



**STAFF REPORT
Growth Management**

Title: Comments on Bill 66 - Restoring Ontario's Competitiveness Act, 2018
Report Number: IPPW2019-010
Author: Michelle Lee
Meeting Type: Committee of the Whole Meeting
Council/Committee Date: January 14, 2019
File: [File]
Attachments: [Attachments]
Ward No.: All Wards

Recommendation:

1. That report IPPW 2019-010 be approved.
2. That report IPPW 2019-010 and the accompanying recommendations be forwarded to the Province as the City of Waterloo's initial comments in response to the Province's proposed Bill 66 - Restoring Ontario's Competitiveness Act, 2018.

A. Executive Summary

The Province has introduced Bill 66 (Restoring Ontario's Competitiveness Act, 2018) which proposes to make broad changes to existing legislation for the purpose of enhancing economic competitiveness. Of particular relevance to the City of Waterloo are the changes proposed in Schedule 10 of the Bill, which would enable local municipalities to adopt a new planning tool to streamline their development approvals process for new, major employment uses. Streamlining provisions primarily consist of an open-for-business planning tool (by-law) that would enable a Council to approve development applications that do not conform to the local or regional official plans, and certain Provincial legislation, policies and plans, such as the Clean Water Act and the Growth Plan for the Greater Golden Horseshoe.

This report provides staff's initial comments and recommendations on Bill 66. Comments on the Bill are due to the Province by January 20, 2019. Given the limited commenting window, staff are not able to undertake effective public consultation.

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B. Financial Implications

None

C. Technology Implications

None

D. Link to Strategic Plan

(Strategic Priorities: Multi-modal Transportation, Infrastructure Renewal, Strong Community, Environmental Leadership, Corporate Excellence, Economic Development)

Consideration should be given to the City's Strong Community, Environmental Leadership, Corporate Excellence, and Economic Development pillars when considering Bill 66.

E. Previous Reports on this Topic

None

F. Approvals

Name	Signature	Date
Author: Michelle Lee		
Director: Joel Cotter		
Commissioner: Cameron Rapp		
Finance:		

CAO



Comments on Bill 66 - Restoring Ontario's Competitiveness Act, 2018 IPPW2019-010

1.0 Overview

The Province recently introduced Bill 66 (Restoring Ontario's Competitiveness Act, 2018) that, if approved, would make broad changes to existing legislation as a means to enhance economic competitiveness. Of particular relevance to the City of Waterloo, and the subject of this report, is the proposal to amend the Planning Act to allow local municipalities to pass open-for-business planning by-laws for "major" employment uses, subject to the approval (with or without conditions) of the Minister of Municipal Affairs & Housing.

Open-for-business by-laws would enable a municipality to fast track certain employment development by exempting it from specified Provincial plans, legislation, and regional and local official plans. Specifically, an open-for-business planning by-law and the employment development to which it applies, would be exempt from:

- 1) Conformity with Provincial Policy Statement and Provincial Plans (e.g. the Growth Plan for the Greater Golden Horseshoe),
- 2) Conformity with Official Plans,
- 3) Appeal to the Local Planning Appeal Tribunal (LPAT),
- 4) Holding Provision By-laws,
- 5) Height and Density Bonusing,
- 6) Conformity with the Greenbelt Act, 2005,
- 7) Conformity with the Ontario Planning and Development Act, 1994, and
- 8) Conformity with Places to Grow Act, 2005.

Further, a municipality would not be required to give notice of or hold a public meeting prior to passing an open-for-business planning by-law or notify other agencies. A new but not yet drafted regulation under the Bill is proposed to prescribe a set of requirements and criteria for municipalities seeking approval to adopt an open-for-business planning by-law. This regulation would set out job creation thresholds for qualifying employment uses, with a minimum of 50 jobs proposed for municipalities with a population of less than 250,000 people, and a minimum of 100 jobs for municipalities with a population of more than 250,000 people. The regulation would also set out the types of land uses that would qualify as a major employment use, and gives the example of "manufacturing and research and development, but not residential, commercial or retail as the primary use".

2.0 Staff Review and Recommendations

According to the Province, the purpose of Bill 66 is to “stimulate business investment, create good jobs, and make Ontario more competitive by cutting unnecessary regulations that are inefficient, inflexible or out of date”. It purports to achieve this objective by providing municipalities with a tool that enables zoning for major employment uses without the need to comply with certain Provincial, regional and local policies and regulations that would normally apply. While staff are supportive of the objective to simplify the development review process and enhance economic competitiveness, we do not support legislative instruments that could undermine important planning and environment laws, plans and policies that play a critical role in safeguarding human health and safety, protecting the environment and natural resources, creating land use compatibility, and ensuring efficient and sustainable development of land. Further, planning staff are concerned with the proposal to remove the requirement to consult and the right to appeal – such requirements are necessary for transparency, accountability, and effective decision making. Further, such requirements are essential to mitigating cross-border impacts and managing orderly growth and development.

The lack of information related to Bill 66 is concerning. More information is required, regarding the types of conditions that could be applied by the Minister when approving an open-for-business planning by-law, the ability to require compliance with exempted laws / plans / policies should the local municipality desire to do so, and the type and scale of qualifying employment uses.

The above concerns are detailed in the section below.

2.1 Eligible Employment Uses

Employment uses that could qualify for an open-for-business planning by-law are not defined in Bill 66, and instead are to be defined in a forthcoming regulation. A description of the proposed regulation provided by the Province suggests that any lands subject to the open-for-business planning bylaw will be required to have employment use(s) such as manufacturing and research and development as the primary use. The description is vague – it is unknown if knowledge based industries and professional offices are deemed “employment”. The Provincial description leaves open the possibility that residential, commercial and retail could be considered as a secondary use, however no parameters are given, nor consideration towards economic development via mixed-use intensification in major transit station areas or the like. Such secondary uses require further consideration, including requirements that secondary uses only be permitted in settlement areas where sufficient transportation and water/waste water infrastructure exists. Staff also have concerns about the possibility that over time, secondary or ancillary uses could become the primary use and recommend that, should Bill 66 be approved, that municipalities be provided with tools to ensure that employment uses remain the primary use. Clarity is needed about whether the minimum threshold for the number of jobs created could include those

created through the secondary uses, such as retail or commercial. More information is also needed to clarify whether the open-for-business tool can only be used for lands for which a potential employer has been identified, and not for the pre-zoning of areas outside of settlement areas as a means to expand municipal boundaries and circumvent planning and environment laws, plans and policies.

Recommendation: that Council encourage the Province to extend municipal consultation, and provide draft regulations with respect to the conditions under which the by-law may be used, the definition of employment uses and how the number of jobs created by the land use is calculated and maintained.

2.2 Source Water Protection

Schedule 10 of Bill 66 exempts employment uses established via an open-for-business planning bylaw from adhering to section 39 of the Clean Water Act, 2006 (CWA). The CWA was enacted to protect public health and safety in response to Walkerton's water contamination tragedy. Section 39 requires municipal and Provincial planning decisions to be consistent with policies in source water protection plans that address significant threats to drinking water. The proposed exemption from the CWA could result in the construction and operation of industrial developments in wellhead protection areas or surface water intake protection zones that have been identified in source protection plans. In such cases, significant drinking water threats could be posed to the regional drinking water system from activities or facilities associated with these exempted developments, such as high-volume water-takings, on-site sewage works, waste disposal, or the handling or storage of solvents and fuel. Given that Waterloo's drinking water is integrated with the regional system, the proposal to exempt employment development from the CWA means that Waterloo's drinking water will be vulnerable to decisions by other municipalities. Threats to drinking water could be further exacerbated by the Bill's proposal to remove the requirement to consult with adjacent municipalities and agencies with appropriate expertise. Recourse for decisions that have a negative impact on adjacent municipalities would be limited because of the Bill's proposal to exempt open-for-business by-laws from appeal.

Recommendation: That Council object to the provisions in Bill 66 that would exempt planning decisions from the requirement to conform to the Clean Water Act.

2.3 Strategic, Coordinated Planning

If approved, Bill 66 would enable an open-for-business planning by-law to contravene Provincial plans and policies, such as the Provincial Policy Statement (PPS) and the Growth Plan for the Greater Golden Horseshoe, as well as regional and local official plans. These planning instruments set out expectations and requirements for land use planning to ensure coordinated, compatible, and orderly development while protecting public health and safety and conserving natural, cultural and agricultural resources. The proposed exemption for major employment uses ignores contemporary land use and

environmental planning principles that are the cornerstone to sustainable development and long-term economic prosperity. Large employment developments should not be located outside of settlement areas, or in locations where they can't be efficiently serviced by transportation and water/waste water infrastructure. Natural heritage features including significant woodlands and significant wildlife habitat must be protected and buffered. Prime agricultural lands should be conserved, along with sites of archaeological or cultural heritage significance.

While a municipality has the ability to choose whether or not to adopt an open-for-business planning by-law, it has limited ability under Bill 66 to prevent negative impacts created by open-for-business by-laws adopted in other municipalities, contrary to good planning, forcing municipalities out of the planning realm and into the courts if issues arise.

City of Waterloo staff do not support the broad based approach proposed in Schedule 10 of Bill 66 to exempt certain developments from conforming to planning and legal instruments / provisions intended to foster transparency, collaboration, orderly development, public safety, and the protection of significant resources. Further, staff do not support the elimination of certain municipal site plan powers as proposed by Bill 66, particularly elimination of the City's ability to regulate matters relating to exterior design, which could have adverse impacts on the City's urban design objectives and character of the City that contributes to its sense of place.

Furthermore, the necessity of Bill 66 should be questioned as the Minister has already broad powers under Section 47 of the Planning Act to establish zoning to capitalize on major economic development opportunities, providing the Minister with significant power and the corresponding accountability.

Recommendation: That the Province re-examine the need for Bill 66, having regard to Section 47 of the Planning Act. If the Province elects to advance Bill 66, that the legislation be modified as follows:

- a) that employment uses be prohibited within significant natural heritage features and areas (and their associated buffers), and prohibited in or proximal to sensitive surface water features and sensitive groundwater features / systems;*
- b) that employment uses be located within settlement boundaries as identified in the Growth Plan for the Greater Golden Horseshoe;*
- c) that employment uses be connected to municipal water and wastewater servicing and transportation infrastructure sufficiently sized and configured to accommodate the development; and,*
- d) that employment uses shall be compatible with nearby sensitive land uses, such as but not limited to residential uses, including in terms of adverse effects from noise, vibration, odour and other contaminants.*

2.4 Public and Agency Consultation and Appeal Rights

Adopting an open for business planning by-law would enable municipal councils to bypass requirements for public consultation as set out in the Planning Act, and where they exist, in a municipality's Official Plan. There would also be no requirement to consult with relevant agencies and stakeholders, such as the Region of Waterloo and adjacent municipalities. Consultation with the Grand River Conservation Authority would not be required until after the open-for-business by-law is adopted, at the Building Permit stage. Planning staff are concerned with the proposal to remove the requirement to consult and the right to appeal – such requirements are necessary for transparency, accountability, and effective decision making. While consultation can be time consuming, it results in more informed and transparent decision making which in turn leads to better land use planning outcomes. Even if the City of Waterloo were to choose to continue its current consultation practices under an open-for-business by law, it could still be impacted by other municipalities who opt out of the requirement to consult, particularly if the development impacts planning issues that have regional implications such as transportation, transit, source water protection, and natural heritage.

Recommendation: That Council encourage the Province to require municipalities to consult with adjacent and upper tier municipalities prior to adopting an open-for-business by-law. That Council encourage the Province to reconsider its exemption of open-for-business by-laws from appeal, given that the exemption may simply shift land use disputes from LPAT to the courts.

3.0 Conclusions

City of Waterloo staff have significant concerns with Schedule 10 of Bill 66 specifically with respect to open-for-business by-laws that would exempt certain developments from adhering to comprehensively prepared Provincial, regional and local plans, policies and legislation. While Bill 66 provides councils with the authority to streamline the development review process for desired major employment opportunities, it fails to adequately address planning, environmental and cross-border issues. Adoption of an open-for-business by-law could negatively impact other municipalities and circumvents planning legislation that is intended to ensure coordinated, efficient and sustainable land uses and development. This could result in poorly informed and uncoordinated planning decisions that could have negative public health and safety, environmental, infrastructure and growth management impacts for Waterloo.

A number of tools exist that could achieve the Bill's objective of encouraging employment related development by streamlining the development review process. These include Ministerial Zoning Orders, which enable the Province to bypass regulation to secure significant employment-related developments of Provincial interest. Municipalities are also already enabled by the Province to adopt a Development Permit System which would consolidate zoning by-law, site plan control, and minor variance applications into one application, with a shorter processing time of 45 days. Granting

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municipalities the ability to use conditional zoning is another planning tool that could speed up the development review process by enabling municipalities to approve zoning by-laws with detailed conditions, which in turn would reduce the need for holding provisions as a means to apply conditions which must be removed at a later date by Council and create certainty as part of issues resolution.