

Memorandum

Date: January 15, 2019

To: Members of Council

From: Sylvia Kirkwood, Manager, Policy & Sustainability, Community Services

Subject: Proposed Open-for-Business Planning Tool – Bill 66, Restoring Ontario's Competitiveness Act, 2018

The purpose of this memo is to inform Council on the proposed new Bill introduced by the Province on December 6, 2018, entitled "Bill 66 - *Restoring Ontario's Competitiveness Act*, 2018" ("**Bill 66**"). This is the second in a series of bills through Ontario's Open for Business Action Plan which aims to stimulate business investment, create jobs, and make Ontario more competitive by cutting unnecessary regulations that are inefficient, inflexible or out of date.

Staff recognize the Province's efforts at aiming to make the planning approvals process more efficient and flexible for municipalities to secure and expedite major business investment and potentially speed up approvals for major employment opportunities. There is recognition that changes made as a result of Bill 66 have the potential to provide municipalities with additional tools to promote economic development in the Town of Caledon.

However, one of the key amendments of Bill 66 is a new regulation to the *Planning Act* referred to as the "Open-For-Business Planning By-law." This new economic development tool would remove planning barriers to expedite major business investment and potentially speed up approvals.

Both the proposed legislation and the regulation are posted on the Environmental Registry of Ontario (ERO #'s 013-4293, 013-4239 and 013-4125, respectively) requiring comments within 45 days (due January 20, 2019).

Background

Bill 66, proposes to make a series of legislative changes one of which is to add a new section to the *Planning Act* allowing municipalities to pass an "Open-for-Business Planning By-law" pursuant to section 34 of the Act for "prescribed purposes."

While the Act is silent on what the prescribed purposes are, the ERO identifies that the purpose of the by-law is to introduce a new development tool and remove barriers to planning to expedite major business investments. Additionally, the proposed regulation is intended to, if certain prescribed criteria are met; ensure that municipalities can act quickly to attract businesses seeking future development sites.

The description of the proposed regulation would also, among other things:

- require confirmation that the proposal is for a new major employment use;
- require evidence that the proposal would meet a minimum job creation threshold (e.g. 50 jobs for municipalities with a population of less than 250,000 people, or 100 jobs for municipalities with a population of more than 250,000 people);
- identify the uses of land, buildings or structures that may be authorized by the tool, such as manufacturing and research and development, but not residential, commercial or retail as the primary use;
- prescribe how notice is to be given to MMAH following passing of the bylaw

Process

A municipality would be permitted to pass an Open-for-Business By-law only with ministerial approval and only when prescribed criteria have been satisfied. The Region or local municipality could impose specific conditions, such as entering into appropriate agreements, or that any works are in accordance with approved plans, or any requirement that is reasonable for and related to the appropriate use of the land or for the protection of public health and safety.

A by-law comes into force 20 days after it has been passed or a later date if specified by the Minister. Only the Minister may modify or revoke a by-law before it comes into force. Afterwards, a by-law may be amended or revoked by by-law pursuant to section 34 of the Act. Further, by-laws cannot be appealed to the Local Planning Appeal Tribunal. There is no specific requirement to notify any persons or public bodies unless the municipality chooses to do so.

To summarize, this process would:

- a) Allow municipalities to permit the use (i.e., zone the lands) without having to strictly adhere to existing local requirements (e.g., official plan and zoning);
- b) Remove the application of a separate approval process for site plan control;
- c) Remove ability to use density bonusing (community benefits in exchange for height or density) and holding by-law provisions;
- d) Allow the municipality to impose limited planning-related conditions that may help to facilitate the proposal [e.g., approval of plans and drawings that show site plan matters (transportation access, lighting, parking, etc.)] and enter into agreements to ensure development conditions are secured;
- e) Allow public consultation at the discretion of the municipality, while requiring public notice after the by-law is passed (at a minimum);
- f) Provide that decisions are final and cannot be appealed to the Local Planning Appeal Tribunal (but allow the Minister of Municipal Affairs and Housing to intervene before the by-law comes into effect, 20 days after its passing);
- g) Remove the requirement for decisions to strictly adhere to provincial policies and provincial plans (but allow the Minister of Municipal Affairs and Housing to impose conditions to protect matters like public health and safety when endorsing the use of the tool).

Exemptions

The proposed Open-for-Business By-law will be exempt from complying with a multitude of plans, policies and pieces of legislation. Specifically, by-laws need not comply with the Provincial Policy Statement, Growth Plan, Official Plans and are exempt from certain provisions of the Clean Water Act, 2006, Great Lakes Protection Act, 2015, Greenbelt Act, 2005, Lake Simcoe Protection Act, 2008, Metrolinx Act, 2006, Oak Ridges Moraine Conservation Act, 2001, Ontario Planning and Development Act, 1994, Places to Grow Act, 2005, and the Resource Recovery and Circular Economy Act, 2016.

Potential Town of Caledon Implications

Staff have concerns with the risks of this tool being used in areas of environmental significance as approximately 80% of Caledon is within the areas of the Greenbelt Plan, Oak Ridges Moraine Conservation Plan, and Niagara Escarpment Plan. Under current provincial policy, this prevents significant development from occurring in these areas. Under Bill 66, a development could be proposed for any area of Caledon, except for within the Niagara Escarpment Plan Area.

The Town of Caledon is widely recognized as having a regionally valuable land base that sustains significant and rich natural systems, including: rural and agricultural landscapes (49%), naturally forested areas (20.1%), meadows (13.9%) and wetlands (6.6%) (Natural Systems in Peel Region: Vulnerability Assessment, 2017). A large swath of the Town's geography includes: the Oak Ridges Moraine and the Niagara Escarpment geological features, while encompassing the headwaters of regionally significant watersheds including the Humber River, Etobicoke Creek and Credit River. Groundwater infiltration occurs throughout the Town's natural areas, providing a significant and unique natural resource for recharging aquifers and sustaining clean drinking water in the region. These currently protected natural assets offer key ecosystem services and integral natural systemic functions throughout the Region of Peel and more broadly throughout the Greater Golden Horseshoe area.

The Greenbelt protects against the loss and fragmentation of the agricultural land base, gives permanent protection to the natural heritage and water resource systems, provides for a range of economic and social activities including agriculture, tourism and recreation uses.

With respect to climate change, Caledon's naturally forested areas, agricultural areas, and greenspaces act as a major carbon sinks to absorb and mitigate climate changing greenhouse gas (GHG) emissions; while also moderating and buffering against the impacts of extreme rainfall (e.g. overland and riverine flooding) and extreme temperatures (e.g. urban heat island effect). In the context of the Town's ability to plan for climate change mitigation and adaptation, decisions made today at the municipal level related to land use change, urban growth and infrastructure development, will have significant regional implications for GHG emissions growth (i.e. inefficiencies in land use planning, infrastructure design, urban growth and development that may result in increased GHG emissions) and ecological buffering capacities to cope with climate change impacts (i.e. transition of natural permeable areas to impermeable paved surfaces that may increase flood risk), now and into the future. It is therefore important from a climate change perspective to continue to protect lands currently regulated by the Green Belt and Oak Ridges Moraine.

Notwithstanding the above concerns, staff consider this proposed enabling regulation similar to “inclusionary zoning” and the municipality could opt to not utilize this tool or ensure that it is not used in areas of significant environmental or agricultural concern.

In particular, the Town would not support the use of this tool where it would jeopardize the protection of the Greenbelt, Oak Ridges Moraine or impact our drinking water. The tool would only be used at the discretion of the municipality subject to certain prescribed criteria being met.

At the time of writing, these criteria have not been identified, and will be released by regulation at a future date. As a result, the true impacts of this proposal cannot be determined until these purposes are clearly identified.

Next Steps

Town Staff are currently consulting with Regional staff to discuss comments on the draft Bill and proposed regulations ahead of the January 20, 2019 deadline in order to facilitate a formal response to the Province.