

# Staff Report



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Service Area	Office of the Chief Administrative Officer
Date	Monday, January 14, 2019
Subject	<b>Bill 66, Restoring Ontario's Competitiveness Act, City of Guelph Response</b>
Report Number	CAO-2019-05

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## RECOMMENDATION

1. That Report CAO-2019-05 dated January 14, 2019 regarding Bill 66, Restoring Ontario's Competitiveness Act be received.
2. That the City of Guelph identifies it will not support the Proposed Amendments to the Planning Act as set out in Bill 66, Restoring Ontario's Competitiveness Act, based on the information currently available and the perceived threat to the City's drinking water.
3. That Committee of the Whole recommends the province remove from the proposed Bill 66 amendments to the Planning Act in regards to exemptions from water quality and quantity protection under the Clean Water Act, 2006 and that all relevant sections of the Clean Water Act continue to apply to all municipal development applications.
4. That the response prepared by staff, dated January 9, 2019 and included in Attachment 1, be endorsed and submitted to the Ministry of Economic Development, Job Creation and Trade and the Ministry of Municipal Affairs and Housing for consideration.
5. That the comments received by City of Guelph residents and stakeholders received and/or presented at the Council meeting be forwarded to the Province of Ontario for consideration.
6. That the City request to meet with provincial staff to further discuss the City of Guelph's comments regarding Bill 66 and become a partner in any further review and amendments of the Bill.
7. That the province engage in a formal consultation with municipalities and hold a public consultation in Guelph on potential changes to the Act.

## **Executive Summary**

### **Purpose of Report**

The purpose of this report is to provide members of Council with an overview of the changes proposed under Bill 66, Restoring Ontario's Competitiveness Act, 2018, and staff's comments on these changes for members of Council's consideration and endorsement. The deadline to provide these comments to the province on this Bill is January 20, 2019.

### **Key Findings**

On December 6<sup>th</sup>, 2018 Todd Smith, the Minister of Economic Development, Job Creation and Trade introduced Bill 66, Restoring Ontario's Competitiveness Act, 2018. If passed, the proposed legislation would make changes to a number of pieces of legislation. Of these changes includes amendments to the Planning Act to allow municipalities to apply to the province for permission to pass "open for business" By-laws. With permission from the Minister of Municipal Affairs and Housing, these By-laws are meant to attract employers and accelerate development approvals. Such development could be made exempt from the conformity provisions of a number of pieces of legislation including the Greenbelt Act and the Clean Water Act. The By-law would not have to conform or to be consistent with these Acts (amongst others) or any upper tier or local municipal Official Plan.

The Bill has been posted to the Environmental Registry for comment until January 20<sup>th</sup>.

In reviewing the legislation, staff do not support the changes to the Planning Act in Schedule 10 as proposed by Bill 66 based on the information currently available and the perceived threat to the City's water supply. While City staff recognize the merits of an expedited review process for major employment uses, staff have significant concerns regarding the proposed process. The concerns include the potential risks to health and the safety of municipal water supply and 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 non-applicability of Provincial and Municipal Plans as they relate to planning matters; and the potential impact to existing economic development initiatives.

The full summary of staff's proposed comments to the province are included in Attachment 1.

### **Financial Implications**

The potential financial implications of any future proposed changes under Bill 66 are being reviewed and are unknown at this time. However, Finance staff have indicated that the Bill could have an impact on the collection of Development Charges and other revenue streams that are modelled on certain assumptions for growth/population density. If changes occur as to where development can occur, there is risk that the rates the City is charging are no longer sufficient and this could put the organization at financial risk.

## **Report**

### **Background**

On December 6<sup>th</sup>, 2018 the Province introduced Bill 66, Restoring Ontario's Competitiveness Act. If passed, the Bill would make changes to a number of pieces of legislation that impact municipalities directly including the Planning Act, Pawnbrokers Act, Ontario Energy Board Act, Labour Relations Act and the Long-Term Care Homes Act.

The Bill would also allow municipalities to apply to the province for permission to pass an "open for business" By-law meant to attract employers and accelerate development approvals. With permission from the Minister of Municipal Affairs and Housing, such "open for business" development could be made exempt from the conformity provisions from legislation including:

- Clean Water Act;
- Great Lakes Protection Act;
- Lake Simcoe Protection Act, the Greenbelt Act;
- Metrolinx Act;
- Oak Ridges Moraine Conservation Act;
- Places to Grow Act;
- Resource Recovery and Circular Economy Act;
- Ontario Planning and Development Act; and
- as well as aspects of the Planning Act that apply to site plan control areas.

### **Process to Implement an Open for Business Bylaw**

The draft legislation outlines the order of obtaining an "open for business" By-law as follows, presumably after a planning application is received and evaluated by the municipality. The municipality must receive approval from the Minister to pass the "open for business" By-law. Below is the process for a municipality to obtain the "open for business" By-law:

1. The municipality passes the By-law;
2. An agreement between the land use proponent and municipality regarding site plan type conditions is signed and registered against the land to which it applies;
3. It comes into effect within 20 days of passing and is sheltered from LPAT appeal;
4. Notice is provided to the Minister within 3 days of passing and to others within 30 days;
5. The Minister may modify or revoke the By-law; and
6. The municipality can amend or revoke the By-law.

The above process would allow municipalities to circumvent many traditional legislative requirements. The process would:

- Allow municipalities to permit the use (i.e., zone 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);
- 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); and
- 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).

More information on the implications of the proposed changes under Bill 66 are listed in later sections of this report and in Attachment 1.

The Bill has been posted to the Environmental Registry for stakeholder comment until January 20<sup>th</sup>, 2019. No formal consultation document has been provided by the province. At the time of writing this report only a description of the proposed Regulation regarding the “open for business” By-law has been posted on the Environmental Registry, therefore, it is difficult to fully evaluate the proposed changes without the benefit of the specific details, or the regulation to review.

### **Impacts of the Proposed Legislation**

Due to the limited amount of time available to assess the implications of the Bill, staff representatives from Planning, Finance, Legal Services, Engineering, Environmental Services, Economic Development and Intergovernmental Relations met to assess the perceived implications to the Bill. Accordingly, staff have prepared a summary of a high-level understanding of the proposed legislative changes in the Bill that impact municipalities and the potential identified implications of the proposed changes.

City staff have also reached out to their respective professional associations and to the Association of Municipalities of Ontario (AMO) to gain additional insight into the implications the Bill may have on municipalities. AMO has indicated that it is continuing to review the Bill in more detail and will be bringing forward a comprehensive analysis to its Board in the coming weeks.

## Schedule 2- Repeal of the Pawnbrokers Act

**Overview of Proposed Change:** Schedule 2 of Bill 66 repeals the Pawnbrokers Act in its entirety. Created in the early 1900s, the Act regulates pawnshops and second hand stores.

**Implications:** Municipal governments would retain the authority to create bylaws and business licenses regulating pawnshops, however, the repeal would eliminate law enforcement tools aimed at enforcing against theft and enabling the search and return of stolen goods.

## Schedule 3- Child Care and Early Years Act, 2015 and Education Act

**Overview of Proposed Change:** Changes to the number of children allowable by a care giver and offering programs starting at 4 years old instead of 6 years.

**Implications:** The changes to this program would increase the number of spaces available for child care. The County is responsible for childcare in the City of Guelph and the City provides \$3.5M in funding annually to the County for childcare services. As a result in the proposed changes in Bill 66, there could potentially be a financial impact with an increase in the availability of spaces. However, it is challenging to comment on this without analysis and a fulsome consultation, which would be the responsibility of the County of Wellington as the childcare provider for the City.

The City has discussed the proposed change with the County and they are currently reviewing and assessing Bill 66 and will be submitting comment by the January 20<sup>th</sup> deadline with respect to the Child Care Act changes.

## Schedule 4 — Amendments to the Ontario Energy Board Act, 1998 (Sub-metering)

**Overview of Proposed Change:** The proposed change deletes references to 'unit sub-metering' from the Ontario Energy Board Act, and replaces it with references to smart meters.

**Implications:** The changes outlined in the Bill may impact individual homeowners for energy used if residences are not permitted to have smart meters in their homes. Studies show that lack of individual meters can raise energy use over 30%, which will bring financial impacts to residences without smart meters. As well, it is unclear if it would have any impact on secondary suites or inclusionary zoning initiatives. More information is required to better assess the implications of this change.

## Schedule 8 — Amendments to the Long-Term Care Homes Act, 2007

**Overview of Proposed Change:** Proposed changes for long-term care homes' licences include that the Director, as appointed by the Minister, may determine the need and how public consultations shall be conducted.

**Implications:** Under the proposed changes, the Ministry would have added flexibility to issue licenses for temporary beds for a longer duration of time. Municipal homes have licences subject to Minister's approval with no designated term.

There is a need for more discussion to develop a less prescriptive, outcomes-based framework that reduces burden while prioritizing patient care and well-being. The proposed amendments would potentially result in a reduction in the frequency of attendance by long term care licensees at public meetings. However, the proposed amendments to improve the timeliness and process for issuing long-term care emergency licenses may help to support the operation of the long term care home.

Staff at the Elliott Community will conduct their own review of the proposed legislation and will be providing comments to the province through their professional associations.

#### Schedule 9 — Amendments to the Labour Relations Act, 1995 (Construction Employer Designation) and Employment Standards Act, 2000

**Overview of Proposed Change:** Bill 66 would clarify that municipal governments are not construction employers. Construction employer designation reduces the number of eligible bidders for municipal construction projects and increases municipal capital costs by eliminating competition. Construction is not considered a core municipal function and it has been argued that municipal governments should not be treated as construction employers.

Further, changes are also included to to remove the Director's approval for employers to make agreements that allow their employees to exceed 48 hours of work in a work week. These changes also include removing the Director's approval for employers to make agreements that allow them to average their employee's hours of work for the purpose of determining the employee's entitlement to overtime pay.

**Implications:** The changes to the Labour Relations Act are positive for the City by deeming municipalities to be non-construction employers. Although the City of Guelph was not previously designated a non-construction employer, the City could be designated and that would have affected our costs.

Further, the removal of the requirement to seek Director approval for working over 48 hours of work in a work week and overtime entitlement would be a positive change for the City and create efficiencies. However, more time is required to better understand the risks and benefits of these changes and how they may impact the safety of workers.

#### Schedule 10 — Amendments to the Planning Act ('Open For Business' Tool)

**Overview of Proposed Change:** The proposed legislation introduces a new planning tool called an "open for business" Bylaw. The provincial government has

indicated that this tool would be available to all local municipalities, if certain prescribed criteria are met, to ensure they can act quickly to attract businesses seeking development sites.

The posted description of the scope of the regulation indicates that a proposal to use this tool would require 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). It would appear that the tool, like a Minister's Zoning Order (MZO) would be for a specific land use application, however, additional clarification from the province is required as to this process.

The following provisions do not apply to an open-for-business By-law:

- Clean Water Act;
- Great Lakes Protection Act;
- Lake Simcoe Protection Act, the Greenbelt Act;
- Metrolinx Act;
- Oak Ridges Moraine Conservation Act;
- Places to Grow Act;
- Resource Recovery and Circular Economy Act;
- Ontario Planning and Development Act; and
- as well as aspects of the Planning Act that apply to site plan control areas.

The By-law would not have to conform or to be consistent with the above Acts the 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.

Under the current legislation, 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 Minister's Zoning Order (MZO). The Planning Act provides for Ministerial Zoning Orders that permit the Minister to directly impose zoning by-laws, interim control by-laws and temporary use controls 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. Similarly, there is no automatic appeal or review of the Minister's decision.

Given that a By-law as proposed under Bill 66 would require Minister's approval, it is unclear as to why a new planning tool is being proposed as opposed to modifying the existing Minister's Zoning Order provisions of the Planning Act.

**Implications:** It appears that the proposed amendments to the Planning Act create a new development approval process that would allow municipalities to impose both zoning By-law amendment related requirements and site plan control related conditions and requirements within the same process through the Open for Business By-law. The requirements and conditions that can be imposed are subject

to certain restrictions and significant exemptions from provincial policies and plans outlined in the Bill. Not outlined in the Bill itself, but based on the description of the proposed future regulations, it appears that an open for business By-law could only be used for a major employment use.

## **Environmental and Source Water Protection**

### *Clean Water Act*

As proposed, Bill 66 aims to remove source water protection policies that were developed under the Clean Water Act, 2006, which use the Planning Act as the implementation tool. Staff have serious concerns regarding the province reducing the drinking water quality and quantity protections in communities across the province to support employment growth.

The scientific, evidence-based policies, which were approved by the Province of Ontario, were developed to manage drinking water threats and provide sustainable development for the future, while protecting municipal drinking water sources (i.e. not prohibiting growth or freezing development). The City of Guelph has 17 policies in effect that would be removed from the City's Source Protection Plan if Bill 66 is implemented as proposed. These include policies regarding septic systems, storage and handling of fuels and chemicals in close proximity to municipal drinking water supply wells. Based on the potential outcomes of Bill 66, important tools for protecting the City's municipal drinking water takings would also be removed. Circumventing the source water protection process in an area where significant drinking water threats have been identified would put the City's water supply.

The City has wellhead protection areas (groundwater takings) and intake protection zones (surface water takings), which extend into the County of Wellington (Township of Puslinch, Guelph/Eramosa and Erin), Region of Waterloo (Woolwich Township), and Halton Region (Milton). Bill 66 may provide municipalities outside the City with the ability to side step current planning checks provided under the Clean Water Act in the siting and approval of new industry. Therefore, Bill 66 as proposed may provide surrounding municipalities with the ability to pass individual by-laws supporting new industry within the City's wellhead protection areas without consultation, creating a new, significant, potential risk to the City's drinking water.

In summary with respect to water issues, staff are concerned that the approval of Bill 66 may result in the loss of protection that the Clean Water Act specifically affords the City with respect to current and future municipal drinking water supplies.

### *Toxics Reduction Act*

Also included within Bill 66 is the proposed repeal of the Toxics Reduction Act. This Act identifies accountabilities and qualifications of responsible parties, is aimed at prevention and protection of public health, and is intended to inform Ontarians about toxic substances specifically.

There are a number of concerns from staff as to whether the adoption of a Federal Toxics Plan instead of a Provincial Plan will be capable of enforcing issues such as



corporate accountability and sewer and waste discharges in communities with a heavy manufacturing base. More information is required to understand the implications of this change and its influence on how it would influence the increase in use of toxins by manufacturers.

### **Planning Provisions**

It appears that the proposed amendments to the Planning Act under Bill 66 create a new development approval process that would allow municipalities to impose both zoning by-law amendment related requirements and site plan control related conditions and requirements within the same process through the open for business bylaw. The requirements and conditions that can be imposed are subject to certain restrictions and significant exemptions from provincial policies and plans outlined in the Bill. Not outlined in the Bill itself, but based on the description of the proposed future regulations, it appears that an open for business by-law could only be used for a major employment use needs to be defined in the legislation.

### **Economic Development**

The perceived intention of Section 10 of Bill 66 is to support the reduction of regulatory process or “red tape” in order to make it easier for businesses to be established in Ontario communities. However, despite the intent of Section 10, in addition to the environmental concerns it presents, City Economic Development staff believe that the implementation of the schedule would in fact create the opposite effect of what it is intending.

By way of analysis of the Bill, staff agree that Schedule 10 of Bill 66 would create economic hardship for municipalities, would negate thoughtful and long-term vision planning policies, would erode collaborative regional economic efforts (e.g. Innovation Corridor, two-way-all-day GO) and would spur on a ‘race to the bottom’ as neighbouring municipalities seek short-term economic gains that put municipal regions around them at a competitive disadvantage.

In Guelph, we work with partners across the region and beyond. We seek to bring economic growth to the region, recognizing that success breeds success. Work force planning initiatives, transportation and transit advocacy, trade missions and expos, environmental initiatives, affordable housing round tables, policies and collaborations, etc. With the implementation of Schedule 10, these efforts to work collaboratively would be negatively impacted and longer-term effects would include economic hardships for Guelph and our neighbours.

### **Public Consultation**

Lastly, City staff are concerned with the removal of consultation requirements through the open for business By-law. It is understood that Schedule 10 would allow for the municipality to still have a public process at their discretion. While a streamlined public process may be supportable in some instances, the City of Guelph does not support the potential exemption of the planning and development of major employment uses from any public process prior to a decision being made.

## **Next Steps**

In assessing next steps, at the direction of the Committee of the Whole, staff will be providing comments to the province on Bill 66 by the January 20<sup>th</sup> deadline.

The Bill is still in first reading and will transition into second reading on February 19<sup>th</sup>. Second reading allows for amendments to be made to the legislation prior to receiving Royal Assent and coming into force. Staff will continue to monitor the progression of the Bill and provide an update to Council once the legislation has been passed.

Staff have also recommended that Committee communicate to the Province that we are willing to consult further with the province on our comments regarding the Bill and the development of subsequent regulations.

## **Financial Implications**

The potential financial implications of any future proposed changes under Bill 66 are being reviewed and are unknown at this time. However, Finance staff have indicated that the Bill could have an impact on the collection of Development Charges and other revenue streams that are modelled on certain assumptions for growth/population density. If these assumptions are altered significantly, there is risk that the rates the City is charging are no longer sufficient and this could put the organization at financial risk.

The financial implications to municipalities related to implementation of various elements of Bill 66 continue to be a key area of concern for many municipalities.

## **Consultations**

The following service areas/ departments were involved in the preparation of the staff response dated January 9<sup>th</sup>, 2019:

**CAO's Office:** Corporate Communications, Intergovernmental Affairs

**Corporate Services:** Legal Services, Clerks, Human Resources, Finance

**Infrastructure, Development and Enterprise Services:** Economic Development, Water and Wastewater Services, Planning, Engineering

**Public Services:** Responsible for the Elliot Community

## **Corporate Administrative Plan**

### **Overarching Goals**

Service Excellence

Financial Stability

### **Service Area Operational Work Plans**

Our Resources - A solid foundation for a growing city

## **Attachments**

ATT-1          Draft Response to the Province of Ontario, Bill 66

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