

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee
From: John M. Fleming
Managing Director, Planning and City Planner
Subject: Bill 66, “Restoring Ontario’s Competitiveness Act, 2018”
Meeting on: January 7, 2019

Recommendation

That, on the recommendation of the Managing Director, City Planning and City Planner, the following actions be taken with respect to Bill 66, “Restoring Ontario’s Competitiveness Act, 2018”:

- a) That this report **BE RECEIVED** for information; and
- b) That this report **BE SUBMITTED** to the Ministry of Municipal Affairs and Housing as the City of London’s comments regarding Bill 66, “Restoring Ontario’s Competitiveness Act, 2018”.

Executive Summary

- On December 6, 2018, Bill 66, “Restoring Ontario’s Competitiveness Act, 2018”, received first reading in the Legislature. If passed, this Bill would provide significant amendments various pieces of legislation. This report is focused on proposed changes to the *Planning Act* that would permit municipalities to create a new type of zoning by-law.
- As part of the announcement of this Bill, the Province has provided an opportunity to submit comments on the proposed legislation. This 45 day commenting period ends on January 20, 2019.
- The following report summarizes the proposed Bill, primarily as it relates to the *Planning Act*, and includes comments for the Province’s consideration.

1.1 Background

On December 6, 2018, Bill 66, “Restoring Ontario’s Competitiveness Act, 2108”, received first reading in the Legislature. The Bill proposes amendments to many statutes that would remove or reduce regulations currently in place with the intent that this would increase Ontario’s competitiveness. These proposed amendments address matters such as agricultural loan guarantee programs, the repeal the *Pawnbrokers Act*, the repeal of the *Toxics Reduction Act* by 2021, amendments to the *Employment Standards Act*, and the introduction of a new section to the *Planning Act* that would provide municipalities with new powers to adopt “open for business planning by-laws”.

The following link provides an overview of these proposed changes.

<https://ero.ontario.ca/notice/013-4125>

This report focuses on the proposed changes to the *Planning Act*, which are attached as Appendix A. In addition to these proposed legislative changes, regulations are proposed that would provide more detail on the permitted applications for an open for business planning by-law.

In summary, the proposed amendments would allow a municipality to pass an “open for business planning by-law, which is a new form of zoning by-law that would allow the City pass a by-law, subject to written approval by the Minister, to permit the use of lands

without the need to adhere to the general zoning provisions of the zoning by-law, the Official Plan, or the Provincial Policy Statement.

In addition to these significant changes, other proposed changes include:

- Subsections 34 (10.0.0.0.1) to (34) of the *Planning Act* relating to public notice, public meetings and appeals to the LPAT would not apply.
- Section 36 (Holding Provisions) would not apply.
- Section 37 (Bonusing) would not apply.
- Section 39 of the *Clean Water Act, 2006*, would not apply. This addresses source protection, and the need for municipalities to have regard for source protection and drinking water supply in planning decisions.
- Section 20 of the *Great Lakes Protection Act, 2015* would not apply. This would mean that any planning application would not need to conform to any initiative under this Act.
- Changes to numerous other Acts applicable to the Greater Golden Horseshoe Area that would not apply to London.
- An open for business zoning by-law would not require site plan approval (Section 41 of the *Planning Act* would not apply), however, the municipality could apply site plan conditions listed in the proposed legislation.
- The proposed amendment would also add a new Section 34.1 to the *Planning Act* that would provide an alternative to the municipality's powers under Section 34 (Zoning). This new Section would permit (not require) a municipality to pass an open for business planning by-law if the municipality has received an approval in writing from the Minister to pass such a by-law, if certain prescribed criteria have been met. These criteria have not yet been finalized, but the Ministry has identified what those criteria could include in its circulation of the proposed legislation.

The proposed regulation would:

- require confirmation that the proposal is for a new major employment use;
- require evidence that the proposal would meet 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);
- identify the uses of land, buildings or 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;
- prescribe how notice is to be given to the Minister of Municipal Affairs and Housing following the passing of an open-for-business by-law (similar to how the Minister is notified following the passing of a zoning by-law – e.g. email and personal service).

In addition to those matters that would not apply to an open for business planning by-law previously described, the by-law would not be subject to the two-year prohibition on amendments to the by-law, public notice and a public meeting would not be required for Council to pass the by-law, and the by-law would not be appealable to the Local Planning Approvals Tribunal (LPAT).

In order to pass an open for business planning by-law, municipal council would pass a resolution requesting that the Minister approve the by-law. The Minister may apply conditions on the approval of the by-law, and may modify or revoke the by-law any time before it comes into force, which would be 20 days after it is passed (or any other date

as imposed by the Minister). No public notice and no public meeting is required before the passing of the by-law, however, the municipality must give notice of the passing of the by-law within three (3) days to the Minister, and within thirty (30) days to “any persons or public bodies the municipality considers proper in such a manner as the municipality considers proper”.

1.2 Comments

Given the broad range of powers proposed by the legislation related to the matters that would generally be considered by Municipal Council in its deliberations of a by-law to permit a new land use, it is recommended that the Minister very clearly define those types of uses or classes of uses that would be eligible to be considered.

Recognizing that the intent of the proposed legislation is to remove barriers to economic development, the exemption from the consideration of matters of Provincial interest, and the municipality's own Official Plan, would suggest that this type of by-law should only be considered in the most extreme circumstances where normal planning considerations would not be addressed. For this reason, those circumstances and criteria should be very clearly stated in the regulation. For example, Official Plan policies related to matters such as natural area protection, the conservation of agricultural lands, the availability of municipal services, and adequate transportation infrastructure are all important planning considerations that should apply in the approval of a new land use. The Province might wish to consider that criteria to address these, and other matters, be part of any regulation. In order to provide this clarity, the new Act should not come into force until the regulation is in place.

There is also concern that there is no opportunity for public review or comment on such an application. While public consultation does add time to an approval process, public input often provides decision-makers with valuable information for their consideration as part of their deliberation on an application. The Province might consider that public notice of Council's intent to pass an open for business by-law be required, but a public meeting may not be required. This way, Municipal Council could receive input from the public as part of the process.

With respect to no appeal rights to the LPAT, Municipal Council has previously commented that local decisions made by local decision-makers should not be appealable to other bodies.

Lastly, we would note that many of the powers proposed under this legislation are currently available to the Minister. Section 47 of the Planning Act states:

Power of Minister re zoning and subdivision control

47 (1) The Minister may by order,

(a) in respect of any land in Ontario, exercise any of the powers conferred upon councils by section 34, 38 or 39, but subsections 34 (11) to (34) do not apply to the exercise of such powers; and

(b) in respect of any land in Ontario, exercise the powers conferred upon councils by subsection 50 (4). R.S.O. 1990, c. P.13, s. 47 (1); 1994, c. 23, s. 27 (1).

This Section goes on to further define those powers, many of which parallel the powers proposed to be provided to Municipal Council by this legislation. It is not clear why this authority needs to be provided to a municipality, as the Minister may exercise these powers in the Provincial interest.

In summary, the City of London has significant concerns regarding the scope of this proposed legislation with respect to the many significant matters of public interest that are a fundamental part of the planning approval process that would not be required to be considered through the use of these powers. The use of an open for business planning by-law that has no regard for the Official Plan, the Provincial Policy Statement,

or the public process should be severely restricting to instances where time and immediacy of the economic development opportunity merit such a process.

2.0 Conclusion

The proposed legislation would provide broad municipal powers to permit the development of new employment uses. Given the extent of those powers, it is anticipated that these would be used in only the most extreme circumstances where timing and consideration of matters generally reviewed by Municipal Council cannot be met. It is important to note that these powers can only be exercised with the approval of the Minister upon the application by the City to pass an open for business planning by-law.

In order to meet the 45 day commenting period, it is recommended that this report be submitted to the Minister as London's submission on the proposed Bill 66, "Restoring Ontario's Competitiveness Act, 2018".

Prepared and Submitted by:	Gregg Barrett, AICP Manager Long Range Planning and Sustainability
Recommended by:	John M. Fleming, MCIP, RPP Managing Director, City Planning and City Planner
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from City Planning.	

December 12, 2018
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Appendix A – Proposed Section 34.1 of the *Planning Act*

SCHEDULE 10 MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

PLANNING ACT

1 The *Planning Act* is amended by adding the following section:

Open-for-business planning by-law

34.1 (1) A local municipality may pass a by-law to which this section applies (hereinafter referred to as an open-for-business planning by-law) that,

- (a) involves the exercise of the municipality's powers under section 34; and
- (b) may impose one or more of the conditions specified in subsection (8) on the use of land or the erection, location or use of buildings or structures.

Conditions

(2) A local municipality shall not pass an open-for-business planning by-law unless the following conditions are satisfied:

- 1. The municipality has received approval in writing by the Minister to pass an open-for-business planning by-law.
- 2. The prescribed criteria, if any, have been met.

Request by municipality

- (3) The approval by the Minister referred to in paragraph 1 of subsection (2) must have been requested by the municipality by resolution, and the request must have been accompanied by the prescribed information.

Approval subject to conditions

- (4) The approval by the Minister referred to in paragraph 1 of subsection (2) is subject to such conditions as the Minister may provide.

Purposes of open-for-business planning by-law

- (5) An open-for-business planning by-law shall not authorize the use of land, buildings or structures except for a prescribed purpose.

Non-application of listed provisions

(6) The following provisions do not apply to an open-for-business planning by-law:

- 1. Subsection 3 (5).
- 2. Section 24.
- 3. Subsections 34 (10.0.0.1) to (34).
- 4. Section 36.
- 5. Section 37.
- 6. Section 39 of the *Clean Water Act, 2006*.
- 7. Section 20 of the *Great Lakes Protection Act, 2015*.
- 8. Section 7 of the *Greenbelt Act, 2005*.

9. Section 6 of the *Lake Simcoe Protection Act, 2008*.
10. Subsection 31.1 (4) of the *Metrolinx Act, 2006*.
11. Section 7 of the *Oak Ridges Moraine Conservation Act, 2001*.
12. Section 13 of the *Ontario Planning and Development Act, 1994*.
13. Subsection 14 (1) of the *Places to Grow Act, 2005*.
14. Section 12 of the *Resource Recovery and Circular Economy Act, 2016*.
15. Any prescribed provision.

Application of site plan control

(7) Section 41 of this Act and section 114 of the *City of Toronto Act, 2006* do not apply in respect of land that is subject to an open-for-business planning by-law. However, those sections do apply if the by-law has been amended, other than in circumstances where the amendment relates only to a condition imposed in accordance with subsection (8). 26

Conditions that may be imposed

(8) One or more of the following conditions may be imposed in accordance with clause (1) (b):

1. A requirement that any use of land or the erection, location or use of buildings or structures be undertaken in accordance with,
 - i. plans showing the location of all buildings and structures to be erected and showing the location of all facilities and works to be provided in conjunction therewith and of all facilities and works as may be required by a condition imposed under paragraph 2, including facilities designed to have regard for accessibility for persons with disabilities, and
 - ii. drawings showing plan, elevation and cross-section views for any building to be erected, which drawings are sufficient to display,
 - A. the massing and conceptual design of the proposed building,
 - B. the relationship of the proposed building to adjacent buildings, streets and exterior areas to which members of the public have access,
 - C. the provision of interior walkways, stairs, elevators and escalators to which members of the public have access from streets, open spaces and interior walkways in adjacent buildings, and
 - D. facilities designed to have regard for accessibility for persons with disabilities.
2. Any condition that can be imposed by a municipality under subsection 41 (7).
3. Any condition that can be imposed by an upper-tier municipality under subsection 41 (8).
4. 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.
5. A requirement that the owner of the land to which the by-law applies enter into one or more agreements with the municipality respecting one or more conditions imposed under this subsection.

Same

(9) The following matters are not subject to a condition imposed under paragraph 1 of subsection (8) with respect to a building:

1. The colour, texture and type of materials, window detail, construction details, architectural detail and interior design.
2. The layout of interior areas, excluding interior walkways, stairs, elevators and escalators referred to in sub-subparagraph 1 ii C of subsection (8).
3. The manner of construction and construction standards.

Same

(10) If an agreement is entered into in accordance with a requirement imposed under paragraph 5 of subsection (8),

- (a) the agreement may be registered against the land to which it applies; and
- (b) the municipality may enforce the agreement against the owner and, subject to the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the land.

Notice

(11) No notice or hearing is required prior to the passing of an open-for-business planning by-law, but the municipality shall give notice of the by-law,

- (a) within three days of the passing thereof to the Minister in the prescribed manner; and
- (b) within 30 days of the passing thereof to any persons or public bodies the municipality considers proper in such manner as the municipality considers proper.

Coming into force of by-law

(12) An open-for-business planning by-law comes into force on,

- (a) the 20th day after it is passed, even if that day is a holiday; or
- (b) such later day as may be specified by the Minister, if the Minister notifies the municipality of that day in writing before the day on which the by-law would otherwise come into force.

Minister may modify, revoke

(13) The Minister may by order modify or revoke an open-for-business planning by-law at any time before it comes into force. 27

Non-application of *Legislation Act, 2006*, Part III to order

(14) Part III of the *Legislation Act, 2006* does not apply to an order made under subsection (13).

Order provided to municipality

(15) If the Minister makes an order under subsection (13), the Minister shall provide a copy of the order to the municipality.

Deeming rule for modified by-law

(16) If the Minister makes an order modifying an open-for-business planning by-law under subsection (13), the by-law is deemed to have been passed by the municipality with the modifications specified in the order.

Deeming rule for revoked by-law

(17) If the Minister makes an order revoking an open-for-business planning by-law under subsection (13), the by-law is deemed never to have been passed by the municipality.

Amendment and revocation

(18) An open-for-business planning by-law may be amended or revoked by a by-law passed by the local municipality in accordance with section 34. However, any provision of the by-law that imposes a condition in accordance with subsection (8) may be amended or revoked by a by-law passed by the local municipality if the municipality has given notice, in such manner as the municipality considers proper, to the owner of the land to which the open-for-business planning by-law applies.

Conflict

(19) In the event of a conflict between an open-for-business planning by-law and a by-law passed under section 34 or 38, or under a predecessor of either of those sections, the by-law that was passed later prevails to the extent of the conflict, but in all other respects the other by-law remains in effect.

2 Subsection 77 (3) of the Act is amended by striking out “34, 36” and substituting “34, 34.1, 36”.

Commencement

3 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor

Appendix B – Summary of Comments on Bill 66 with regards to the *Planning Act*

1. The City of London recommends that the Province clearly articulate under what circumstances an open for business planning by-law may not adhere to important planning directions in the Provincial Policy Statement. These include but are not limited to protecting agricultural land, conserving natural heritage features, and protecting public health and safety.
2. The City of London recommends that the Province refrain from bringing the proposed Section 34.1 of the *Planning Act* into force until a regulation is prepared clearly articulating the conditions that apply to such a by-law.
3. The City of London recommends that the Province clarify that the use of an open for business planning by-law should be used only in very rare instances where it is in the public interest to prioritize jobs and economic growth over other matters of provincial interest.
4. The City of London recommends that the nature of economic development opportunities, particularly the number and type of jobs to be created, and the types of industrial/manufacturing/employment uses intended to be permitted by this Act be clearly defined and articulated.
5. The City of London recommend that the Province confirm that thee jobs to be created as a result of an open for business planning by-law are new jobs to the Province, and not jobs created as a result of relocation for other parts of the Province.
6. The City of London notes that many of these powers are available to the Minister under Section 47 of the *Planning Act*. It is unclear why it is necessary to provide these same powers to a municipality.