

Report No. 1 of the Commissioner of Corporate Services and Chief Planner was adopted, as amended, by the Council of The Regional Municipality of York at its meeting held on December 15, 2016, to read as follows:

1. Council endorse Attachment 1 as the Region's formal submission to the Province in response to the Environmental Bill of Rights (EBR) posting entitled Consultation on the role of the Ontario Municipal Board in Ontario's land use planning system (EBR No. 012-7196).
2. *Council request the Province to consider the inclusion of a sunset clause related to privately-initiated Ontario Municipal Board rulings.*
3. This report be circulated to local municipalities, the Ministry of Municipal Affairs and Housing and the Ministry of the Attorney General in response to the Environmental Bill of Rights (EBR) posting entitled Consultation on the role of the Ontario Municipal Board in Ontario's land use planning system (EBR No. 012-7196).

Regional Response to Provincial Review of  
the Ontario Municipal Board's Role in Land Use Planning

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Report dated December 7, 2016 from the Commissioner of Corporate Services and Chief Planner now follows:

1. Recommendations

It is recommended that:

1. Council endorse Attachment 1 as the Region's formal submission to the Province in response to the Environmental Bill of Rights (EBR) posting entitled Consultation on the role of the Ontario Municipal Board in Ontario's land use planning system (EBR No. 012-7196).
2. This report be circulated to local municipalities, the Ministry of Municipal Affairs and Housing and the Ministry of the Attorney General in response to the Environmental Bill of Rights (EBR) posting entitled Consultation on the role of the Ontario Municipal Board in Ontario's land use planning system (EBR No. 012-7196).

## 2. Purpose

This report provides a response to provincial consultation on Ontario Municipal Board (OMB) reform being carried out through an EBR posting. The report is being presented directly to Council as a result of a pending deadline and limited consultation period.

## 3. Background

The OMB has extensive jurisdiction to hear appeals of Planning Act applications in Ontario

Originally created in 1906 as the Ontario Railway and Municipal Board, with a mandate to oversee municipal accounts and supervise rail transportation between and within municipalities, the OMB's mandate and responsibilities have continued to evolve. The OMB currently hears appeals to a wide range of planning applications, as well as non-planning matters including expropriation, development charges and ward boundaries. This review deals only with the OMB's involvement in Planning Act applications. While many Canadian provinces have some form of provincial body to hear appeals of land use planning decisions, none have a jurisdiction as extensive as the OMB.

This extensive jurisdiction and the current practices of the OMB have led to an often complex, time consuming and costly process for municipalities, citizens and development proponents. Over the past two years the OMB had 1500 files; with 67% of those from Central Ontario, which includes York Region.

Previous efforts to reform the OMB have not produced desired results

Over the past decade there have been two Bills resulting in Planning Act amendments which included some measures to reform the OMB. The first was Bill 51 (the *Planning and Conservation Land Statute Law Amendment Act*) in 2006, which restricted appeals to those who had participated in the municipal process, gave the OMB the ability to refer matters back to a municipal council, and instructed that the OMB was to "have regard to" municipal decisions. The Bill 51 amendments have resulted in the dismissal of some appeals in York Region, but the impact has not been substantial. In practice it appears to be rare that the OMB refers matters back to council, and it is often unclear whether and how regard to municipal decisions is impacting OMB decisions on appeals. Bill 51 also enabled municipalities to set out complete application submission requirements. All of the Region's local municipalities have done this.

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Recent changes to the *Planning Act* through Bill 73 (the *Smart Growth for Our Communities Act*), which was the subject of a [November 2016](#) report, remove the right to appeals of an entire OP (referred to as “whole plan appeals”), restricts appeals of certain matters of provincial interest, and provides a ‘two year prohibition’ on privately initiated amendments to a new OP or zoning by-law. While it is too soon to determine the magnitude of impact on the number and length of OMB cases, consultation revealed that further changes were needed.

The Province is again reviewing the OMB and released a public consultation document in October

At the outset of this review, the Province identified that it sees a continuing need for the OMB in the land use planning system, and the review is focussed on reforming the scope (what it deals with) and effectiveness (how it operates) of the OMB. A public discussion document entitled *Review of the Ontario Municipal Board: Public Consultation Document* was released on October 5, 2016. The document presents 24 discussion questions organized under five theme areas.

Regional staff contributed to the Regional Planning Commissioners of Ontario report on reforming the OMB, and attended provincial consultation sessions on October 18, 2016 and November 15, 2016. Regional staff also held a consultation session with local municipal staff on November 18, 2016, to examine local experience at the OMB and identify areas of common interest with respect to OMB reform.

Comments are due to the Province by December 19, 2016. Draft legislation is expected to be released in spring 2017, with a public consultation period to follow.

York Region spends significant time and money defending Regional and local plans and decisions at the OMB

York Region was involved in 17 different planning matters at the OMB in 2015, and 19 planning matters at the OMB in the first half of 2016, ranging from appeals of Minister's zoning orders, to appeals to local OPs, to outstanding matters related to the York Region Official Plan (YROP-2010). These appeals amount to significant staff time and costs related to preparation of evidence, mediation and hearings.

#### 4. Analysis and Implications

The main focus of changes to the OMB should be to ensure respect for decisions of council and public input in the process

The public planning process in Ontario is designed to ensure opportunities for public input to the process, and to allow elected municipal councils to make planning decisions. In cases where those decisions conform to provincial policies and plans, and implement the community vision set out in the OP, such decisions should maintain primacy during an appeal process.

The Province is considering a variety of modifications to the OMB, grouped under five theme areas

Theme areas include:

1. **OMB's Jurisdiction and Powers** – changes being considered include limiting appeal rights to protect public interests and provincial transit investments, giving communities a stronger voice by limiting appeals to a range of council decisions, ceasing de novo hearings (as new – without heed to any prior consideration or decisions), and changing when new planning rules should be applied
2. **Citizen Participation and Local Perspective** – changes being considered include measures to increase public participation in the appeal process, and increase citizen access to planning and legal expertise or representation
3. **Clear and Predictable Decision-Making** – changes being considered include updating the qualifications for adjudicators, implementing multi-member panels, and delivering clear and accessible decisions
4. **Modern Procedures and Faster Decisions** – changes being considered include reducing complexity of tribunal procedures, setting appropriate timelines, increasing flexibility for how evidence can be heard and hearings conducted, establishing clear issues lists and introducing maximum days for hearings
5. **Alternative Dispute Resolution and Fewer Hearings** – changes being considered include active promotion of mediation, requiring all appeals to be considered by a mediator, strengthening case management to better scope and stream appeals, and creating timelines for scheduling mediation and hearings

York Region staff support the broad range of changes being considered by the Province

The Province's OMB review discussion document demonstrates an understanding of the wide range of issues and challenges arising from current OMB jurisdiction, practices and procedures. Implementation of the solutions

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being considered by the Province would lead to significant improvements to reduce the number, length and complexity of appeals to the OMB.

Attachment 1 includes a comprehensive response to the questions posed in the Province's discussion document. Key opportunities for improvement are discussed in the following sections. Changes being considered under the theme of Jurisdiction and Powers have the potential for greatest impact to reform the OMB. The current broad jurisdiction and powers of the OMB create an unpredictable planning environment; diminish the value of public input and a council's authority to establish the community vision. They also lead to a costly and legalistic process.

Two specific changes to the OMB's jurisdiction and powers would lead to major improvements in the Ontario planning process.

1. Removing the right to appeal approved OPs that conform to Provincial legislation and policy
2. Eliminating the practice of conducting de novo ("as new") hearings in every case

Removing the right to appeal approved Official Plans that conform to Provincial legislation and policy will significantly reduce the number and complexity of OMB appeals

Municipally-initiated new OPs and updates to OPs to conform to provincial legislation and policy are based on municipal comprehensive reviews, including extensive studies and broad consultation with the public, other agencies and stakeholders. They represent a vision for the community that has been adopted by council and approved by the approval authority. Removing the ability to appeal a municipally-initiated new OP or amended OP that conforms to Provincial legislation and policy will respect and protect the vision adopted by council through the public process. Given no other appeal body in Canada has jurisdiction over OPs or OPAs like the OMB, it is not unreasonable for the Province to eliminate or restrict the appeal of municipally initiated new Official Plans and updated Official Plans.

The Region spent several years and millions of dollars resolving appeals to the Regional Official Plan 2010. Removing the right of appeal would uphold council's vision; reduce costs to all levels of government associated with defending these comprehensive plans, saving significant time to enable more timely implementation of an OP.

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Eliminating de novo or "as new" hearings is one of the most effective actions the Province can take to reform OMB procedures

A significant amount of hearing and mediation time is spent considering information beyond what was available to Council at the time of their decision. Proposals change, and/or are supported by new or significantly revised information, and the OMB is in effect starting anew through the appeal process. This is legally referred to as a de novo hearing. Eliminating de novo, or "as new", hearings would ensure that the OMB considers the merits of an application based on the same arguments and evidence that was available to council. Conversely, any potential applicant seeking a decision from the OMB would have to provide the same information to Council, avoiding the tendency to take short cuts with municipal applications.

The scope of the OMB review would be limited to whether the decision rendered by council was valid and in keeping with provincial legislation and policy, and the community vision set out in the OP. Without de novo hearings, OMB decisions would no longer be substituting for decisions of council. This would also encourage better use of amendments introduced in 2006 through Bill 51.

Additional benefits to the elimination of de novo hearings include reduced expense and length; scoping of issues which reduces the number of evidence documents and like-expert meetings necessary; and simplifies court-like hearing procedures and written decisions.

A range of additional modifications are being considered to improve the OMB

The Province is considering some relatively simple and inexpensive measures. This includes updates and improvements to the OMB website to increase the accessibility of information and case documentation and provide educational resources. Expanded qualifications for OMB Members could ensure experience with planning matters and planning-related legislation. Changes to the hearing format could ensure a less litigious atmosphere, and conducting some hearings in writing would speed up the hearing process.

Other changes being considered have more potential cost implications and may be more challenging to implement. These include expanding the staffing level at the Citizen Liaison Office (CLO) to provide a higher level of service and information to unrepresented citizen participants, or providing a funding source to enable citizens to engage their own planning experts and legal representation. Expanding the number of board members to implement mandatory Alternative Dispute Resolution (ADR) assessment as well as multi-member panels for a greater number of hearings would also increase provincial costs. An option might

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be OMB sanctioned and recognized use of private ADR providers by willing parties.

A number of remaining issues would be alleviated once OMB jurisdiction is narrowed and de novo hearings are removed

Eliminating appeals of new or updated OPs, and eliminating de novo hearings will ensure that the local perspective, as represented by council's decision on matters, is respected. It should encourage early participation in the land use planning process, and allow citizens to be more fully involved in a scoped and less complex appeals process. It would ensure that applications to municipalities are more complete and not produce additional evidence only on appeal to the OMB. If effective, it should reduce the number and length of hearings, thereby alleviating some of the scheduling pressures and difficulty in producing timely decisions, something that should be measured and reported on in the years following any reforms. Overall, these two changes to the OMB could make other improvements being considered by the Province unnecessary, or easier and less costly to implement.

### 5. Financial Considerations

Reducing the number and length of OMB hearings should reduce expenditures in the long term

The Region spent more than \$4 million defending the YROP-2010 at the OMB, including associated appeals at the local level. Individual applications continue to be appealed at both the Regional and local levels, which also generates cost to the Region. The various solutions being considered by the Province have the potential to substantially reduce the Region's expenditure on OMB hearings, and may free up staff time to work on other matters.

### 6. Local Municipal Impact

The solutions under consideration by the Province, plus the additional solutions proposed by staff, have the potential to reduce the number of OMB appeals faced by both the Region and local municipalities, and limit the scope and length of hearings.

York Region's local municipalities have been consulted during review of the public consultation document and that consultation informed the comments provided in Attachment 1. There was general consensus among Regional and local staff on a number of issues; however, co-ordinating a joint submission was not possible, in part due to the short commenting period. Staff at some local

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municipalities may be sending reports to their councils and providing comment directly to the Province, reflecting their specific context and experience with the OMB.

### 7. Conclusion

The changes being considered to the OMB's jurisdiction, powers and procedures have the potential to increase the legitimacy, accountability and certainty of the public planning process, and ensure council decisions retain their primacy in the process.

Removing the right to appeal approved OPs that conform to provincial legislation and policy, and eliminating de novo ("as new") hearings are expected to have the greatest impact to reform the OMB.

Staff proposes that this report and Attachment 1 be provided to the Province as the Region's comments on the current phase of OMB review consultation.

For more information on this report, please contact Paul Freeman, Director of Long Range Planning at 1-877-464-9675 ext. 71534.

December 7, 2016

Attachments (1)

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Accessible formats or communication supports are available upon request

## York Region Response: The role of the Ontario Municipal Board in Ontario's land use planning system



York Region thanks the Province for the opportunity to provide input to the review of the Ontario Municipal Board (Environmental Bill of Rights Registry Number: 012-7196).

The OMB review discussion document demonstrates an understanding of the wide range of issues and challenges arising from current OMB jurisdiction, practices and procedures. Implementing the variety of solutions presented for consideration in the consultation document should substantially reduce the number of appeals and improve the function of the OMB.

Overall, we are encouraged by the considerations which would go a long way to ensuring that the OMB becomes a review body used in limited cases to confirm the validity of a council decision.

The following response to the *REVIEW OF THE ONTARIO MUNICIPAL BOARD: PUBLIC CONSULTATION DOCUMENT* has been prepared in consultation with local municipal planning staff from all nine of the Region's municipalities. Comments may also be submitted by local municipalities outlining their context, position and experiences at the OMB.

### **Theme 1: OMB's Jurisdiction and Powers**

One of the major factors that limits the OMB's success and effectiveness is that it has jurisdiction over too many areas under the Planning Act. It is the only appeal body in Canada with jurisdiction to deal with the full range of planning applications and issues, as well as development charges and expropriation of land. To address the issue of over-abundance of appeals, and to right-size the jurisdiction of the OMB, we commend the Province for considering the following:

- No, or limited appeal of specified parts of OP's approved by Province
- No, or limited appeal where municipalities are implementing provincial policy
- Restricting appeals on OPs, OPAs and zoning by-laws for development that supports provincially funded transit infrastructure
- Eliminating de novo (starting anew) hearings and shift OMB focus to the validity of a decision under appeal
- Prohibit appeal of municipality's refusal to amend a new OP or secondary plan for two years
- No appeal of an interim control bylaw
- Expand powers of local appeal body to include site plans
- Limit OMB's authority to matters that are part of municipal council's decision
- Require OMB to send significant new information back to municipal council
- Require all planning decisions, not just those after 2007, to be based on legislation and planning documents in effect at the time of the decision, rather than the time of application

**York Region Response: The role of the Ontario Municipal Board in Ontario's land use planning system****Questions:****1. What is your perspective on the changes being considered to limit appeals on matters of public interest?**

Given no other appeal body in Canada has jurisdiction over OPs or OPAs like the OMB, it is not unreasonable for the Province to eliminate or restrict the appeal of municipally initiated new Official Plans and updated Official Plans. The Province should eliminate appeals of municipally-initiated Official Plans, and comprehensive Official Plan updates once they are approved by the approval authority. Extensive planning, including a municipal comprehensive review, and public and stakeholder consultation is undertaken prior to adopting and approving these plans. Removal of the right to appeal will recognize this effort and the necessity to implement Provincial legislation and policy, as well as Regional official plan conformity, when it comes to local municipal plans. It is recommended that public agencies retain the right to appeal in these instances.

**2. What is your perspective on changes being considered to restrict appeals of development that supports the use of transit?**

Staff supports the concept of protecting municipally identified transit supportive development, but more emphasis on consistency with local plans is required. There are concerns about the lack of direction, and potential conflicts with existing local intensification plans, community vision, and context.

Densities and heights that have been identified through local Official Plans and intensification plans should be respected. While applicants should not be permitted to reduce density in areas that have been identified as being transit-supportive, they should also be prevented from increasing height and density beyond what is approved by Council and provided for by the plans.

**3. What is your perspective on the changes being considered to give communities a stronger voice?**

Staff support eliminating the right of appeal of interim control by-laws. The Province should also consider removing the right to appeal holding by-laws.

Should the Province choose not to protect all Official Plans from appeal, the blackout period on appeals of Council's refusal to amend official plans and secondary plans should be extended to cover the entire period in advance of the scheduled comprehensive review period (5 years or 10 years), provided the municipality is timely in conducting the statutory review of their Official Plan. Non-decision on these amendment applications should also be protected from appeal. This would allow time to

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undertake the comprehensive studies required to implement the Official Plan or Secondary Plan, and recognize the extensive work undertaken with the community to develop the plan and comprehensive amendments.

If de novo appeals continue to be permitted at the OMB, planning staff support limiting the OMB's authority to matters that were part of the council decision, and requiring the OMB to send significant new information back to council. The primacy of municipal decision-making powers in the planning process needs to be better supported. The Province must outline how the "significance" of new information is to be defined and what the timelines are for information sent back to council for decision.

**4. What is your view on whether the OMB should continue to conduct de novo hearings?**

A significant amount of hearing and mediation time is spent considering information beyond what was available to Council at the time of their decision. Proposals change, and/or are supported by new or significantly revised information, and the OMB is in effect starting a new hearing through what should be an appeal process. This is legally referred to as a de novo hearing. The OMB should not conduct de novo hearings as this information was not subject to the comprehensive municipal planning and consultation process. Legislation directs the OMB to have regard for municipal decisions, and should further limit the OMB to only consider information that was available to Council. Municipal Council's should also be required to make decisions following appeals for 'non-decision' and those matters treated in the same manner.

**5. If the OMB were to move away from de novo hearings, what do you believe is the most appropriate approach and why?**

The OMB should be limited to determining whether the council decision was reasonable, based on the information available to council at the time the decision was rendered.

**6. From your perspective, should the government be looking at changes related to transition and the use of new planning rules? If so:**

- a. What is your perspective on basing planning decisions on municipal policies in place at the time the decision is made?**
- b. What is your perspective on having updated provincial planning rules apply at the time of decision for applications before 2007?**

Decisions on site specific planning applications should be based on the planning legislation and policies applicable at the time of decision. Additionally, transition provisions for site specific

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planning applications should be phased out of other legislation, such as the Places to Grow Act, Oak Ridges Moraine Conservation Act, Greenbelt Act, etc. and their associated Plans. Where significant changes to Provincial policy are introduced, transition provisions for municipally initiated comprehensive planning currently underway (OPs, Secondary Plans and comprehensive OPAs) should be developed with consideration of the amount of planning, consultation and municipal investment already committed, and clear communication and sunset provisions provided.

### **Also...**

Better case management practices should be established for all cases at the OMB, including proper scoping of issues, and dismissing appeals without valid planning rationale.

### **Theme 2: Citizen Participation and Local Perspective**

While the council decision-making process allows individuals and citizen groups to have their opinions presented, there are many real and perceived barriers to participation at OMB proceedings. These include cost and time to participate, lack of access to subject matter experts and legal representation, and lack of information and guidance regarding mediation and hearing procedures.

To encourage public involvement in the appeal process, the Province is considering:

- Expanding the Citizen Liaison Office (CLO) by increasing staff and/or moving outside the Environment and Lands Tribunal (ELT)
- Possibly making in-house planning experts and lawyers available to eligible members of the public
- Funding tools to help citizens retain their own planning expert and/or lawyers
- Creating a more user-friendly website
- Adopting plain language for decisions
- Creating educational videos
- Making posted decisions easier to find online

### **Questions:**

**7. If you have experience with the Citizen Liaison Office, describe what it was like – did it meet your expectations?**

A large proportion of staff was not aware of the Citizen Liaison Office, making the need for increased awareness apparent.

**8. Was there information you needed, but were unable to get?**

**9. Would the above changes support greater citizen participation at the OMB?**

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The York Region recommendations in response to OMB jurisdiction and powers are intended to uphold the public process and council decision making and therefore protect citizen engagement in the planning process, reducing their need to participate in the OMB process. However, expanding the citizen liaison office would support greater and more informed citizen participation at the OMB when necessary, which would benefit the process.

Case documents, including the record sent to the OMB, affidavits, document books and exhibits, should be made available on the website so that citizens can stay informed about OMB hearings. The website should be updated to make it more user-friendly in general, and should include educational videos, pamphlets and other materials, and a search function that makes posted documents and decisions easy to locate.

**10. Given that it would be inappropriate for the OMB to provide legal advice to any party or participant, what type of information about the OMB's processes would help citizens to participate in mediations and hearings?**

Promoting active public participation in the planning process by limiting what can be appealed would help ensure citizen engagement.

The OMB could set up an independent body to provide legal and planning advice to citizen participants. Through this body, residents would ensure they are able to identify and articulate a planning rationale for their position, resulting in some appeals being dismissed, withdrawn or scoped to remove any arguments not based on planning issues or merit.

In-house guidance to ensure citizen participants are prepared with the supporting documentation and information that is useful in a hearing, understand how mediation and hearings work, and the difference between being a party and a participant at the OMB could be provided by an expanded CLO without the need to set up an independent body. Some of this information could also be provided through an updated and improved website, or through a training course enabling citizens to prepare to be a party or participant in an appeal.

**11. Are there funding tools the province could explore to enable citizens to retain their own planning experts and lawyers?**

Increased appeal fees, based on the type and complexity of application being appealed, could be used to fund citizen participation at the OMB. Funding sources should not fall to municipalities to shoulder, nor should funding of citizen participation be considered until the jurisdiction of the OMB is focussed, and proper scoping and case management

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practices are implemented. The probability of success should not be improved by deep pockets or patience. Hearings should have certainty with respect to timing – a defined beginning and end.

**12. What kind of financial or other eligibility criteria need to be considered when increasing access to subject matter experts like planners and lawyers?**

Funding could be provided based on the planning merits of the appeal, as assessed during the scoping process, and should be limited to citizens or citizen groups and based on demonstrated need.

**Theme 3: Clear and Predictable Decision-Making**

Skilled and qualified decision-makers and clear and predictable processes are needed at the OMB. To ensure clear and predictable decisions, the Province is considering:

- Increased use of multi-member panels

**Questions:**

**13. Qualifications for adjudicators are identified in the job description posted on the OMB website. What additional qualifications and experiences are important for an OMB member?**

Greater emphasis should be placed on planning experience and knowledge of planning-related legislation and policy.

**14. Do you believe the multi-member panels would increase consistency of decision –making? What should be the make-up of these panels?**

Multi-member panels have the potential to provide more balanced decisions on larger and more complex hearings. Multi-member panels would provide an opportunity to include subject matter experts on panels, which could increase the consistency of decision-making. Multi-member panels should be made up of random pairings and should change for each hearing in order to spread expertise and promote consistency.

Additionally, members should have some knowledge or experience of the geographic area they are hearing cases in, to ensure an understanding of the context of the planning decision under appeal.

**15. Are there any types of cases that would not need a multi-member panel?**

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Minor variance, consent and site plan appeals and other scoped or site-specific matters should generally not require multi-member appeals. Multi-member panels may not be required on other types of appeals involving a single appellant.

**16. How can OMB decisions be made easier to understand and better related to the public?**

OMB decisions should be clearly-worded in plain language. Decisions should also be based on a set of templates, for consistency. Lengthy decisions should require a summary or abstract setting out the key elements of the decision in no more than a half page.

Decisions should include justification of the decision. For example, the reason one witness's evidence is preferred over another.

Decisions should be made more easily accessible online, and posted in a more timely manner.

**Also...**

Board members should receive better compensation, in order to attract experienced professionals.

Performance review practices should be instituted for members.

A standard case book and document book should be established, rather than submitting copies of the same legislation and policies each and every time for the majority of hearings.

**Theme 4: Modern Procedures and Faster Decisions**

There are opportunities to improve accessibility, predictability and transparency at the OMB through updated rules of practice and procedure. Updated procedures should create a less formal, more welcoming process with a less "court-like" procedure. Modernization options the Province is considering include:

- Creating a less formal and less adversarial culture at the OMB by:
  - Allowing the OMB to adopt less complex and more accessible tribunal procedures
  - Allowing active adjudication
- Modernizing procedures and promoting faster decisions by
  - Setting appropriate timelines for decisions



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- Increasing flexibility for how evidence can be heard (e.g. video-conference, written hearings, etc.)
- Establishing clear rules for issues lists to ensure hearings are focused and conducted in the most cost-effective way possible
- Introducing maximum days allowed for hearings

### Questions:

**17. Are the timelines in the chart appropriate, given the nature of appeals to the OMB? What would be appropriate timelines?**

Performance Result	Target
<b>OMB Decision issued within 60 days of the end of the hearing</b>	<b>85%</b>
<b>OMB minor variance cases (stand-alone) scheduled for a first hearing within 120 days of the receipt of a complete appeals package</b>	<b>85%</b>
<b>Other OMB cases scheduled for a first hearing within 180 days of the receipt of a complete appeals package</b>	<b>85%</b>

The target for issuing OMB decisions within 60 days of the end of a hearing should be accomplished 95% of the time. Minor variance cases should be scheduled for a first hearing within 60 days and other OMB cases should be scheduled for a first hearing within 120 days of receipt of a complete appeals package. The Province's proposed timelines and targets for scheduling hearings and issuing decisions do not represent a significant improvement over the current timelines.

Narrowing the jurisdiction of the OMB, creating consistent templates and approaches to writing decisions, increasing the number of board members, should collectively reduce the caseload of board members and ensure more timely scheduling and decision issuance is possible.

Overall, timelines are less important than good case management. Reduced timelines need to also take into account council schedules and the ability of staff to receive direction from council on matters before the OMB.

**18. Would the measures suggested help modernize OMB hearing procedures and practices? Would they help encourage timely processes and decisions?**

The measures being considered by the Province would assist in modernizing the rules of practice and procedure. Additional measures should include:

- i. Requiring the early scoping of issues
- ii. Requiring the appellant to submit alternative policy wording or mapping sought through the appeal

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- iii. Docket scheduling, where hearings are scheduled based on OMB availability, rather than seeking to accommodate all parties
- iv. Empowering municipalities to reject appeals and not forward them to the OMB where no written or oral submission was made to council before a decision was made
- v. Scheduling early like-expert meetings as part of a scoping exercise

### 19. What types of cases/situations would be most appropriate to a written hearing?

Consents, matters of law, and disputes to the declaration of a complete application could be appropriate matters to deal with through a written hearing. If the OMB ceases to conduct de novo hearings, many cases could be conducted in writing, with the documents submitted for council consideration forming the basis of the case.

### Theme 5: Alternative Dispute Resolution and Fewer Hearings

Some matters that are currently decided at OMB hearings might be better settled through Alternative Dispute Resolution. In order to facilitate greater use of mediation and other ADR methods, the Province is considering:

- More actively promoting mediation
- Requiring all appeals to be considered by a mediator before scheduling a hearing
- Allowing mediators to be available at all times during the process, including before an application arrives at municipal council
- Strengthening the case management at the OMB to better stream, scope issues in dispute, and identify areas that can be resolved at pre-hearings
- Create timelines and targets for scheduling cases, including mediation

### Questions:

#### 20. Why do you think more OMB cases don't settle at mediation?

It seems that some proponents of development view OP policies as 'proposed' and therefore challenge local decisions to have them 'tested' at the OMB. As a result, little effort is put into resolving matters through up-front mediation. The goals and objectives of municipalities are to direct physical change in the public interest versus private interest but the current system seems to be set up to promote hearings over meaningful, proactive mediation. This adversarial culture tends to have parties escalate positions.

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Mediation also often fails because lawyer participation hinders expert dialogue and collaboration, and because decision-makers are not in the room and/or the participants are not empowered to make decisions.

Many applicants now see OMB hearings as the cost of doing business, and the perception on the part of the proponent is often that there is nothing to lose by going to a hearing. Removing de novo hearings may make mediated solutions more palatable for many appellants.

**21. What types of cases/situations have a greater chance of settling at mediation?**

Efforts should be to restrict what can be appealed in the first place and focus only on the validity of the approval authority decision.

Single appellant cases and site-specific cases are more likely to settle at mediation.

Better screening at mediation assessment, plus regular evaluation throughout the mediation process, could ensure that only cases with a reasonable chance of a successful mediated outcome continue in the mediation process.

**22. Should mediation be required, even if it has the potential to lengthen the process?**

Mediation should not be mandatory. There are situations in which one or more party/participant is not willing to move from their position, or where parties are not convinced that a negotiated agreement will be as beneficial to them as a hearing. In these cases mediation can be a waste of time and resources.

**23. What role should OMB staff play in mediation, pre-screening applications and in not scheduling cases that are out of the OMB's scope?**

Proper case management by the OMB would include pre-screening applications to identify planning merit and ensure early dismissal of cases that are determined to be without merit, scoping the case by identifying areas of agreement, opportunities for mediation and specific issues in dispute. Mediation assessment needs to take place early and be completed quickly.

**Also...**

Staff is concerned with the Province's proposal to provide mediators during the planning application process, prior to a council decision being issued. It is staff's position that prior to a council decision, stakeholders and the public should be proactively collaborating to ensure good planning.

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The formal mediation process at the OMB excludes citizens or citizen groups who are participants rather than parties to a hearing. If mediation is to play an increasingly important role in the OMB process, methods to ensure citizens can remain involved and informed must be found. Additionally, when citizens or citizen groups are determining the party or participant status they wish to have in a hearing, the OMB must ensure they understand how their role at mediation will change depending on their status.

The OMB should sanction and recognize use of private ADR by willing parties, in order to reduce the caseload on OMB mediators, and costs.

**Additional Questions and Comments**

**Questions:**

**24. Do you have any other comments or points you want to make about the scope and effectiveness of the OMB with regards to its role in land use planning?**

To reduce appeals that lack planning merit, appellants could be required to apply for leave to appeal to the OMB, as is done in the Court of Appeals. Motion for leave to appeal would have to specify the reason council's decision was not reasonable or valid.

The fee structure should be reviewed and updated.

Cases should be better managed leading up to and throughout a hearing to minimize duplication of evidence and presentation of evidence that is not relevant to the scope of the appeal.

The rules of practice and procedure should be updated.

The backlog of files awaiting resolution must be reduced.

**Conclusion**

While the Region supports the majority of solutions being considered by the Province in the consultation document, the following changes will, in our view, have the greatest impact to increase the effectiveness of the OMB while respecting local planning and citizen engagement:

- Remove the right to appeal new OPs and OP updates resulting from a municipal comprehensive review
- Eliminate de novo hearings

This would not only ensure that local decision-making is respected, but would significantly reduce the cost and complexity associated with de novo hearings, improve

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timelines for planning implementation, clarity of process and decisions, and effectiveness of citizen participation in the land use planning process.

If you have any questions or require additional information, please contact Valerie Shuttleworth, Chief Planner, Planning and Economic Development by email [valerie.shuttleworth@york.ca](mailto:valerie.shuttleworth@york.ca) or telephone 1-877-464-9675, extension 71525; or Paul Freeman, Director, Long Range Planning by email [paul.freeman@york.ca](mailto:paul.freeman@york.ca) or telephone at extension 71534.