



Report: PDL-CPL-19-01/PDL-LEG-19-03

Region of Waterloo

Planning Development and Legislative Services

Community Planning

Legal Services

To: Chair Tom Galloway and Members of the Planning and Works Committee

Date: January 8, 2019 **File Code:** C06-80(A)

Subject: Proposed Amendments to the Planning Act - Bill 66 Restoring Ontario's Competitiveness Act, 2018

Recommendation:

That The Regional Municipality of Waterloo 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 in particular the safety of the Region of Waterloo's drinking water resources;

And That if amendments to the Planning Act proceed through Bill 66, Restoring Ontario's Competitiveness Act, 2018 that Section 39 of the Clean Water Act, 2006 continue to apply to any proposed by-law;

And That Report PDL-CPL-19-01/PDL-LEG-19/03, dated January 8, 2019, be submitted to the Ministry of Municipal Affairs and Housing as The Regional Municipality of Waterloo'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 is specific to the Document Number: 2914539

amendments to the Planning Act proposed by Bill 66. The remainder of legislative changes proposed by Bill 66 are addressed through report PDL-LEG-19/04 dated January 8, 2019.

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.

The Region does not support the amendments to the Planning Act proposed by Bill 66. While Regional staff recognize the merits of an expedited review process for major employment uses, Regional staff 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 type and scale of the employment use; and, the non-applicability of Provincial and Municipal Plans. This being said, an existing tool, a Minister's Zoning Order could be used to facilitate a major employment use if the circumstance 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 Regional 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 that under normal circumstances would be addressed through conformity with Provincial plans and policies, official plans, appropriate circulation and notice 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. Only a description of the proposed Regulation has been posted on the Environmental Registry. As a result, it is difficult to fully evaluate the proposed changes without the benefit of the specific details of the proposed regulation to review.

If approved by Council, this report would form the Region's formal comments on the components of Bill 66 as it relates to the proposed amendments to the Planning Act.

Report:**Background:**

Proposed Planning Act Amendments

On December 6, 2018, Bill 66, the Restoring Ontario's Competitiveness Act, 2018, received first reading by the Provincial legislature. Should this Bill become law, it will amend a number of statutes including the Planning Act. Specifically, the amendments to the Planning Act would allow for a local municipality to pass an open-for-business planning by-law (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. It is noted that further exemptions may be prescribed by Regulation. The other legislative changes contemplated by Bill 66 are considered through Report PDL-LEG-19-04, dated January 8, 2019.

The 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. Details on the prescribed

criteria have not been provided by the Province. 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. This would include conditions that an upper tier municipality may impose pursuant to the site plan control provisions of the Planning Act. Bill 66 does not require consultation with the upper tier municipality and it would be at the discretion of the local municipality to impose conditions relating to, for example, a road widening and access to Regional Road or the provision of an easement for a transit shelter. The proposed amendments to the Planning Act also permits 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". Again, there is no requirement for consultation with the upper tier municipality nor the ability of the upper tier municipality to require such conditions. This is of particular concern given that the By-law would not have to conform to the Regional Official Plan nor the Grand River Source Protection Plan. Effectively, the By-law would zone a property with conditions and exempt the development from Site Plan control.

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.

Further, a local municipality is not required to circulate adjacent municipalities or any other potentially interested parties or to consult with the public prior to passing of the By-law. Notice is required within 3 days after the By-law is passed to the Minister and to those the local municipality "considers proper in such manner as the municipality considers proper" within 30 days following passage of the By-law. The By-law would come into effect 20 days after it is passed unless the Minister specifies a later day in a notice to the municipality within the 20-day period. There is no appeal mechanism once the By-law is passed or approved by the Minister.

Bill 66 has been posted on the province's Environmental Registry for comment by January 20, 2019. Only a description of the proposed Regulation 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.

Planning for Employment Areas

The Region of Waterloo and the 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. Further, long term planning of the East Side lands (for serviced employment) and the Highway 401/

Regional Road 97 Employment Area in North Dumfries (for unserviced employment uses) provide for employers requiring larger lots. This longer term planning helps to ensure the logical and orderly development of land and that the necessary water and wastewater servicing can be provided in a cost-effective manner.

The Region has commenced its Regional Official Plan review and Municipal Comprehensive Review process which includes a requirement under the Growth Plan (2017) for the upper tier municipality to undertake an employment strategy and to designate employment areas in official plans and protect them for appropriate employment uses over the long-term. In the lead up to the review, the Region is aware that some of the Area Municipalities have expressed concerns over the supply of employment lands. Working with the Area Municipalities, the intent is to review and address these concerns in a comprehensive manner through the Regional Official Plan Review. This work will provide for an appropriate and adequate supply of employment land across the Region.

The Region also provides a Brownfield Financial Incentive Program which offers Tax Increment Grants (TIGS) and Regional Development Charge (RDC) exemptions to help offset the costs of remediation and provide opportunity for intensification, including employment uses, within existing settlement areas.

Minister's 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 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. The Minister is only required to give notice of the zoning order within 30 days of making the order. The Minister may, on its own initiative or at the request of any person or public body, amend or revoke all or any part of the zoning order. The Minister may request the Local Planning Appeal Tribunal to hold a hearing or ask it to hold a hearing at the request of any person or public body to consider whether the zoning order should be amended or revoked. The Minister is required to give effect to the Tribunal's decision unless the Minister advises the Tribunal that its hearing involves a matter of Provincial interest making its decision subject to Cabinet review. 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.

Staff Comments:

Regional staff do not support the proposed amendments to the Planning Act. While Regional staff recognize the merits of an expedited review process for major employment uses the potential trade offs on matters of provincial and regional interest set out in Bill 66 as currently proposed are too great. Regional staff have concerns with: 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; non-applicability of Provincial and Municipal plans and policies; and how servicing and infrastructure needs will be addressed.

This position being clear, should the Province decide to move forward with Bill 66, the tool should be modified to continue to protect critical matters of Provincial and Regional interest and public health and safety.

Source Water Protection

It is recommended that the proposed non-application of 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 be removed from the Bill. The Clean Water Act, 2006 should always apply.

The Region is the largest urban municipality in Ontario to rely almost exclusively on groundwater supplies for its drinking water. Approximately three-quarters of the Region's drinking water is provided from more than one hundred municipal wells. Protecting this valuable resource from contamination is essential to maintaining public health and safety and economic prosperity. Regional staff have substantial concerns about the potential risks to health and safety by exempting a By-law from the provisions of the Clean Water Act (2006). These provisions require decisions under the Planning Act to conform with significant threat policies of the Grand River Source Protection Plan given the Region of Waterloo's reliance on groundwater for its municipal water supply. For example, policies in the Grand River Source Protection Plan prohibit the storage of fuel and hazard chemicals within 100 metres of the Region's 130 municipal supply wells. As a result, a company that needed fuel or chemicals as part of its manufacturing operation could be located adjacent to a supply well increasing the risk that the well could be impacted by a spill. In addition, the exemption would prevent salt including salt application mitigation measures as part of site plan approvals which is essential to stabilizing the increasing chloride levels detected in most of the Region's supply wells. As a result, the Region would have to attempt to address these matters after the site has been approved and constructed which is more difficult and costly.

Proposed Prescribed Criteria

While the Region is very clear on its position that the Clean Water Act (2006) should still be applied to a proposed By-law, Regional staff acknowledge the proposed merits of this form of planning tool from an economic development perspective. However, in the absence of any detail related to a draft regulation to implement such a By-law, the Region has significant concerns with the trade-offs on matters of Provincial and Regional interest that would no longer apply if Bill 66 as drafted moves forward. As a result, the Region is recommending a series of prescribed criteria that should be incorporated into any future regulation to provide direction to municipalities to ensure that matters such as protection of natural heritage features and hazard lands, protection of agricultural resources, appropriate servicing and land use compatibility are addressed. In addition, changes to the definition of a major employment use are recommended to be better aligned with the weight of this significant proposed planning tool.

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 Features or Area of Hazard Land and that development be restricted in or near sensitive surface water features and sensitive groundwater features.

Regional staff have concerns about the protection of natural heritage features and areas and hazard lands and hazardous sites such as floodplains, unstable soils and slopes and erosion hazards given the broad exemption from Provincial policy, the Growth Plan and the Regional Official Plan. 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 valleylands, habitat of endangered species and threatened species, significant wildlife habitat, and significant areas of natural and scientific interest. These areas should continue to be protected from development. Development should continue to be restricted in surface water features and ground water features which include headwaters, rivers, stream channels, inland lakes, seepage areas, recharge/discharge areas, springs, wetlands, and associated riparian lands, water tables, aquifers and related unsaturated zones. These features are of provincial interest and should continue to be protected from development. 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.

Location of Major Employment Uses/ Protection of Agricultural Resources

It is recommend that major employment use should be located within Settlement

Areas. Where this cannot be accommodated, uses should avoid Prime Agricultural Lands and be located adjacent to Settlement Areas.

With the amendments to the Planning Act as proposed, a major employment use could be located outside of the urban area and potentially compromise prime agricultural areas and the agricultural system. Prime Agricultural areas are an important resource that should continue to be protected. In addition, the Agricultural Sector is a significant employer in the Region and both the agricultural industry and the agricultural resources land base should be protected from non-agricultural uses and potential land use conflicts.

Adequate Servicing

It is recommended that a municipality should not be able to pass a By-law unless the following prescribed criteria are met:

- **Adequate water and wastewater servicing must be available and environmentally appropriate, and**
- **Development of the site does not obligate any municipality to provide water and / or wastewater servicing or any infrastructure required for the development of the site.**

Regional staff have concerns about the ability to locate a major employment use where adequate water and/ or wastewater servicing is limited or unavailable, such as outside settlement areas. Under the proposed Bill, a major employment use could locate outside of a settlement area potentially compromising the Prime Agricultural area and/ or locate where municipal water or wastewater services do not exist or where it would be very expensive to extend and provide municipal services. The potential impact should be minimized and the provision of adequate, feasible and environmentally appropriate service must be a requirement.

Definition of Major Employment Use/ Major Employer

It is recommended that where an upper tier municipality exists, the threshold should be based on the upper tier population given the Region's responsibility for Employment Land under the Growth Plan. A minimum threshold of 200 employees for populations over 250,000 is recommended.

Major employment use should be defined and the definition should not include any residential or commercial (including retail) component. Major office should be excluded from the definition where it is locating outside of the Urban Area, particularly in a municipality where higher order transit is planned or exists. Where ancillary or secondary uses are contemplated there must be specific detail

to ensure these uses remain ancillary or secondary to the major employer.

Any By-law should be tied to the specific major employment use/ major employer contemplated for the site and contain a lapsing provision should that use not locate on the lands within a specified reasonable period of time. The tool should not be available to be used where there is not an imminent and likely major employment use/ major employer looking to locate.

Regional staff are of the opinion that the minimum number of employee thresholds provided as examples in the description of the Regulation are too low. This is based on the threshold the Region considers a large employer when conducting the workplace count surveys. Examples of employers with 200-499 employees are Google (Kitchener), NCR (Waterloo) and Honeywell Aerospace (Cambridge). At a minimum a major employment use should generate a significant quality and/or quantity of jobs to justify by-passing the regular planning process.

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 a 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 be required to 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. It is anticipated that issues related to compatibility can be addressed through design and conditions of approval associated with the By-law.

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 the lands proposed for a By-law are within an upper tier municipality, notification to and consultation with the upper tier municipality be mandatory at all points in the process to request, pass and seek Minister's approval of a By-law; and,**
- **Any conditions or criteria provided by an upper tier municipality must be included in the By-law and the upper tier municipality have authority to enter into an agreement with the land owner to implement upper tier conditions.**

As proposed, Bill 66 does not require notification to the upper tier municipality, adjacent municipalities and agencies. However, the proposed amendments still provide the opportunity to include matters of Regional interest as set out in section 41 of the Planning Act. It is inconsistent to provide this opportunity, but not require the local municipality to circulate the upper tier municipality. In addition, other matters of Regional interest such as source water protection and servicing should be considered when developing potential conditions to be imposed through the By-law.

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. It is the Region's position that Bill 66 is not appropriate. However, if the Province considers it appropriate to move forward with the amendments, the tool should be modified to continue to protect critical matters of Provincial and Regional interest outlined in this Report while still streamlining the development approvals process and providing opportunities for economic development.

Further Exemptions from Applicable Statutes, Plans or Policies

It is recommended that any further exemptions for a proposed By-law be considered by way of further legislative amendment to the Planning Act and not through prescription by regulation.

It is noted in Bill 66 that further exemptions may be prescribed by regulations, for example exemptions from other Planning Act requirements or any other Provincial Legislation or Plans. It is recommended that any further exemptions for a proposed By-law be considered by way of further legislative amendment to the Planning Act and not through prescription by regulation.

Other Recommendations

Other methods of streamlining the planning approvals process should be considered. One matter that should be considered by the Province in order to facilitate development is the creation of implementing regulations that would operationalize the zoning with conditions provisions of the Planning Act. Zoning with conditions combines zoning by-law with site plan approval and would serve to streamline the development approvals process.

Conclusions and Next Steps

The public review period ends on January 20, 2019. No further information has been provided on the timing of next steps, however it is anticipated that the Province will move quickly. Staff will continue to monitor the progress of Bill 66 and the proposed regulations and will update Council as necessary.

Corporate Strategic Plan:

This report is consistent with the following Regional Strategic Objectives:

- 1.1 Support existing business and attract new employers and investments (to stay, grow, thrive and prosper).
- 3.2 Protect the quality and quantity of our water resources.
- 3.5 Preserve, protect and enhance green space, agricultural and environmentally sensitive lands, and Regionally owned forests;
- 3.6 Improve environmental sustainability and liveability intensifying urban and rural settlement areas.

Financial Implications:

Nil.

Other Department Consultations/Concurrence:

Staff from Transportation and Environmental Services were consulted on the preparation of this report.

Area Municipal Consultation / Coordination:

Regional and Area Municipal staff discussed initial thoughts and implications relating to Bill 66. There are varying views and approaches to responding to the Province on this matter and each Area Municipality is proceeding to comment independently. Regional staff have also consulted with the GRCA who is preparing a report to their Board and will be providing comments to the Province.

Attachments

Nil.

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