



Report to: Development Services Committee

Report Date: January 28, 2019

SUBJECT: City of Markham Comments on Bill 66, *Restoring Ontario's Competitiveness Act, 2018*, Proposed Open-For-Business Planning Tool and New Regulation Under the *Planning Act*

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RECOMMENDATION:

- 1) That the report entitled "City of Markham Comments on Bill 66, *Restoring Ontario's Competitiveness Act, 2018*, Proposed Open-For-Business Planning Tool and New Regulation Under the *Planning Act*" dated January 28, 2019 be received;
- 2) That the Province be advised that the City of Markham does not support proposed legislation that would a) over-ride the established planning framework in the Province of Ontario including the Provincial Policy Statement, Greenbelt Plan, Oak Ridges Moraine Conservation Plan, *Clean Water Act* as well as municipal official plans and b) that would result in redistribution of infrastructure investment from areas already planned for growth, resulting in these areas not achieving their development potential;
- 3) That the Province allow sufficient time for meaningful public consultation on the proposed legislation, by extending the commenting deadline for a further 30 days;
- 4) And that the report entitled "City of Markham Comments on Bill 66, *Restoring Ontario's Competitiveness Act, 2018*, Proposed Open-For-Business Planning Tool and New Regulation Under the *Planning Act*" dated January 28, 2019 be approved and forwarded to the Assistant Deputy Minister of Economic Development, Job Creation and Trade and Assistant Deputy Minister of Municipal Affairs and Housing in response to comments requested by the Province.

EXECUTIVE SUMMARY:

The Province is proposing to make changes to the *Planning Act* to create a new economic development tool called the open-for-business planning by-law and is seeking feedback. The open-for-business planning tool is part of several legislative changes the Province is proposing as part of Bill 66, *Restoring Ontario's Competitiveness Act, 2018* to facilitate job creation in a number of sectors.

The open-for business planning by-law is intended to be available to all local municipalities to attract employment uses seeking development sites. A local municipal planning by-law would require Minister approval before it is approved by Council. The open-for-business planning by-law would allow employment uses to be approved without being subject to a number of Provincial land use planning related policy statements and

plans (e.g. Planning Act, Provincial Policy Statement, Growth Plan, Greenbelt Plan and Oak Ridges Moraine Conservation Plan, *Clean Water Act*, etc).

Preliminary staff comments were submitted to the Province prior to the commenting deadline on January 20, 2019. The submission noted preliminary staff comments were subject to Council's support and Council would follow up with additional comments to the Province.

There are questions and comments regarding several provisions of the proposed planning by-law:

- Clarity is requested on the nature of the barriers to economic development being addressed by the proposed planning by-law;
- The proposed planning by-law should not over-ride the established planning framework in the Greater Golden Horseshoe, and particularly but not limited to the Provincial Policy Statement, Greenbelt Plan, Oak Ridges Moraine Conservation Plan, and *Clean Water Act*;
- The implications of the proposed planning by-law on Provincial, Regional and local infrastructure investment and urban structure must be fully understood;
- The public should have the right to be notified prior to Council approval of the proposed planning by-law;
- Additional information is sought on how delivery of the minimum 100 jobs for municipalities with a population of 250,000 or more will be ensured;
- Non-employment uses should not be permitted and clarification is requested on the extent of a by-law beyond the area of a site-specific use;
- Conditions related to natural and cultural heritage should be included in the proposed planning by-law; and
- What are the actions to address the Province's goal for Provincial approvals within 1 year?
- The Province allow sufficient time for meaningful public consultation on the proposed legislation, by extending the commenting deadline for a further 30 days

It is recommended this report be forwarded to the Province in response to the request for comments on the proposed open-for-business planning by-law. Staff will report back to Development Services Committee should the Province allow for additional public input, as per staff recommendations, or upon the Province making a decision on Bill 66.

PURPOSE:

This report provides Development Services Committee with information and preliminary staff comments on the Province's new economic development tool called the open-for-business planning by-law which is part of several legislative changes the Province is proposing as part of Bill 66, Restoring Ontario's Competitiveness Act, 2018 to facilitate job creation. Council's comments will be sent to the Ministry of Economic Development, Job Creation and Trade and Ministry of Municipal Affairs and Housing.

BACKGROUND:

On December 6, 2018, the Minister of Economic Development Job Creation and Trade tabled Bill 66, *Restoring Ontario's Competitiveness Act, 2018* to further reduce red tape and regulatory burden to support business to grow and create jobs.

Bill 66 amends several Provincial *Acts* governed by 12 ministries including the *Planning Act*, *Child Care and Early Years Act*, and *Employment Standards Act* and is part of the Province's Open for Business Action Plan. This staff report focuses on the proposed changes to the *Planning Act* to provide local municipalities with a new economic development tool called an open-for-business by-law as contained in Appendix 'A' to this report. The proposed Regulation to facilitate implementation of the by-law is contained in Appendix 'B'.

Preliminary staff comments subject to Council's approval and further comments, were submitted to the Province prior to the commenting deadline on January 20, 2019 (attached as Appendix 'C').

Bill 66 amends the *Planning Act* to add a new section 34.1, which allows local municipalities to pass open-for-business planning by-laws. These by-laws involve the exercise of a municipality's powers under section 34 of the Act (pertaining to passing of zoning by-laws by councils of local municipalities) and allow municipalities to impose one or more specified conditions. A municipality may pass an open-for-business planning by-law only if it has received approval to do so through a council resolution requesting that the Minister of Municipal Affairs and Housing approve the by-law.

Certain provisions of the *Planning Act*, that would ordinarily apply to a by-law passed under section 34, do not apply to an open-for-business planning by-law. Key exemptions are briefly noted below:

1. Exempt from being consistent with policy statements and conformity with Provincial plans (subsection 3(5) of the *Planning Act*), specifically the following Provincial Acts referencing the corresponding plans:
 - a. Conformity with *Places to Grow Act, 2005* (subsection 14(1))
 - b. Conformity with the *Greenbelt Act, 2005* (section 7)
 - c. Conformity with the *Oak Ridges Moraine Act, 2001* (section 7)
 - d. Have regard to significant threat policies and designated Great Lakes policies, or have regard to any other policy set out in a drinking water source protection plan prepared under the *Clean Water Act, 2006* (section 39)
 - e. Conformity with *Resource Recovery and Circulation Economy Act, 2016* (Section 12)
 - f. Where the by-law is in effect, public works is exempt from conformity with a development plan that is in effect in the area (Section 13 of the *Ontario Planning and Development Act, 1994*);
2. Exempt from conformity with an Official Plan (section 24 of the *Planning Act*);

3. Cannot be appealed to the Local Planning Appeal Tribunal. A municipality is also not required to hold public meetings with respect to the request for a zoning by-law. However, individuals may apply for an amendment to the by-law within the two year period since coming into effect (subsection 34(10.0.0.1) – 34 of the *Planning Act*);
4. Exempt from a holding provision by-law (subsection 36(1) – 34 of the *Planning Act*);
5. Exempt from density bonusing (Section 37 of the *Planning Act*); and
6. No notice or hearing is required prior to the passing of an open-for-business planning by-law as the following are the required notice provisions and the coming into force date:
 - a. Notice within 3 days of passing thereof to the Minister
 - b. Notice within 30 days of the passing thereof to anyone the municipality considers
 - c. Comes into force on the 20th day after it is passed by Council or a later day as specified by the Minister

The following are details of the proposed Regulation to facilitate implementation of the proposed open-for-business by-law:

1. Require confirmation that the proposal is for new major employment use;
2. Require evidence that the proposal would meet a minimum job creation threshold (e.g. 100 jobs for municipalities with a population of more than 250,000 people);
3. Identify uses of land, buildings and 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; and
4. Prescribe how notice is to be given to the Minister of Municipal Affairs and Housing following the passing of the by-law (yet to be released).

OPTIONS/ DISCUSSION:

The initiative from the Province to streamline planning approvals is appreciated, especially at the Provincial level where much work needs to be done with various Ministries involved with development approvals. However, staff has questions and comments regarding several of the provisions of the proposed planning by-law, which are fully reflected in preliminary staff comments submitted to the Province prior to the January 20, 2019 commenting deadline (see 'Appendix C').

1. Clarity is requested on the nature of economic development barriers being addressed by the proposed planning by-law

The City of Markham supports economic development opportunities, and has for many years very successfully planned for and delivered employment in accordance with various Provincial legislation, policy statements and plans.

The proposed planning by-law provides the opportunity to establish employment uses, subject to specific requirements, without due consideration of the Provincial planning framework that has been carefully established over the past 25+ years. However, staff could find no mention in the consultation documents of the specific barriers to major employment uses that the proposed planning tool is meant to address, e.g., whether the barriers are province-wide or more regional in nature, or related to a specific sector. Identification of the specific barriers would assist in better understanding and commenting on the proposed planning by-law and its relevance to Markham.

2. The proposed planning by-law should not over-ride the established planning framework in the Greater Golden Horseshoe, particularly the Provincial Policy Statement (PPS), Greenbelt Plan, Oak Ridges Moraine Conservation Plan, and Clean Water Act

As the PPS indicates, the Provincial policy-led planning system recognizes and addresses the complex inter-relations among environmental, economic and social factors in land use planning. The PPS supports a comprehensive, integrated and long-term approach to planning, and recognizes the linkages among policy areas. The City of Markham recognizes the need for an integrated and long term approach to land use planning and has strongly supported the PPS and Provincial plans which provide for this balanced approach. This approach is reflected not only in the City's Official Plan, but also in the City's overarching Greenprint Sustainability Plan which addresses environmental health, social and cultural well-being, and economic vitality.

Allowing employment uses to be approved without regard for environmental or social factors such as natural heritage protection, land use compatibility, and impact to nearby residents as provided for in the PPS and other Provincial legislation and policy is not consistent with the progressive planning policy framework established in Ontario and in Markham. It is recommended that at minimum, the proposed planning by-law be required to have regard to the Provincial Policy Statement, Greenbelt Plan, Oak Ridges Moraine Conservation Plan, and *Clean Water Act*.

3. Adequate time should be provided for public input by extending the commenting deadline for a further 30 days

The Province released Bill 66, *Restoring Ontario's Competitiveness Act, 2018* for comment on December 6, 2018 with a commenting deadline of January 20, 2019. Typically such comprehensive legislative changes with major implication are accompanied by public engagement opportunities such as workshops, consultation events and time to understand appropriately provide comments. Staff are concerned that in this instance the Province has not provided adequate time for meaningful public consultation and input.

4. The implications of the proposed planning by-law on Provincial, Regional and local infrastructure investment and urban structure must be fully understood

Allowing development on lands not identified for potentially urban uses in Regional or local official plans may require more costly infrastructure to service the new uses (e.g., roads, transit, water, wastewater, stormwater management, electricity). In addition, the extension of infrastructure to areas outside of the urban boundary not planned for employment uses will create pressure for additional development (e.g., residential, retail, etc) nearby to maximize the new investment in infrastructure, potentially undermining the urban structure, land use and associated infrastructure policies of official plans. These pressures could result in the unintended redistribution of infrastructure investments from areas already planned for growth, resulting in these areas not maximizing infrastructure investment and not achieving its development potential.

It is also a concern that there would be a potential impact of the proposed planning by-law on designated employment lands, identified in official plans from reaching their full potential. By allowing employment uses to be located on lands not identified for employment uses in an official plan, designated employment lands may remain undeveloped longer, and may be under greater pressure to be converted to non-employment uses.

5. The public should have the right to be notified prior to Council approval of the proposed planning by-law

The right of the public to be notified of planning decisions is supported, especially those decisions that are inconsistent with a municipality's official plan. At minimum, notice provisions after the passing of a by-law should be such that the by-law cannot come into force before the end of the notice period.

6. Additional information is sought on how delivery of the minimum jobs will be ensured

In addition to minimum jobs, density and land area also be considered as criteria for using the proposed planning by-law, as the amount of land area could further negatively impact areas not subject to Provincial plans and policies such as the Greenbelt Plan. More information on the reasoning/justification behind the 100 job threshold for municipalities over 250,000 population is requested.

7. Non-employment uses should not be permitted and clarification is requested on the extent of a by-law beyond the area of a site-specific use

The proposed regulation states that residential, commercial or retail are not to be the primary use permitted by an open-for-business planning by-law. Allowing these uses as secondary uses will further undermine the land use planning framework in official plans. If the proposed tool is to be used to attract employment uses, there need to be controls in place to ensure the by-law does not become an opportunity for non-employment uses to establish over time.

Further clarification is also requested on whether the proposed tool is solely for site-specific employment uses or whether the by-law may apply over a larger contiguous area reserved for a specific type of employment. While it is assumed the former case is the intent, consideration of approval of a by-law extending beyond the area of a site-specific use is not recommended.

8. Conditions related to natural and cultural heritage should be included in the proposed tool

The proposed regulation associated with the proposed planning by-law includes the requirements for a reduced form of site plan control and allows conditions to be attached to approvals. However, there is no mention of conditions related to environmental protection such as protecting ground and surface water and terrestrial features, or of cultural heritage protection. It is recommended to include both these considerations in the proposed new Section 34.1 of the *Planning Act* which provides for the open-for-business by-law. Clarity is requested on the role of other levels of government and agencies such as Regional municipalities and conservation authorities in the review of a proposal.

9. Province's goal for Provincial approvals within 1 year

The background information on the Environmental Registry website notes that introduction of the proposed planning by-law would support the government's 1-year service standard for Provincial approvals. More information on the Province's 1-year service standard is requested, particularly on the measures being taken to allow these timelines to be met by Provincial ministries.

The City of Markham supports economic development opportunities and ways to streamline planning approvals. However, several questions and issues have been raised with respect to the proposed open-for-business by law that could over-ride the established planning framework in the Greater Golden Horseshoe that balances environmental, economic and social factors in land use planning which Markham continues to strongly support.

It is recommended that this report be forwarded to the Province as Markham Council comments on the open-for-business by-law being proposed as part of Bill 66. Staff will report back to Development Services Committee should the Province allow for additional public input, as per staff recommendations or upon the Province making a decision on Bill 66.

FINANCIAL CONSIDERATIONS:

Not applicable

HUMAN RESOURCES IMPLICATIONS:

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

The comments in this report on proposed Bill 66 open-for-business by-law support the City's efforts to enable a strong economy, manage growth, protect natural heritage and agriculture, and maximize infrastructure investments in areas already planned for growth, which are key elements of the Engaged, Diverse and Thriving City; Safe and Sustainable Community; and Stewardship of Money and Resources strategic priorities.

BUSINESS UNITS CONSULTED AND AFFECTED:

Comments from the Planning and Economic Development Departments were included in this report.



Arvin Prasad
Commissioner, Development Services

ATTACHMENTS:

Appendix 'A' – Schedule 10 Proposed Changes to the Planning Act

Appendix 'B' - Proposed Regulation to Implement the Proposed Open-For-Business Planning By-Law

Appendix 'C' – Preliminary Staff Comments on Proposed Bill 66 Open-For-Business Planning By-Law