



**Planning & Development**

File No.: 2/2019

# PLANNING & DEVELOPMENT REPORT

**To:** Council

**Meeting Date:** January 8, 2019

**Prepared by:** Geoff VanderBaaren  
Director of Planning

**Date Prepared:** January 3, 2019

**Subject:** Bill 66 – Proposed Provincial Legislative amendments

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## **Recommendation:**

That the Council of the Township of Wellesley not support the Proposed Amendments to the Planning Act as set out in Bill 66, Restoring Ontario's Competitiveness Act, 2018 as it fails to adequately protect human health and safety;

AND THAT Report 2/2019, dated January 8, 2019, be submitted to the Ministry of Municipal Affairs and Housing as The Township of Wellesley's response to the proposed amendments to the Planning Act included in Bill 66, Restoring Ontario's Competitiveness Act, 2018.

## **Summary:**

On December 6, 2018, Bill 66, the Restoring Ontario's Competitiveness Act, 2018 was given first reading by the Provincial legislature. This report focusses on the amendments to the Planning Act proposed by Bill 66. The posting on the Environmental Registry indicates that the Bill is intended to restore Ontario's competitiveness by amending or repealing certain statutes.

If Bill 66 becomes law, amendments to a number of Acts will occur, including significant amendments to the Planning Act. Specifically, the proposed amendments would allow local municipalities to pass an open-for-business planning by-law (By-law) with conditions which would exempt a major employment use from many Planning Act requirements, as well as other Provincial policies and plans including, but not limited to, the Clean Water Act (2006), the Greenbelt Act (2005), Provincial Policy Statement (2014) and the Places to Grow Act (2005). The By-law would not have to conform or to be consistent with these plans (amongst others) or any upper tier or local municipal Official Plan. In addition, the municipality would not be required to consult with the public or notify upper tier municipalities or other agencies, and there is no ability to appeal the By-law to the Local Planning Appeals Tribunal..

**Report:**

Township staff does not support the amendments to the Planning Act proposed by Bill 66. While staff recognize the merits of an expedited review process for major employment uses, we have significant concerns. Concerns include the potential risks to health, safety and the environment; the lack of prescribed consultation and notification requirements; the lack of detail on the nature of the criteria or conditions that can be imposed; the proposed types of employment use; and, the non-applicability of Provincial and Municipal Plans. Essentially, the tool permits a municipality to disregard all matters of Provincial and Regional interest and regular planning process for moderately sized employment uses. The Provincial planning framework is in place to protect the public interest and the public, and disregard for this framework should rarely if ever be warranted. The province does have the ability already to use a Minister's Zoning Order to facilitate a major employment use if it is warranted.

This report outlines the key elements of the proposed statutory and regulatory changes and comments on the potential implications. In addition, it makes recommendations on Bill 66 should the Province choose to move forward with proposed amendments. Recommendations include removing the Clean Water Act as legislation that does not apply to any proposed By-law; identifying prescribed criteria; defining major employment use/ major employer; imposition of a lapsing provision; the requirement for public consultation; mandatory circulation to upper tier municipality, adjacent municipalities and agencies; and, the ability for conditions to be imposed and implemented through an agreement if necessary. The intent of the recommendations is to ensure that some of the fundamental planning matters and matters of public interest would be addressed through prescribed criteria as required by the Regulation while streamlining the process.

The Province has posted a summary and the draft of the Bill on the Environmental Registry for a 45-day public review period ending January 20, 2019. The proposed Regulation has not been posted; as a result, it is difficult to fully evaluate the proposed changes without the benefit of the specific details of the proposed regulation.

**Proposed Planning Act Amendments**

Should Bill 66 become law, it would allow for a local municipality to pass an open-for-business planning by-law which would exempt a major employment use from many Planning Act requirements, as well as other Provincial policies and plans. This includes the Clean Water Act (2006), the Greenbelt Act (2005), Provincial Policy Statement (2014) and the Places to Grow Act (2005). The By-law would not have to conform to or be consistent with these plans (amongst others) or the upper tier or local Official Plan.

Regulations relating to Bill 66 have not been released, however based on the Province's description of the regulation the By-law would be available for a "new major employer use" with a minimum job creation threshold which the province identifies as "for example" 50 jobs

for municipalities with a population of less than 250,000 people, or 100 jobs for municipalities with a population over 250,000 people.

A By-law would be available to all local municipalities and is described by the Province as an “economic development tool” with the intention of allowing a municipality to streamline development approvals and respond quickly to major employer uses seeking development sites.

In order to pass such a By-law, a local municipality must pass a resolution requesting the Minister approve the passing of a by-law and the request must be accompanied by the prescribed information. Approval from the Minister must be received prior to passing the by-law and the prescribed criteria, if any, must be met. The Minister’s approval may be subject to conditions however no information or examples of such have been provided.

Conditions may be imposed by the local municipality that principally relate to some, but not all matters of site plan control. The proposed amendments to the Planning Act also permit the local municipality to impose, “Any requirement that is reasonable for and related to the appropriate use of the land and that the municipality considers necessary for the protection of public health and safety”.

While a municipality may impose conditions that it considers necessary for the protection of public health and safety, there is no requirement for the local municipality to address matters of compatibility with sensitive land uses or require mitigation. There is no requirement to circulate adjacent municipalities or any other potentially interested parties or to consult with the public prior to passing of the By-law.

### **Planning for Employment Areas**

The Township currently has very little employment land available to accommodate new or expanding businesses. Although this tool could be used to speed up the process of zoning new lands for employment uses, doing so by by-passing public input and appropriate planning review, the broader public interest is not served.

The Region and area Municipalities have been comprehensively and strategically planning for employment lands through employment land forecasts and land inventories to ensure an appropriate supply of employment lands. This long term planning helps to ensure the logical and orderly development of land.

### **Ministerial Zoning Order**

Currently, when an opportunity for a major employment use arises and the need to locate outside of an area designated and zoned for such purposes the Province has the option to use its powers and implement a Ministerial Zoning Order (MZO). The Planning Act provides for Ministerial Zoning Orders that permit the Minister to directly impose zoning by-laws on any

land in Ontario without adhering to the normal zoning process set out in the Planning Act such as the giving of notice or holding a hearing before making a zoning order. The Minister is only required to give notice of the zoning order within 30 days of making the order. Given that a By-law as proposed under Bill 66 would require Ministerial approval, it is unclear as to why a new planning tool is being proposed as opposed to modifying the existing Ministerial Zoning Order provisions of the Planning Act.

### **Staff Comments and Recommendations:**

While recognizing the merits of an expedited review process for major employment uses the potential trade-offs on matters of provincial, regional and Township interest set out in Bill 66 as currently proposed are too great. The concerns include the lack of prescribed consultation; potential risks to health, safety and the environment including groundwater protection; the ability to impose conditions and the lack of detail on the nature of the conditions; lack of detail regarding the type and scale of what is considered a major employment use; disregard for Provincial and Municipal Plans and policies; and how servicing and infrastructure needs will be addressed.

Should the Province decide to move forward with Bill 66, the tool should be modified to continue to protect critical matters of Provincial, Municipal interest and public health and safety.

### **Source Water Protection**

**It is recommended that the Clean Water Act, 2006 and any other policy set out in a drinking water source protection plan prepared under the Clean Water Act, 2006 should always apply.**

The Region and Township rely on ground water for the majority of our water supply. Any potential uses that could jeopardize these groundwater supplies should be regulated and controlled as set out through the Clean Water Act and source water protection plans.

### **Natural Heritage Features and Hazard Lands**

**It is recommended that the prescribed criteria that must be met in order to receive Ministerial approval include a requirement that no development shall occur within or adjacent to lands that are designated as a Natural Heritage Feature/Area or Hazard Land.**

Under the Provincial Policy Statement and the Growth Plan, Natural Heritage Features and Areas include significant wetlands, significant coastal wetlands, fish habitat, significant woodlands significant valley lands, habitat of endangered species and threatened species, significant wildlife habitat, and significant areas of natural and scientific interest. The protection of hazard lands is a matter of public health and safety and development should not

be permitted on hazard lands. At a minimum all of these features and lands should be protected through prescribed criteria.

### **Compatibility with Sensitive Land Uses**

**It is recommended that new employment uses be located with like uses and that compatibility with sensitive land uses be added as prescribed criteria.**

With respect to public health and safety, a new employment use should be evaluated in terms of potential impact on sensitive land uses such as residential uses. The employment use should be located with like uses and should minimize adverse effects from noise, vibration, odour and other contaminants on sensitive land uses. This will serve to protect public health as well as provide for the long-term viability of the employer. At a minimum a new major employment use should be required to assess and mitigate appropriately.

### **Public Consultation**

**It is recommended that public consultation on a proposed By-law be mandatory and in accordance with Section 34 of the Planning Act prior to a municipality passing a resolution requesting the Minister approve the passing of a By-law.**

Public consultation is a fundamental and important part of land use planning in Ontario. Consultation with the public on a proposed employment use can assist a municipality with identifying both positive and negative impacts associated with a proposal. It will serve to inform proposed conditions that the municipality may want to implement through the By-law.

### **Required Notification**

**It is recommended that where lands proposed through By-law under Bill 66 are within an upper tier municipality, notification to agencies, neighbouring municipalities and the upper tier municipality of the intent to request approval for By-law should be provided at least 20 days prior to a decision.**

As proposed, Bill 66 does not require notification to the upper tier municipality, adjacent municipalities and agencies. There may be matters of Regional interest, such as source water protection, that should be part of the consideration for adopting a By-law through this process.

## **Conclusions**

As Bill 66 is currently drafted, the type and degree to which conditions would be utilized is at the discretion of the area municipality. While the use of the By-law is voluntary, the proposed By-law would be the strongest planning tool available under the Planning Act. If the Province moves forward with these amendments, the tool should be modified to include opportunity for public input, and additional protection for health, safety and compatibility consideration as outlined in this report.

## **Township Strategic Plan:**

This report aligns with the initiative of Growth Management/Sustainable Growth with the strategic goal to ensure the Township of Wellesley is carefully planned and that Township policies provide for well managed balanced sustainable growth and directly relates to the strategic objective of developing strong, appropriate, local land use policies and guiding principles in the context of an Official Plan that concurs with Provincial and Regional policy.

## **Financial Implications:**

None

## **Other Department / Agency Comments:**

None

## **Legal Considerations:**

None

## **Attachment(s):**

Bill 66 – Section 10

Department Head:	_____
Treasurer:	_____
Corporate Management Team (date):	January 4, 2019
<b><u>Approved by:</u></b>	
Chief Administrative Officer:	