

Planning at Niagara-on-the-Lake

Agenda

- 1. Council and Staff Roles in the Planning Process
- 2. Planning Law
- 3. The Planning Application Process in NOTL
- 4. Top Ten Points on Bill 23



1. Council and Staff Roles in the Planning Process

Council

Municipal Act, 2001, s. 224:

It is the role of council to:

- Represent the public and consider the well-being and interests of the municipality
- Develop and evaluate policies and programs
- Determine which services to provide
- Ensure that the administrative and controllership policies, practices and procedures are in place to implement decisions
- Ensure accountability and transparency of operations
- Maintain the municipality's financial integrity
- Carry out statutory duties of council

Staff

Municipal Act, 2001, s. 228:

The administrative arm of the municipality is expressly directed to:

- Implement and carry out council's decisions
- Advise council on municipal policies and programs
- Carry out their duties under the statute or as otherwise assigned by the municipality (pursuant to council's authorized directions) the municipal administration responds to and acts on behalf of its council and not on behalf of any individual council member

Staff

- There are a number of municipal employees that have statutory obligations:
- These obligations are set in the legislation
- These employees have independent powers to deal with specific matters
- **Council cannot direct these officers to act in a manner that is inconsistent with their legislative obligations:**
 - Clerk – s. 228 *Municipal Act, 2001*
 - Treasurer – s. 286 *Municipal Act, 2001*
 - Auditor – s. 296 *Municipal Act, 2001*
 - Integrity Commissioner – s. 223.3 *Municipal Act, 2001*
 - Chief Building Official – s. 3 *Building Code Act, 1992*
 - Fire Chief – s. 6 *Fire Protection and Prevention Act, 1997*

Lawyers and Planners are Similar but not the Same

Lawyers have **obligations** under the Law Society Rules and are Officers of the Court

Lawyers and Planners have **Codes of Conduct** and are regulated by their professional body

Planners:

- have a regulatory body, Ontario Professional Planners Institute (OPPI)
- have a Code of Conduct
- must maintain their professional standards
- have an obligation to provide independent, objective, non-partisan, professional advice regardless of who pays them

What Does This Mean?

This means that a Council cannot tell a Planner what his or her professional opinions should be

A Council cannot expect a Planner to change his or her opinion in light of a position taken by Council

But ...

- Planners do not make the decisions on planning applications
- Planning decisions are made by Council
- Council can reject the advice of a Planner
- Council can seek the advice of another Planner
- Council can defer a decision
- Council can re-visit its policy upon which the planning recommendations have been made

Requirements of Expert Witnesses giving evidence before Courts and Tribunals

- Must provide Form 53 or verbally attest
- Must provide objective, non-partisan, independent evidence
- Must be free from influence or persuasion
- Must provide decision-maker with best evidence to make informed decisions
- Opinions must not be based on who pays or retains them

Form 53 Rules of Civil Procedure - Expert

FORM 53 Courts of Justice Act ACKNOWLEDGMENT OF EXPERT'S DUTY

(General heading)

1. My name is (name). I live at (city), in the (province/state) of (name of province/state).
2. I have been engaged by or on behalf of (name of party/parties) to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date

Signature

OPPI Rules of Professional Conduct

2.0 The Planner's Responsibility to Clients and Employers

Members must provide diligent, creative, **independent**, and competent performance of work in pursuit of the client's or employer's interest. Accordingly, a member shall:

- 2.1 **impart independent professional opinion** to clients, employers, the public, and tribunals;
- 2.2 work with integrity and professionalism;
- 2.3 not perform work outside of his/her professional competence;

Extract From Appendix I: Preamble, Statement of Values, Professional Code of Practice of By-Law No. 1
ONTARIO PROFESSIONAL PLANNERS INSTITUTE

2. Planning Law

Planning Law

- History
- Planning at 30,000 ft
- The Principles of Planning
- Stakeholders
- Provincial Role
- Provincial Levers
- The Region and NOTL
- Official Plans
- Zoning Bylaws
- The Planning Hierarchy
- As of Right Zoning
- Pre Bill 139/ Bill 139 /Bill 108
- Community Improvement
- Non Conforming Uses
- Committee of Adjustment
- Severances and Subdivisions
- Parkland dedications
- Site Plan Control
- Complete Application
- Planning Appeals
- **The Council Role**

Brief History

- Per the *British North America Act*: Provinces create municipalities
- Post WW2 was a period of rapid growth
- Resultant problems including traffic congestion, strip development, inadequate services, intermingling of incompatible land uses and a lack of developable land
- There was a housing shortage at that time

Planning at 30,000 feet

- To deal with these difficulties the Province passed the *Planning Act*
- Through the Act the interests of the public take precedence over the rights of property owners
- The imposition on rights is balanced with a system of input and appeals
- The objective of planning is to regulate the use and development of land in an orderly and controlled fashion

The Principles of Planning

- Control the development and redevelopment of land and the uses thereof
- Public interest
- The provision of public needs such as education, recreation, housing, transportation and institutions
- Co-ordinate services such as public utilities, sewers, transportation networks
- Private development should not be publicly financed (Bill 23 revisits this principle)
- Promote a physical environment that promotes economic, social and moral welfare
- Organize land uses, streets, buildings
- Involve the community

Stakeholders

- The Province and the Provincial Government
- Planning Departments
- Resident Groups
- Municipalities
- Politicians
- Consultants and “Helpers” including developers, planners, lawyers, traffic engineers, ecologists, hydrogeologists, market analysts, etc.

Provincial Role

- The Province delegates primary authority for land use planning to municipalities
- The Regional Municipality of Niagara is an upper-tier municipality and shares planning responsibilities with local municipalities
- As an upper-tier municipality, the Region is the approval authority for some planning matters in lower-tier municipalities
- The Region also delegates some of its authority to the lower-tier municipalities
- Bill 23 will substantively affect the Regional/Local relationship with the removal of regional planning responsibilities.

Provincial Role

- Planning is not just a municipal function
- Planning is a provincially led process in Ontario
- There are also Provincial and Regional planning concerns
- Local policies must reflect government policies (the Province guides planning)
- Municipal planning needs to balance two important priorities: it must be consistent with province-wide objectives and reflect local input and priorities.
- A number of Provincial levers to guide municipalities

PLANNING FRAMEWORK



Ontario Planning Framework

- Provincial levers guide land use planning through legislation and policies, including:
 - The *Planning Act* (Policy embedded in the Statute; the *Act* is amended from time to time)
 - The Provincial Policy Statement (the PPS)
 - Provincial Plans (Greenbelt Plan, Growth Plan, Niagara Escarpment Plan)
- The identification of matters of Provincial Interest (set out in the *Act*)
- Provincial Official Plan Approvals

The *Planning Act*, R.S.O. 1990 c. P.13

- Provincial legislation sets out the ground rules for land use planning in Ontario, including how land uses may be controlled and who has the authority to control them
- Under the *Planning Act*, the Region and local municipalities must incorporate the Province's policies through Official Plans
- The *Planning Act* includes subordinate legislation, or Ontario Regulations, which inform *Planning Act* provisions regarding public notification and implementation practices for Official Plans and Official Plan Amendments and other planning applications

Planning Act and Provincial Interest

A critical part of the *Planning Act* is the identification of matters of 'Provincial interest'. Under Provincial Administration (specifically Section 2 of the *Act*), these include, among others:

- The protection of ecological systems and agricultural resources
- The conservation of energy and water
- The adequate provision and efficient use of systems (transportation, sewage and water services)
- The orderly development of safe and healthy communities
- The adequate provision and distribution of educational, health, social, cultural, and recreational facilities
- The adequate provision of a full range of housing including affordable housing
- The appropriate location of growth and development
- The promotion of development that is designed to be sustainable, to support public transit, and be oriented to pedestrians
- The promotion of built form that:
 - Is well designed,
 - Encourages a sense of place, and
 - Provides for public spaces that are of high quality, safe, accessible, attractive and vibrant
- The protection of the financial and economic well-being of the Province and its municipalities

Planning Act, Section 3 (5)

(5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Tribunal, in respect of the exercise of any authority that affects a planning matter,

- (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and
- (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5; 2017, c. 23, Sched. 5, s. 80.

Provincial Interest in Policy and Plans

These 'interests' are captured within the Province's policy documents such as:

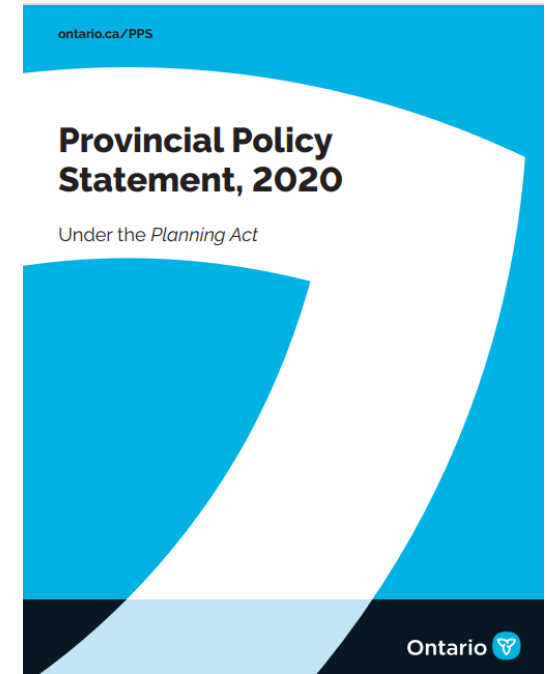
- The Provincial Policy Statement (2020)
- The Niagara Escarpment Plan (2017)
- Greenbelt Plan (2017)
- Growth Plan for the Greater Golden Horseshoe (2020)

These Provincial Plans contain geographically specific policies affecting The Region of Niagara and the local municipalities within it

The Provincial Policy Statement (2020)

The Provincial Policy Statement (PPS) is not considered to be a Provincial Plan with which municipalities must '*conform with*'. Instead, municipal Official Plans must be '*consistent with*' the PPS. The PPS provides land use policies on:

- Managing and directing land use to achieve efficient development patterns
- Land use compatibility
- Employment areas
- **Housing**
- Public spaces, recreation, parks, trails, and open spaces
- Infrastructure and Public Service Facilities
- Long-term Economic Prosperity
- **Energy Conservation, Air Quality and Climate Change**
- Wise Use and Management of Resources
- Protecting Public Health and Safety near Natural Hazards and Human-made Hazards



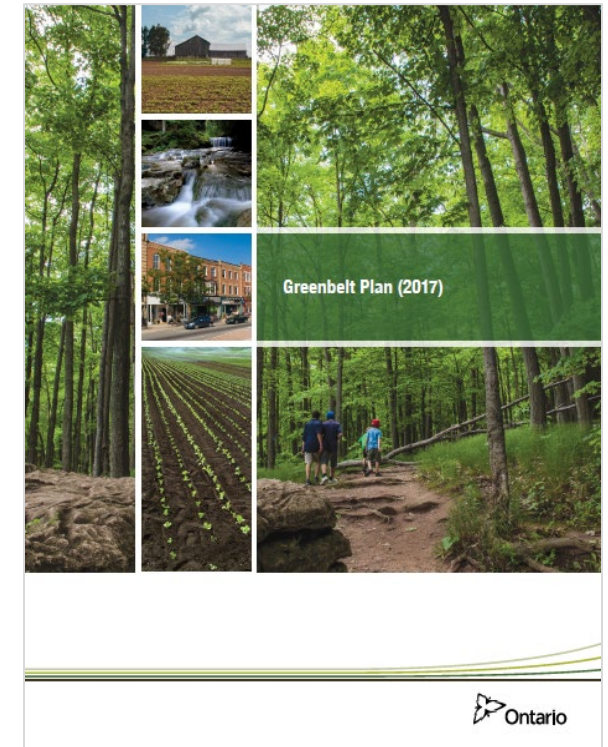
Growth Plan for the Greater Golden Horseshoe (2020)

- Prepared and approved under the *Places to Grow Act, 2005*
- Provides population and employment distribution projections for single-tier municipalities as well as for upper-tier municipalities to be allocated to lower-tiers
- Guides where and how increased population, employment and associated infrastructure may be located
- Growth is to be focused in settlement areas and in particular in Strategic Growth Areas where infrastructure and community services exist



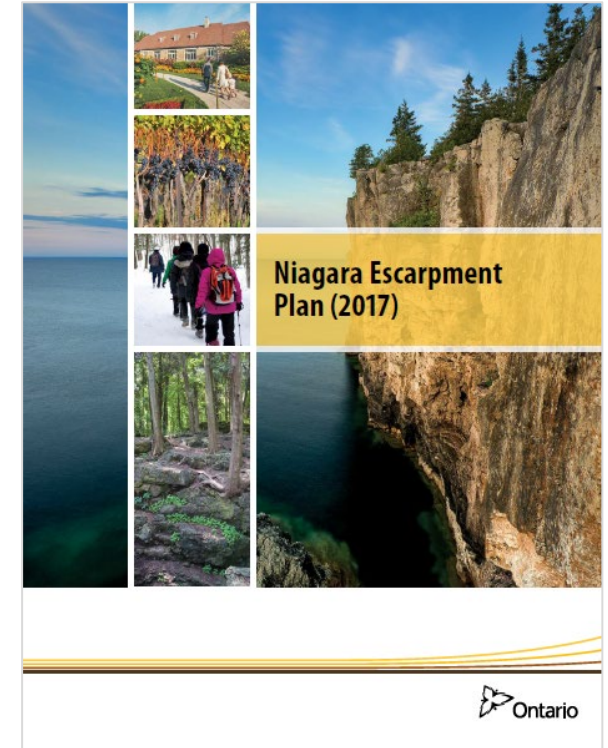
Greenbelt Plan (2017)

- Geographically specific policies that serve to protect agricultural and natural heritage lands surrounding the Greater Golden Horseshoe
- Passed under the *Greenbelt Act, 2005*
- Generally restricts development to provide protection to the agricultural land base and natural heritage areas and features on this landscape
- The Greenbelt was “opened up” in 2022 (these changes do not affect NOTL)



The Niagara Escarpment Plan (2017)

- *Niagara Escarpment Planning and Development Act*, which was originally approved on June 12, 1985
- Large scale environmental land use plan that assigns approval authority for planning applications within its boundaries to a Provincial body called the Niagara Escarpment Commission (NEC)
- Includes policies for Natural, Protection, Rural, Recreation, Urban, Minor Urban and Mineral Resource Extraction designations
- Intended to balance protection, conservation and sustainable development to ensure the Niagara Escarpment is preserved for future generations



Niagara Escarpment Commission

- The Niagara Escarpment Commission (NEC) has jurisdiction over development applications in the Niagara Escarpment Plan Area
- They are made up of:
 - 17 members (commissioners) appointed by Order-in-Council
 - 9 of the members, including the Chair, represent the public
 - 8 of the members are municipally elected members representing the counties, cities, and regions within the Niagara Escarpment Plan area
- Niagara-on-the-Lake provides local comments to the NEC on development applications within NOTL that fall within the Niagara Escarpment Plan Area

Niagara Official Plan, 2022

- Long-range planning document used to guide the physical, economic and social development of the Region as a whole. Contains objectives, policies and mapping that implement the Regions approach to managing growth, growing the economy, protecting the natural environment, resources and agricultural land, and providing infrastructure.
- Acts to implement Regional Council's interests.
- Must conform to Provincial Plans and be consistent with the Provincial Policy Statement, and not conflict with the Niagara Escarpment Plan.
- Niagara Official Plan received approval from the Minister on November 4, 2022. Local Official Plans must achieve conformity within 1 year of this date.

Relationship Between the Region and Niagara-on-the-Lake

- Region is the approval authority for Local Official Plans (LOPs) as well as major Local Official Plan Amendments (LOPAs) where Provincial or Regional interest is identified.
- When NOTL processes an Official Plan Amendment, staff work with the Region to address matters of Regional interest. The Region has the authority to exempt the amendment from Regional approval. The decision on the amendment would remain with Local Council.
- Niagara-on-the-Lake is the approval authority for subdivisions, condominiums, zoning, consents to sever, minor variances and site plan control applications.

Regional Development Planning (Pre-Bill 23)

Approval authority for: Regional Official Plan Amendments, Local Official Plans and Local Official Plan Amendments (unless they are exempt)

Commenting agency for: Local Zoning By-laws and Zoning By-law Amendments, Plans of Subdivision/Condominium, Site Plans, Consents and Minor Variances

Provincial and Regional interests:

- Growth management (e.g. where growth will be directed)
- Rural and agricultural land protection
- Protection of the natural environment (e.g. wetlands, watercourses, woodlands)
- Regional transportation (including active transportation) and infrastructure investment
- Cultural heritage and archaeological resources

Role of Planning Services at the Region (Post Bill 23)

- The Region and Local Municipalities signed a Memorandum of Understanding for Planning Services in 2018. This MOU sets out roles, responsibilities and timelines for review.
- The Region provides comments on all planning applications that affect Provincial or Regional interests. This role will shift to providing advice post Bill 23.
- Service level agreements may allow more fulsome role.

Local Official Plans

- A policy document created by a municipality to shape its future growth and development. Sets a vision, goals and objectives to guide land use decisions.
- Addresses the built, social, economic and natural environments. Contains policies with respect to transit, highways, energy, agriculture, the environment, commercial, residential, industrial land uses.
- Local official plans must be consistent with and conform to the Regional Official Plan and Provincial policies and plans.
- A secondary plan is a more specific plan for a particular geographic area.
- Current Official Plan in force and effect (2017)

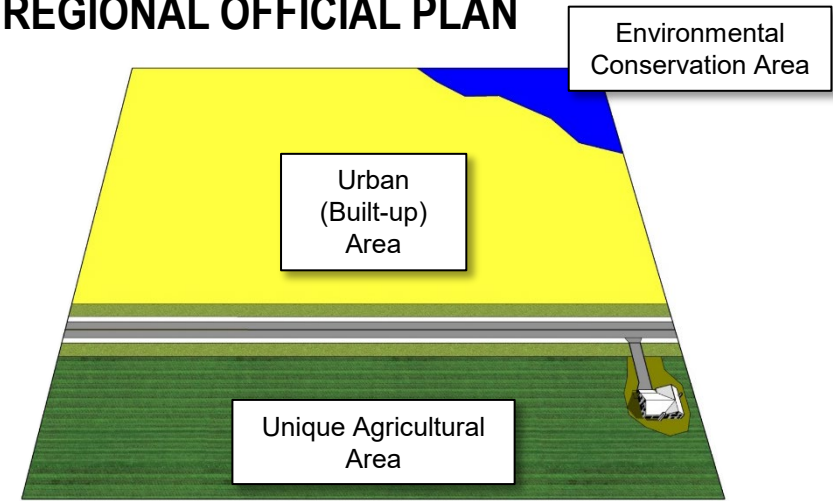
Adopted Official Plan (2019)

- Town Council adopted a new Official Plan in 2019. Requires approval from Region.
- The Region paused approval of the Town's Official Plan while the completed the Niagara Official Plan.
- The Town must now update the adopted Official Plan to align several areas, including:
 - Population and Employment Growth to 2051
 - Environmental protection
 - Recent changes to the legislation and plans
 - Direction with recent Town documents (i.e. Climate Change Adaption Plan)

Zoning By-laws

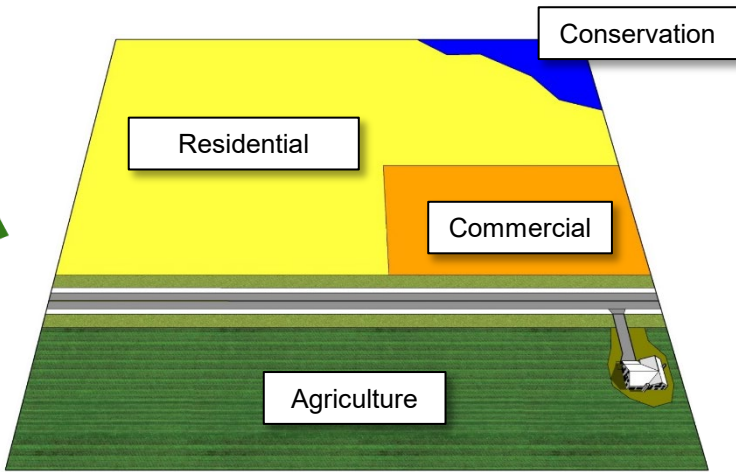
- Set out specific uses for geographical areas in a general or site specific manner
- Zoning restricts the uses that land can be used for
- General municipal zoning by-laws and site specific zoning by-laws
- Zoning by-laws often contain performance standards as minimums (e.g. lot coverage/height/side yard, backyard/front yard setbacks, lot sizes, and parking requirements)
- A number of specialized zoning by-laws:
 - Temporary Use
 - Holding
 - Interim control

REGIONAL OFFICIAL PLAN

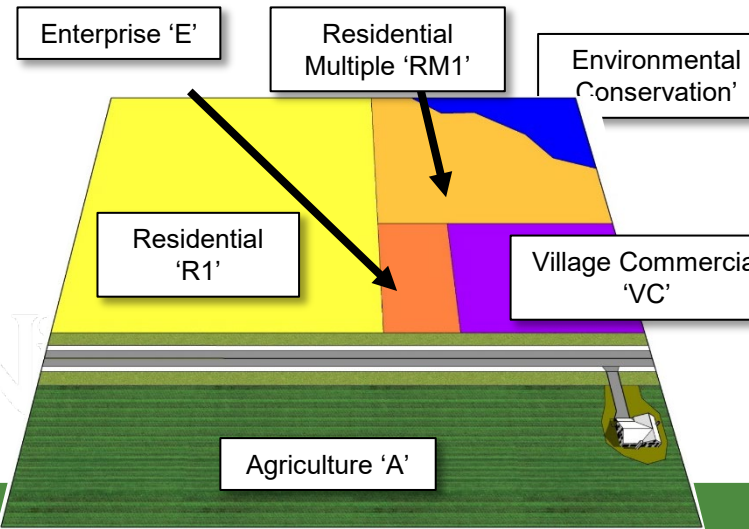


Municipal Planning Documents

LOCAL OFFICIAL PLAN



ZONING BY-LAW



Temporary Use Zoning By-laws

- Authorize the temporary use of land, buildings or structures for a use that is not allowed in the zone.
- By-law defines area and period of time.
- Time can't exceed 3 years from passage unless Council grants extension.
- Temporary uses do not become non-conforming.

Holding By-laws

- A regular zoning by-law with an “H” symbol
- No right to use the land for the use identified in the by-law until the “H” is removed
- Used where ultimate use of land can be determined but certain conditions precedent to use are appropriate (such as the extension of water services)

Interim Control By-law

- Precondition is a Council authorized review or study concerning land use policies in an area.
- In effect for a specified time (no more than a year...can be extended for one year).
- Prohibits use of land buildings or structures except for purposes set out in the by-law.
- Passed without any advance notice
- Once ICBL ceases to be in effect, 3 year “cooling off.”

Non Conforming Uses

- A legal non-conforming use is a use that legally existed on the day a by-law came into force
- The use is permitted to continue even though it is no longer recognized by the by-law
- Non-conforming uses must be continuous
- Changes to non-conforming uses can be made through the Committee of Adjustment

What is “as of right” under the Planning Act?

- It is whatever the current zoning of the property permits
- Current zoning rights can be re-zoned by a municipality through an amendment process, but amendments can be appealed
- As of right intensification which means additional residential units – see s. 16(3) *Planning Act* which was an amendment from Bill 108 and further amended by Bill 23:

Restrictions for residential units

(3) No official plan may contain any policy that has the effect of prohibiting the use of,

(a) two residential units in a detached house, semi-detached house or rowhouse on a parcel of urban residential land, if all buildings and structures ancillary to the detached house, semi-detached house or rowhouse cumulatively contain no more than one residential unit;

(b) three residential units in a detached house, semi-detached house or rowhouse on a parcel of urban residential land, if no building or structure ancillary to the detached house, semi-detached house or rowhouse contains any residential units; or

(c) one residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse on a parcel of urban residential land, if the detached house, semi-detached house or rowhouse contains no more than two residential units and no other building or structure ancillary to the detached house, semi-detached house or rowhouse contains any residential units. 2022, c. 21, Sched. 9, s. 4 (1).

- This is the Province’s direction that intensification should occur.

Intensification by Application

- Aside from as of right intensification is intensification by application
- “Cultural heritage preservation cannot mean an arresting of change or a freezing of a locale to a particular time period. Infill is a recognized community building activity and it necessarily occurs in the midst of established streetscapes. It is now not only a sensible community planning precept but is Provincially mandated by the PPS and Growth Plan. As such, there can be no primacy to the status quo. The existing natural and built heritage of any given community or neighbourhood are the framework to begin the exploration of guiding change in order to ensure compatibility. Retention of the status quo is not a policy objective which can be derived from the Town’s OP. The OP policies anticipate growth and development.”

Committee of Adjustment

- The name comes from their role of adjusting by-law requirements
- The *Planning Act* authorizes their creation by a municipal Council (is not mandatory)
- Eases the work load of Council and often is a speedier and less expensive process
- The *Planning Act* allows Councils to extend power to the Committee of Adjustment for other by-laws (NOTL: fence variances and appeals of property standards orders)

What is a minor variance?

- The *Planning Act* enables a municipal Committee of Adjustment to authorize, upon application, variances from the provisions of a municipal zoning by-law in respect of their land, building or use
- Applications seek to relax or to vary one or more standards in the zoning by-law, such as parking requirements, setbacks, gross floor area, and height.
- **Four tests** must be considered:
 - intent and purpose of the by-law is maintained,
 - intent and purpose of the official plan is maintained,
 - variance must be minor in nature, and
 - relief is desirable for the appropriate development or use

What is a minor variance? (from caselaw/common law)

What it is:

- Subjective
- Determined in the circumstances
- A question of fact
- If no unacceptable adverse impacts to neighbours

What it is not:

- A strict question of mathematics
- A special privilege related to need or hardship

Severances and Subdivisions

- The Planning Act prohibits the sale of part of a piece of land unless approval is given via the severance or subdivision process.
- The Committee of Adjustment also makes decisions on consent to sever land. Council makes decisions on plans of subdivision.
- The criteria to be determined under either process are the same.
- Consent (severance) process is generally a simpler process and is utilized where the number of parcels to be created is small – up to 3 lots (Official Plan policy direction).
- A plan of subdivision is appropriate for development proposals where more coordination for lotting, road connections and servicing considerations are required.

Site Plan Control

- Site plans are drawings or a series of drawings showing how a property is going to be developed
- Could include landscaping, location of parking, and driveways, loading facilities, buildings, elevations/cross sections, and grading plans
- Secured by registered agreements and letters of credit
- A means of ensuring that the work on site gets done

Site Plan Approval – Delegated Authority

- In the past, NOTL Council delegated approval authority to the Director to approve site plans and site plan agreements in situations where an amendment to the zoning by-law is not required
- Council retained the approval authority for applications submitted in conjunction with an amendment to the zoning by-law
- Bill 109 requires delegation of all Site Plans to Staff
- Bill 109 extends time for site plan approval **from 30 to 60 days**
- As noted, site plan process will also be subject to fee refunds if the approval extends beyond the **60 days**

Community Improvement

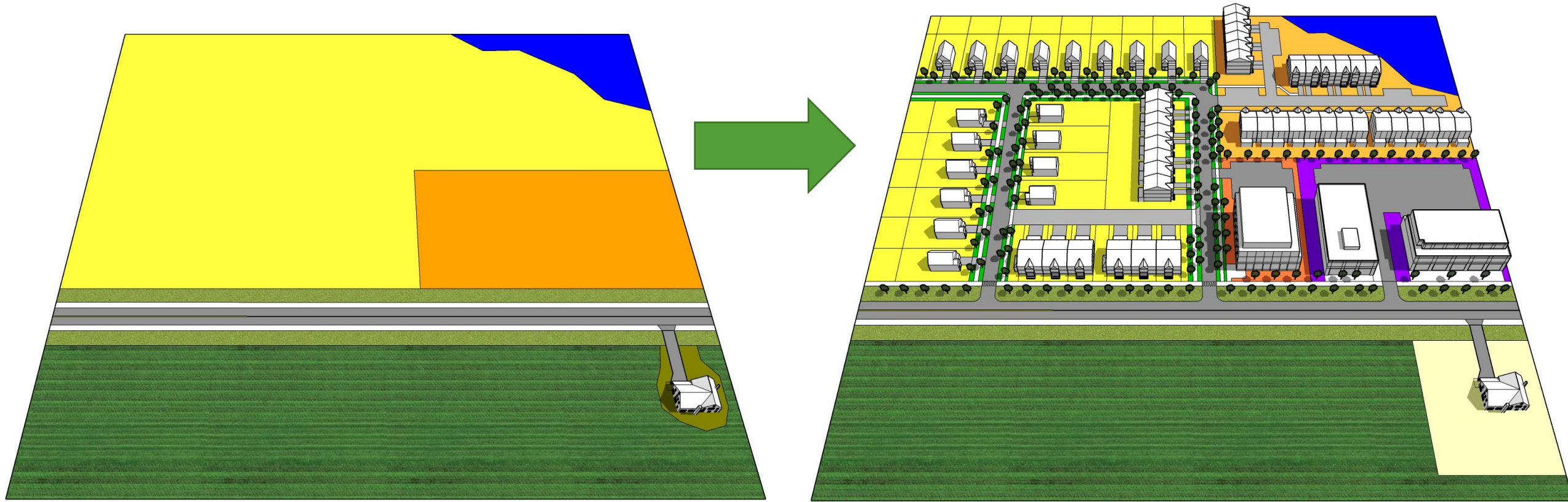
- Historically used for brownfield redevelopment and Central Business Districts (CBDs; this is optional)
- Creation of a plan for a particular area
- Plans approved by the Province can be utilized as a means to provide assistance (\$) that ordinarily would not be permitted under the bonussing provisions of the *Municipal Act, 2001*
- While the Town has policies for a Community Improvement Plan area, we currently do not have a CIP in place.

Parkland Dedication

- A municipality can request a parkland dedication – either land or cash-in-lieu
- 2% for commercial or industrial development, 5% for other development
- For residential can use a formula 1 ha for 300 units
- Note: NOTL does not have policy to support an alternate rate.
- A municipality can take cash in lieu of parkland
- The cash is to be kept in a special account
- Generally the cash can be used for park related purposes

3. The Planning Application Process in NOTL

Application Process in NOTL



Pre-consultation



Meetings held for all types of planning applications



Provides opportunity for applicant to present proposal and receive feedback



Identifies requirements for a complete application



Provides opportunity to highlight major obstacles



Complete Application Starts Timeline

- Complete application policies in the Official Plan
- Policies set out the criteria for a complete application
- Municipalities send a letter to the applicant to confirm complete application, timelines start with complete application
- Complete application process and steps is under review as a result of Bill 109

SCHEDULE J – SCHEDULE FOR COMPLETE APPLICATION

Planning Justification Report	Any proposal for development or site alteration should demonstrate that it meets goals, objectives and policies of Provincial plans and policy statements, the Regional Policy Plan and the Town of Niagara-on-the-Lake Official Plan and provide an indication of whether it conforms to applicable Provincial plans and policies
Land Use/Market Needs	Any proposal for major commercial or residential proposals should consider the existing supply of available land and future land use needs in the local municipality and in the Region.
Urban Design/Landscape Plans	Any proposal for infill development, redevelopment of intensification or where a site plan agreement is required should include plans illustrating how the proposal will be compatible with the character of adjacent uses and the surrounding neighbourhood. These Plans and related descriptive details may include building elevations, shadow/wind impacts and streetscaping.
Archaeology and Cultural Heritage Assessment	Any development or site alteration proposed in proximity to lands that contain known archaeological resources or areas of archaeological potential
Heritage Impact Analysis	Any development or site alteration proposed on or adjacent to lands, structures or buildings designated under the Ontario Heritage Act or listed on an approved heritage resource inventory
Environmental Impact Study	Any proposal for development or site alteration within or adjacent to any natural heritage feature or natural hazard identified on the Region's Core Natural Heritage Map, the regulated area of the Niagara Peninsula Conservation Authority or the Official Plan of the Town of Niagara-on-the-Lake shall provide an inventory and assessment of ecological features and functions to determine areas to be protected and any mitigation measures necessary.

Application Process in NOTL

Applications circulated to staff departments and prescribed agencies

Preliminary policy review and preparation of Information Report.

Open House and Public Meeting to gather initial input from the public and Council.

Public Consultation

- Public input is important in the planning process.
- The Town goes beyond the minimum requirements of the *Planning Act*.
- In addition to the legislated requirement for a Public Meeting convened at Committee of the Whole, Town Staff hosts an Open House.
- Open houses more informal opportunity to collect comments and answer questions
- Public Meetings are statutory and held during a Committee of the Whole-Planning meeting.



Application Process in NOTL

Full review of application, agency comments and input from Council and Public

Request for additional information/second submission

Re-circulation, as required. Preparation of recommendation report.

Planning Act requirements for Municipal decisions on Planning Applications

Planning Application	Pre Bill 139	Bill 139	Bill 108	% Change
OP/OPA	180 days	210 days	120 days	down 30%
ZBA	120 days	150 days	90 days	down 30%
Plan of Subdiv	180 days	180 days	120 days	down 30%

Municipalities now have less time to make decisions on planning matters

Council Decision

Recommendation Report presented at Committee of the Whole-Planning meeting. At this meeting, Council members have the opportunity to:

- Ask questions of Staff regarding the planning legislation and policies as well as their recommendation(s);
- Debate the application; and
- Accept Staff's recommendation(s) or formulate an alternate recommendation to Council.

Decision forwarded to the next Council meeting for ratification.

Notice of decision circulated for 20-day appeal period.

Fee Refunds (Bill 109)

Application fee to be refunded if beyond timeframe

Number of days processing application without decision on OPA, ZBA or failure to approve Site Plan

Amount

ZBA

OPA & ZBA

Site Plan

50%

90 days

120 days

60 days

75%

150 days

180 days

90 days

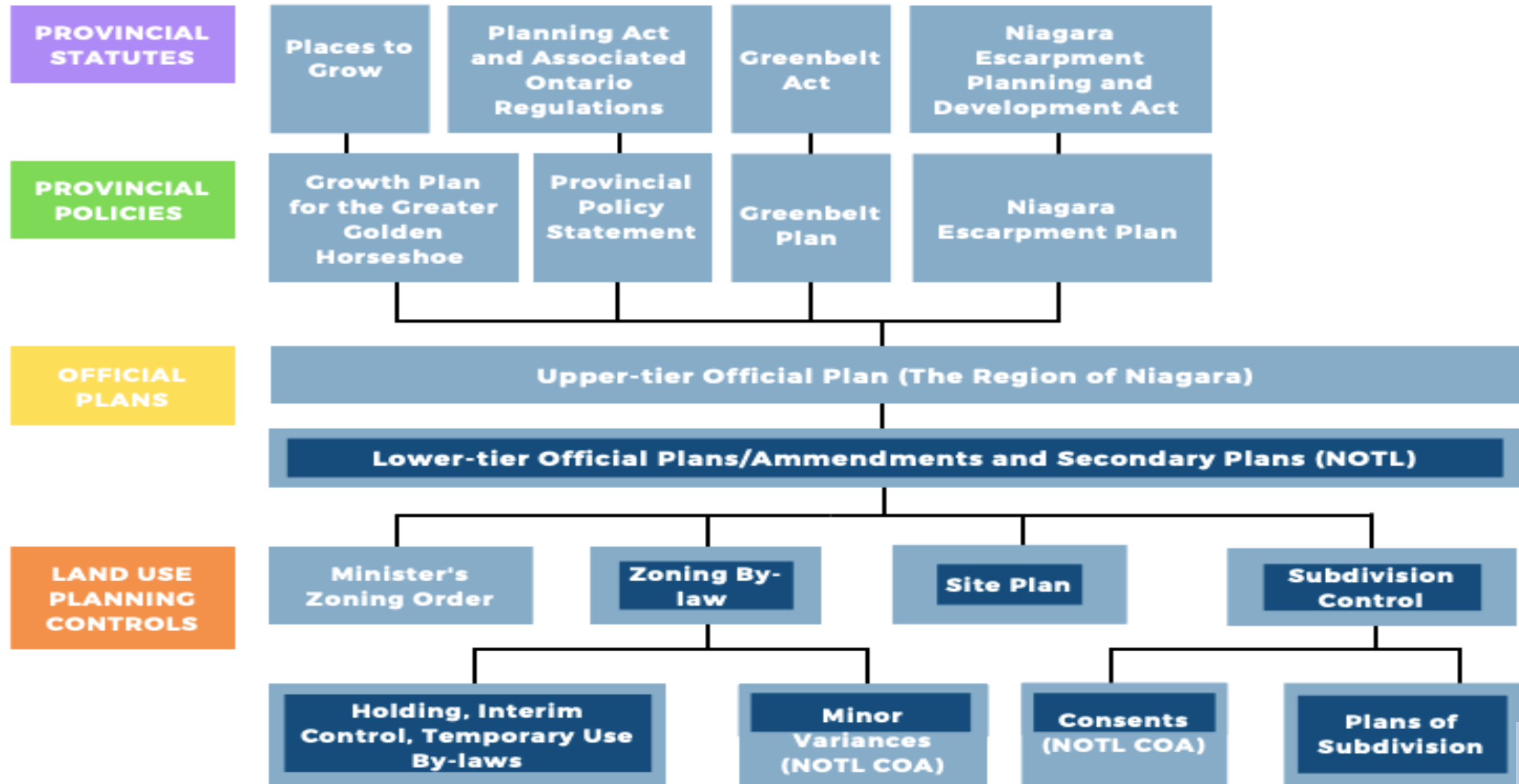
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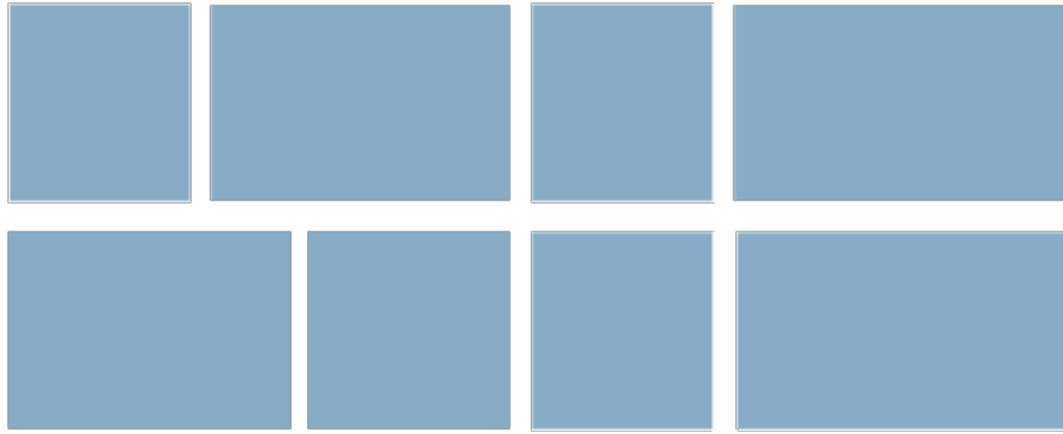
180 days

240 days

120 days

The Planning Hierarchy





Light Blue = Province /COA

Dark Blue = NOTL

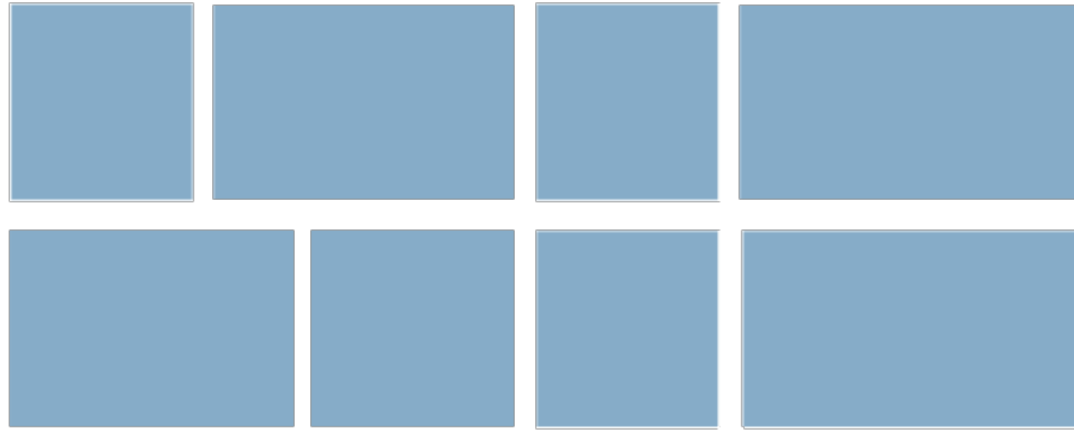


What can Council do with a Development Application?

- 1. Refuse**
- 2. Approve what is proposed**
- 3. Approve a modified version of what is proposed**
- 4. Make no decision**

When Council does not make a decision...

- They essentially are handing over the ability to make a decision to someone else (Ontario Land Tribunal)
 - Someone else who is not elected
 - Someone else who may not be aware of the local nuances
 - Someone else who is not accountable to the local electorate
- The municipality's role then becomes a position which needs to be proven



**Your say is limited
on appeal – OLT to
have regard to
Council's decision**



**OLT has *de
novo* power**



OLT formerly OMB/LPAT

- *de novo* (Latin “of new”) powers
- They look at the proposal planning approval as a new decision maker
- Takes away the right of the Council to make a decision

Planning Appeals

- *de novo* hearings but no place for Participants to speak
- right of appeal by neighbours on minor variances and consents eliminated by Bill 23
- OLT having the final say (unless a Review or Court appeal)
- test of “good and proper planning”
- test of “in the public interest”
- subjective review done through consideration of circumstances unique to individual applications

Citizen Participation in the Planning Process

- Citizen participation in the appeal process has changed dramatically in the last 10 years
- An average citizen/stakeholder/resident/ratepayer (Participants) can no longer come to a hearing and speak (Section 17 of the OLT Act)
- Bill 23 reduces citizen participation even more by removing opportunities for engagement and limiting appeal rights
- Participants can submit a written document; you can't cross examine a written document and a written document is not an affidavit
- To be taken seriously you need to elevate your status to a party
- Often party status means being represented (lawyers/planners)
- Most residents don't have the resources to take an active role as a party (cost awards are evolving concern)

Planning Acronyms

• AMP	Adaptive Management Plan	• FSR	Functional Servicing Reports	• NHS	Natural Heritage System
• APEC	Areas of Potential Environmental Concerns	• GIS	Geographic Information System	• OLT	Ontario Land Tribunal
• ARA	Aggregate Resources Act	• GPS	Geographic Positioning System	• OMB	Ontario Municipal Board (replaced by LPAT and now OLT)
• ARIP	Aggregate Resources Inventory Papers	• HPD	Housing Policy and Development	• PCA	Potentially Contaminating Activities
• BPE	Best Planning Estimate	• IAH	Investment in Affordable Housing	• PPS	Provincial Policy Statement
• CA	Conservation Authority	• LEAR	Land Evaluation and Area Review	• PW	Public Works
• CHS	Comprehensive Housing Strategy	• LOP	Local Official Plan	• ROP	Regional Official Plan
• CSAP	Corporate Sustainability Action Plan	• LOPA	Local Official Plan Amendment	• ROPA	Regional Official Plan Amendment
• CSSC	Corporate Sustainability Steering Committee	• LPAT	Local Planning Appeal Tribunal	• SCH	Small Craft Harbours
• DPM	Development Project Manager	• MHC	Municipal Heritage Committee	• SCS	Social Community Services
• DC	Development Charge	• MOE	Ministry of Environment	• SDE	Single Detached Equivalent
• EEAC	Ecological and Environmental Advisory Committee	• MOU	Memorandum of Understanding	• SWM	Stormwater Management
• EOC	Emergency Operations Centre	• MMAH	Ministry of Municipal Affairs and Housing	• UNESCO	United Nations Educational, Scientific and Cultural Organization
• ERT	Environmental Review Tribunal	• MNR	Ministry of Natural Resources	• W/WW	Waste/Waste-Water
• ESA	Environmental Site Assessment	• MPAC	Municipal Property Assessment Corporation		
• ESI	Environmental Source Information	• MTO	Ministry of Transportation		
• FEA	Front-Ending Agreement	• NEP	Niagara Escarpment Plan		

Bill 23 – *Build More Homes Faster Act, 2022*

- Received Royal Assent November 28, 2022
- Royal Assent means when a Bill changes to a Statute = a law = legislation
- Various parts or pieces of the law come into effect on different dates (Proclaimed)
- The Act amends a number of Acts including:
 - *the Development Charges Act*;
 - *the Ontario Heritage Act*;
 - *the Ontario Land Tribunal Act*;
 - *the Planning Act*;
 - *the Conservation Authorities Act*

4. Top Ten Points on Bill 23

Top Ten points from Bill 23 that will impact NOTL

#1.

Appeals on minor variances and consents limited to only Applicant, Minister, “specified person” and “public body”

“public body” means a municipality, a local board, a ministry, department, board, commission, agency or official of a provincial or federal government or a First Nation; (s. 1 (1) *Planning Act*)

“specified person” examples utility companies, Ontario Power Generation Inc., Hydro One Inc., an oil or natural gas pipeline, telecommunication

Therefore, third-party appeals are no longer available for the approval of minor variances or consents

Top Ten points from Bill 23 that will impact NOTL

#2.

Prohibition on applications to amend certain planning instruments within two years of approval eliminated

- Includes new official plans, secondary plans and minor variances within two years of a re-zoning amendment.
- What does this mean? Municipalities will no longer have a 2-year hiatus before applications are made to amend their planning instruments

Top Ten points from Bill 23 that will impact NOTL

#3.

The scope of **site plan control has been scaled back.**

- It cannot apply to developments of less than 10 residential units
- It cannot apply to exterior design of buildings or landscape elements
- It can apply to :
 - matters related to green roofs;
 - building construction requirements related to environmental conservation, where permitted, under the Building Code Act;
 - the appearance of building elements if it impacts health, safety accessibility or sustainable design.

Top Ten points from Bill 23 that will impact NOTL

#4.

Parkland rules have significantly been changed

- Developers can identify the land to provide for parkland (unsuitable lands in terms of size, location, quality or maintenance could be put forward)
- **Important for OP policies on where parkland are wanted and what kind of lands are not suitable**
- NOTL has a Parkland Dedication By-Law (needs to be reviewed)
- Completion of a Parks Plan required (in the queue for 2023)
- At least 60% of a parkland reserve at the start of each year has to be allocated

Top Ten points from Bill 23 that will impact NOTL

#5.

Reduction of Upper Tier (not proclaimed) and Conservation Authority Powers

- Upper Tier municipalities to be removed from the Planning approval process
- Responsibilities for lower OP's and OPA's will be at the local level
- The Minister to be approval authority for these and decisions not appealable
- Conservation Authorities' review to focus only on natural hazards and flooding instead of flooding control, erosion, dynamic beaches, pollution and the conservation of land (in force)

Top Ten points from Bill 23 that will impact NOTL

#6.

Ontario Heritage Act changes:

- Will impact how properties will be designated, the requirements for heritage districts and how listed properties will be treated
- Municipalities will not be permitted to issue a notice of intent to designate after a prescribed event unless the property is already on the Heritage Register
- A property listed on a Heritage Register must be designated within 2 years or be removed for a minimum period of 5 years
- Existing properties on the Register must be designated within 2 years or be automatically removed

Top Ten points from Bill 23 that will impact NOTL

#7.

Development Charge regime is in a serious state of flux

- A variety of development charge discounts and exemptions have been proposed
- It is anticipated that current funds to the Town will be reduced unless alternative funds are raised through the existing tax base or provided by the Province
- Bill 23 limits the Town's ability to fund the capital costs of growth-related infrastructure
- The Finance team continues to review this evolving area

Top Ten points from Bill 23 that will impact NOTL

8.

Costs at the OLT (was **OLT** was OMB /LPAT)

- The Tribunal's ability to order an unsuccessful party to pay the successful party's costs
- This has yet to evolve: what will the rules be? How significant might the awards be?
- It will have a chilling effect on participation by third parties
- It may have a chilling effect on participation by municipalities

Top Ten points from Bill 23 that will impact NOTL

#9.

Gentle Density/Intensification in effect

- a single property can have, as of right, three units (up to 3 units in the primary unit or up to 2 units in the primary unit plus one unit in the ancillary building)
- No DC's / Parkland Dedication or Cash in Lieu for these units
- No minimum size of unit and only one parking space per unit
- Other zoning performance standards still apply i.e. setbacks, height, yard requirements

Top Ten points from Bill 23 that will impact NOTL

#10.

Subdivision Approvals

- Public meetings no longer required (in effect)
- Public meetings are required for an associated application such as a zoning by-law amendment



**Thank you.
Any Questions?**