



REPORT FOR ACTION

Response to Provincial Consultation on Reforming the Ontario Municipal Board (OMB)

Date: November 10, 2016

To: Planning and Growth Management Committee

From: Chief Planner and Executive Director, City Planning Division

Wards: All

SUMMARY

On October 5, 2016, the Province of Ontario released its Public Consultation Document in support of its review of the scope and effectiveness of the Ontario Municipal Board (OMB). The consultation paper is organized around reforming the OMB along five themes: OMB jurisdiction and powers; citizen participation and local perspective; clear and predictable decision-making; modern procedures and faster decisions and alternative dispute resolution and fewer hearings. If adopted, the changes are intended to:

- allow for more meaningful and affordable public participation;
- give more weight to local and provincial decisions and support alternative ways to settle disputes;
- bring fewer municipal and provincial decisions to the OMB; and
- support clearer and more predictable decision-making.

While legislative changes took place with regard to Ontario's land use planning and appeal system in 2006 and 2015, the current review affords the City a further opportunity to revisit matters that were not addressed in the last round of *Planning Act* and *City of Toronto Act* reforms and to comment on the proposed changes to the OMB identified in the Provincial Public Consultation Document.

The Province sees a continuing need for the OMB in Ontario's land-use planning system and has advised that the current review does not include consideration of the elimination of the OMB.

The Province is seeking feedback by December 19, 2016. This report provides an overview of the latest changes to the OMB proposed by the Province. It provides staff comments and recommendations in response to questions posed in the Consultation Document. While the proposed directions are a positive step towards improving the scope and effectiveness of the OMB, the subsequent wording of the legislative changes to implement the directions outlined in the Consultation Document will be a critical next step.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning Division recommends that City Council:

1. Express support to the Province with respect to the proposed directions generally outlined in the consultation document.
2. Express support for the direction that the Province have the authority to specify which parts of provincial decisions on official plans would not be subject to appeal, provided that municipalities continue to retain their right of appeal.
3. Request the Minister of Municipal Affairs to amend the *Planning Act* such that the Province would have the authority to specify which parts of thematic official plan policy amendments would not be subject to appeal.
4. Request the Minister of Municipal Affairs to amend the *Planning Act* such that all official plans and official plan amendments subject to provincial approval not be appealable in their entirety following issuance of the provincial decision.
5. Express support for the proposal that the Province's decisions on new official plans or official plan amendments by municipalities to bring their official plans into conformity with the PPS or Provincial Plans be final and not subject to appeal.
6. Request the Minister of Municipal Affairs to amend the *Planning Act* to restrict appeals of a refusal or a non-decision by Council, of privately initiated official plan amendments relating to Urban Growth Centres that are planned to achieve by 2031, or have already achieved a gross density that exceeds the minimum density targets set in Policy 2.2.3.3 of the proposed Provincial Growth Plan for the Greater Golden Horseshoe, until such time as the municipality has completed its official plan and infrastructure capacity review to determine the impacts, if any, of permitting additional intensification in these areas.
7. Express support for the Province's proposal to give the Minister and not the OMB, the authority to make the final decision on requests to amend zoning provisions, put in place through a Minister's Zoning Order.
8. Express support for the Province's proposal to restrict appeals of official plan policies that support provincially funded transit infrastructure provided that the wording of Policy 2.2.4. in the proposed Provincial Growth Plan for the Greater Golden Horseshoe is amended to allow municipalities to identify which major transit station areas will be planned at higher densities.
9. Express support for the Province's proposal to amend the *Planning Act* to not permit privately initiated appeals of a municipality's refusal to amend new secondary plans for two years.

10. Request the Minister of Municipal Affairs to amend the *Planning Act* to not allow privately initiated amendments to newly approved official plan policies stemming from comprehensive municipal reviews of existing official plans and secondary plan amendments, along with concurrent implementing zoning by-laws, for a two-year period.
11. Express support for the Province's proposal to not permit appeals for a municipal interim control by-law.
12. Express support for the Province's proposal to expand the authority of local appeal bodies adjudicating appeals of minor variances and consents to include associated appeals relating to site plan applications.
13. Express support for the Province's proposal to further clarify, through legislation and OMB Practice Procedures, that the OMB's authority is limited to dealing only with matters that are part of the municipal council's decision.
14. Request the Province to make it mandatory for the OMB to send significant new information that arises in an OMB hearing back to the municipal council for re-evaluation of the original decision if a municipality brings a motion advising that the new information and material could have materially affected council's decision.
15. Request the Province to amend the legislation and regulations governing the planning approval and appeals process to reflect the primacy of municipal decision-making on planning matters.
16. Advise the Province of its concern that a full OMB hearing on an appeal of a planning application should not be automatic and should only be scheduled if the OMB first finds that a municipality has acted unreasonably or in a manner not consistent with the Provincial Policy Statement (PPS) or not in conformity with Provincial Plans.
17. Advise the Province that it should consider using legislation to limit appeal matters and impose directions for changes to the OMB's Rules of Practice Procedure to effectively limit the scope of OMB hearings without focusing discussion on the term "de novo" hearing.
18. Express support for the Province's proposals to expand and re-configure the Citizen Liaison Office (CLO) and to explore funding tools, including intervenor funding to assist citizens to retain planning experts and lawyers, at no cost to the municipality.
19. Support the Province's proposal that the OMB reintroduce multi-member panels with panel members representing a broad range of skills and backgrounds.
20. Recommend that the Province re-examine OMB member recruitment practices and modernize OMB practices to improve the efficiency and quality of dispute resolution processes at the OMB and the scheduling of hearings.
21. Request the Province to prioritize the scheduling of OMB cases related to the adoption of planning policy documents such as official plans, municipally initiated comprehensive official plan amendments and comprehensive zoning by-laws.

22. Support the Province's proposal to actively promote mediation as a means to scope and resolve planning issues under appeal.

23. Advise the Province that it supports the use of government mediators to resolve disputes during the municipal planning approval process where there is no cost to the municipality and where the municipality, through a council motion, requests assistance from provincially appointed mediators.

24. Advise the Province that it supports the use of government mediators at no cost to the municipality, during the 60 day time-out period that a council may initiate alternative dispute resolution, prior to matters being appealed to the OMB, introduced through Bill 73.

25. Request the Minister of Municipal Affairs to amend the *Planning Act* to extend the period required for Alternative Dispute Resolution after an appeal has been made and the municipal council has given notice of its intention to use ADR, from 60 to 90 days, to further encourage opportunities for mediation.

26. Support the Province's proposals requiring all appeals to be considered by an OMB appointed mediator before scheduling a hearing.

27. Support the Province's proposal to strengthen the case management at the OMB to better stream and scope issues in dispute, identify areas that can be resolved at pre-hearings and support OMB members during hearings.

28. Recommend that the Minister of Municipal Affairs extend application processing timeframes in the *Planning Act* before "failure to proceed" appeals can be made for applications, in order to provide for more opportunities for mediation and reduce the potential number of "failure to proceed" based appeals, as follows:

- a. official plan amendments be increased from 180 days to 240 days;
- b. zoning by-law amendments be increased from 120 days to 180 days; and
- c. zoning by-law amendments that run concurrently with an official plan amendment be increased from 180 days to 240 days.

29. Forward this Report to the Province before December 19, 2016 in order to meet the commenting deadline; and

30. Request the Province to consult with the City on any legislative, regulatory or other changes associated with the review of the OMB, as per the Toronto-Ontario Cooperation and Consultation Agreement.

FINANCIAL IMPACT

There are no direct financial implications arising from the recommendations in this report. If future legislative, regulatory and/or procedural changes are enacted resulting from the review of the OMB, that have a financial impact on the City, they will be reported on at that time.

DECISION HISTORY

This report responds to the Province's October 5, 2016 announcement of its review of the OMB's scope and effectiveness. Notwithstanding the current review, City Council has been engaged over the years, in advocating for changes to the structure and function of the OMB, including:

- Planning and Transportation Committee Report 2, Clause 4a, "City of Toronto Position Regarding Ontario Municipal Board Reform", adopted as amended by Toronto City Council at its Special meeting on April 15 and 16, 2004.
<http://www.toronto.ca/legdocs/2004/agendas/council/cc040415/pltcl004a.pdf>
- Planning and Transportation Committee Report 5, Clause 14, "Provincial Planning Reform Initiatives: Consultation Papers on OMB Reform, *Planning Act* Reform and Implementation Tools and Provincial Policy Statement Draft Policies" adopted without amendment by Toronto City Council on July 20, 21 and 22, 2004.
<http://www.toronto.ca/legdocs/2004/agendas/council/cc040720/plt5rpt/cl014.pdf>
- Planning and Transportation Committee Report 2, Clause 1a, "Bill 51, Planning and Conservation Land Statute Law Amendment Act, 2005 and the Land Use Provisions of Bill 53, Stronger City of Toronto for a Stronger Ontario Act, 2005", adopted as amended by Toronto City Council on May 23, 24 and 25, 2006.
<http://www.toronto.ca/legdocs/2006/agendas/council/cc060523/cofa.pdf>
- Planning and Growth Management Committee Report PG29.16, "Response to the Provincial Review of Land Use Planning and Appeal System", adopted as amended by Toronto City Council on December 16, 2013.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG29.16>
- Planning and Growth Management Committee Report PG4.3, "*Planning Act* - Proposed Amendments Introduced Through Bill 73, Smart Growth for Our Communities Act, 2015", adopted without amendment by Toronto City Council on June 10, 2015.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PG4.3>
- Executive Committee Report EX8.1, "Five-Year Review of the City of Toronto Act, 2006", adopted as amended by Toronto City Council on September 30, 2015.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX8.1>

ISSUE BACKGROUND

For over a decade, City Council has advocated for OMB reform. Council's recommendations with regard to OMB and land use planning reform have been forwarded to the Minister of Municipal Affairs and Housing on previous occasions. A number of City Council's recommendations were incorporated into legislative

amendments made to the *Planning Act*, in 2006 and 2015 and to the *City of Toronto Act*, in 2006. Historically, City Council has concurrently requested both abolishment of the OMB as it pertains to Toronto, but also for its reform.

Council's most recent recommendations for legislative and regulatory change of the land use development approval and appeals process, build on past reform measures and were intended to:

- give greater weight to Council decisions at the OMB;
- put measures in place that would have the effect of further scoping appeals to the OMB and clearly discouraging full hearings "de novo";
- provide an environment for Council approved and publically vetted comprehensive land use policies, including municipally initiated Official Plan amendments, to be put into effect and to take effect without being immediately able to be amended by site-specific Official Plan amendments and related appeals;
- add more certainty, predictability and "contextual integrity" to the development approvals process and to managing longer range public policy formulation versus the more immediate goals of market driven speculative decision-making;
- streamline and improve service efficiency for the City's development approvals process;
- recognize Toronto as a mature order of government on par, in terms of its decision-making sphere of authority, with other large cities across North America; and
- pave the way for the establishment of a Local Appeal Body for Toronto for all planning related matters and applications, or, as an interim measure, a hearing panel at the OMB comprised of residents of Toronto who would have exclusive jurisdiction over appeals arising from Toronto.

COMMENTS

The Ontario government has undertaken a comprehensive review of how the OMB operates and its role in the Province's land-use planning system to help make it more efficient and more accessible. Through the OMB review, the provincial government will consider the OMB's scope (what it deals with) and effectiveness (how it operates) to determine improvements with respect to how the Board works. The guiding principles established by the Province frame the OMB Review and include: protecting long-term public interests; maintaining or enhancing access to dispute resolution; providing transparency in hearing processes and decision making; and minimizing impacts on the court system.

The City commends the Province on this initiative to improve and modernize the Ontario Municipal Board (OMB) and the proposed directions for change presented in the Provincial Public Consultation Document. The current review affords the City an opportunity to comment on matters that were not addressed in the last round of *Planning Act* and *City of Toronto Act* reforms.

The Public Consultation Document reviewing the OMB, poses a series of discussion questions associated with five key themes which are intended to focus on matters related to improving the OMB's scope and effectiveness in Ontario's land-use planning and appeal system:

- Theme 1. OMB's Jurisdiction and Powers
- Theme 2. Citizen Participation and Local Perspective
- Theme 3. Clear and Predictable Decision-Making
- Theme 4. Modern Procedures and Faster Decisions
- Theme 5. Alternative Dispute Resolution and Fewer Hearings

City Planning staff have completed a review of the key changes the Province is considering and provides staff comments and recommendations in response to the questions and proposed changes being considered.

Theme 1. OMB's Jurisdiction and Powers

A common theme running through previous City comments on OMB reform is that the OMB has jurisdiction over too wide a range of planning matters and its power to overrule local decision making is too broad. Matters that are local in nature are being appealed to an unrepresentative adjudicative body with little knowledge of the local context and issues.

In its Public Consultation Document the Province indicates that it has heard that:

- too many matters are being appealed to the OMB, which is time consuming and costly for all involved;
- the OMB's jurisdiction and power should be limited to matters of provincial interest and that there should be more limits on appeals, for example, the *Planning Act* should prohibit appeals where the Province has approved an official plan amendment, or where municipalities are implementing provincial policy in local planning documents;
- the OMB deals with too many local matters and does not give enough weight or consideration to decisions made by municipal councils;
- the OMB should change the way it holds hearings, including eliminating "de novo" (starting anew) hearings;
- the OMB is needed to provide decisions based on planning evidence when a municipal council makes a decision based on local concerns that may not reflect the broader public interest;
- the OMB is needed when municipalities are not able to make decisions, to ensure there is a fair, efficient and timely approval process; and
- without the OMB, appeals could end up in the court system, leading to even greater costs for public participation.

Protect public interest for the future

In response to concerns to protect the broader public interests of the community for the future, the government is considering limiting appeals on provincial land use planning decisions so that:

- the Province can specify which parts of its decisions on official plans will not be subject to appeal;
- the Province's decisions on new official plans or proposed official plan amendments, where municipalities are required to implement Provincial Plans, will be final and not subject to appeal; and
- when the Minister of Municipal Affairs puts zoning provisions in place through a Minister's Zoning Order to protect public interests, the Minister (and not the OMB) will have the authority to make the final decision on any requests to amend that zoning.

Proposed Provincial Amendment: The Province could specify which parts of its decisions on official plans would not be subject to appeal.

City Comment:

Under the current legislative framework established by the *Planning Act*, the Minister of Municipal Affairs is the approval authority for municipal official plans, except where the approval is delegated to a municipality. Ministerial delegations do not extend to amendments arising under Section 26 of the *Planning Act*, such as, the review of the official plan, or official plans conducted as parts of a municipal comprehensive review. The proposed amendment, as stated, would extend only to those municipal official plan amendments which are subject to approval by the Ministry.

It appears from the Consultation document that when the Province exercises its role as an approval authority of official plans, it can specify which parts of its decisions would not be subject to appeal. However, the amendment is unclear as to whether the provincial decision applies only to the changes introduced through Bill 73 to the *Planning Act* which limits "global appeals" in respect of the decision of the approval authority on "new official plans". Clarity is required as to whether the proposed amendment contained in the Consultation Document allows the Province to specify which parts of its decisions for "new official plans" would not be subject to appeal. This distinction is important since the limitations on appeals would only apply to the City, if Council were to adopt a new official plan on a go forward basis.

While staff generally agree with this proposed amendment, clarity is required as to how it would be implemented. The removal of appeals on parts of the Ministry's decision would be of limited use to the City if the provision applied only to "new official plans". The removal of appeals on parts of the Ministry's decision should extend to thematic official plan policy amendments as well.

Further, it is unclear how the Province would specify which parts of its decisions on official plans would not be subject to appeal. It is recommended that the Province retain its right to adopt or amend, municipal policies to ensure that they are in keeping with provincial policies or directions. Upon a decision by the Province appeals should be limited to municipalities and individuals with site-specific interests.

Recommendation 2. City Council express support for the direction that the Province have the authority to specify which parts of provincial decisions on official plans would

not be subject to appeal, provided that municipalities continue to retain their right of appeal.

Recommendation 3. City Council request the Minister of Municipal Affairs to amend the *Planning Act* such that the Province would have the authority to specify which parts of thematic official plan policy amendments would not be subject to appeal.

Recommendation 4. City Council request the Minister of Municipal Affairs to amend the *Planning Act* such that all official plans and official plan amendments subject to provincial approval not be appealable in their entirety following issuance of the provincial decision.

Proposed Provincial Amendment: The Province's decisions on new official plans or proposed official plan amendments, where municipalities are required to implement Provincial Plans, would be final and not subject to appeal.

City Comment:

Official plan amendments (OPAs) resulting from a statutory provincial conformity exercise and those that establish a detailed area based land use and built form context to guide development/redevelopment policies, (e.g. Secondary Plans, Precinct Plans – non statutory), are prepared after extensive public engagement and input and build upon numerous detailed studies. These OPAs become the blueprint for how an area will grow over the coming decades once they are approved by Council or take effect following an appeal. Once these OPAs and their implementing zoning by-laws (if approved concurrently with the OPA) are adopted, they should be allowed sufficient time to "take root" without the ability for parties aside from municipality itself to amend these policies.

Following council's adoption of its official plan, initiated as part of a conformity exercise, the Province and only the Province, should have the authority to determine conformity. Accordingly, challenges relating to the municipal adoption of provincial policies should not be appealable to the OMB. Municipalities should not be subject to on-going lengthy and costly OMB challenges to justify the implementation of Provincial policies. Bill 73 related amendments to the *Planning Act* took a first step at addressing this issue, but did not go far enough.

Specifically, these provisions do not permit appeals with respect to any part of the City's Official Plan that identifies an area as being within the boundary of a vulnerable area as defined in the Clean Water Act, 2006; the Greenbelt Area or Protected Countryside as defined in the Greenbelt Act, 2005 and any City policies that incorporate the Ministry's identified forecasted population and employment growth as set out in a Growth Plan under the Places to Grow Act, 2005.

Notwithstanding that no appeals can be brought with respect to Official Plan amendments to implement a boundary of a provincial plan or provincially forecasted population and employment growth policies, the associated policies relating to how Council chooses to allocate its population and employment growth targets in its Official Plan, for example, continue to be appealable. The City is still required to defend any related implementation policies should they be appealed.

It is staff's opinion that only the Province should have the authority to determine conformity. The City should not be subject to on-going lengthy and costly OMB challenges to justify the implementation of mandated Provincial Plan policies.

Recommendation 5. City Council express support for the proposal that the Province's decisions on new official plans or official plan amendments by municipalities to bring their official plans into conformity with the PPS or Provincial Plans be final and not subject to appeal.

The restriction on appeals should also extend to policies a municipality has adopted that are more restrictive or exceed minimum requirements, thresholds and targets established by the Province. Municipally adopted policies based upon good planning principles, after being given consideration by local councils that have extensive knowledge of local issues and the desires and needs of the residents they represent, should be given their appropriate weight. For example, in the City of Toronto, the North York, Yonge-Eglinton and Downtown Toronto Urban Growth Centres are planned to achieve by 2031, or have already exceeded their provincially established minimum gross density targets, as set by the proposed Growth Plan for the Greater Golden Horseshoe. In setting minimum density targets, the proposed Growth Plan encourages additional density beyond these targets by stating that densities already exceeding the provincially set minimums in Urban Growth Centres such as the Centres noted above, will be considered the de facto minimum density targets for these areas. City staff is concerned about the negative impact this provincial policy has with regard to implicitly encouraging over-intensification within these centres.

Recommendation 6. City Council request the Minister of Municipal Affairs to amend the *Planning Act* to restrict appeals of a refusal or a non-decision by Council, of privately initiated official plan amendments relating to Urban Growth Centres that are planned to achieve by 2031, or have already achieved a gross density that exceeds the minimum density targets set in Policy 2.2.3.3 of the proposed provincial Growth Plan for the Greater Golden Horseshoe, until such time as the municipality has completed its official plan and infrastructure capacity review to determine the impacts, if any, of permitting additional intensification in these areas.

Proposed Provincial Amendment: When the Minister of Municipal Affairs puts zoning provisions in place through a Minister's Zoning Order to protect public interests, the Minister (and not the OMB) would have the authority to make the final decision on any requests to amend that zoning.

City Comment:

The Minister of Municipal Affairs is provided with broad powers under Section 47 of the *Planning Act*. The Act gives the Minister of Municipal Affairs the authority to zone any property in the Province to protect public interests. A Minister's Zoning Order (MZO) can allow for new development to proceed but it may also restrict certain types of development. Zoning orders are common in areas without municipal organization and are rarely used where municipalities have existing zoning by-laws. When they have been used in municipalities with existing zoning by-laws they have often been used to prevent development in sensitive areas or to permitting development in areas where the

development may have been unpopular but the development's construction served a greater economic interest to the Province.

A MZO is an important planning tool used protect matters of provincial interest and matters of broader public importance. Staff support the Province's proposal to limit appeals of requests to amend a MZO.

Recommendation 7. City Council express support for the Province's proposal to give the Minister, and not the OMB, the authority to make the final decision on requests to amend zoning provisions, put in place through a Minister's Zoning Order.

Bring transit to more people

Modern transit systems attract new investment and jobs, connect people to home and work, fight traffic congestion, air pollution and climate change, and help to strengthen communities. Accordingly, to bring transit to more people and help ensure that there are sufficient densities to support transit investments the government is considering the following proposed amendment:

- *restricting appeals of municipal official plans, amendments to these plans, and zoning by-laws, for development that supports provincially funded transit infrastructure such as subways and bus stations.*

While the City supports the vision of being able to bring transit to more people, the concept of restricting appeals must be considered in conjunction with the recently released proposed Growth Plan for the Greater Golden Horseshoe policies associated with achieving transit goals. Comments on these policies have been included in the City Planning Division's Report on the Coordinated Provincial Plan Review (<http://www.toronto.ca/legdocs/mmis/2016/pg/bgrd/backgroundfile-96968.pdf>).

Based upon the revised definitions and policies, new targets regarding major transit station areas have been established. The proposed policies establish specific minimum density targets for major transit station areas, as delineated by municipalities, which are scaled to reflect the type of transit. Policy 2.2.4.5 of the proposed Growth Plan provides that major transit station areas will be planned to achieve, by 2041 or earlier, a minimum gross density target of: 200 residents and jobs combined per hectare for those that are served by subways; 160 residents and jobs combined per hectare for those that are served by light rail transit or bus rapid transit; or 150 residents and jobs combined per hectare for those that are served by express rail service on the GO Transit network.

The application of blanket density targets solely based on the type of transit infrastructure raises questions in the context of a mature urban area and does not take into consideration that certain areas may not be appropriate for intensification, despite its location to a subway station (e.g. Rosedale Station). There should be a provision in Policy 2.2.4.5 of the Growth Plan that states that these targets need to be considered in relation to the underlying land use designations within official plans. Municipalities should be permitted to identify which major transit stations, have or will be planned for higher densities.

Based upon the interpretation of the definitions provided above and the new direction set by the Province, City staff have concerns about the changes to the intensification and density targets as the density target would be applicable to all existing or future stations.

With respect to the Province's consideration of restricting appeals of municipal official plans, amendments to these plans, and zoning by-laws, for development that supports provincially funded transit infrastructure such as subways and bus stations, staff are generally supportive of the proposed limitation on appeals provided that the Province consults with municipalities. It is important to ensure that the proposed growth targets for major transit stations are acceptable to the municipality and that opportunities exist to recognize that each existing station has its own unique characteristics and historical context. The growth targets should be reflective of municipal planning exercises.

Recommendation 8. City Council support for the Province's proposal to restrict appeals of official plan policies that support provincially funded transit infrastructure provided that the wording of Policy 2.2.4. in the proposed Provincial Growth Plan for the Greater Golden Horseshoe is amended to allow municipalities to identify which major transit station areas will be planned at higher densities.

Give communities a stronger voice

The Province recognizes that the land use planning process provides communities with an important opportunity to share their future. In order to give communities a stronger voice, the Province is exploring whether to make the following changes to the land use planning and appeal system so that more land use decisions can be made locally, such as:

- no appeal of a municipality's refusal to amend a new secondary plan for two years - which recognizes the extensive work and involvement of a community in developing a plan, and would provide certainty and stability for neighbourhoods;
- no appeal of a municipal interim control by-law - which would give municipalities the time to do the comprehensive studies that are required to appropriately plan for a neighbourhood, particularly where neighbourhoods are experiencing rapid change or are in transition;
- expanding the authority of local appeal bodies to include appeals related to site plans. This would allow local appeal bodies to hear disputes on individual properties relating to, for example, landscaping, driveways or lighting;
- further clarifying that the OMB's authority is limited to dealing with matters that are part of the municipal council's decision, meaning the Board will only be able to deal with the same parts of an official plan as those dealt with by a council; and
- requiring the OMB to send significant new information that arises in a hearing back to the municipal council for re-evaluation of the original decision. This would ensure the OMB has the benefit of council's perspective on all significant information.

Proposed Provincial Amendment: No appeal of a municipality's refusal to amend a new secondary plan for two years. This recognizes the extensive work and involvement of a community in developing a plan, and would provide certainty and stability for neighbourhoods.

City Comment:

Official plan amendments (OPAs) that establish a detailed area based land use and built form context to guide development/redevelopment policies (e.g. Secondary Plans, Precinct Plans) are prepared after extensive public engagement and input and build upon numerous detailed studies. The approval process focuses public input at the front-end of the process and any party that has participated in the planning process can appeal the amendment to the OMB. However, once these OPAs and their implementing zoning by-laws (if approved concurrently with the OPA) are adopted, they should be allowed sufficient time to be implemented and guide development without the ability for individuals to amend these documents shortly after they have taken effect.

Removing appeals for privately initiated amendments to newly approved comprehensive thematic official plan amendments and new secondary plans for a period of two years would provide an opportunity to implement and evaluate the approved official plan policies and secondary plans. It is recognized that while some municipally initiated official plans are accompanied by comprehensive implementing zoning by-laws, others are not. Removing the right to not only appeal refusals but also non-decisions of Council of privately initiated official plan amendments, secondary plans and zoning by-laws amendments that have been adopted concurrently (be it by Council or the OMB) with the municipally initiated official plan amendment, should also be considered.

In order to provide sufficient time for the community framework and vision to establish itself, both the refusals of zoning by-law amendments and non-decisions of development applications should be non-appealable. While an official plan sets the municipality's general policies for future land use, it is the zoning by-laws which implement the plan. New development that doesn't comply with the new implementing zoning by-law should not be allowed while the official plan policies are taking root. Further, while Council makes every effort to reach a decision, when complex development applications are being considered, there may not be sufficient time to reach a decision within the legislated time-lines. Allowing appeals of these non-decisions may result in developments being approved by the OMB which could cumulatively destabilize the vision of the newly approved underlying official plan policies.

Recommendation 9. City Council express support for the Province's proposal to amend the *Planning Act* to not permit privately initiated appeals of a municipality's refusal to amend new secondary plans for two years.

Recommendation 10. City Council request the Minister of Municipal Affairs to amend the *Planning Act* to not allow privately initiated amendments to newly approved official plan policies stemming from comprehensive municipal reviews of existing official plans and secondary plan amendments, along with concurrent implementing zoning by-laws, for a two-year period.

Proposed Provincial Amendment: No appeal of a municipal interim control by-law. This would give municipalities the time to do the comprehensive studies that are required to appropriately plan for a neighbourhood, particularly where neighbourhoods are experiencing rapid change or are in transition.

City Comment:

Interim control by-laws permit a municipality to prohibit the use of land, buildings or structures for such purposes as set out in the by-law, temporarily suspending all but specified land uses pending a planning study of the matters given rise to concern for up to a year (with the right to extend the by-law for a further year). In order to enact an interim control by-law, a municipality must direct that a review or study be undertaken in respect of land use policies in the municipality (or a defined part of the municipality).

These by-laws are usually enacted in response to an urgent planning matter that requires a planning study. As an interim control by-law can result in the suspension of the rights of property owners that might otherwise be permitted, they are often challenged at the OMB. The potential of having an OMB hearing can adversely affect a municipality's ability to undertake the comprehensive studies that are required by redirecting resources to preparing for an OMB hearing.

The undue delays while a hearing is being scheduled, adjudicated and a decision issued could permit applications to proceed in the area that is in need of study, changing its character and enforcing a pattern of development that the interim control by-law was trying to control in the first place. Accordingly staff is supportive of removing appeal rights for municipal interim control by-laws.

Recommendation 11. City Council express support for the Province's proposal to not permit appeals for a municipal interim control by-law.

Proposed Provincial Amendment: Expand the authority of local appeal bodies to include appeals related to site plans. This would allow them to hear disputes on individual properties relating to, for example, landscaping, driveways or lighting.

City Comment:

Section 115 of *City of Toronto Act, 2006* enables the City to constitute by by-law, one local appeal body for certain local land use planning matters, such as minor variance applications and consents.

As the provincial proposal is currently worded it is not clear if the expanded authority would relate solely to site plans that are associated with minor variances and consents or if the amendment would allow municipalities to have a local appeal body that hears all site plan appeals whether or not they are associated with a minor variance.

On the assumption that the intent is being directed only at those site plans that are concurrently associated with minor variances and consents, staff recommend that this would not put undue hardship on the City's proposed Toronto Local Appeal Body as research has shown that these types of combined site plan and minor variance/consent files constitute a very small portion of "appealed" planning application types.

Recommendation 12. City Council express its support for the Minister of Municipal Affairs and the Attorney General's proposal to expand the authority of local appeal bodies adjudicating appeals of minor variances and consents to include any associated appeals relating to site plan applications.

Proposed Provincial Amendment: Further clarify that the OMB's authority is limited to dealing with matters that are part of the municipal council's decision, meaning the Board is only able to deal with the same parts of an official plan as those dealt with by council.

City Comment:

Under the *Planning Act*, Council's role is to make local planning decisions based on the evidence and information before it and the specific official plan policies under consideration. The *Planning Act* also requires that municipal councils provide the public as much information as possible when preparing its official plans and when considering official plan amendments. Before it adopts a plan or amendment, council must hold at least one public meeting where the public can formally give their opinion based on the complete range of information and analysis of specific parts of the official plan that is available to the council and the public.

By permitting an appeal to deal with different matters which were not part of the municipal council's decision, the OMB is removing decision making from local decision makers. In essence it is allowing for the substitution of unconsidered matters to become central to the appeal. The place for an inclusive review of all relevant official plan policies rests with council and who should be able to comment on the policies being considered.

Recommendation 13. City Council express its support for the Province's proposal to further clarify, through legislation and OMB Practice Procedures, that the OMB's authority is limited to dealing only with matters that are part of the municipal council's decision.

Proposed Provincial Amendment: Require the OMB to send significant new information that arises in a hearing back to the municipal council for re-evaluation of the original decision. This would ensure the OMB has the benefit of council's perspective on all significant information.

City Comment:

The *Planning Act* contains language to ensure that information and material needed to assess planning applications is provided up-front. In 2006 the *Planning Act* was amended to provide that if new information was presented at a hearing which was not provided to the municipality before council made its decision, the OMB "on its own initiative or on a motion by the municipality or any other party, consider whether the information and material could have materially affected council's decision, and if the Board determines that it could have done so" the material would not be admitted into evidence until council had been given an opportunity to "reconsider its decision in light of the new information and material and make a written recommendation to the Board." Despite these changes, the OMB continues to have final authority to make a determination as to whether any new evidence presented at the hearing could have materially affected Council's decision.

The proposed amendment identified by the Province would, if enacted, require the OMB to send significant new information that arises in a hearing back to the municipal council for re-evaluation of the original decision. While the City is generally supportive of this

proposed direction, staff are concerned that the use of the term “significant new information” needs to be clarified to remove ambiguity as to its interpretation.

If the OMB’s authority to make the determination to admit new evidence was limited to only such occasions where written direction is provided by a council or the Ministry, more predictability, transparency and accountability would be introduced into the planning/appeal process and result in reduced costs. It also supports the notion of greater municipal stewardship and leadership in resolving issues and making local land use planning decisions that reflect “good planning”.

Recommendation 14. City Council request the Province to make it mandatory for the OMB to send significant new information that arises in an OMB hearing back to the municipal council for re-evaluation of the original decision if a municipality brings a motion advising that the new information and material could have materially affected council's decision.

"De novo" hearings

The Province is looking for input on a possible change that would give more weight to municipal and provincial decisions by moving the OMB away from "de novo" hearings. The term "de novo" has been used to describe how the OMB deals with appeals of municipal land use planning decisions, by considering the same issue that was before the municipality as though no previous decision had been made.

Staff are of the opinion that municipally adopted and approved Official Plan policies and implementing by-laws should not be treated lightly where they set comprehensive and strategically determined municipal planning and city building direction. Municipal councils have the benefit of ongoing engagement with the communities they represent, and extensive knowledge of local issues, opinions and needs on which to base their decisions.

The decisions of municipal councils once approved, regarding the implementation of provincial policies and plans, should be recognized and given the appropriate weight they deserve. In 2006, amendments to the *Planning Act* recognized the municipality's role in local planning decisions by introducing language to ensure approval authorities and the OMB had regard for municipal decisions. However, it is staff's opinion that the current *Planning Act* standard of “shall have regard to” has not, in practice, been applied rigorously by the OMB.

The Province has also heard from stakeholders that there should be a shift away from de novo hearings altogether. If this were to occur, it would mean that the OMB would focus on the validity of the decision under appeal instead of seeking the “best” decision. The decision of the approval authority (i.e., the municipality or the province) would be central to the appeal in a way that it currently is not. The Province suggests that the shift from "de novo" hearings might be achieved in a number of ways, including:

- requiring the OMB to review municipal/approval authority decisions on a standard of reasonableness. That means OMB hearings would examine whether the original decision was within a range of defensible outcomes within the authority of the

- municipality/approval authority. If the decision is found to have been made within that range of outcomes, the OMB would not be able to overturn it; and
- authorizing the OMB to overturn a decision made by a municipality/approval authority only if that decision does not follow local or provincial policies.

This would mean that the OMB would have to be convinced that the planning decision under appeal is contrary to local or provincial policies. Examples might include approvals of proposals for development in a flood prone area or a provincially significant wetland, or an official plan that does not meet the Growth Plan for the Greater Golden Horseshoe intensification targets.

In the context of looking at "de novo" hearings the Public Consultation Document asks for input on the following questions:

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

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

Council has previously recommended that the legislation governing the planning process and appeals to the Ontario Municipal Board be amended to reflect the primacy of municipal decision-making on planning matters, subject to consistency with declared Provincial interests, and more particularly that a full OMB hearing "de novo" on an appeal of a planning application should not be automatic and should only be scheduled if the Board first finds that a municipality has acted unreasonably, or in a manner not consistent with the Provincial Policy Statement (PPS) or Provincial Plans.

The City spends considerable time evaluating the merits of a development application. Area residents provide invaluable local input in shaping Council's decision and, in the end, the entire process could be repeated "de novo" or all over again before the OMB. The OMB is not called upon to determine whether the decision of the local government decision maker was fair or reasonable or correct, instead the OMB considers the land-use planning impacts of the proposal anew regardless of the analysis and debate conducted at the local level.

Staff recommend that the OMB should focus on the validity of a council or approval authority decision. This approach to OMB oversight should focus on both a reasonableness standard and a review of whether a decision has followed local and provincial policies.

Instead of the OMB substituting its own decision in the place of a municipality or approval authority, de novo hearings would only be permitted if the decision of council cannot be supported by any reasons that can stand up to an examination of the facts.

The second standard for review would be based on a determination that a decision made by a municipality/approval authority does not follow local or provincial policies. The *Planning Act* establishes the Province's role in a policy-led planning system in which it has the authority to issue policy statements municipalities must:

- be consistent with;
- prepare provincial plans municipalities must conform with;
- function as the approval authority for upper-tier and single-tier municipalities; and,
- direct a municipality to revise, “without undue delay”, all or part of an official plan updated as part of a municipal comprehensive review and conformity exercise.

Where a municipality has followed local and provincial policies, the OMB should not be able to overturn local decision makers. A review would only be permitted if the OMB can be convinced by a preponderance of evidence that the planning decision under appeal is contrary to local or provincial policies. To ensure that this review is not abused, changes would have to be made to the legislation to require that appellants provide a more robust notice of appeal which contains detailed grounds and substantive arguments identifying which local or provincial policies are not being complied with in the Council's decision.

Recommendation 15. City Council request the Province to amend the legislation and regulations governing the planning approval and appeals process to reflect the primacy of municipal decision-making on planning matters.

Recommendation 16. City Council advise the Province of its concern that a full OMB hearing on an appeal of a planning application should not be automatic and should only be scheduled if the OMB first finds that a municipality has acted unreasonably or in a manner not consistent with the Provincial Policy Statement (PPS) or not in conformity with Provincial Plans.

Recommendation 17. City Council advise the Province that it should consider using legislation to limit appeal matters and impose directions for changes to the OMB's rules of Practice Procedure to effectively limit the scope of OMB hearings without focusing discussion on the term "de novo" hearing.

Theme 2: Citizen Participation and Local Perspective

In the Public Consultation Document the Province indicates that it has heard that:

- it is difficult for individuals to effectively participate in OMB hearings;
- the cost to participate in a hearing is high, which can discourage participation;
- a person or community group may not have the same access to subject matter experts that is available to municipalities and developers;
- OMB procedures need to be more citizen-friendly; and
- there is a perceived lack of information about how a layperson can take part in an appeal and what to expect at a hearing.

The Province indicates that it wants to ensure that individuals and parties without legal representation are able to get and stay involved in local land use planning, including appeals. To support this, the Province is considering increasing public education opportunities to provide clear information on OMB practices and procedures, including creating a new user-friendly website.

In the context of looking at options for the average citizen to participate in a meaningful way and to ensure that local perspectives are well represented when decisions are made, the Province is looking for input on the following questions:

Are there funding tools the Province could explore to enable citizens to retain their own planning experts and lawyers?

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

The cost of participating in an OMB hearing, including fees to obtain information to support substantive arguments, and hiring relevant experts or consultants, can be substantial. To offset these costs the Province could explore participant or intervenor funding programs to facilitate the participation of the public in hearings.

Intervenor funding could provide funding in advance of a hearing for those who could not otherwise afford to participate. To be eligible for funding, the applicant would need to be a party to the adjudicative proceedings and show that they meet certain conditions of eligibility.

Recommendation 18: City Council express support for the Province's proposals to expand and re-configure the Citizen Liaison Office (CLO) and to explore funding tools, including intervenor funding, to assist citizens to retain planning experts and lawyers, at no cost to the municipality.

Theme 3: Clear and Predictable Decision-Making

In the Public Consultation Document the Province indicates that it has heard that:

- making good decisions requires both good decision-makers and clear and predictable decision-making processes;
- there is a need for OMB members to be well qualified, possess specific skills and accreditation, and receive appropriate training to do their job well; and
- there is a need for clearer rationale, more plain language in decisions, and for complex hearings to be heard by multi-member panels.

In response, the Province is considering:

- increasing the number of OMB adjudicators and ensuring they possess the necessary skills through further training on decision writing, active adjudication, and dealing with parties that have no legal representation; and
- whether to reintroduce multi-member panels with panel members representing a broad range of skills and backgrounds to ensure clear and predictable decision-making at the OMB.

Proposed Provincial Amendment: the government is considering having multi-member panels only conduct complex hearings, and/or having multi-member panels conduct all hearings.

City Comment:

OMB hearings are generally conducted by one member who hears the case and writes the decision. Although the draft decision is reviewed by senior board members for clarity of reasoning and expression, the decision is still based on the judgement of one member with their own particular skill sets and reasoning. If the Province proceeds with multi-member panels it is suggested that the panel be composed of three members with varying backgrounds: one with a background in planning law (generally a solicitor); one with a background in planning (registered professional planner) and the member with mediation, dispute resolution and analytical skills to resolve complex matters involving multiple interests.

The advantages of having the OMB composed in this manner would be to obtain the benefits of collective decision deliberations and enhance the legitimacy and authority of the OMB's decisions. By adopting this approach, the OMB would function as a true appellate body where decisions would be based not on a single opinion, but rather on a majority decision. This approach could also result in dissenting options which could be used for future cases which have similar fact circumstances.

Recommendation 19. City Council support the Province's proposal that the OMB reintroduce multi-member panels with panel members representing a broad range of skills and backgrounds.

In the context of looking at options to achieve clear and predictable decision-making, the Province is looking for input on the following questions:

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

Consistent decisions do not necessarily translate to better decisions. Consistency of decision-making is not a matter of hearing panel size, but rather an adherence to the use of commonly shared principles on the part of all OMB panel members who have been informed by ongoing training, experience in adjudication and the strategic use of and updates to the OMB's Practice Procedures. What is also important to ensure is that consistent principled rules are applied to decisions so that similar facts yield similar and predictable legal outcomes but are still able to generate decision outcomes based on "good planning" and local context. Staff, however, are of the opinion that better informed decisions would be generated more consistently if the OMB established a panel who would also develop the specific knowledge and expertise to deal exclusively with Toronto's land-use planning application appeals.

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?

A review of the job description and qualifications for OMB members was conducted by City staff. It was the finding of staff that the qualifications in the job description are too high level and don't reflect the more specific skill sets that would be required. One remedy could be that job descriptions for OMB members would be distinguished from the Environment and Land Tribunals Ontario (ELTO) member position description. If

the OMB job description and qualifications are separately articulated there could be a greater emphasis placed on:

- experience in land use-planning;
- knowledge of provincial planning policies and interests, the PPS, the Provincial Plans;
- an understanding of municipal practices and development approval processes, procedures and policies;
- the ability to take into consideration local municipal city-building priorities and challenges and local context in decision making; and
- knowledge of planning law.

Board members should also be paid commensurate with their job functions and responsibilities and given longer terms so that qualified and experienced persons are attracted to being appointed as members.

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

Staff recommend that short hearings on consents and minor variances do not require a multi-member panel.

Theme 4: Modern Procedures and Faster Decisions

The OMB has rules of practice and procedure that set out how it deals with land use planning appeals. The Province has indicated that they have heard that these rules need to be updated and the procedures streamlined to make the system more accessible and to encourage timely decisions.

Comments identified in the provincial Public Consultation Document include the need for faster screening and scheduling of appeals, and more flexibility in how evidence can be presented. The public feels that the hearing process is too long and that the process is not simple, predictable or transparent. As previously mentioned in this report, there is the view that hearings are too adversarial and court-like. In response, the Province has indicated that it would consider allowing the OMB to adopt less complex and more accessible tribunal procedures and more active adjudication. Active adjudication refers to an approach to hearings in which adjudicators play a more active role to simplify and expedite the hearing process, question witnesses, and in some cases to address inequalities between parties.)

The Province is also considering other ways to modernize procedures and promote faster decisions. Options include:

- setting appropriate timelines for decisions;
- increasing flexibility for how evidence can be heard;
- conducting more hearings in writing in appropriate cases;
- establishing clear rules for issues lists to ensure that hearings are focused and conducted in the most cost-effective and efficient way possible; and
- introducing maximum days allowed for hearings.

In the context of looking at options to help to modernize the OMB and achieve faster decisions, the Province is looking for input on the following questions:

Are the timelines for scheduling hearings and issuing decisions appropriate, given the nature of appeals to the OMB? What would be appropriate timelines?

The OMB has publicly posted business plans with timelines for scheduling hearings and issuing decisions. Their performance measures include:

- OMB decisions issued within 60 days of the end of a hearing;
- OMB minor variance cases (stand-alone) scheduled for a first hearing within 120 days of the receipt of a complete appeals package; and
- Other OMB cases scheduled for a first hearing within 180 days of the receipt of a complete appeals package.

According to the Environmental & Land Tribunals Ontario's (ELTO) most recent Annual Report, the targets have increasingly not been met in recent years. City staff are of the opinion that the timeframes are a function of the number of matters that go to the Board; if fewer items were appealable and if resources were increased, the timeframes would be improved as there would be sufficient members to deal with fewer appeals. Staff are also of the opinion that there should be less of a gap between when an oral decision is given and when a written decision is handed down. Although the OMB reports that in 2012-2013, 82% of decisions were issued within 60 days of the hearing, City staff advise that one of the delays associated with bringing appealed planning documents into force is the long wait for written decisions to be issued after hearings have ended. No data is available as to the whether the decisions rendered within 60 days pertain to complex matters.

It has been the experience of City staff that site specific development applications are heard in a shorter timeframe, whereas comprehensive municipal documents, which set the foundational groundwork for the how the City can and should grow, can take years to be heard. This results in a patchwork of approvals that has the cumulative effect of destabilizing key new policies that are waiting to be heard and decided upon. According to the ELTO's most recent Annual Report, 17% of cases were not scheduled for a first hearing within 180 days of the receipt of a complete appeals package resulting in important policy initiatives sitting with the Board with no pre-hearing conference, settlement meeting, mediation event or hearing scheduled for 6 months or more. For example, the City's Comprehensive Zoning By-law (By-law 569-2013), enacted in May 2013, and the subject of a number of appeals, did not have its first prehearing scheduled until March 2015. The appeal continues to this day with the first full hearing scheduled in May of 2017. In another example, the City's Development Permit System's Official Plan policies (OPA 258) was adopted by Council on July 8, 2014, with the first hearing date being scheduled for August 2016.

Lastly, staff recommend that the measures identified by the Province to help modernize OMB hearing procedures and practices, allowing the OMB to adopt less complex and more accessible tribunal procedures and establishing clear rules for issues lists would have the greatest impact towards encouraging timely processes and decisions and

would help ensure that hearings are focused and conducted in the most cost-effective and efficient way possible.

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

It is staffs understanding that a written hearing occurs when parties do not appear before an adjudicator in person; instead, the appellants send a package of material to the adjudicator, including relevant documents and a “legal argument” that explains why the adjudicator should decide in their favour. It occurs where the parties make submissions in writing only, and have no opportunity to make oral submissions.

A written hearing is most appropriate if the case cannot be resolved at an early stage by mediation, or a settlement conference. Further, a written hearing is a good alternative to in-person hearings if the issue under appeal is not complex; the facts are generally not in dispute; there are no issues of credibility that need to be determined; and oral testimony would not add to the information already in the case materials.

The recommendations below seek to address matters related to both improving the efficiency and quality of dispute resolution processes at the OMB and to the scheduling and prioritization of hearings as follows:

Recommendation 20. City Council recommends that the Province consider re-examining existing OMB member recruitment practices and modernize OMB practices to improve the efficiency and quality of dispute resolution processes at the OMB and the scheduling of hearings.

Recommendation 21. City Council request the Province to prioritize the scheduling of OMB cases related to the adoption of planning policy documents such as official plans, municipally initiated comprehensive official plan amendments and comprehensive zoning by-laws.

Theme 5: Alternative Dispute Resolution and Fewer Hearings

In the Public Consultation Document the Province indicates that it has heard that:

- most people would choose to avoid a formal appeal process, whenever possible;
- there is considerable interest in pursuing alternative ways to work out mutually acceptable solutions to land-use planning issues;
- mediation should be promoted;
- more OMB members should be able to mediate appeals and more staff should be hired to facilitate mediation processes; and
- mediation should be required to level the playing field for all involved.

The Province has indicated that it wants to encourage more land use disputes to be resolved using alternative dispute resolution, which would not only help make the OMB experience more positive experience for many people, but also lead to fewer and/or possibly shorter OMB hearings as follows:

- more actively promote mediation;

- require all appeals to be considered by a mediator before scheduling a hearing;
- allow government mediators to be available at all times during an application process, including before an application arrives at municipal council, to help reduce the number of appeals that go to the OMB;
- strengthen the case management at the OMB to better stream, scope issues in dispute, and identify areas that can be resolved at pre-hearing and to further support OMB members during hearings; and
- create timelines and targets for scheduling cases, including mediation.

Proposed Provincial Amendment: More actively promoting mediation.

City Comment:

Staff are supportive of the concept that the OMB more actively promote mediation. In the City's experience mediation is a dynamic process where parties are actively engaged to find a solution/resolution to the issues being disputed. Combined with the fact that mediation is conducted on a "without prejudice" basis enables an open dialogue with the parties actively engaged in finding common ground.

Compared to formal proceedings before an administrative tribunal such as the OMB, mediation offers several advantages:

- disputes handled through mediation often reach agreement with less expense and in less time. The cost is often less than the cost of preparing for and conducting a formal appeal, or a prolonged political or legal fight;
- mediation may yield better solutions because parties participate in deciding the outcome. All parties have opportunities to generate options and alternatives that can maximize the benefits for all parties. And because the parties are responsible for the outcome, they are more likely to reach an agreement that is practical and realistic - an outcome that they can and will live up to;
- mediation can improve relationships. Litigated disputes can cause communication to break down or relationships to become strained. Mediation can bridge these barriers and establish the groundwork for an improved (or at least neutral) working relationship;
- in mediation the freedom to choose and decide is retained. No one is forced to make an agreement;
- the discussions during a mediation session are usually confidential. A mediator will only release information about the mediation if all parties agree to its release; and
- it can shorten a formal hearing. Sometimes mediation cannot settle everything, but it can resolve or narrow some of the issues in dispute, paving the way for a speedier or less costly appeal hearing. Even if not everything is resolved, the mediation can still be a good investment of time and effort.

Recommendation 22. City Council support the Province's proposal to more actively promote mediation as a means to scope and resolve planning issues under appeal.

Proposed Provincial Amendment: requiring all appeals to be considered by a mediator before scheduling a hearing.

City Comment:

Staff are supportive of the concept that would require all appeals to be considered by a mediator before scheduling an OMB hearing. The many advantages to mediation would more than compensate for the fact that this requirement would add an additional step in the appeal process. Although the consideration by a mediator might not find that every case has the attributes that would merit mediation or that mediation does not always result in a settlement agreement, mediation is relatively inexpensive compared to going to a full appeal, and relatively simple since there are no complex procedural or evidentiary rules which must be followed.

However, staff advise that for this provincial proposal to be effective the opportunity to schedule mediation should be swift, and this would entail the OMB having to hire additional experienced mediators to be able to schedule sessions in a timely manner that could take place across the Province in a variety of locations.

Proposed Provincial Amendment: allow government mediators to be available at all times during an application process, including before an application arrives at municipal council, to help reduce the number of appeals that go to the OMB;

City Comment:

It is unclear to staff how this proposal would be put into practice as currently identified. In theory the proposal would require that government mediators be made able to intervene and facilitate negotiations on applications as they are being processed. Who would be able to ask for a mediator to become involved needs to be addressed?

Staff recommend that government mediators be utilized to resolve disputes during the municipal planning approval process only where there is no cost to the municipality and where the municipality, through a council motion, requests assistance from provincially appointed mediators.

Recommendation 23. City Council advise the Province that it supports the use of government mediators to resolve disputes during the municipal planning approval process where there is no cost to the municipality and where the municipality, through a council motion, requests assistance from provincially appointed mediators.

If the event the Province wants to make mediators available to municipalities they should do so under the auspices of the changes introduced under Bill 73. Bill 73 amendments to the *Planning Act* introduced voluntary mediation into the planning approval process by allowing Council to require a 60-day period for alternative dispute resolution after an appeal has been made. This option is available in regard to decisions to adopt official plans, refusal to adopt official plan amendments, and decisions to approve or refuse applications to amend zoning by-laws. All appellants are given notice of council's decision to engage mediation but only those appellants council considers appropriate are invited to participate.

Recommendation 24. City Council advise the Province that it supports the use of government mediators at no cost to the municipality, during the 60 day time-out period that a council may initiate alternative dispute resolution, prior to matters being appealed to the OMB, introduced through Bill 73.

Recommendation 25. City Council request the Minister of Municipal Affairs to further amend the *Planning Act* to extend the period required for Alternative Dispute Resolution after an appeal has been made and the municipal council has given notice of its intention to use ADR, from 60 to 90 days, to further encourage opportunities for mediation.

Recommendation 26. City Council support the Province's proposals requiring all appeals to be considered by an OMB appointed mediator before scheduling a hearing.

Proposed Provincial Amendment: strengthen the case management at the OMB to better stream, scope issues in dispute, and identify areas that can be resolved at pre-hearing and to further support OMB members during hearings; and create timelines and targets for scheduling cases, including mediation.

City Comment:

City staff believe that OMB staff should play a greater role in mediation, pre-screening applications and in not scheduling cases that are out of the OMB's scope.

Recommendation 27. City Council supports the Province's proposal to strengthen case management at the OMB to better stream and scope issues in dispute, identify areas that can be resolved at pre-hearings and support OMB members during hearings.

Finally the Province has asked for input on the following General Question:

- *Do you have 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?*

Notwithstanding all the previous recommendations presented in this report there is an additional recommendation that staff believe will improve the effectiveness of the OMB.

Achieving Greater Co-Operation and Public Involvement by Extending the Timeframes for Planning Application Reviews

Greater public involvement and co-operation can be achieved if a municipality is afforded adequate time to review and decide on an application. Cities such as Toronto are experiencing tremendous growth pressures. The City receives numerous complex applications for intensification and growth for which a wide range of matters must be evaluated as part of the City's complete application and development application approval process. Often even when the applicant has submitted all the necessary information, the time required by the City to review, comment upon, request updates and effectively consult with the public cannot be completed within the legislated timeframes. Good planning, local autonomy, front-end consultation and collaboration with applicants and the public, is compromised if an appeal, based simply on timelines, takes the matter out of the hands of local council. This is the reason why during previous land use planning reviews initiated by the Province, the City requested that legislated timeframes be extended further than those timeframes ultimately approved by Provincial legislation.

<http://www.toronto.ca/legdocs/2002/minutes/committees/plt/plt020429.pdf>

While it may be argued that extending timeframes simply encourages delays and deferrals in decision-making, the City has also heard from the public that longer timeframes gives them the necessary time to adequately consider applications and productively participate in the municipal review process. There is undoubtedly a need to balance opportunities for proper municipal review of planning applications with the rights of the development industry and the economic impacts of longer timeframes. When a matter becomes subject to the OMB's scheduling and agenda, decisions can take longer, costs can increase and the public may feel excluded.

Recommendation 28. City Council recommend that the Minister of Municipal Affairs extend application processing timeframes in the *Planning Act* before “failure to proceed” appeals can be made for applications, in order to provide for more opportunities for mediation and reduce the potential number of “failure to proceed” based appeals, as follows:

- a. official plan amendments be increased from 180 days to 240 days;
- b. zoning by-law amendments be increased from 120 days to 180 days; and
- c. zoning by-law amendments that run concurrently with an official plan amendment be increased from 180 days to 240 days.

CONCLUSION

On October 5, 2016, the Province of Ontario released a Public Consultation Document in support of OMB review. The consultation paper is arranged around changing the OMB along five themes: OMB jurisdiction and powers; citizen participation and local perspective; clear and predictable decision-making; modern procedures and faster decisions and alternative dispute resolution and fewer hearings. If adopted, the changes will:

- allow for more meaningful and affordable public participation;
- give more weight to local and provincial decisions and support alternative ways to settle disputes;
- bring fewer municipal and provincial decisions to the OMB; and
- support clearer and more predictable decision-making.

The current review affords the City a further opportunity to revisit matters that were not addressed in the last round of *Planning Act* and *City of Toronto Act* reforms and to also comment on the proposed recommended changes to the OMB identified in the provincial Public Consultation Document.

This report summarizes staff comments and recommendations in response to specific proposed changes by the Province in the Consultation document. Further to the parameters set by this latest provincial review of Ontario's land use planning and appeal system, 30 recommendations are proposed for Council's consideration.

City Council's adopted recommendations will be due back to the Province for its December 19, 2016 commenting deadline and will form the basis for further discussions with provincial staff around the City's position with regard to the review and reform of the OMB.

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