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Open-for-Business By-law (Bill 66) Staff Report

Report Number: 2019-09

Department(s): Planning and Building Services

Author(s): Adrian Cammaert

Meeting Date: February 4, 2019

Recommendations

1. That the report entitled Open-for-Business By-law (Bill 66) dated February 4, 2019 be received; and,
2. That the report entitled Open-for-Business By-law (Bill 66) dated February 4, 2019 be submitted to the province as feedback; and,
3. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Executive Summary

Staff have significant environmental, social and human health concerns with the “open-for-business” planning by-law tool that forms Schedule 10 of the proposed Bill 66 legislation. If enacted by a municipality, this by-law would override important legislation and policy documents that have been established to protect the public interest. These overrides have the effect of not providing adequate information to professional planners and decision makers when assessing development applications, and as such, well-informed opinions cannot be rendered and the public interest is less likely to be served.

It is recommended that this report be submitted to the province as feedback. It is hoped that the province revise the draft legislation to address the concerns received during the consultation period, including those contained in this report.

Purpose

The purpose of this report is to provide Council with information regarding Schedule 10 of the province's proposed Bill 66 "Restoring Ontario's Competitiveness Act, 2018", being the new "open-for-business" planning by-law tool.

Background

On December 6, 2018, Bill 66, Restoring Ontario's Competitiveness Act, 2018, was announced by the province. The province describes this as an Act to restore Ontario's economic competitiveness by amending or repealing certain Acts in order to "eliminate red tape and burdensome regulations so businesses can grow, create and protect good jobs for the people of Ontario".

Bill 66 is an omnibus bill which proposes to amend or repeal a total of 12 separate, unrelated Acts and statutes. Of these, the amendments proposed to the Planning Act (known as the "open-for-business" planning by-law tool) that form Schedule 10 to the Bill will be discussed in this report.

The public review and commenting period for this Bill and "open-for-business" planning by-law tool was from December 6, 2018 to January 20, 2019. Notwithstanding that this consultation period has closed, it is being recommended that this report be submitted to the province as feedback.

Discussion

General

The proposed revisions to Section 34.1 of the Planning Act would allow municipalities to pass "open-for-business planning by-laws" (OFB BLs). The province's description of the regulation describes this as a type of zoning by-law which authorizes the use of land, buildings or structures for a specific employment purpose. It is intended to be an economic development tool that can be used by a municipality to act quickly to attract business seeking development sites.

The description of the regulation further suggests that an OFB BL will be limited to proposals for new major employment uses. This legislation is intended to be an economic development tool that removes certain employment development proposals from the regular suite of provincial planning policies.

The Province describes the proposed changes as follows:

"The Schedule 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 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 in writing by the Minister and if criteria as may be prescribed are satisfied. Certain provisions of the Act and other Acts that would ordinarily apply to a by-law passed under section 34 do not apply to an open-for-business planning by-law.”

The following constitutes the regular suite of provincial Acts/regulations to which a confirmed employment land use would not be applicable under an OFB BL:

Act	Regulations not Applicable	What this means for an OFB BL
<i>Planning Act, RSO, 1990</i>	Subsection 3(5)	An OFB BL need not be consistent with policy statements or conform to provincial plans.
	Section 24	An OFB BL need not to conform to an upper or lower tier Official Plan, as may be applicable.
	Section 36	An OFB BL is not affected by a holding by-law.
	Section 37	Bonusing is not permitted with respect to an OFB BL.
	Section 41	Site plan approval would not be required for development approved under an OFB BL.
<i>Clean Water Act, 2006</i>	Section 39	An OFB BL would be exempt from source water protection policies.
<i>Great Lakes Protection Act, 2015</i>	Section 20	An OFB BL would be exempt from conformity requirements.
<i>Greenbelt Act, 2005</i>	Section 7	An OFB BL need not conform with the Greenbelt Act.
<i>Lake Simcoe Protection Act, 2008</i>	Section 6	An OFB BL need not conform to or have regard to Lake Simcoe Protection Plan policies.
<i>Metrolinx Act, 2006</i>	Subsection 31.1(4)	An OFB BL need not be consistent with designated polices in a transportation planning policy statement.

<i>Oak Ridges Moraine Conservation Act, 2001</i>	Section 7	An OFB BL need not conform to the Oak Ridges Moraine Conservation Plan.
<i>Ontario Planning and Development Act, 1994</i>	Section 13	Such by-law may conflict with a development plan that is in effect. It also appears that where such by-law is in effect, public works need not conform to the development plan in effect.
<i>Places to Grow Act, 2005</i>	Subsection 14(1)	An OFB BL need not conform with the Growth Plan.
<i>Resource Recovery and Circular Economy Act, 2016</i>	Section 12	An OFB BL need not be consistent with applicable policy statements.

Employment Threshold & Total Population

The proposed legislative changes include eligibility criteria for the applicability of the OFB BL, one of which being an employment number threshold for potential employment uses. In order for a proposed employment use to be considered under an OFB BL, it would have to generate a minimum number of jobs for the municipality. Specifically, there is a minimum job creation threshold of 50 jobs for municipalities with a population of less than 250,000, or 100 jobs for municipalities with a population of more than 250,000 people.

Given the above thresholds, in the case of Newmarket an OFB BL could be approved, if requested by Council, where a specific development application proposes a minimum of 50 jobs.

Process to Enact an OFB BL

Should a local municipality wish to enact an OFB BL, it must request and obtain approval by the province. This approval is required through resolution and must be accompanied by the ‘prescribed information’. The prescribed information will be specified in regulations that are not yet released by the province, however the legislation states that such a request must include:

- details about the proposed employment opportunity;
- confirmation that it will be for a “new major employment use” (i.e. propose at least 50 jobs in the case of Newmarket); and
- confirmation that the proposed use does not include “residential, commercial or retail as the primary use”.

Staff's Initial Opinion

Staff have completed a review of the proposed OFB BL tool and have identified various environmental, social and human health concerns, as noted below.

1) Non-applicability of planning legislation and policy documents

This presents environmental and social concerns.

Currently, developments must demonstrate that they comply and are consistent with provincial policy statements (i.e. the Provincial Policy Statement, 2014), provincial plans (i.e. the Growth Plan for the Greater Golden Horseshoe, 2017), upper tier Official Plans (i.e. the York Region Official Plan), and lower tier Official Plans (i.e. the Town of Newmarket Official Plan).

The above noted legislation and policy documents represent the typical planning documentation under which development applications are regularly assessed. A professional planner completes an assessment of the application under this legislation and policy documents to determine if it is 'good planning' and therefore in the public interest.

Development under an OFB BL does not need to be consistent with or comply with these policies. In addition, such development would not need to obtain site plan approval. Therefore, the typical assessment by a professional planner cannot occur and the public interest is less likely to be served.

2) Non-applicability of the Greenbelt Plan and Oak Ridges Moraine Plan

This presents environmental and social concerns.

The Greenbelt protects 1.8 million acres of environmentally sensitive and agricultural land. The Oak Ridges Moraine, which forms part of the Greenbelt, provides drinking water for over 250,000 people by filtering and storing water in aquifers. The moraine also provides the base flow for rivers and streams flowing to Lake Ontario and Lake Simcoe. Both the Greenbelt and Oak Ridges Moraine are protected by provincial policies, specifically the Greenbelt Plan and Oak Ridges Moraine Conservation Plan.

The Greenbelt and Oak Ridges Moraine also provide a social benefit. The passing of the first Greenbelt Plan in 2005 and the Oak Ridges Moraine Conservation Plan in 2002 has had effect of curbing extensive, low density, single use development (often referred to as 'sprawl') in favour of more intensive, mixed-use development in existing urban centres.

Development under an OFB BL would not need to conform with the Oak Ridges Moraine Conservation Plan or Greenbelt Plan and consequently, the environmental and social benefits that these policies provide would be reduced.

3) Non-applicability of source water protection legislation and policies

This presents environmental and human health concerns.

Development under an OFB BL would not need to conform with Section 39 of the Clean Water Act. This Section of the Act requires planning decisions to: i) conform with significant threat policies and designated Great Lakes policies; and ii) have regard to other policies set out in a drinking water source protection plan. These requirements are intended to ensure the health of the drinking water. If this legislation is not applicable, public drinking water quality is less likely to be protected.

4) Reduction of public involvement

This presents a social concern.

An OFB BL can be passed without the requirement to notify residents. Only a notice of passing is required to be circulated after the by-law has been approved. There are no appeal rights contained in the proposed OFB BL process.

In addition, the Planning Act currently requires landowners and/or the public at large to be consulted on planning applications and planning decisions. Members of the public provide key insight in development applications based on local knowledge and are often directly affected by a planning decision. However, as noted above, development applications under an OFB BL are not subject to planning legislation and policy document, and therefore local residents would not be advised of such a development.

The fact that no public notice is required prior to the passing of an OFB BL, coupled with the non-applicability of planning legislation and policy documents, public consultation is significantly reduced from the planning process for these developments.

The stated goal of Bill 66 is to “eliminate red tape and burdensome regulations so businesses can grow, create and protect good jobs for the people of Ontario” and ensure that municipalities can “act quickly to attract businesses seeking development sites”. Staff respectfully submit that the ‘red tape and burdensome regulations’ are important policies that serve to provide safeguards for the public and protect the public interest.

Further, staff believe that municipalities already have the tools necessary to expedite redevelopment. These tools can generally be described as best practices, and include aligning zoning with official plan designations, deferring development charges, prioritizing servicing allocation to certain areas, and establishing Community Improvement Plans. Having already completed the above noted measures, staff submit that Newmarket is already well-positioned to “act quickly to attract businesses seeking development sites”.

Status of Bill 66

As of the date of this report's preparation, the Bill has only received First Reading at the Legislature (December 6, 2018). A Second Reading (debate) and Third Reading (vote) are required before the Bill received Royal Assent and becomes law. No timeline has been provided for these remaining steps.

Next Steps

It is recommended that this report be submitted to the province as feedback. It is hoped that the province revises the draft legislation to address the feedback received through the consultation period, including those contained in this report.

Staff will monitor the Bill as it moves through the legislative process and provide updates to Council as more information becomes available.

Conclusion

The legislation is intended to be an economic development tool for local municipalities, however, it undermines the planning process that has been expressly created to ensure that development applications are in the public interest. The draft legislation, as currently proposed, essentially sidesteps this established planning process.

Without having the benefit of assessing such development applications against the established planning legislation and policies, professional planners and decision makers cannot determine whether or not a proposed development would be in the public interest. As such, staff do not support draft Bill 66's OFB BL planning tool as currently proposed.

Business Plan and Strategic Plan Linkages

Well-Respected:

- Being an active, influential political contributor in regional, provincial and federal affairs.

Consultation

None.

Human Resource Considerations

None.

Budget Impact

None.

Attachments

None.

Approval

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