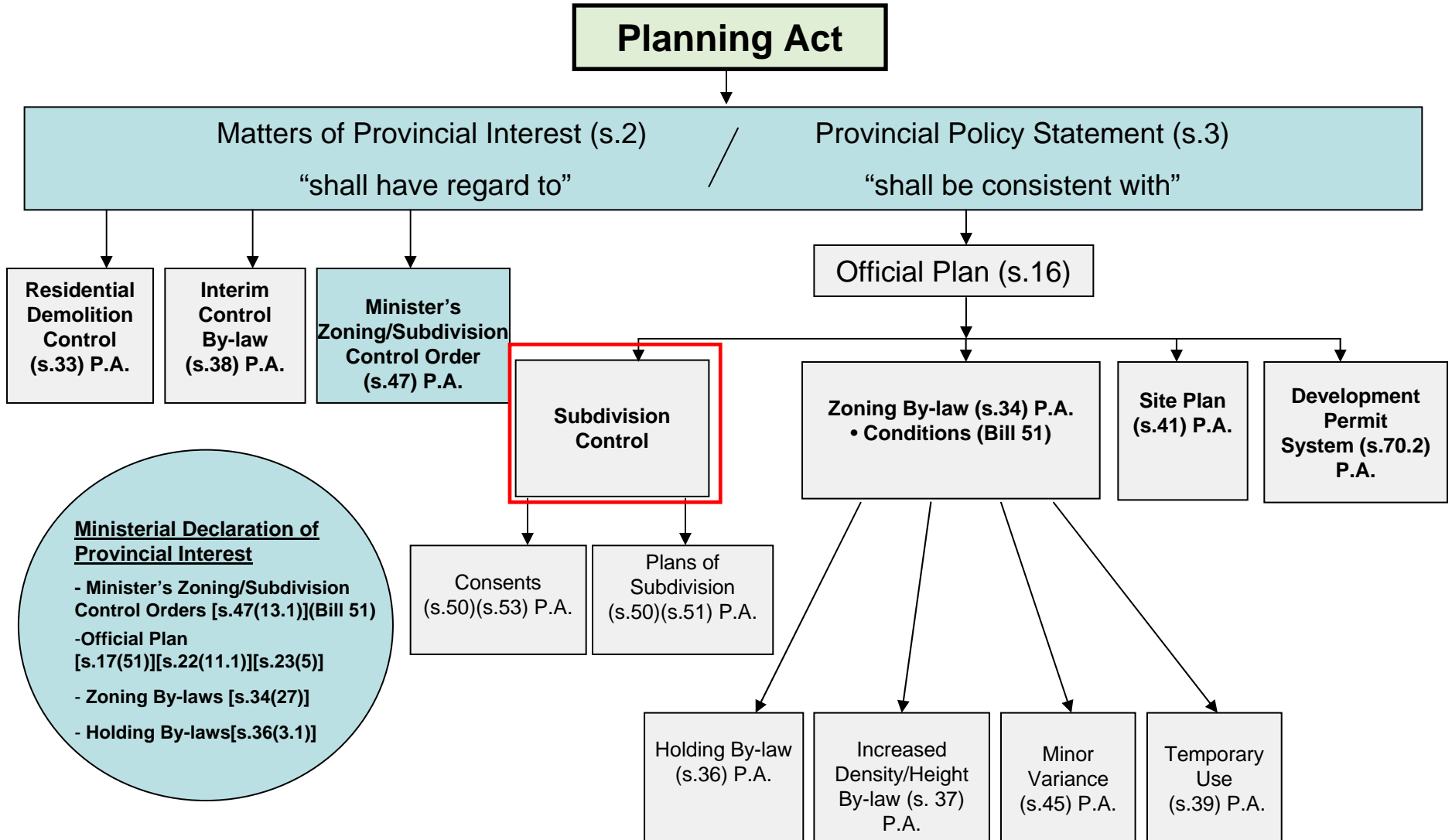
Conditions to approval of plans

- (7) As a condition to the approval of the plans and drawings referred to in subsection (4), a municipality may require the owner of the land to,
- (b) maintain to the satisfaction of the municipality and at the sole risk and expense of the owner any or all of the facilities or works mentioned in paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of clause (a), including the removal of snow from access ramps and driveways, parking and loading areas and walkways;
 - (c) enter into one or more agreements with the municipality dealing with and ensuring the provision of any or all of the facilities, works or matters mentioned in clause (a) or (d) and the maintenance thereof as mentioned in clause (b) or with the provision and approval of the plans and drawings referred to in subsection (4);
 - (c.1) enter into one or more agreements with the municipality ensuring that development proceeds in accordance with the plans and drawings approved under subsection (4); **(Bill 51)**
 - (d) subject to subsection (9.1), convey part of the land to the municipality to the satisfaction of and at no expense to the municipality for a public transit right of way. R.S.O. 1990, c. P.13, s. 41 (7); 1996, c. 4, s. 24 (1, 2).

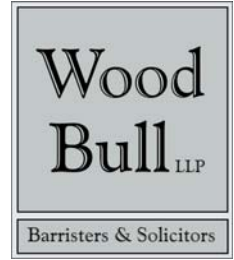
Site Plan Approval



Planning Act: Legislative Framework

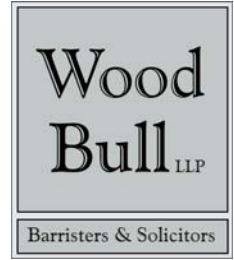


Subdivision of Land



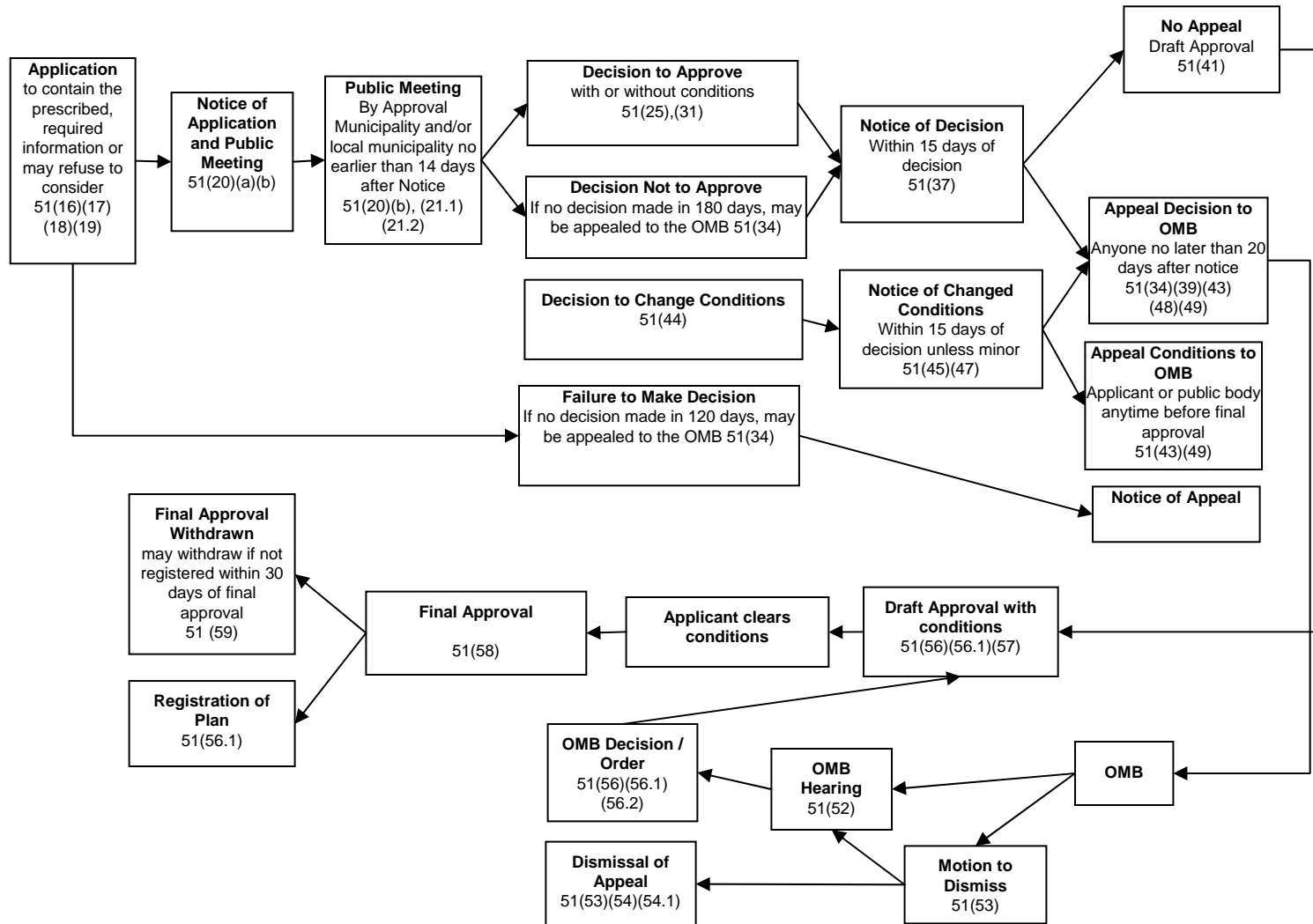
- Subdividing land in Ontario (section 50)
 - Plan of subdivision (section 51)
 - Consent to a conveyance, mortgage or other transfer of an interest in land for a period of twenty-one years or more (section 53)

Plan of Subdivision

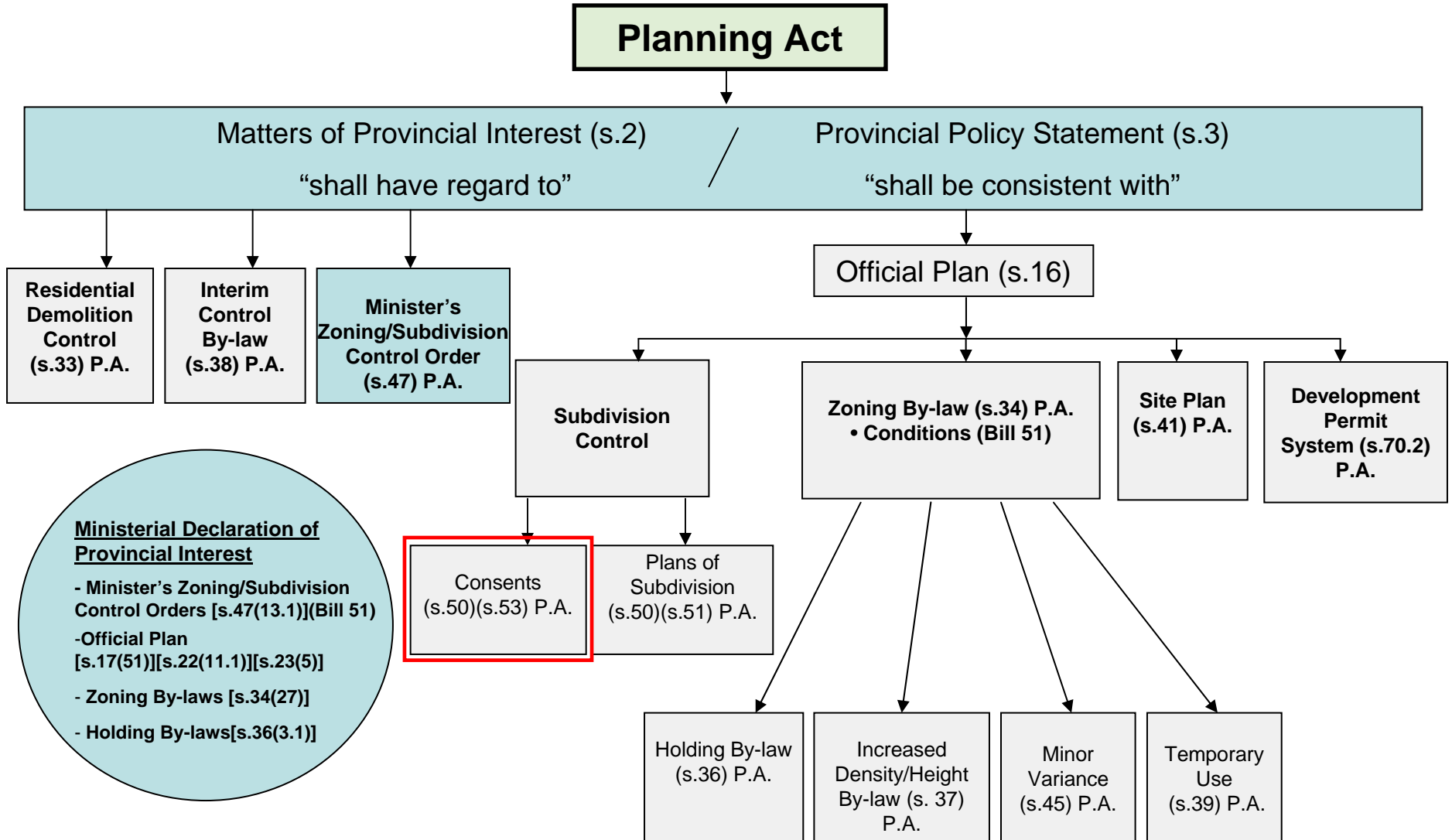


- Section 51
- Approval authority: Minister, upper-tier municipality, lower-tier municipality
 - authority may be delegated to a committee of council or an appointed officer
- Contents (section 51(17))
- Criteria (section 51(24))
- Conditions (section 51(25))
 - Parkland dedication
- Agreements (section 51(26))

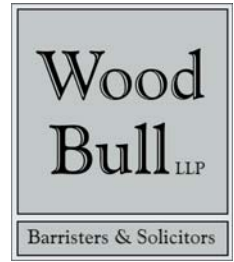
Subdivision of Land



Planning Act: Legislative Framework

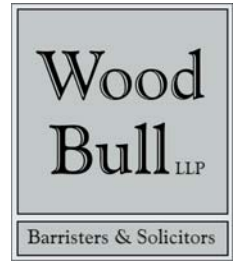


Consent



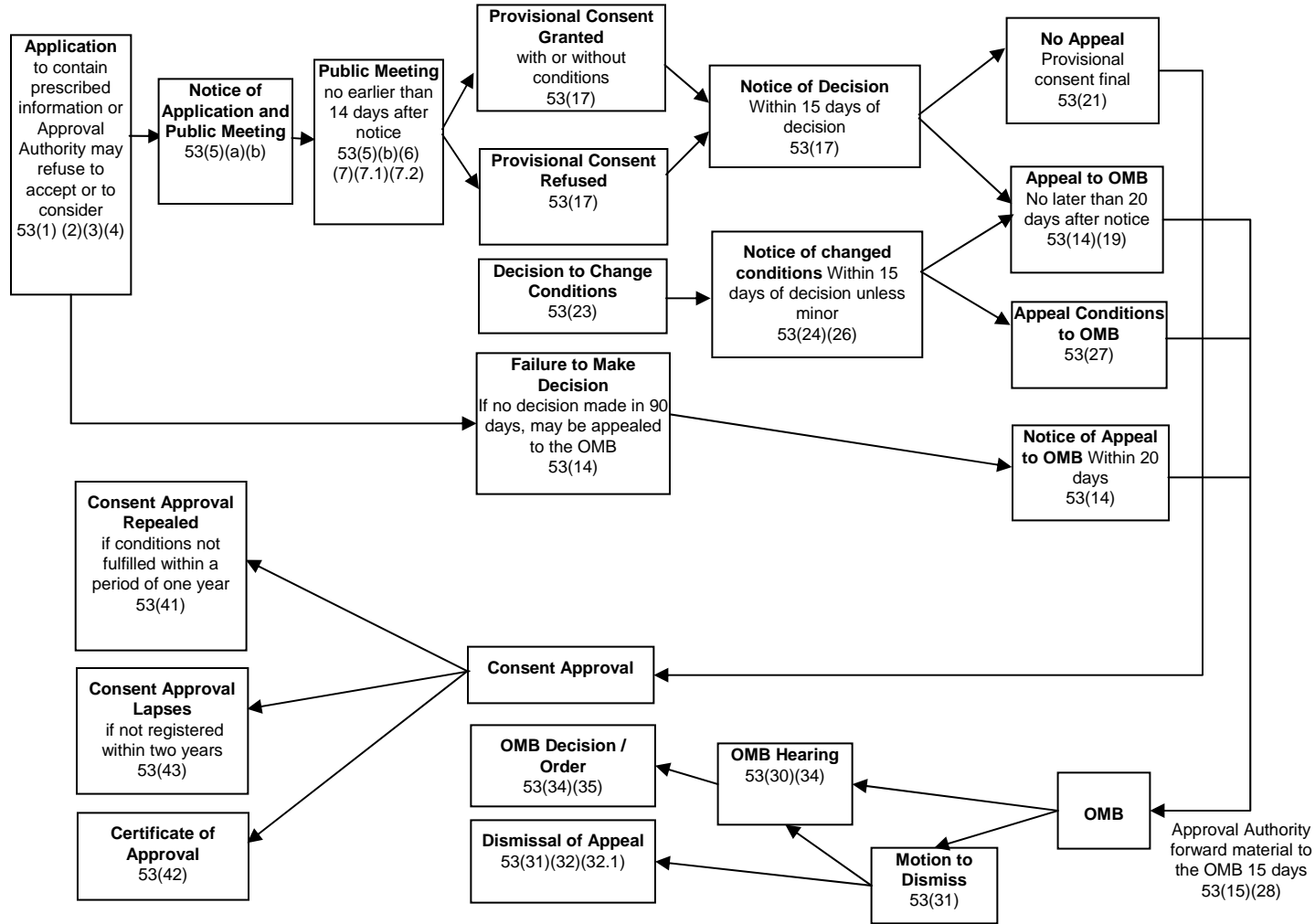
- Consent, where a plan of subdivision is not necessary for the proper and orderly development of the municipality
 - Smaller number of parcels
 - Leases
 - Mortgages
- Granting authority – committee of adjustment, land division committee, council

Consent

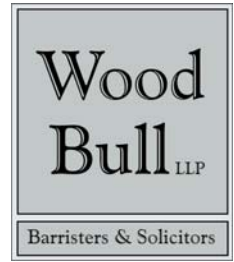


- Process is less onerous and faster than plan of subdivision
- Conditions – similar to plan of subdivision
- Agreements – similar to plan of subdivision

Consent

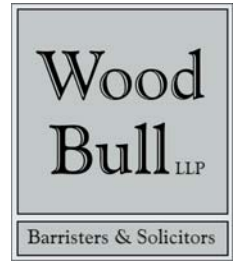


Municipal Act, 2001



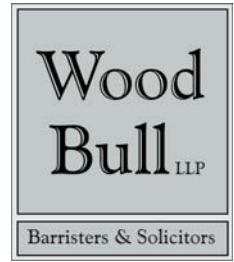
- Natural person powers
 - A municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act (section 8 of the *Municipal Act, 2001*)
- Procedure by-law (section 238)
- Procedures re sale of land (section 268)
- Designation of business improvement areas (section 204)

Other Municipal Legislation



- *Development Charges Act, 1997*
 - Section 2(1)
 - The council of a municipality may by by-law impose development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies
 - Front-ending agreements: section 44(1)

Other Municipal Legislation



- *Ontario Heritage Act*
- *Building Code Act*
 - Building permits (section 8)
 - Building Code
 - Applicable law (section 1.1.3.3)

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