

Theme 1: OMB's jurisdiction and powers

Q1. What is your perspective on the changes being considered to limit appeals on matters of public interest?

The Town of Oakville fully supports further limitations on matters that can be appealed to the OMB in order to streamline implementation of the Province's policy-led planning system and bring stability to municipal planning documents.

It would be helpful if the Province could clearly define what specific "public interests" would be restricted from appeal to the OMB.

Changes are needed to better respond to issues raised by allowing a single appellant to hold back a comprehensive municipally-initiated planning process.

Any municipal refusal of a privately-initiated official plan amendment should not be appealed to the OMB.

Interim Control By-laws should not be appealed to the OMB.

Appeals of official plan policies or zoning by-law regulations as they apply to the entirety of a municipality should not be permitted.

Controls that further scope appeals are critical to improving OMB service delivery.

Q2. What is your perspective on the changes being considered to restrict appeals of development that supports the use of transit?

There should be circumstances where appeals to municipally-initiated official plans should not be permitted.

Q3. What is your perspective on the changes being considered to give communities a stronger voice?

Considerable weight should be given to municipal decisions in determining any matters under appeal. The "have regard to" standard needs to be strengthened significantly to give it meaning and clear direction to the Board.

Broaden the list of matters that cannot be appealed to the OMB (for example, all municipally-initiated official plans or official plan amendments that are made to be consistent with or conform to provincial policy). This will enable municipalities to bring stability to and fully implement their official plans that are in keeping with provincial interests.

Empower municipalities to restrict appeals from being filed to the OMB where persons did not make oral or written submissions to a municipal council.

The OMB should dismiss appeals that lack sufficient land use planning grounds.

Q4. What is your view on whether the OMB should continue to conduct de novo hearings?

De novo hearings should be restricted, through legislative amendments to the *Planning Act*, to give validity to Council's decisions on land use matters.

Clear direction must be provided to the OMB for the requirement to "have regard to" municipal decisions, but the standard needs to be strengthened significantly to give it meaning and the appropriate deference to municipal decisions.

Institute rules of practice and procedure regarding the treatment of new evidence brought to the Board.

Institute procedural controls to make the process less litigious.

Q5. If the OMB were to move away from de novo hearings, what do you believe is the most appropriate approach and why?

A fundamental change to the standard of review of municipal planning decisions is essential for any improvement in the OMB's role in the land use system.

The OMB should be required to review municipal/approval authority decisions on a standard of "reasonableness".

The "threshold test" that must be met before the OMB can overturn such decisions should be raised.

Q6. From your perspective, should the government be looking at changes related to transition and the use of new planning rules? If so:

- what is your perspective on basing planning decisions on municipal policies in place at the time the decision is made?

- what is your perspective on having updated provincial planning rules apply at the time of decision for applications before 2007?

Support applying policies at the time a decision is made to ensure that the most up to date planning documents are applied.

Support applying Bill 51 changes to applications made prior to 2007 to ensure that the most up to date provincial policies apply to these older applications.

Theme 2: Citizen participation and local perspective

Q7. If you have had experience with the Citizen Liaison Office, describe what it was like – did it meet your expectations?

N/A

Q8. Was there information you needed, but were unable to get?

N/A

Q9. Would the changes outlined on page 22 of the public consultation document support greater citizen participation at the OMB?

Increased citizen participation in development application processes may assist in avoiding appeals.

Q10. 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?

Provide clear direction on options for participating in an OMB process.

Information on how to avoid going to OMB or requiring mediation.

Expand on this material and include more information regarding the complexity and potential costs for an appeal.

Improve the navigation of the Board's website, making it easier to find relevant material

Information on:

- what constitutes a substantiated 'land use planning' argument and what does not; and
- what expert(s) and evidence may be required to assist citizens in representing their interests in mediation, alternative dispute resolution, and Board proceedings
- party and/or participant status.

Recommend that the government hold focus group or to expand the citizen liaison office to assist citizens who have attempted to appeal decisions for the first time.

Expand on this material and include more information regarding the complexity and potential costs for an appeal

Improve the navigation of the Board's website, making it easier to find relevant material.

Amend the rules to have a specific exchange requirement for participant statements.

Q11. Are there funding tools the province could explore to enable citizens to retain their own planning experts and lawyers?

Yes, only if the OMB finds merit in the application/appeal to minimize frivolous types of participation in an OMB process.

Q12. What kind of financial or other eligibility criteria need to be considered when increasing access to subject matter experts like planners and lawyers?

The appeal must be assessed by the OMB to have legitimate planning merit, that mediation and or ADR have been unsuccessful, only then should there be consideration for support. The support could be in-kind or experts from a pool that the province could retain.

Theme 3: Clear and predictable decision-making

Q13. 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?

If it is a multi-member panel, then an array of expertise may be warranted e.g. planner, lawyer, ecologist, architect/urban designer, land economist.

There may be opportunities to include a citizen participant (non-impacted) to provide community perspective.

The OMB needs to focus on good planning outcomes, the OMB appointments should reflect this.

Training for Board Members should be from neutral party that does not appear before the Board, ie: neither private nor public sector lawyers/planners should be doing training.

Q14. Do you believe that multi-member panels would increase consistency of decision-making? What should be the make-up of these panels?

Multi-member panels may be warranted for larger, complex hearings to help streamline decision-making. A broader range of experience as noted in Q13 may assist in understanding different perspectives.

Q15. Are there any types of cases that would not need a multi-member panel?

Appeals of site specific development applications (not involving multiple parties), minor variances, consents, site plan.

Q16. How can OMB decisions be made easier to understand and be better relayed to the public?

Decisions should be written in plain language without use of legal or planning jargon. Decisions should be clearly worded as to what the decision is, what the order is, and what it does.

Where the Board makes decisions that are “in accordance with Exhibit X”, the relevant document should always be attached to the decision as the public does not necessarily have good access to the document.

A summary of the decision would be helpful with a link to technical aspects of the matter and perhaps an image of where the subject property is.

Board decisions should be issued in a timely manner and be subject to metrics.

The Board’s website could also be enhanced to provide more user-friendly information to the public.

Theme 4: Modern procedures and faster decisions

Q17. Are the timelines in the chart (page 26 of the public consultation document) appropriate, given the nature of appeals to the OMB? What would be appropriate timelines?

Merit assessments should be completed within 30 days of receipt of a complete appeals package.

If improvements are made to the appeal system wherein appeals are properly scoped and substantiated, then the ‘nature of appeals’ will be altered and the timelines for resolutions shortened.

A greater number of OMB members would help deal with backlog cases by providing more hearing opportunities and giving more time for decisions to be written.

Limiting the number of expert witnesses within the same discipline would save hearing time. Expert panels may help to shorten hearing time.

180 days of receipt of a complete appeals package to scheduling of first hearing represents ½ year in which an official plan or zoning by-law is not in effect. Perhaps the 180 days should represent the maximum permissible time to schedule a first hearing rather than the target time.

Q18. Would the measures outlined on page 27 of the public consultation document help to modernize OMB hearing procedures and practices? Would they help encourage timely processes and decisions?

Matters should be pre-screened for “readiness” for a hearing, eg: if studies are incomplete or lacking then it should be sent back to the municipality for consideration upon resubmission rather than having such technical matters debated at the OMB.

Schedule matters on a docket (for pre-hearing events, settlements, etc) or split-day style hearing that would allow multiple matters to be heard on the same day in a manner similar to court schedules.

Allow the possibility for matters to be heard in a neighbouring municipality where a short hearing is already scheduled.

Greater consistency on procedural matters such as the submission of new evidence, the appearance of new parties, the status of municipal guideline documents and the requirement to send matters back to Council.

Municipal clerk should be authorized to make administrative determinations such as if an appeal is valid (ie: within time frame, complete, etc.) instead of relying on the OMB staff and their internal processes.

Improve consistency and transparency in scheduling practices with standardized protocol for canvassing availability and scheduling recommendations. Matters should be scheduled according to a queue and based on the OMB’s calendar. The schedule should not be dictated by numerous counsel conflicts that are virtually impossible to accommodate. Similar to court proceedings, a date is booked and parties must make themselves available, subject to time required for counsel to seek instructions.

Amend Rules to have requirements for exchange in advance of hearing of materials, similar to other tribunals. Eliminate issues lists, and instead update rules to provide for a staggered exchange of all evidence to be relied upon at the hearing, with parties who dispute that the proposal represents “good planning” serving first.

Update service requirements, to clarify that personal service, courier, etc. permitted. Also explicitly permit the use of file sharing services when serving by email given the sizes of different documents.

Greater scrutiny where summons are requested for the planner, senior planner, manager and director, when all are related to the same matter.

Require advance notice if challenging an expert’s qualifications and require a motion in advance if issue not resolved.

Q19. What types of cases/situations would be most appropriate to a written hearing?

Written hearings can be used for consent matters, questions of law, or section 43 review requests. Written hearings could also be used to assist in arriving at an interim decision in more complex matters to reduce the scope of a hearing, but some

matters will require an oral hearing so there is an opportunity for cross-examination in order to probe the validity/credibility/reliability of witnesses.

Theme 5: Alternative dispute resolution and fewer hearings

Q20. Why do you think more OMB cases don't settle at mediation?

Mediation takes time and additional resources with no guarantee of achieving a result. Land owners who may not see any gain in settling an appeal through mediation if their business plan forecasts better outcomes through protracted and prolonged hearings. Also, some parties just want their day "in court". Mediation requires voluntary parties who are willing to negotiate.

Q21. What types of cases/situations have a greater chance of settling at mediation?

All cases where there is merit in the appeal, and valid planning grounds. In particular, site specific applications may be easier to settle in mediation. There may be cases that have weak planning grounds that a mediator could assist in cautioning against proceeding to a hearing on such grounds.

Q22. Should mediation be required, even if it has the potential to lengthen the process?

Yes, mediation should be utilized to shorten the process, even if there is the potential to lengthen the process. It should be about a good planning decision. As well, participants must be willing to undertake this process.

Q23. What role should OMB staff play in mediation, pre-screening applications and in not scheduling cases that are out of the OMB's scope?

A Board should have dedicated resources to ensure that applications are reviewed for merit and scope. Appeals that have merit should be assessed for mediation and hearing. Appeals that are beyond scope should be refused.

General question:

Q24. 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?

All of the proposed changes are supported, but there are two which are fundamental to any improvement in the OMB appeal system: (1) Changing the OMB's standard of review of municipal planning decisions, and (2) Scoping appeals and limiting what can be appealed to the OMB.