



Committee Report

To: Warden Mitch Twolan
Members of the Planning and Development Committee

From: Kara Van Myall
Director of Planning and Development

Date: January 17, 2019

Re: Ontario's Proposed 'Open for Business Planning Tool'

Recommendation:

That the Ontario's Proposed "Open for Business Planning Tool" report be forwarded to the Ministry of Municipal Affairs as Bruce County's Comments on the EBR Registry number 013-4125, Amendments to the *Planning Act* by Bill 66, "Restoring Ontario's Competitiveness Act, 2018"

Background:

The Ontario Provincial Government has proposed Bill 66, titled the "Restoring Ontario's Competitiveness Act, 2018."

This Bill would amend or revoke several pieces of legislation including the *Agricultural Employees Protection Act (2002)*, *Farm Registration and Farm Organizations Funding Act (1993)*, *Ministry of Agriculture, Food and Rural Affairs Act*, *Pawnbrokers Act*, *Child Care and Early Years Act*, *Education Act*, *Ontario Energy Board Act*, *Toxics Reduction Act*, *Pension Benefits Act*, *Technical Standards and Safety Act*, *Wireless Services Agreements Act*, *Long Term Care Homes Act*, *Employment Standards Act*, *Labour Relations Act*, *Private Career Colleges Act*, *Highway Traffic Act*, and the *Planning Act*.

This report addresses proposed changes to the *Planning Act*.

As professional Land Use Planners, staff offer this analysis for Committee consideration in forwarding County feedback to the Ministry of Municipal Affairs.

Staff have been asked to provide feedback through their governing body, the Ontario Professional Planners Institute.

Comments are due to the Ministry of Municipal Affairs by January 20, 2019.

Summary:

We hope that the Province will consider the County's comments in its further review and debate of the legislation. These are summarized below and detailed in following pages.

1. Based on the suggested criteria of at least 50 jobs for manufacturing / research and development jobs the tool is unlikely to be available for many developments in Bruce County;
2. Issues with investment attraction in Bruce County municipalities generally relate more to infrastructure timing and funding than to land being designated for development
3. Staff could likely process, and councils decide upon, applications through the conventional *Planning Act* process more quickly than the Open for Business Planning By-law tool, which requires review and approval from the Minister of Municipal Affairs before it can be used;
4. While there may be gains achieved by using the Open for Business Planning By-law, there may be political costs of by-passing Official Plans and public meetings, and social, economic, and environmental costs of exempting decisions from plans designed to protect these factors;
5. If the tool is to offer time savings and maintain environmental and other planning objectives it will need the Province to assign adequate resources.

Detailed Review:

The proposed amendment would add a new site-specific tool to Section 34 ‘Zoning By-laws’ to allow Municipalities to pass an ‘open for business planning by-law.’

The purpose of the tool is to enable municipalities to act quickly to attract businesses seeking development sites.

The below table outlines changes described in the Environmental Bill of Rights Posting and comments about their potential relevance to Bruce County:

Change proposed by the legislation	Relevance to Bruce County and its lower tier Municipalities
Allow municipalities to permit a site specific use (i.e., zone the lands) without having to strictly adhere to existing local requirements (e.g., official plan and zoning);	There Could be advantages in the short term where Official Plan(s) are outdated
Remove the application of a separate approval process for site plan control;	May be advantages in streamlining the process; a limited site plan control process is permitted (see below).
Remove ability to use density bonusing (community benefits in exchange for height or density) and holding by-law provisions;	Density bonusing is not currently used in Bruce County Municipalities; holding provisions are not widely used.
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;	This is a limited form of site plan approval to address basic site planning issues; it appears to have limited requirements for offsite improvements warranted by a development (for example, traffic lights).
Allow public consultation at the discretion of the municipality, while requiring public notice after the by-law is passed (at a minimum);	Could condense the process; May be politically unpopular due to lack of consistency and transparency.

Change proposed by the legislation	Relevance to Bruce County and its lower tier Municipalities
<p>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);</p>	<p>This could offer greater certainty to the proponent;</p> <p>Would-be appellants may express concerns through other means and/or seek to directly influence the Minister of Municipal Affairs.</p>
<p>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).</p>	<p>This includes exemptions from Drinking Water Source Protection Plans and Provincial Policy Statement.</p> <p>Puts greater responsibility on the Ministry of Municipal Affairs and the Minister to review information and consider exemptions; no public review process</p>

The Bill enables regulations to set out criteria that must be met before a Municipality can pass an ‘open for business planning by-law.’

At this stage the regulations have not been outlined in detail, but the government is proposing that the criteria would:

- 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 the Minister of Municipal Affairs and Housing following the passing of an open-for-business by-law (similar to how the Minister is notified following the passing of a zoning by-law - e.g. email and personal service).

1. Is the tool likely to be applicable in Bruce County?

Based on a job creation threshold of 50 primarily manufacturing or research and development jobs, it is unlikely that the tool would apply to many situations in Bruce County.

Job creation in Bruce County has tended to be more gradual. Of approximately 30 businesses highlighted thus far in relation to the Bruce Power Life Extension Program, 10% (3) provide more than 50 direct jobs.

2. Would the tool help us out?

For the most part, Bruce County Municipalities have inventories of designated employment lands. Financing services and timely infrastructure approvals from the province are barriers to development.

Municipalities are taking steps to advance their business attraction aims. Although there are many examples, a few recent highlights include:

- Brockton amending its zoning by-law proactively to be ready to accommodate cannabis-related business activity.
- Kincardine currently undertaking an Official Plan Review which provides an opportunity to consider land needs for the next 20 years for a variety of uses.
- South Bruce completing an Official Plan update that considered supply of employment lands.
- Saugeen Shores exploring its employment lands supply and undertaking efforts to bring new serviced employment lands online in the near future

Challenges municipalities face in being ‘development ready’ relate more to getting services to the lot line, both in terms of financing and obtaining timely infrastructure approvals from the province, than they relate to having lands approved for development purposes.

In a large stakeholder meeting in 2016 with developers associated with the Bruce Power Life Extension Project, one of the primary opportunities noted for Planners to improve the development approvals process was to work with MOECC (now MECP) to encourage faster turnaround on permits to construct water and sewer works and other infrastructure. As the Municipality ends up responsible for owning and operating this infrastructure, a faster turnaround on these important approvals could be a more appropriate focus of attention.

Investors (including municipalities) in planned business/industrial parks, where roads and services exist or are planned to be provided near major roads and a workforce, may struggle to finance and support development if larger-scale businesses can locate outside these areas.

3. Will the Tool save time?

The process for using the proposed tool is not entirely clear, however it appears that it would likely involve several steps and consultations between the entrepreneur, the Municipality, and provincial staff, including development-specific evaluation of:

- Whether there is adequate job creation (to enable use of the tool);
- What form of public consultation is appropriate (to address potential political costs);
- The public interest risks associated with using the tool (exemptions from plans)
- What safeguards are appropriate to address these risks and will they be effective

The *Planning Act* posting notes that "The tool would support the government's 1-year service standard for provincial approvals related to these land use planning proposals."

It is unclear whether the Province, acting in this capacity to grant Municipalities authority to pass a by-law, would have duties of consultation and accommodation or to obtain Free,

Prior, and informed Consent of First Nations as it may relate to their interests, and whether this is accounted for in the one-year service standard.

Official Plan and/or Zoning Amendment Applications within Bruce County typically take less than 1 year to process, and include multi-agency consultation, public notices, public meeting(s), and an opportunity for appeals to the Local Planning Appeals Tribunal.

The Local Planning Appeals Tribunal has recently been established to replace the former Ontario Municipal Board with a timelier review process.

4. Benefits and Costs of using the tool

Land use plans and controls are created to consider a broad range of criteria. From these, plans outline the best uses of land and manage conflict between uses.

There are some elements of plans that have not been updated, and which lead to repetitive amendments. These can be frustrating for applicants, staff, and Council, and having an opportunity to address these issues through a swifter process could be beneficial.

Applicants may see a benefit to the certainty of having a decision that cannot be appealed or overturned except by the Minister of Municipal Affairs, in order to avoid lengthy or costly appeals.

The Open-for-Business tool does have some similarities to the 'Ministers Zoning Order' which allows the Minister to establish zoning anywhere in the province, by order, with no further public consultation, review, or appeal to the Tribunal. Although rarely used, its typical applications are for areas of the province that are not organized into Municipalities, or where there are provincial interests (often economic) that the government wants to secure, with no further questions. These have included slot machines at racetracks and large-scale manufacturing and distribution facilities.

The proposed 'Open for Business Planning By-law' appears to extend an opportunity for local Councils to request zoning decisions from the ministerial level, to signal local support for the Minister authorizing zoning and perhaps make the use of this form of planning tool more frequent.

This approach could, however, be offset by costs to the stakeholders in the planning process.

For example,

- Applicants may be unsuccessful in their pursuit of an Open for Business by-law; they can't appeal a refusal, and would need to start over with a different type of *Planning Act* application;
- Decision makers may spend time making decisions about how to proceed through the Open for Business process on a case-by-case basis, as compared to following the typical *Planning Act* process that provides for gathering and reviewing information, consulting the public, decisions, and appeals;
- Public interest stakeholders who can't appeal the decision could use other means to express their concern, with the result being harmful to the reputation of the proponent,

the municipality, and the government, in addition to time and money spent by all parties fighting or defend something.

While the tool may help to generate increased economic activity, GDP, and tax revenue for the province and host municipalities, there could be longer-term costs in terms of increased traffic congestion, higher infrastructure maintenance costs, health impacts and further biodiversity loss. Taxpayers province wide (including in Bruce County) may be exposed to the costs of adverse long-term impacts, whether or not they used or benefitted from the tool.

5. Time and Quality Considerations

The Open for Business process places significant responsibility on the provincial bureaucracy to understand potential impacts of decisions to exempt proposals from planning and source water protection policies.

If the government proceeds with this proposal, adequate resources should be provided so that the timeliness and quality of provincial reviews and approvals can be maintained.

Source Information:

Planning Act Changes EBR Posting:

<http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTM2NTE2&statusId=MjA4MDQ5&language=en>

Regulation posting: <https://ero.ontario.ca/notice/013-4239>

Bill 66:

<https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-66#BK9>

Financial/Staffing/Legal/IT Considerations:

There are no financial, staffing, legal or IT considerations associated with this report.

Interdepartmental Consultation:

Stellina Williams, Business Investment Specialist, Energy Sector provided insights into nuclear energy cluster business development.

Link to Bruce County Strategic Goals and Elements:

1. Develop and Implement tactics for improved communications
G: leadership based on consensus direction with acceptance of calculated risks
Comment: The Open For Business Planning Tool may limit opportunities to seek consensus and evaluate risks.

5. Eliminate our own red tape:
 - A. All work processes designed for the fewest steps and easiest completion
Comment: The Open for Business Planning Tool follows a separate land use approval process and may not offer time savings over existing processes.

7. Stimulate and Reward innovation and economic development:
 - A. Streamline and simplify our Planning Processes (Official Plan, Zoning By-law)

Comment: The tool could streamline the approval process, but may not yield better decisions.

9. Coordinated, concerted effort to advance our agenda

C. Lobby the federal and provincial government green belt design for designated areas

Comment: The tool may impair the effectiveness of greenbelt plans by providing opportunities for exemptions.

Written by: Jakob Van Dorp, Senior Planner, Planning and Development

Approved by:

A handwritten signature in black ink, appearing to read "Murray Clarke". The signature is fluid and cursive, with a long horizontal stroke at the end.

Murray Clarke
Acting Chief Administrative Officer