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TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	ONTARIO MUNICIPAL BOARD (OMB) REVIEW, 2016 MEETING ON NOVEMBER 28, 2016

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning & City Planner, the following actions be taken:

- i) This report **BE RECEIVED** for information; and
- ii) This report **BE FORWARDED** to the Ministry of Municipal Affairs and the Ministry of the Attorney General as City comments in response to the 2016 Ontario Municipal Board Review and the potential changes under consideration by the Province through the October 2016 'Public Consultation Guide'.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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August 22, 2016 Planning and Environment Committee, "Ontario Municipal Board Review."

BACKGROUND

The Ontario Ministry of Municipal Affairs and the Ministry of the Attorney General are currently undertaking a review of the scope and effectiveness of the Ontario Municipal Board (OMB) for the purposes of developing recommendations to improve how the OMB operates within the broader land use planning system.

An initial City response to the review was submitted to the August 22, 2016 meeting of the Planning and Environment Committee and was forwarded to the Province following the August 30, 2016 direction of Council. This initial City response regarding the scope and effectiveness of the OMB identified the following areas of concern:

- i) the scope of matters that can be appealed to the Ontario Municipal Board is too broad;
- ii) the Ontario Municipal Board does not place sufficient weight on Municipal Council's decisions (arrived at by Council as an elected body and with substantial public consultation);
- iii) an emphasis on alternative dispute resolution that includes limited public consultation, following Municipal Council's decision, has the potential to undermine the province's rigorous requirements for public participation throughout the planning process prior to appeal and, thus, weaken meaningful public participation in establishing a final local planning decision; and,
- iv) the Ontario Municipal Board should be more accountable for implementing existing legislation in its hearings and practices relating to such matters as not allowing for

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new information to be introduced at Ontario Municipal Board hearings that was not clearly in front of the public and the Council at the time of Municipal Council's decision;

It was also identified in the staff report to Planning and Environment Committee that further City comments regarding the OMB review would be submitted to the Ministry of Municipal Affairs and the Attorney General upon the release of a Provincial consultation guide on the subject.

In October 2016, the "Review of the Ontario Municipal Board: Public Consultation Guide" was released by the Province. To seek public and municipal comments, a series of town hall meetings were also hosted by the Province, including one in London on October 27, 2016. The Province is seeking municipal and public feedback on the potential OMB reforms through the Environmental Bill of Rights Registry (EBR) by December 19, 2016.

The remainder of this report is an overview of the OMB Review 'Public Consultation Guide', including the range of possible changes to the OMB that are being considered and a series of proposed City responses to the questions and possible changes being considered.

REVIEW OF THE ONTARIO MUNICIPAL BOARD: PUBLIC CONSULTATION GUIDE

In October 2016, the Ministry of Municipal Affairs and the office of the Attorney General released the "Review of the Ontario Municipal Board: Public Consultation Guide" to solicit public response to a series of possible changes being considered to enhance the scope and effectiveness of the OMB. The Province identified that changes are intended to accomplish the following:

- Allow for more meaningful and less costly resident participation;
- Give more weight to local decisions and allowing alternative ways to settle disputes;
- Bring fewer municipal and provincial decisions to the OMB; and
- Support clearer and more predictable decision-making.

The Public Consultation Guide further notes that the comments received to date through this 2016 OMB review, which would include the City's August 22, 2016 Report to Planning and Environment Committee, have thus far identified the follow issues with the OMB pertaining to its scope and effectiveness:

- Citizens feel they do not have a meaningful voice in the process;
- More weight should be given to municipal decisions;
- OMB decisions are unpredictable;
- Hearings cost too much and take too long; and
- There are too many hearings; more mediation should be used.

The consultation guide identifies five (5) key themes for the review and under each identifies possible changes to the OMB that are being considered. To elicit feedback on the proposed changes, a series of discussion questions have been posed. The review themes, questions posed, and proposed City responses follow.

Theme 1: OMB's Jurisdiction and Powers

The Public Consultation Guide notes that there are frequent public and municipal concerns with the OMB's jurisdiction and powers. The Province identifies that some stakeholders have called for the OMB's jurisdiction be limited to hearings on matters of Provincial interest. Others identified that the OMB deals with too many local issues and does not give sufficient weight to the decisions of local councils. Insufficient weight to local decisions is exemplified by the OMB only being required to "have regard for" the decision of Council rather than seeing Council's decision and the

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existing Official Plan and other policy documents that are in force and effect as being the basis for good land use planning and the community’s expectations of the public interest. The Public Consultation Guide does acknowledge that certain recent changes have been made to support stronger recognition of municipal and provincial decisions and policies, including the recent changes in Bill 73, like appeals of entire Official Plans no longer being permitted and moratoriums on appeals after new Official Plans are approved. However, the Province acknowledges that further changes to the OMB’s jurisdiction and powers may be required. These potential changes are classified into five (5) subsection parts, as identified below.

Theme 1, Part 1: Protect Public Interests for the future

The Province notes that strong communities need to be able to conduct comprehensive, strategic land use planning and ensure that decisions are timely and that citizens are involved from the early stages. As such, the Province is considering limiting appeals on provincial land use planning decisions so that:

- The Province could specify which parts of its decisions on Official Plans would not be subject to appeal, noting that this may assist in matters like the preservation of farmland and the orderly development of safe and healthy communities;
- 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; and/or
- 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 the zoning.

<u>Public Consultation Guide Question</u>	<u>City Response</u>
1. What is your perspective on the changes being considered to limit appeals on matters of public interest?	<p>The City supports new Official Plan policies and Official Plan Amendments that implement Provincial Plans and Provincial policies as matters that cannot be appealed to the Ontario Municipal Board. This prohibition on appeals should include parts of Official Plans (or Amendments) that implement provincial policies such as those of the Provincial Policy Statement, including but not limited to: intensification of land use as part of growth management; farmland protection; incompatibility of industry and sensitive land uses; the mitigation of risks to human health and life in areas with natural hazards and protection of ecological function in areas with natural heritage systems.</p> <p>The City agrees that Minister’s Zoning Orders should not be subject to appeal.</p>

Theme 1, Part 2: Bring transit to more people

The consultation guide identifies that modern transit systems attract jobs and investments, and provide for more compact growth and connectivity between home, work and recreation opportunities without the traffic congestion, air pollution or climate change impacts associated with greater personal automobile usage. It also notes that the Province is investing \$31.5 billion in local public transit and related infrastructure projects across Ontario over the next ten (10) years.

As such, the Province is considering restricting appeals of municipal Official Plans, Official Plan Amendments, and appeals to Zoning By-laws for developments that supports provincially funded

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transit infrastructure such as subways and bus stations. The Province identifies that this would help ensure that there are sufficient densities to support transit investments.

<u>Public Consultation Guide Question</u>	<u>City Response</u>
<p>2. What is your perspective on the changes being considered to restrict appeals of development that supports the use of transit?</p>	<p>Official Plan policies, Zoning or other Council decisions that are supportive of connecting land development (and hence future ridership) with higher-order public transportation systems are supported by the City. If the Province is to implement such restrictions upon appeals, a more definitive description of what types of planning matters would be covered is required. For example, will restrictions on appeals also be applied to initiatives funded by municipalities without the use of Provincial monies (e.g. a federal-municipal or municipal only transit initiative)? How will the term “transit-supportive” be defined? Criteria could include the distance from transit stations or transit routes within which the “transit-supportive” restrictions would apply. Also, the term “subways and bus stations” used in the Public Consultation Guide is inadequate. Applicable transit systems and infrastructure should be defined so that it includes “subways, rapid transit (rail or bus), transit stations and transit-related facilities”.</p> <p>Of note is that in response to extensive, multi-year public consultation, City Council recently approved the City of London’s new Official Plan (<i>The London Plan</i>, June 2016), which connects the London community’s objectives for future rapid transit development to rapid transit supportive levels of land use intensification and development permissions. This supports compact growth and city-building that supports “inward and upward” future development.</p> <p>The City is also separately seeking inter-governmental cooperation for the above noted future rapid transit system, and as such is supportive of a coordinated response from Provincial Ministries on matters connecting land use planning matters to transportation infrastructure investments, including involvement from the Ministries of Transportation, Municipal Affairs, Housing, Environment and Climate Change, and Education.</p>

Theme 1, Part 3: Give Communities a Stronger Voice

The Public Consultation Guide notes that land use planning processes provide an important opportunity for communities to shape their future. As such, the Province is considering the following possible changes which may assist with land use decision being made more locally:

- Considering the potential for no appeal of a municipality’s refusal to amend a new Secondary Plan for two (2) years after approval. The Province notes that this recognizes the extensive work and involvement of a community in developing a plan, and would provide certainty and stability for neighbourhoods.

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- Considering the potential for no appeal of a Municipal Interim Control By-law. The Province notes that 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 changer or are in transition.
- Considering expanding the authority of local appeal bodies to hear appeals related to Site Plans. This would allow them to hear disputes on individual properties related to, for example, landscaping, driveways or lighting.
- Considering whether to further clarify that the OMB's authority is limited to deal 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 OP as those dealt with by Council.
- Considering requiring the OMB to send significant new information that arises in a hearing back to the municipal council for re-evaluation of the original decisions. This would ensure the OMB has the benefit of Council's perspective on all significant information.

<u>Public Consultation Guide Question</u>	<u>City Response</u>
<p>3. What is your perspective on the changes being considered to give communities a stronger voice?</p>	<p>First, the City is in support of no appeals permitted on a refusal to amend a Secondary Plan for two (2) years after its approval. The Secondary Plan process requires significant public consultation and City Staff resources. The basis of most Secondary Plans is to provide for more specific policy direction for a defined geographic area. Many of these Secondary Plans are for areas in transition or that are newly developing. A minimum of 2 years is required in order to monitor and to see the impact of the new policies of the Secondary Plan.</p> <p>Second, the City supports the change to no appeals of an Interim Control By-law. Per Section 38 of the <i>Planning Act</i>, the Interim Control By-laws is a one year "hold" on planning applications within a defined area of the municipality in order to study a specific issue, such as growth/development pressure. Interim Control By-laws are a strong planning measure, so are seldom used. Also, the appeal of an Interim Control By-law to the OMB redirects municipal time and resources from the actual study to be undertaken for the affected area and may result in more extensions of Interim Control By-laws (as a one-time, second year extension to the by-law is permitted through s. 38(2) of the <i>Planning Act</i>) than if the by-law were not initially appealable.</p> <p>Third, the City supports the expansion of the authority of local appeal bodies for matters like Site Plan and Minor Variance applications. To do so, the Province must first determine the scope of the Ontario Municipal Board's powers in relation to the general right to appeal matters of a local nature and decisions of a local council. The Board needs to determine what, if any, Provincial interest there is in a specific local planning decision, such as Minor Variances or Site Plans. If the Province believes that such applications should be "appealable" even if there is no Provincial interest justifying the OMB's involvement, then local appeal bodies should be mandated by the Province. Mandating compulsory local appeal bodies is a change from current legislation, where</p>

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<u>Public Consultation Guide Question</u>	<u>City Response</u>
	<p>Local Appeal Bodies are supported by the Province as a possible OMB alternative to be implemented at the discretion of municipalities. This would also require Provincial regulation related to what matters related to Minor Variance and Site Plan are “appealable” in order to ensure consistency across the Province. In instances where there are very few appeals to Minor Variances or Site Plans, the Province may consider allowing these to be heard by the Board where the very small number of appeals would not justify a local appeal body.</p> <p>Fourth, the City supports the OMB limiting matters dealt with as part of its decision to the same matters that were part of the municipal council’s decision. By limiting the appeal to that same issue and policies of an Official Plan as Council did in its decision, appellants and/or the municipality cannot provide additional evidence for an issue that was not part of the scope of the original public participation process and Council decision-making process. This aligns with other proposed reforms to the OMB that reframe the Board’s hearings as a test of the reasonableness of the original decisions made by Council through public process.</p> <p>Fifth, building upon the above and the clarification that the information presented before the OMB should be the same as was presented to the public and Council, the City supports the requirement that new significant information arising from the OMB hearings would be sent back to Council for a re-evaluation. New information that was not available at the time of Council’s decision should never be before the Board as part of an appeal, because Council would not have had the information at the time it held public participation meetings or made its decision. The decision of Council is what is being appealed to the OMB, therefore new information should first go back to Council for its review and evaluation, as new information may change the public’s comments or concerns, or Council’s decision and hence the reasons, or need, for an appeal.</p>

Theme 1, Part 4: “De Novo” Hearings

Hearings at the Ontario Municipal Board are conducted “de novo”. Put another way, the OMB hears issues over again anew, as if no decision had been made by City Council. As noted in the City’s initial August 22, 2016, comments regarding this OMB review, the “de novo” approach does not place sufficient weight on the local decisions of the municipal council. Furthermore, these decisions of local Council are made as an elected public body after substantial public consultation through various statutory and non-statutory public meetings, open houses and other avenues of engagement. The Province has been placing more emphasis on the role of public engagement in planning processes at the municipal level but not nearly as much at the OMB. Additionally, the *Planning Act* requires that the OMB adjudicator must “have regard” to decisions of Council, but are not required to align with or conform to those of Council. As such, the Province is considering two possible options to move towards more local authority and an examination of the validity and reasonableness of Council’s decision, rather than the “de novo” hearings.

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- The Province is considering requiring the OMB to review municipal 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.
- Thus the new approach would authorize the OMB to overturn a decision made by a municipality only if that decision does not follow local or provincial policies. This would mean that the Board 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 policy for growth that does not meet intensification targets.

<u>Public Consultation Guide Questions</u>	<u>City Response</u>
<p>4. What is your view on whether the OMB should continue to conduct de novo hearings?</p>	<p>The City supports the proposed changes to a review of the validity and reasonableness of the original decision made by Council rather than “de novo” hearings. This change would shift the onus to the Appellant to demonstrate how Council’s decision was not consistent with planning policies or principles approved through City and Provincial documents. This shift in the onus to the appellant may also reduce the number of appeals as appellants would be required to prove a Council decision was unreasonable. This approach also changes the starting point for OMB hearing discussions, so that the concepts of ‘good planning’ and the ‘public interest’ shifts back to understood community expectations as are set out in the policies and plans that are in force and effect in the municipality.</p>
<p>5. If the OMB were to move away from de novo hearings, what do you believe is the most appropriate approach and why?</p>	<p>The proposed change identified in the Public Consultation Guide above, with a test of the reasonableness and the appropriateness of Council’s decision rather than the “best” decision as identified by the Board adjudicator, is supported by the City.</p> <p>Concerns with the weight of consideration given to local decisions and the OMB’s writing or re-writing local policies, including in instances where there is no identifiable ‘Provincial Interest’, may be addressed through this new approach. There would need to be a concurrent change in the Board’s rules to clearly identify that the matter under appeal is whether or not the council decision was consistent with local and Provincial policies and if the decision was “reasonable”. This would shift the focus from specifics of Council’s decision itself to a hearing on whether or not the decision was in conformity with local Official Plan policy and consistent with Provincial policy, such as the Provincial Policy Statement (PPS) and whether or not that decision was reasonable, rather than “the best” decision. If the decision was found not to be in conformity with local policy or consistent with Provincial policy, the matter would be sent back to the municipality for a public re-consideration by Council. The Boards’ decision would not, therefore, include new or amended policies.</p>

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Theme 1, Part 5: Transition and use of new planning rules

The Public Consultation Guide has identified that there are, generally, two points of view regarding when new rules and regulations related to land use planning should begin to apply. These views are either: (1) All planning decisions should be made on the most up-to-date planning documents; or (2) Fairness requires that planning decisions be based on the planning documents that were in place when the process was started. Since 2007, the *Planning Act* has required that land use decisions must reflect provincial policies in place when the decision is made, not when the application was made.

As part of this OMB review, the Province is now seeking feedback on possible changes that would require all planning decisions, not just those after 2007, to be based on provincial legislation and planning documents and municipal planning documents in effect at the time of the decision.

<u>Public Consultation Guide Questions</u>	<u>City Response</u>
<p>6. From your perspective, should the government be looking at changes related to transition and the use of new planning rules? If so:</p> <ul style="list-style-type: none"> o What is your perspective on basing planning decisions on municipal policies in place at the time the decision is made? o What is your perspective on having updated provincial planning rules apply at the time of decision for applications before 2007? 	<p>The City is supportive of transition policies where the rules and regulations that are in effect on the day when Council makes its decision are the rules that should apply.</p> <p>Applications made before 2007 should also be subject to the rules and regulations in effect on the day of Council's decision. This will ensure predictability for all parties.</p>

Theme 2: Citizen Participation and Local Perspective

The Public Consultation Guide has identified that many individuals have raised concerns about the ability to participate in OMB hearings. The issues of cost and fairness have been central to such concerns. The cost to participate in a hearing has been identified as high, which can discourage participation. Also, a person or community group may not have the same access to subject matter experts that is available to municipalities and developers, which is considered by some to make the process less fair to the public than it otherwise could, potentially, be. Feedback has identified that the public is seeking OMB procedures that are more "citizen-friendly".

In response to such concerns, in 2006 the Province established the Citizen Liaison Office (CLO) at the OMB (available online at: www.ontario.ca/cxil) to help the public understand what the OMB does and how to participate. To expand upon the 2006 reforms, the Province is considering the following possible changes to support public involvement in land use planning appeals, even if members of the public do not have legal representation. This may include creating a new user-friendly website as well as the following possible changes:

- Possibly expanding the Citizen Liaison Office (CLO). Currently the CLO has one (1) employee dedicated to responding to requests for information for all the Environmental Land Tribunals Ontario tribunals (which includes the OMB, the Environmental Review Tribunal, the Conservation Review Tribunal, the Board of Negotiation, and the

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- Assessment Review Board).
- The Province is considering either hiring more staff to provide easier public access to information or reconfiguring the CLO, including moving it out of the Environmental Land Tribunals Ontario (ELTO) office.
- The reconfigured CLO may include in-house planning experts and lawyers who would be available to the public (subject to eligibility criteria).
- The Province is also considering exploring funding tools to help citizens retain their own planning experts and/or lawyers.

<u>Public Consultation Guide Questions</u>	<u>City Response</u>
7. If you have had experience with the Citizen Liaison Office, describe what it was like – did it meet your expectations?	City Staff have not used the services of the CLO, and therefore have no comments on this question of the Public Consultation Guide.
8. Was there information you needed, but were unable to get?	Not applicable.
9. Would the above changes support greater citizen participation at the OMB?	The City is supportive of any changes to the OMB and related support services of the Citizen Liaison Office that increase education regarding the appeal processes and allow greater public access to the process.
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?	<p>The Board/CLO should provide information regarding the OMB processes, protocols, avenues for individuals' participation, and to educate the public. The information should reinforce that matters before the Board are adjudicated through the lens of land use planning based on land use legislation, policy and development design, rather than advocacy for an individual's or client's position.</p> <p>The CLO could include "Planning Aid" to work like Legal Aid to provide third party professional land use planning advice to the public.</p>
11. Are there funding tools the Province could explore to enable citizens to retain their own planning experts and lawyers?	<p>The City is supportive of the Province establishing funding towards greater participation.</p> <p>Savings could potentially be realized through fewer appeals being brought before the OMB. This can be accomplished through the measures contemplated in this review, including through scoping of the jurisdiction of appeals to not include local matters (e.g. Consents or Minor Variances), or through mediation and alternative dispute resolution measures to avoid appeals.</p>
12. What kind of financial or other eligibility criteria need to be considered when increasing access to subject matter experts like planners and lawyers?	<p>Eligibility criteria could be comparable to that of legal aid in Ontario, which through the <i>Legal Aid Services Act, 1998</i>, mandates access to justice throughout Ontario. As such, the eligibility criteria should be broadly defined, so that access to legal and planning expertise can be provided to all individual members of the public and ratepayers groups who seek it.</p> <p>Individuals and communities could be considered to be disadvantaged in an appeal process in as much as they may have less access to professional advice (through the cost of advice or access to individuals). Board decisions are based on the evidence preferred by the Board adjudicator, and that is evidence provided by professionals. There is little regard for the non-professional evidence of individuals and ratepayers groups not represented by professional planners</p>

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	<p>or other experts.</p> <p>To the public, the appeal process and the public's role within the process is often not clear at the time they file an appeal. The expectations and requirements for public participation in a hearing should be explained at the time of filing an appeal. As such, increasing resources to the CLO or access to professionals to provide this education at the beginning of the appeal process would improve the public's overall understanding of OMB processes.</p>
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THEME 3: Clear and Predictable Decision Making

In order to improve the clarity and predictability of decisions, the Province is considering increasing the number of OMB adjudicators and ensuring they possess the necessary skills. As such, the Province is considering the potential for an increased number of adjudicators who possess necessary skills, as well as increasing opportunities for further training (e.g. including decision writing, active adjudication, and dealing with parties that have no legal representation).

Also, while the *Ontario Municipal Board Act* allows for panels of adjudicators, the use of multi-member panels at the OMB became less common in the 1990s because of associated costs. Hearings, even complex ones, generally only have one adjudicator today. Thus the Province is also considering whether to reintroduce multi-member panels with panel members representing a broad range of skills and background to ensure clear and predictable decision-making. Specifically, the Province is considering:

- Having multi-member panels only conduct complex hearings; or
- Having multi-member panels conduct all hearings.

<u>Public Consultation Guide Questions</u>	<u>City Response</u>
<p>13. Qualifications for adjudicators are identified in the job description posted on the OMB website (available at: www.ontario.ca/cxjf). What additional qualifications and experiences are important for an OMB member?</p>	<p>The current list of qualifications is fairly exhaustive and generalized, such that expertise in planning, law, transportation, ecology, architecture/design, or other related fields are included. If additional qualifications are required, it could be made explicit that knowledge and experience in the land use planning process and municipal government processes is necessary, thus reinforcing the understanding in adjudicators that the decisions of local Councils were arrived at as a result of public, democratic processes and they would also have specific knowledge of the land use planning process. Additionally, the qualifications could note that adjudicators should come from professional backgrounds with balanced experiences from both public and private practice.</p>
<p>14. Do you believe that multi-member panels would increase consistency of decision-making? What should be the make-up of these panels?</p>	<p>Multi-member panels would increase the consistency of decision-making. Depending upon the nature of the land use, policy and/or design issues, a multi-member panel may be better equipped with the range of subject matter expertise necessary and thus require less time at appeal to bring the adjudicator(s) up to speed on a given issue (because they would already have related experience). Also, decision-making would become less dependent upon the opinion or perspective of individual Board members.</p> <p>However, by implementing the changes proposed through</p>

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<u>Public Consultation Guide Questions</u>	<u>City Response</u>
	<p>this Review, including narrowing appealable matters (e.g. no Minor Variance or Site Plan appeals), and narrowing the scope of appeals to a test of reasonableness of municipal decisions, then the types of decisions made by the OMB would no longer be based on what an individual Board member believes to be the “best” planning decision. As such, the necessity of multi-member panels to improve consistency of OMB decisions may not be required with these changes.</p> <p>There may be additional costs and scheduling issues associated with introducing panels of OMB adjudicators. The use of multi-member panels could also have a negative impact on the Board’s abilities to hear appeals, as scheduling would become more difficult. The use of multi-member panels is also an extreme response for a tribunal with a scope limited to land use matters, given that most civil and many criminal court hearings are before a single Judge or Justice of the Peace.</p>
15. Are there any types of cases that would not need a multi-member panel?	The City recommends that straight-forward and minor matters that do not have a Provincial interest, including Site Plans and Minor Variances, not be heard before a multi-member panel. The City furthermore recommends that such minor matters without a Provincial interest be mandated by the Province to be heard by local appeal bodies rather than the OMB.
16. How can OMB decisions be made easier to understand and be better relayed to the public?	The City is supportive of the Province providing their OMB adjudicators with on-going training, including for decision writing, so that “common language” executive summaries are standard. The Province introducing a standardized template for the written decisions could also help relay the decisions to the public more easily.

THEME 4: Modern Processes and Faster Decisions

Through the consultation guide, the Province has identified a public desire for OMB rules of practice and procedures to be updated and processes streamlined to make the OMB appeal system more accessible and to promote timely decisions. Comments in the consultation guide note the need for faster screening and scheduling of appeals, and more flexibility in how evidence can be presented. The hearing process is also felt to be too long and that it is not simple, predictable, or transparent. Additionally, comments from the public have identified that the hearings are too adversarial and court-like. Most people appear to be in support of a less formal process.

Thus the Province is considering the following measures in order to create a less formal and less adversarial culture the OMB:

- Allowing the OMB to adopt less complex and more accessible tribunal procedures;
- Allowing active adjudication.

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

- Setting appropriate timelines for decisions;

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- Increasing flexibility for how evidence can be heard;
- Conducting more hearings in writing in appropriate cases;
- Establishing clear rules for issues listed to ensure that hearings are focused and conducted in the most cost-effective and efficient way possible;
- Introducing maximum days allowed for hearings.

In regards to the targeted and achieved timelines for resolution to different types of appeals in Ontario, the consultation guide notes the following trends:

Performance Results	2013-2014 Achieved (Targeted)	2014-2015 Achieved (Targeted)	2015-2016 Achieved (Targeted)
OMB decisions issued within 60 days of the end of a hearing	86% (85%)	84% (85%)	80% (85%)
OMB minor variance cases (stand-alone) scheduled for a first hearing within 120 days of the receipt of a complete appeals package	71% (85%)	51% (85%)	67% (85%)
Other OMB cases scheduled for a first hearing within 180 days of the receipt of a complete appeals package	80% (85%)	75% (85%)	84% (85%)

Based on the above trends and comments received through the consultation guide, the Province asks:

<u>Public Consultation Guide Questions</u>	<u>City Response</u>
17. Are the timelines in the chart above appropriate, given the nature of appeals to the OMB? What would be appropriate timelines?	The City is supportive of measures that reduce the time to schedule hearings. The current Board timelines are unreasonable. Municipal Councils have similar timelines to complete the entire planning application process and reach a decision on the matter that could be subject to appeal. Council's similar timeline (e.g. 120 or 180 days, depending on the type of <i>Planning Act</i> application) includes the actual application process from complete application received by the City, to internal and external review, to public participation meetings and Council decision. It is unreasonable that the Board has a similar timeline of up to 180 days to just schedule the hearing dates which does not include completion of the OMB appeal process. The City is supportive of a maximum of thirty (30) days to set hearing dates.
18. Would the above measures [being considered] help to modernize OMB hearing procedures and practices? Would they help encourage timely processes and decisions?	The City is supportive of the above list of 'Theme 4' changes contemplated, including alternative and more flexible methods for presenting evidence and a maximum number of days for hearings being pre-determined. However, it is important that any changes to the scheduling of hearings maintain opportunities to provide meaningful public input and public involvement into the OMB appeal process.
19. What types of cases/situations would be most appropriate to a written hearing?	The types of cases that could be appropriate for written hearings could include hearings that are: simpler, more straight-forward with an identified narrow scope of issues under appeal, technical hearings, and hearings where there

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	<p>had been limited public input throughout the public consultation held as part of the Planning application process prior to Council’s decision.</p> <p>The Province would, however, need to ensure a written hearing maintains a level of public accessibility, as all hearings should be accessible to the public.</p>
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Theme 5: Alternative Dispute Resolution and Fewer Hearings

Comments received to date by the Province through the OMB Review have suggested that mediation should be promoted. More OMB members should be able to mediate appeals and staff should be hired to facilitate mediation processes

Through Bill 73 (*Smart Growth for Our Communities Act, 2015*) municipalities are given time to engage in Alternative Dispute Resolution (ADR) before an appeal is forwarded to the Board. If ADR is agreed upon by both parties and is initiated, a 60 day “time out” applies, allowing a pause in the appeal process to work out disputes and avoid potential hearings. Then when the appeal goes to the OMB, it is reviewed to determine if it should be streamed into mediation, pre-hearing or full hearing. Most appeals go directly to full hearing.

Pre-hearings are also set when matters are anticipated to be complex and take 5 days or more for hearings. Pre-hearings are intended to: identify and scope issues; identify parties and participants; organize complicated hearings; determine what documents should be exchanged; and determine procedures before and during the hearing. Pre-hearings are intended to clarify issues, focus the hearings and save time.

Through this OMB Review, the changes being considered by the Province are so that the OMB experience is more comfortable and leads to fewer and/or possibly shorter OMB hearings. Thus the changes being considered are:

- More actively promoting mediation;
- Requiring all appeals to be considered by a mediator before scheduling a hearing;
- Allowing 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;
- Strengthening 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;
- Creating timelines and targets for scheduling cases, including mediation.

<u>Public Consultation Guide Questions</u>	<u>City Response</u>
20. Why do you think more OMB cases don’t settle at mediation?	<p>The ADR through Bill 73 is an important step towards increased mediation; however, it requires both parties to agree to the mediation. Thus both parties need to be motivated to settle and also believe their chances of success are equally as good through mediation as they would if heard “de novo”.</p> <p>Unless the OMB stops hearing its cases “de novo” and sufficiently gives weight to the public process and decisions of the elected local Councils that preceded an appeal, there will be many appellants who may prefer to enter appeals because it is, <i>de facto</i>, a “new” application rather than mediation which would look at the range of decisions and</p>

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<u>Public Consultation Guide Questions</u>	<u>City Response</u>
	<p>arguments made up to that point through the public process, including the decisions made by local Municipal Council.</p> <p>A significant concern with mediation is how the interests of Municipal Council and the public would be addressed in the process. The Province needs to determine how the public who participated in the planning application would be represented in the mediation process. There would also need to be time built into a mediation process to allow the opportunity to receive Council direction if required.</p>
<p>21. What types of cases/situations have a greater chance of settling at mediation?</p>	<p>There may be cases which can settle through mediation, as some cases currently settle prior to their appointed OMB hearing date. Instances where both parties are generally in agreement but where more time is required for completion of an identified study or where resolution of a few minor issues is required could be addressed through mediation, subject to Municipal Council approval. Mediation should be open to the public and provide opportunities for public input, as the Council and OMB processes do.</p>
<p>22. Should mediation be required, even if it has the potential to lengthen the process?</p>	<p>Through an initial screening it should be determined whether or not mediation is appropriate. In instances where there is a fundamental disagreement over what constitutes the public interest or good planning, mediation may only prolong a process that would eventually require a hearing. Where it is identified that the issues to be resolved are fewer, more minor, or where parties could be in a position to find mutually-agreeable terms, scoping issues for the purposes of mediation is appropriate. Mediation processes should be open to the public and provide the opportunity for public input.</p> <p>Mandatory mediation is not recommended for all appeals. If mandatory mediation were introduced it could pose the risk of some applicants or neighbours not treating the Planning application process as seriously or sincerely as they otherwise would. Mandatory mediation could be considered by some to be where the “real planning discussions” begin rather than during the planning application review process and Council decision.</p>
<p>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?</p>	<p>OMB Staff includes a complement of Planners and related professionals who should actively be ensuring that appeals received are screened for their permissibility and for legitimate land use planning merits. This pre-screening should be done through consultation with Staff and appellants and should be less formal than the Staff- and resource-intensive preparations that are required in preparation for full hearings.</p> <p>It is important that while OMB Staff should actively pre-screen appeals, the OMB Staff should not become the key decision-makers at the Board. That role should remain with adjudicators. OMB Staff should actively work with City Staff and appellants to pre-screen appeals and scope issues. The OMB should deny appeals where no identifiable land use issue has been identified.</p>

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<u>Public Consultation Guide Questions</u>	<u>City Response</u>
	<p>A stepped approach to cases, requiring increasing levels of documentation through the various stages of ADR, mediation, pre-hearings and hearings would improve the resourcing and effectiveness of both Municipal and OMB Staff in their handling of appeal files of various degrees of validity and varying degrees of complexity.</p> <p>Through the efforts of this OMB Review, there is also the potential to scope appealable matters and also the opportunity to increase the resources available to educate the public on the role and processes of the OMB such that there will be fewer appeals and those received will be permissible based on merits of land use planning legislation and policy rather than based on market competition or perceptions of property value, or other appeals generally considered inadmissible for being “frivolous and vexatious”.</p>

Additional General Question

In addition to the above twenty-three questions posed in the Public Consultation Guide, the Province is seeking any additional comments or suggestions on the scope and effectiveness of the Ontario Municipal Board in its role within the land use planning system of Ontario. The following is the City’s response:

<u>Public Consultation Guide Question</u>	<u>City Response</u>
<p>24. 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?</p>	<p>The City reiterates that the primary areas of concern regarding the scope and effectiveness of the Ontario Municipal Board are that:</p> <ul style="list-style-type: none"> - The scope of matters that can be appealed to the OMB is too broad and matters should be restricted to those with an identified Provincial Interest; - The OMB does not place sufficient weight on Councils’ decisions, which are arrived at as an elected body with substantial public consultation; - Alternative Dispute Resolution (increased mediation and pre-screening) should include public consultation, otherwise the Province’s rigorous requirements for public participation through the planning process be moot and OMB hearings may undermine meaningful public participation in planning decisions overall; - The OMB should be accountable for implementing existing legislation. The City believes this is not currently the case. New information heard at the Board must be heard by the public and Council. If that information was not available during the time of Council’s decision the information should return to Council; - The City is in support of the proposed changes to the OMB’s scope and jurisdiction such that the Board’s role would become one of conducting a “reasonableness test” of Council’s decision and the

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<u>Public Consultation Guide Question</u>	<u>City Response</u>
	<p>appropriateness of Council’s decision will be measured against its conformity with local municipal policies and its consistency with Provincial policies. This will shift the onus to appellants to demonstrate non-conformity with existing policies which are the basis for the community’s expectations of “good planning”. The change to a reasonableness test rather than the OMB’s current role of <i>de novo</i> reviewing evidence and giving the “best decision” in the opinion of the Board adjudicator, regardless of Council’s decision would result in more appropriate decisions and</p> <ul style="list-style-type: none"> - Furthermore, expansion of local appeal bodies (recommended to be mandated for matters without Provincial Interest, e.g. Site Plan and Minor Variances), and scoping of OMB jurisdiction would greatly improve the efficiency of the OMB and the Ontario land use planning system. According to the <i>Public Consultation Guide</i>, about 35 percent of appeals are to Minor Variances (by type), and 67% of overall appeals (by geography) are in the Central Ontario MMAH branch area meaning that a large proportion of the Board’s work is appeals to Minor Variances in the GTA. Thus addressing local appeal matters through consistent ‘local appeal bodies’ would significantly improve efficiency of the overall Provincial appeals process and improve the efficiency and timeliness of appeals. The London and Western Ontario area account for only about 15% of OMB appeals annually, which is less than the number of Minor Variance appeals in the Central region.

NEXT STEPS IN THE 2016 OMB REVIEW

The City’s responses to the 2016 Ontario Municipal Board Review Public Consultation Guide, as identified in the report above, will be forwarded to the Ministry of Municipal Affairs and the Ministry of the Attorney General following the Council meeting of December 6, 2016. Municipal and public feedback to the OMB Review is required by December 19, 2016.

The results of the 2016 OMB Review will be reported back to Council once any proposed changes to OMB legislation, practices, procedures or jurisdiction are made known to the City through the Ministries.

Agenda Item # Page #

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