

Report



Report No. DS2019-003	To: Special Council	Prepared By: Andy Karaiskakis, Senior Planner and Derek Witlib, Manager, Planning Services
Meeting Date: January 16, 2019	Subject: Bill 66, Restoring Ontario's Competitiveness Act and Proposed Open-for-Business Planning By-law (OFB-ZBL)	Motion # _____
Roll #: n/a		R.M.S. File #: L11 56153

Recommendation(s):	Requires Action <input checked="checked" type="checkbox"/>	For Information Only <input type="checkbox"/>
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It is recommended:

1. That Report No. DS2019-003 be received and adopted;
2. That Council authorize Planning staff to submit the comments as outlined in Report DS2019-003 through the Environmental Registry (013-4125) as the Township's submission on the Provincial Consultation on the proposed Open-For-Business Planning Tool; and
3. That Staff be directed to prepare for the Development Services Committee's consideration a protocol for consideration of development in context to an OFB-ZBL.

Background/Analysis:

Background

On December 6, 2018, the Province announced that Bill 66, Restoring Ontario's Competitiveness Act, 2018, had undergone first reading by the Legislature. If it becomes law, Bill 66 will introduce numerous amendments to a wide variety of statutes, including the Planning Act, Clean Water Act, Lake Simcoe Protection Act and other provincial statutes. Among the most notable changes are those proposed in Schedule 10 of the Bill, which would introduce significant amendments to the Planning Act to create a new economic development tool, called an "open-for-business planning by-law" (OFB-ZBL). The government is proposing this tool to be available to all local municipalities to ensure they can act quickly to attract businesses seeking development sites by allowing a new major employment use to be permitted in a location where Township, County, or Provincial planning policies and by-laws would not otherwise

permit the employment use. This OFB-ZBL represents a new zoning power for municipalities. The by-law would only be available to the municipality if a proposed development qualifies as a new major employment use which creates 50 or more jobs for those municipalities with populations under 250,000 (which would be applicable to Oro-Medonte) or 100 or more jobs in larger municipalities.

It appears that the Province's proposed open-for-business planning tool is not intended to allow a municipality to pass a single, blanket by-law to permit all eligible employment uses. Rather, it appears that the tool is intended to be applied on a case-by-case basis to allow municipalities to consider and pass individual OFB-ZBLs for individual new major employment development proposals.

The Ministry of Municipal Affairs and Housing (MMAH) has posted to the Environmental Registry a notice for a proposed amendment to the Planning Act and a proposed regulation under the Planning Act related to the proposed open-for-business planning tool, a copy of which is appended to this report as Attachment #1. The comment period for this proposal closes on January 20, 2019.

Process

In order to pass an OFB-ZBL, a municipal Council must first pass a resolution requesting that the Minister of Municipal Affairs and Housing approve the OFB-ZBL. A municipality's request to the Minister would need to be accompanied by information such as a description of the subject lands, land use planning information, details about the proposed new major employment use and presumably a justification for the request, including evidence that the proposal would meet the minimum job creation threshold. The tool also replaces the requirement for site plan approval, with a seemingly streamlined approach to approval of the detailed development plans. No public consultation is required for the by-law and no appeals to the Local Planning Appeal Tribunal are permitted.

Certain provisions of the Planning Act and other Acts that would ordinarily apply to a by-law passed under Section 34 would not apply to an open-for-business planning by-law. If a request is endorsed, the municipality could pass an open-for-business planning by-law through a streamlined process. This process would:

- 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);
- remove the application of a separate approval process for site plan control;
- remove the ability to use density bonusing (community benefits in exchange for height or density) and holding by-law provisions;
- 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;
- allow public consultation at the discretion of the municipality, while requiring public notice after the by-law is passed (at a minimum);

- 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); and,
- 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).

An open-for-business planning by-law comes into effect 20 days after it is passed, or alternatively, on such later day as may be specified by the Minister. Unlike other zoning by-laws, a municipality is not required to give notice of or hold a public meeting prior to passing an open-for-business planning by-law. After passing an open-for-business planning by-law, the municipality must give notice of the passing of the open-for-business planning by-law to the Minister within three days, and to “any persons or public bodies the municipality considers proper” within 30 days. The proposed legislative changes would create regulation-making authority to provide criteria for the use of the proposed new tool.

Planning Considerations

Bill 66 is unique as it would provide municipalities with unprecedented and sweeping powers to pass by-laws (subject to Provincial approval) to permit new employment uses, without having to be consistent with/comply with/conform to the Provincial Policy Statement, Provincial Plans (e.g. Growth Plan for the Greater Golden Horseshoe 2017, Lake Simcoe Protection Plan), the County of Simcoe Official Plan, the Township of Oro-Medonte Official Plan, or the Township of Oro-Medonte Zoning By-law and certain sections of Provincial legislation (e.g. Clean Water Act 2006). Bill 66 also does not require public consultation in the development process and does not allow a decision to be appealed.

The proposed tool seems similar to a Minister’s Zoning Order which is a tool that is currently available in the Planning Act that allows the province to pass a by-law to restrict the use of land at the Minister’s discretion. However, the difference is that the proposed tool would be passed by a local municipality (with Provincial approval) and would gather a site-specific zoning by-law amendment and detailed site plan application into one open-for-business planning by-law approval. The process for application and implementation of the proposed open-for-business planning by-law tool is not clear at this time.

Bill 66 would provide for a more flexible and timely local decision-making by eliminating the requirements for potentially lengthy consultation and appeal processes. While this may provide near-future economic benefits to the Township, it is Planning Staff’s recommendation that any development proposal that might be considered by the Township under an OFB-ZBL should still be subjected to due diligence and technical review as it would under a regular planning application process, in order to ensure that the long-term health and prosperity of the Township is maintained. In other words, it is Planning Staff’s view that a proposal should still be required to be accompanied up front by technical reports and information to support the development being proposed at a

specific location (e.g. functional servicing, stormwater management, traffic and transportation, environmental impacts (natural features, surface and ground water), hazards (flooding and erosion, slope/soil stability), archaeological resources, land use (compatibility with surrounding land uses, impacts on agriculture and economic impact analysis) for review by the Township. However, not every development proposal may require all such studies. It is through the due diligence process where an applicant is advised of the nature and scope of any study, report or plan dependent on the size of the proposal and its relationship to adjacent land uses and features. Planning Staff would also encourage the Township to undertake some level of public and agency consultation before passing a OFB-ZBL.

Planning Staff's position is that failure to undertake due diligence or consider the public's concerns in context to a proposed new major employment use could lead to land uses that put the Township's quality of life, prime agricultural lands, key hydrologic features and key natural heritage features including the Oro Moraine, source water protection areas and the Lake Simcoe watershed at risk. At this time, it is unclear how the proposed tool could balance the interest of economic development and long-term environmental and water protection in the Province.

It is also unclear at this time how the Province will define a "major employment use" although it is assumed that this will follow the definitions of Employment Use found in the Provincial Policy Statement (2014) and the Growth Plan (2017) which follow traditional business and economic activities (manufacturing, offices, and warehousing) but would not provide for more tourism focused employment use that may be of benefit to the Township of Oro-Medonte. It is Planning Staff's opinion that there may be limited opportunities where Council may choose to use this new planning process as proposed. As currently proposed, a development proposal would be required to meet a minimum job creation threshold of 50 jobs for a municipality of less than 250,000 people. This puts Oro-Medonte in the same category as larger, more urban municipalities such as Town of Richmond Hill, City of Burlington and the Town of Oakville. The Province has not provided a category scaled to smaller, more rural municipalities, such as Oro-Medonte.

It is Planning Staff's opinion that in the event that Bill 66 and its regulations come into effect, the Township would benefit from having its own, locally-developed protocol and procedures in place for the consideration of development in context to an OFB-ZBL. This would include details regarding the type of information and technical documents to be submitted to the Township for review as well as the type of public consultation process that would be undertaken by the Township.

Financial / Legal Implications / Risk Management:

There are no current implications as a result of adopting this report. There may be future implications (financial and legal) that would result from the implementation required to be completed by the Township of any of the legislated changes made by the Province.

Policies/Legislation:

- Planning Act, R.S.O. 1990, c.P.13
- Provincial Policy Statement, 2014
- Places to Grow Act, 2005
- Lake Simcoe Protection Act, 2015
- Clean Water Act, 2006

Corporate Strategic Goals:

In 2016, Council adopted the Township's Strategic Plan. The following Goals of the Plan are relevant to the proposed legislated changes:

Enhanced Communications & Customer Service – We demonstrate a culture of open communication and engagement that delivers on 'customer come first'.

Balanced Growth – We support business and job creation while protecting our natural environment.

Inclusive, Healthy Community – We are a community that is safe, accessible and inclusive.

Consultations:

Director, Development Services

Attachments:

Attachment #1 – EBR Posting 013-4125 – Proposed Open-For-Business Planning Tool

Conclusion:

This report provides an information update for Council and staff in regard to Bill 66, Restoring Ontario's Competitiveness Act and a related proposed regulation under the Planning Act to permit "Open-for-Business Planning By-laws (OFB-ZBL)".

Township Planning Staff remain supportive of planning decisions that promote economic growth, that protect agriculture, our water resources, natural heritage features and that provide a voice for the Township's residents in the development review process. As identified in this report, staff are of the opinion that use of the proposed by-law could lead to land uses that could put quality of life, agriculture, key natural heritage features and key hydrologic features, including the Oro Moraine, source water protection areas and the Lake Simcoe watershed at risk without a locally-developed protocol being established.

On this basis, staff are recommending to Council that Planning Staff be authorized to submit comments on behalf of the Township through the EBR posting, and that these comments reflect the following:

- Concerns that the proposal would not allow for consideration by a local municipality for tourism-based employment uses that are not the more traditionally defined employment uses;
- Concerns that Bill 66 potentially puts quality of life, agriculture, source protection areas, key natural heritage features and key hydrologic features at risk; and
- Intent of the Township to develop its own municipal protocol for the consideration of an OFB-ZBL to ensure that the communities' interests remain protected in the context of good planning.

Respectfully submitted:

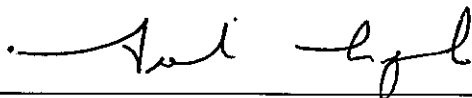


Andy Karaiskakis, RPP
Senior Planner

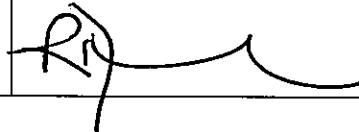


Derek Witlib, RPP
Manager, Planning Services

SMT Approval / Comments:



C.A.O. Approval / Comments:



Attachment #1



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Act Proposal Notice:

Title:
Proposed Open-For-Business Planning Tool

EBR Registry Number: 013-4125
Ministry:
Ministry of Municipal Affairs and Housing
Date Proposal loaded to the Registry:
December 06, 2018

Proposal summary

The government is proposing to make changes to the Planning Act to create a new economic development tool, the open-for-business planning by-law. The tool would be available to all local municipalities to ensure they can act quickly to attract businesses seeking development sites.

This notice is available on the new [Environmental Registry of Ontario](#).

Read this proposal and submit your comments on the new site.

Keyword(s): Land use planning
Related Act(s): Planning Act, R.S.O. 1990

45 days: submissions may be made between December 06, 2018 and January 20, 2019.

Description of Act:

The government is proposing to make changes to the Planning Act to create a new economic development tool, the open-for-business planning by-law. The tool would be available to all local municipalities to ensure they can act quickly to attract businesses seeking development sites.

In circumstances where there are major employment and economic growth opportunities, municipalities could request to use an open-for-business planning by-law, provided certain criteria was satisfied.

The tool would support the government's 1-year service standard for provincial approvals related to these land use planning proposals.

If a request is endorsed, the municipality could pass an open-for-business planning by-law through a streamlined process. This process would:

- 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);
- Remove the application of a separate approval process for site plan control;
- Remove ability to use density bonusing (community benefits in exchange for height or density) and holding by-law provisions;
- 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;
- Allow public consultation at the discretion of the municipality, while requiring public notice after the by-law is passed (at a minimum);
- 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);
- 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).

Contact:

Ken Petersen
Manager
Ministry of Municipal Affairs and Housing
Local Government and Planning
Policy Division
Provincial Planning Policy Branch
777 Bay Street
Floor 13
Toronto ON
M5G 2E5
Phone: (855) 776-8011

Additional Information:

The following government offices have additional information regarding this Proposal. To arrange a viewing of these documents please call the Ministry Contact or the Office listed below.

Provincial Planning Policy Branch
777 Bay Street
Floor 13
Toronto ON
M5G 2E5
Phone: (877) 711-8208

The documents linked below are provided for the purposes of

The proposed legislative changes would create regulation-making authority to provide criteria for the use of the proposed new tool.

Overall, the proposed changes would help ensure municipalities are equipped with the tools they need to quickly respond to emerging job creation opportunities.

Purpose of Act:

The proposed legislative changes would create regulation-making authority to provide criteria for the use of the proposed new tool.

Overall, the proposed changes would help ensure municipalities are equipped with the tools they need to quickly respond to emerging job creation opportunities.

Public Consultation:

This proposal has been posted for a 45 day public review and comment period starting December 06, 2018. If you have any questions, or would like to submit your comments, please do so by January 20, 2019 to the individual listed under "Contact".

On-line submission of comments on this proposal is not permitted.

This notice is available on the new Environmental Registry of Ontario.

Read this proposal and submit your comments on the new site.

All comments received prior to January 20, 2019 will be considered as part of the decision-making process by the Ministry if they are submitted in writing and reference EBR Registry number 013-4125.

Please Note: All comments and submissions received will become part of the public record. Comments received as part of the public participation process for this proposal will be considered by the decision maker for this proposal.

Your personal information may be used in the decision making process on this proposal and it may be used to contact you if clarification of your comment is required. It may be shared (along with your comment) with other Ontario Ministries for use in the decision making process. Questions about this collection should be directed to the contact mentioned on the Proposal Notice page.

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enhancing public consultation.
All links will open in a new window

1. [Planning Act](#)
2. [013-4239 New Regulation under the Planning Act for Open-for-Business Planning To](#)
3. [Bill 66, Restoring Ontario's Competitive ness Act, 2018](#)
4. [013-4293 Bill 66, Restoring Ontario's Co mpetitiveness Act, 2018](#)