



Backgrounder

Consultation Paper on Renovating the Public Hearing

Date: 19 December 2023

The subject of the consultation paper

The *Consultation Paper on Renovating the Public Hearing* seeks public comment on options for reforming British Columbia's legislation on public hearings.

Whenever a local government in BC is proposing to adopt or change a bylaw regulating land use, it must first hold a public hearing (unless a specified exemption from this rule applies). These public hearings give the public a forum to express its views on the proposed bylaw.

The requirement to hold a public hearing has been a feature of BC legislation for about 100 years. For most of this time, public hearings have been seen to enhance local democracy and improve local governments' decision making.

But lately, public hearings have attracted some pointed criticism. Critics have questioned whether BC's legislation on public hearings is really advancing public engagement and democratic participation. They've pointed to studies and surveys that indicate widespread dissatisfaction with the process. Public-hearing requirements, critics say, result in costs, wasted time, low satisfaction, and sometimes trauma for those involved.

The consultation paper presents a wide range of options to reform legislation on public hearings—covering everything from root-and-branch reform to fine tuning the current provisions—for public comment. To ensure that your comments are considered when the final recommendations for this project are being formulated, BCLI must receive them by **15 March 2024**.

Renovate the Public Hearing Project:
Pre-Development Public Engagement
& Legal Reforms to Support Housing Supply

in collaboration with:
SFU Wosk Centre for Dialogue

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About the Renovate the Public Hearing Project

BCLI began its Renovate the Public Hearing Project in late 2022, seeking a better way to engage the public and reduce pre-development risk and barriers to housing.

The project's goal is to recommend specific reforms to the public-hearing provisions in the *Local Government Act* and the *Vancouver Charter*. These reforms will be informed by comparative research and public consultation. The project's recommendations will be set out in its final report, which is projected to be published in early summer 2024.

A major component of this project involves considering reforms to the law that may be aligned with Indigenous governance, as called for under BC's *Declaration on the Rights of Indigenous Peoples Act*. The project identifies ways to integrate Indigenous considerations into law-reform approaches for public hearings so that any recommended legislative changes can function in a legally plural context. The project has been designed to support a Reconciliation and Community Listening Exploration Series, which will allow BCLI to engage with these issues directly and to provide input from that engagement to the project committee.

The project committee and the project's supporters

As part of the project, BCLI has formed the Renovate the Public Hearing Project Committee. The committee's primary task is to assist BCLI in developing recommendations for reform of the law. It is made up of experts in local-government law, land use and planning, and public engagement.

BCLI is carrying out this project in conjunction with the Simon Fraser University Wosk Centre for Dialogue. Over the course of the project, the SFU Wosk Centre plans to engage with impacted groups in a variety of ways, including through interviews, workshops, and events.

This project has been made possible by funding from the Canada Mortgage and Housing Corporation's Housing Supply Challenge.

Content of the consultation paper

The organization of the consultation paper

The majority of the consultation paper's chapters have a consistent design. They begin by discussing the current law, move on to reviewing criticisms of the law and legal issues related to it, and conclude by setting out a range of options for reform to address these issues.

The consultation paper opens with two chapters setting out introductory and foundational information for the chapters that follow.

Introduction and consultation paper overview

The introductory chapter explains why BCLI is tackling this subject, sets out a distinction between the broad and diverse category of public engagement and the particular instance within it that is the public hearing, and describes the Renovate the Public Hearing Project. It also discusses the structure of the consultation paper.

The UN Declaration on the Rights of Indigenous Peoples and the framework for recommendations for reform

This chapter provides some background information on the coexisting rights and interests in relation to land and governance in BC to help contextualize some of the options for reform that follow. It situates the land and self-determination rights articulated in the UN Declaration on the Rights of Indigenous Peoples within the context of BC. It also considers the legal foundation on which individual rights relating to public hearings are based. In particular, it focuses on the source of these rights as they derive from English property-law principles as imported into BC. It then discusses the distinction between Aboriginal title and land rights deriving from Canadian constitutional law and inherent Indigenous rights and title as affirmed in the UN Declaration on the Rights of Indigenous Peoples.

Purposes of public hearings, principles of public engagement, and whether the public hearing should be held

This chapter begins the review of options for reform for public comment. It focuses on two big-picture issues. First, it considers whether BC's legislation should include a list of principles of public engagement that apply to land-use bylaws. Second, it discusses if the legislation should allow a local government to forgo the public hearing.

Forms of public engagement other than public hearings

The consultation paper's fourth chapter discusses the wide range of types of public engagement that may be used on a land-use bylaw. It then asks readers to consider whether specific forms of public engagement should be mandated through BC's legislation on land use or whether local governments should simply have the power to decide which forms of public engagement to use. It also asks readers to consider the role that principles of public engagement may play in shaping this aspect of BC's legislation.

Timing of public engagement and public hearings

This chapter considers the narrow issue of when public engagement on a land-use bylaw should take place. BC's current legislation strictly regulates when a public hearing may be held, which has led to concerns that it occurs too late in the process, after all the substantive decisions have been made. This chapter presents a range of options for when the broader category of public engagement on a land-use bylaw should take place.

Procedural issues for public hearings and public engagement

This chapter discusses the current context within which the procedures for public hearings and public engagement are determined. It explains some of the criticisms of the procedures for public hearings and areas for flexibility within the current framework. It then goes on to explore options for making public hearings more inclusive and asks readers to consider options for the inclusion of First Nations in developing approaches to public hearings and engagement.

Conclusion

The consultation paper ends with a brief concluding chapter, which sums up the discussion of issues and options for reform.

Conclusion

BCLI encourages readers to respond to this consultation paper. Readers' responses assist the committee in crafting the final recommendations for reform for the Renovate the Public Hearing Project.