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Hamilton

January 16, 2019

Provincial Planning Policy Branch  
c/o Ken Peterson  
Ministry of Municipal Affairs  
777 Bay Street, 17th floor  
Toronto, ON M5G 2E5

Dear Sir,

**Re: Comments from the City of Hamilton: ERO posting 013-4125 "Proposed open-for-business planning tool" and ERO posting 013-4239 "New Regulation under the Planning Act for open-for-business planning tool"**

Thank you for the opportunity to provide comments on EBR posting 013-4125 "Proposed open-for-business planning tool; EBR posting 013-4239 "New Regulation under the Planning Act for open-for-business planning tool"; and EBR posting 013-4293 "Bill 66, Restoring Ontario's Competitiveness Act, 2018". City of Hamilton staff have reviewed the documents and have prepared the comments below. Please note that additional comments may be forthcoming following the meeting of Hamilton City Council on February 13, 2019.

1. Open-for-business planning by-law is not a necessary tool:

The stated purpose of the open-for-business planning by-law is to provide municipalities with a tool to remove planning barriers and streamline approvals processes. Further, the Notice states that the changes to the *Planning Act* are intended to "speed up approvals by about 2 years". The City questions the validity of this statement. First, the City of Hamilton has already implemented measures to streamline the development approvals process. The City has zoned significant amounts of employment land in the City's Business Parks with up-to-date zoning (2010). A business wishing to locate in these areas should not require a zoning amendment and could proceed straight to site plan control. If an amendment is required, the City has a streamlined development approvals process with zoning amendment applications being approved in under one year, on average. Approval of site plan control applications is a streamlined process with a front-ended conditional approval. Therefore, the City does not see a significant value to the proposed by-law as the City's approval process for new industrial development occurs in a timely manner.

Second, while the purpose of the Bill is to streamline approvals, it is noted that there are a number of other provincial requirements that are a normal part of the land use planning approvals process, and which can be quite onerous and time

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consuming, but were not exempted as part of the open-for-business legislation. Some examples include Ministry of Environment Environmental Compliance Approvals, Ministry of Transportation land use permits, Ministry of Culture archaeological clearances, and Ministry of Natural Resources Species at Risk requirements. It is often these provincial requirements that delay the issuance of site plan approval and / or building permit issuance, and *Bill 66* does not address these issues.

Based on the above, it is the City's opinion that the open-for-business planning by-law is an unnecessary tool, and that, as drafted, it will not fulfil its intended purpose.

2. Potential impacts on employment land values and City's infrastructure and transportation investments:

The City has a concern about potential unintended consequences of the open-for-business planning by-law, and the impact on the City's employment land market and urban structure. Allowing major employment development to locate in areas that are not designated and planned for such uses could have an impact on the future viability and economic development potential of the City's already-designated business parks. The City's urban structure is founded on directing employment uses to the City's business parks, which are located in strategic locations with multi-modal access, separation from residential and sensitive uses, and proper servicing. It is good planning to encourage development and redevelopment in the form of intensification of the City's employment areas. This approach is encouraged by the Province in the Growth Plan, which encourages intensification of employment areas, and represents efficient use of land and infrastructure. Allowing major employment uses in other non-designated and non-zoned areas could undermine this planning goal.

Further, there could be an unintended impact on the real estate market and the City's investment in transportation and infrastructure (i.e. development charges). The legislation has the potential to create uncertainty of land value resulting from the ability to locate employment uses in non-designated areas, which could result in a slowing of investment overall, not only in Hamilton but also other Greater Golden Horseshoe municipalities.

3. Need for clarity on the "prescribed purpose" identified in *Bill 66*:

Proposed section 34.1(5) of *Bill 66* states "An open-for-business planning by-law shall not authorize the use of land, buildings or structures except for a prescribed purpose". The use of the language 'prescribed purpose' is not specific, and therefore concerning. While the associated notices for the 'open-for-business

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planning tool' and the proposed Regulation refer to the proposed by-law being utilized to assist municipalities with attracting major employment and economic growth opportunities, the language in the Bill is vague and refers only to a 'prescribed purpose'. The City is concerned that the language could allow for the by-law to be utilized for other purposes, beyond employment and economic development opportunities, in the future. For example, there has been a suggestion that the by-law could also be used for institutional uses. Further, one of the *Planning Act* sections exempted in the proposed Bill is Section 37 (bonusing) which raises the question as to future usage of the open-for-business by-law for residential development. The City suggests adding clarity to the language in the Bill, under section 34.1(5), to state that the prescribed purpose is for major employment uses only.

4. Concerns regarding exemptions identified in subsection 34.1(6) of Schedule 10 to *Bill 66 (Planning Act changes)*:

The City has concerns over the exemptions cited in the draft Bill which identify certain sections of several Acts which do not apply to an open-for-business planning by-law. The exemptions of concern include:

- *Greenbelt Act, Clean Water Act, and Great Lakes Protection Act*: The exempted sections of these Acts state that any decision made under the *Planning Act* must conform to the Act in question. The effect of these exemptions therefore is to permit development which does not conform to the Acts. There are several concerns in this regard. First, although the option to pass the open-for-business by-law is at the discretion of the municipality, there is a concern that allowing for this option in the legislation will create significant pressure on municipal councils to permit development in areas that would normally be protected under provincial legislation.

Second, the rationale for exempting development from these acts for the purpose of promoting economic development is questioned. The provincial planning framework identifies the protection of natural areas, water resources, agricultural/rural lands, and public health and safety as priorities. Further, the planning framework lays out a clear methodology for the consideration of new urban development in the rural area, which includes the requirement to undertake an exhaustive municipal comprehensive review to ensure all impacts are understood and mitigated to the greatest extent possible. The inclusion of these exemptions could undermine protections for valuable areas identified as provincial and local priorities.

Third, there is a concern that the inclusion of these exemptions may have the impact of 'incentivizing' development in the Greenbelt Plan area, among

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others. The City understands that the rationale behind the enactment of this Bill is to allow for more expedient approvals of new major employment uses. This raises a concern that *Bill 66* may encourage development in these areas to save time and money on the development process and to take advantage of lower land costs outside of approved urban areas.

- *Section 3(5) and Section 24 of the Planning Act:* These exemptions have the effect of permitting development that is not consistent with the Provincial Policy Statement (PPS) and does not conform to the Official Plan. By permitting development that is not consistent with the PPS, it is not clear how the City can ensure that the provincial interest is being met in the decision on a proposed development.

Further, the City has concerns with allowing development which does not conform to the Official Plan. The City's Urban and Rural Hamilton Official Plans provide the land use planning framework to guide the growth and development of the City for the next 30 years. The groundwork for the UHOP and RHOP is the City's comprehensive growth management strategy (GRIDS) which identified the City's nodes and corridors urban structure, as well as future growth areas for the next 30 years. The Plans are built around principles of intensification, efficiency of land use, concentration of employment uses in designated areas, protection of natural areas and agricultural lands. Allowing new development to proceed which does not conform to the Plans not only undermines the planned urban structure, but staff view it as a slippery slope to opening the door to additional unplanned development.

- Exemption from "Any prescribed provision": this language is very broad, and could allow the Minister the ability to override any law for any reason. Related to the comment in number 3 above about the lack of clarity of the prescribed purpose of the open-for-business planning by-law, this broad language raises a concern about the future use of the by-law for purposes other than major employment development.

5. Requirement for more information on proposed Regulation:

The ERO Notice provides a brief description of the proposed Regulation under the *Planning Act* which will facilitate implementation of the proposed 'open-for-business planning by-law'. However, details of the Regulation have not been provided. To provide informed comments, municipalities should be provided with greater clarity on the content of the proposed Regulation. This concern relates directly to the comment regarding the vague language utilized in *Bill 66* as related to 'prescribed purpose' of the legislation. The lack of detail and specificity in both the Regulation and the Bill is concerning.

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Specific areas of concern related to the Regulation are:

- "Prescribed criteria" – the Notice states "The tool would be available to all local municipalities, if certain prescribed criteria are met ..." What is the prescribed criteria that municipalities must meet in order to request the usage of the by-law?
- "Prescribed information" – the Notice states "A municipality's request to use an open-for-business planning by-law would need to be accompanied by information that would be prescribed in a proposed new regulation..." The notice goes on to provide examples, but a definitive list should be provided.

It is common practice for the details of a proposed Regulation to be released after the proposal is final. The City suggests that this practice does not allow for the offering of complete comments. It is further suggested that any time a Regulation is proposed under the *Planning Act*, the full text of the Regulation should be released for comment on the ERO, rather than a general description.

6. Questions on process and implementation:

There are several process questions surrounding the implementation of the open-for-business planning by-law that are unclear. These questions include:

- How and when are conditions imposed? The draft Bill indicates that Section 41 (Site Plan Control) does not apply to lands subject to an open-for-business by-law. However, municipalities may impose conditions which would normally be imposed through the approval of a site plan control application. In the absence of a site plan approval, how will the conditions be imposed and enforced? To apply the appropriate conditions, plans and studies will need to be circulated to Departments and Agencies for comment, as per the normal course of a site plan control application. The City questions the rationale for exempting section 41 site plan approval, as the timing involved in circulation, application of conditions, and clearance of conditions will be the same process and timing as site plan approval. Further, can the municipality require an undertaking agreement to be signed, and holding of securities?
- What is the timing for ministerial approval? Will there be a prescribed time period within which the minister must provide written approval to pass a by-law?
- How will a municipality implement the open-for-business planning by-law? There are questions about how such a by-law would be implemented and how it would fit within the structure of the City's existing Zoning By-law. Further, will a staff report be required to support the passage of the by-law? The report would slow the process, which seems contrary to the purpose of the Bill.

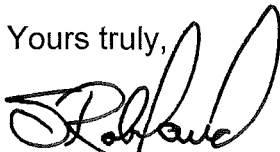
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- Clarification is required regarding how the open-for-business by-law would be applied – would it be applied on a site specific basis only, or could it be applied to a larger area where a municipality is seeking to promote economic development? The implications of applying the by-law broadly to a larger area could result in pressures on the municipality to pre-approve areas for development which are not currently identified for such in the City's Official Plan (eg. rural and agricultural lands). This action would threaten to undermine the structure of the City's Official Plans and the City's fiscally responsible growth strategy.
  - The City is concerned that the language in Bill 66 is vague, and that the open-for-business planning by-law could be utilized for purposes other than the stated purpose (major employment uses). As noted above, the language in the draft Bill should be clarified to be specific about the purpose of the by-law. Further, if there is an intention to allow the tool to be used for other uses, this should be explained and be transparent in the draft Bill and Regulation so that the City can properly provide comment.
7. If the goal of the Province is to expedite the approval of major employment uses, a more appropriate tool would be to amend the *Planning Act* to remove the allowance for appeal of a Minister's Zoning Order. The MZO is a rarely used tool, but because it does not require consultation with the public or municipality, it can be passed expediently by the Minister. Currently it is subject to appeal. If the Minister wishes to expedite new employment development, the MZO tool would allow this development to occur and removing the appeal rights would ensure it occurs in timely fashion. Utilizing this option removes the onus from the municipality of having to undermine its own planning framework, and removes the pressure being put on municipal councils to allow development in locations not deemed appropriate.

Please accept these comments to meet the January 20, 2019 Provincial deadline for the submission of comments on ERO Postings 013-4125 and 013-4239. If you have any questions, please feel free to contact Heather Travis at (905) 546-2424, ext. 4168, or by email at [Heather.Travis@hamilton.ca](mailto:Heather.Travis@hamilton.ca).

Yours truly,



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