

January 7, 2019

BY E-MAIL ONLY (ken.petersen@ontario.ca)

Mr. Ken Petersen
Provincial Planning Policy Branch
Ministry of Municipal Affairs and Housing
777 Bay St., 13th Floor
Toronto, ON M5G 2E5

Dear Mr. Petersen:

Re: Response to Request for Comments
Bill 66, Restoring Ontario's Competitiveness Act, 2018 (ERO #013-4293)
Proposed Open-for-Business Planning Tool (ERO #013-4125)
New Regulation Under the Planning Act (ERO #013-4239)

Thank you for the opportunity to comment on the Ministry of Municipal Affairs and Housing (MMAH) circulation proposal for Bill 66 and the associated Open-for-Business planning tool and proposed future regulation. Toronto and Region Conservation Authority (TRCA) has an ongoing interest in this process given our experience and roles as:

- A regulator under Section 28 of the *Conservation Authorities Act*;
- A public commenting body under the *Planning Act* and the *Environmental Assessment Act*;
- A resource management agency operating on a local watershed basis;
- A body with delegated authority in plan review to represent the provincial interest for natural hazards;
- One of the largest landowners (18,000 hectares) in the Toronto Region; and
- A source protection authority (SPA) under the *Clean Water Act*.

It is our understanding that Schedule 10 of the proposed legislation involves changes to the Planning Act to create a new economic development tool, the open-for-business planning by-law (OFBPBL). The OFBPBL would be available to all local municipalities to ensure they can act quickly to attract businesses seeking to advance proposals on development sites. In circumstances where there are employment and economic growth opportunities, municipalities could request to use an OFBPBL, provided certain criteria were satisfied. The regulation containing these criteria is not yet written but would include details on the new major employment use, identify the uses of land, buildings or structures that may be authorized by the tool, and prescribe how notice is to be given to the Minister of Municipal Affairs and Housing following the passing of an OFBPBL.

Our understanding of the intent of Bill 66, and Schedule 10 in particular, is that an approved OFBPBL would have the effect of exempting applications under the Planning Act from having to be consistent with the Provincial Policy Statement (2014). It would also exempt applications from having to conform to policies in a number of other Provincial Acts, such as the Clean Water Act, the Great Lakes Protection Act, the Greenbelt Act and the Oak Ridges Moraine Conservation Act, among others. Additionally, an OFBPBL is only available to authorize uses of land for "prescribed purposes" (job creation), which have not yet been defined and are to be prescribed by regulation at a later date.

TRCA offers the following comments for your consideration in finalizing the regulations and associated documents.

General Comments

The Provincial Policy Statement, the Acts listed above, and their associated policies and/or plans are vital to the long-term sustainability, health, and safety of the people of Ontario and to fulfilling TRCA's mandate under the CA Act. The PPS guides land use planning to serve the public interest and deliver development that balances economic, environmental and social objectives. Without consideration of the PPS and area specific Acts and Plans that have been promulgated over the last two decades to address areas of public concern, the proposed OFBPBL tool could result in economic considerations outweighing of equally important or more important public interests.

As currently proposed, these changes to the Planning Act significantly diminish our ability to achieve our mandate particularly within our jurisdiction where growth pressures are significant, and the need to protect drinking water, sensitive lands, and aquatic and natural heritage resources is great. At present, it is unclear what criteria municipalities would have to meet before seeking approval to adopt this new economic development tool. The proposed authorization for an OFBPBL uses only the single test of present day job creation (50 or 100 jobs per population of less or greater than 250,000, and the types of jobs are not defined) as the rationale for waiving an assessment that includes other equally important considerations. Without the comprehensive tests afforded by the various pieces of identified legislation and regulations, there could be inadvertent and undesirable impacts on the site itself, as well as to adjacent and downstream properties, in the short term or over time. These impacts may include flooding, ground and surface water contamination, loss of critical habitat function or linkages, and the loss of productive agricultural lands that provide important environmental functions.

TRCA recommends that the province amend the draft Bill and regulations to require municipalities to maintain the conformity/consistency requirements of the PPS, the Clean Water Act, and area specific Plans such as the Oak Ridges Moraine Conservation Plan and Greenbelt Plan.

The Clean Water Act and Source Protection Planning

Several pieces of provincial legislation including the Greenbelt Act, the Oak Ridges Moraine Conservation Act, and the Clean Water Act are in place to protect some of the most hydrologically sensitive lands in Ontario. These lands capture, infiltrate and clean rainwater and snowmelt for storage in natural underground aquifers, which, along with surface water sources, then provide drinking water to hundreds of thousands of residents and their communities that rely on ground and surface water. The Clean Water Act, which provides the legislative basis for Source Protection Plans and their associated policies, alongside the Great Lakes Protection Act, is an essential tool necessary to avoid another tragic contaminated water incident such as what occurred in Walkerton in 2000, which led to multiple deaths and long-term illnesses for many hundreds of people.

Bill 66 proposes to override the need to conform to significant drinking water threat policies, which were mandated and approved by the Province in Source Protection Plans under the Clean Water Act. Eliminating the ability to guide land use planning decisions that protect clean, safe drinking water sources creates risks of more contaminated water illnesses and in a worst case scenario loss of life. Further, Bill 66 is inconsistent with the Province's recently proposed Made in Ontario Environment Plan, put forward by the Ministry of the Environment, Conservation and Parks. The plan states, "We will protect these critical systems by using water more sustainably and keeping our water and air clean while growing our economy."

TRCA recommends reinserting the requirement for compliance with the Clean Water Act and the other Area Specific Acts noted above, to avoid risks to public health from contamination and overuse impacts to groundwater aquifers and surface water, relied upon for drinking water and ecosystem health.

Natural Hazard Risks from Flooding and Erosion

TRCA is a commenting agency under both the Planning Act and the Environmental Assessment Act, and a regulatory agency under the Conservation Authorities Act. The Conservation Authorities Act provides the legal basis for TRCA's mandate to undertake watershed planning and management programs that prevent, eliminate, or reduce the risk to life and property from flood hazards and erosion hazards, as well as encourage the conservation and restoration of natural resources. TRCA also has a delegated responsibility to represent the provincial interest on natural hazards under Section 3.1 of the Provincial Policy Statement.

All new development has the potential to increase the risk of hazards to life and property from flooding and erosion, and add to downstream cumulative impacts. Bill 66 with its employment focus would benefit from recognizing the importance of the management of stormwater from increased impervious surfaces. Historically, employment lands have increased impervious surfaces on up to 90% or more of a site, requiring significant stormwater management infrastructure to minimize impacts from flooding and erosion. Ensuring new development or redevelopment is not at risk from flooding or erosion is essential, and must remain a basic principle in determining the feasibility of new development. Without proper evaluation of these potential impacts, maintenance and operation costs will be uncertain creating risk. Furthermore, downstream residential areas could face increasing flood risks, with the attendant costs and liabilities attributed to the Province and municipalities involved in their review and approval. TRCA has useful mapping tools and hydrology models to aid municipalities in evaluating these risks, managing them with effective mitigation strategies and helping to decide on strategic locations where an OFBPBL could be best utilized. TRCA has successfully worked with municipalities and the proponent to facilitate development of major employment uses within tight timeframes including the Costco, Fed Ex, Canadian Tire, and Home Depot distribution centres within the current planning framework outside of the Canadian Tire distribution centre in Caledon where a Minister's Zoning Order approach was applied. Very recently TRCA has worked with municipalities to facilitate major employment uses on urban redevelopment sites which provided retrofitting and restoration opportunities. Without a specific need to consider important PPS and area specific plan requirements remediation and restoration opportunities that address important matters of public safety and hazards could be missed resulting in costly impacts.

TRCA recommends that Bill 66 and the implementing regulation require municipalities to work closely with their local Conservation Authority and to obtain their sign off on the proposed conditions and requirements to mitigate risks and protect downstream communities from flooding and erosion hazards.

TRCA further recommends that any proposal only be considered by the Minister if it is at a minimum consistent with Section 3.1 of the current 2014 PPS so as to protect public safety and to minimize risk.

Consultation and Due Planning Process

Bill 66 proposes that an OFBPBL is not required to be subject to any public process, including the holding of a public meeting / hearing or the ability to appeal decisions to the Local Planning Appeal Tribunal (LPAT). Additionally, site plan approval by a municipality is not required, although similar conditions may be imposed. A municipal council must first pass a resolution requesting that the Minister of Municipal Affairs approve an OFBPBL. The Minister has the power to impose conditions on an approval, but a municipality is not required to give public notice or hold a public meeting prior to the passing of an OFBPBL. Only after passing the OFBPBL is the municipality required to give public notice within 30 days, even though the by-law comes into force within 20 days after passing.

TRCA supports broad consultation and stakeholder engagement throughout the planning and development process. In particular, conservation authorities (CAs) have long-established close working relationships with local municipalities, and local municipalities regularly consult with CA staff, especially where development occurs within a CA's regulated area. The approach of providing notice after the fact creates a troubling

precedent whereby municipal councils can bypass normal public notice requirements, creating a situation where public and other private interests may not be given adequate consideration.

From a development review perspective, removing site plan approval by a municipality presents serious concerns. The site plan stage is the time when approval agencies receive confirmation that the promises, commitments and conceptual designs made during early stage discussions (stormwater management, grading outside the natural heritage system, hazard land impacts, etc.) are shown that they can be achieved. The site planning process is the time when development feasibility of the proposal on the site needs to be proven. Sites with physical constraints need to be designed appropriately to meet technical standards for public health and safety. Many recent applications proposed a development footprint within site constraints, and benefit from a thorough site plan review process. Without site plan approval, design proposals made at earlier stages will potentially not be followed through to construction and implementation. Further, if the development is not required to obtain site plan approval from the municipality, there will be the potential for confusion, as site plans will be required by CAs for final permits, where development is within lands regulated by a CA.

The bill and future regulation need to incorporate a municipal pre-screening process involving the CAs to confirm development limits, water management and the ability to appropriately address physical site constraints in keeping with provincial standards.

Removing the ability to appeal an OFBPBL to the LPAT undermines the principle of due process within the land use planning system in Ontario. A key purpose of the LPAT (formerly the Ontario Municipal Board, or OMB) is to ensure that all parties' interests are adequately and fairly considered, including those of the proponent, municipalities, agencies, and community members. Removing appeal mechanisms limits the ability of municipalities and planning agencies to ensure the development will not have negative impacts on the surrounding public, property, or environment.

Interestingly in some of our recent experiences involving employment lands it has been litigation between opposing private interests, e.g., landowners opposing landowners to ensure previous landowner agreements are upheld, or to ensure cooperation on servicing arrangements, cost sharing, equitable allocation of community uses, etc. in addition to public interests that have characterized approval processes. Currently, in our jurisdiction most landowners, where there is serviceable land, are part of cost sharing and servicing arrangements premised linked to established Planning Act processes. The notice and approval requirements allow landowners to self-police to allow equitable and orderly development of communities and fair cost sharing. One unintended consequence of this legislation may be to create a situation that would allow one private interest to benefit at the expense of other private interests resulting in an inequitable approach to land development. There is a concern that this situation might result in an individual landowner trying to shirk previous commitments around environmental conditions involving the Conservation Authority and the landowner group.

As currently proposed, by removing or restricting the appeal process, Bill 66 removes the ability for the voice of local communities and private interests to be heard. As the Bill is proposing that consultation with the public is not required, and that the public only have a very limited amount of time to voice their opinion during which time the OFBPBL can be passed, the public and private interests nearby, including landowners, has been effectively removed from the process.

TRCA recommends that an administrative tribunal appeal process remain, even in an altered manner, in order to give agencies, private interests and members of the public adequate channels to be engaged in the protection of public health and safety matters and the shaping of their communities.

It is unclear how the OFBPBL tool will operate in the context of the current planning framework. Municipalities have approved official plans with identified and designated employment lands based on full servicing. Municipal, TRCA and private interests are also currently engaged in the Municipal Comprehensive Review (MCR)

processes in our jurisdiction to identify the next generation of employment (and residential) lands to accommodate growth and development to the 2041 planning horizon.

Accordingly, official plans have identified certain lands, based on public consultation, where other community values take precedence, to identify areas that are not suitable for employment lands. Bill 66 and the OFBPBL seems to be able to override these approved plans to potentially site new employment opportunities in unsuitable areas. The OFBPBL tool could be adjusted in scope to be used wisely to be able to accelerate development approvals for employment lands, while respecting past planning decisions.

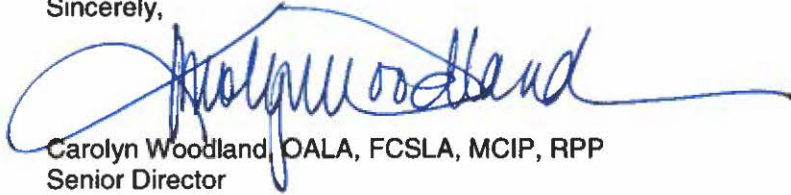
TRCA recommends that the Act and regulation clarify that an accelerated approvals process only be allowed to occur on lands currently serviced and designated for employment in municipal official plans.

Recommendations

- 1. The consideration of use of an OFBPBL should be geographically limited to existing designated employment lands with access to full municipal sewer and water services and proximity to 400 series highways and/or other major transportation corridors.**
- 2. The province should require consistency with the PPS, Clean Water Act, and area specific plans in the proposed regulation to ensure the CA mandate for protection from natural hazards is implemented through an OFBPBL application, a process that has been developed over decades of consultation and application of legislation to minimize risk to people, life and property in Ontario.**
- 3. If the recommendation above is not pursued in full, TRCA recommends including in the regulation of “prescribed criteria” for an OFBPBL application, the following minimum requirements to demonstrate that public health and safety issues will be addressed:**
 - Drinking water supplies and designated vulnerable areas are protected;**
 - Appropriate considerations are incorporated to development and redevelopment decisions, to ensure new natural hazards from flooding and erosion are not created and existing hazards not aggravated, including review and sign off by the local CA prior to Ministerial endorsement;**
 - Include requirements that no development or site alterations take place within a 30 metre setback from Key Natural Heritage Features and Key Hydrologic Features; and**
 - That sites be pre-screened by a municipality, with approval from the local CA, to ensure the development feasibility of the proposal in relation to the physical characteristics of the site, so that public health, safety and natural hazard technical issues can be addressed appropriately on the site to meet provincial standards.**
- 4. Where an OFBPBL is to be considered for lands outside of existing designated and serviced employment lands that only employment uses that are agriculture related or on-farm diversified uses should be permitted. This measure will help to maintain the integrity of rural and agricultural land uses in the Greenbelt and on the Oak Ridges Moraine.**
- 5. The future regulation needs to include additional specific details to provide clarity on:**
 - The types of employment uses that are permitted to use this fast-tracked process; and**
 - A shortened, but open and transparent regime of notice and public consultation under the established Planning Act process.**

Thank you once again for the opportunity to provide comments on this important initiative. Should you have any questions, require clarification, or wish to meet to discuss any of the above remarks, please contact David Burnett, Senior Manager, Provincial and Regional Policy, at extension 5361 or at david.burnett@trca.on.ca. We would appreciate receiving specific written responses to our comments.

Sincerely,



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Senior Director
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BY E-MAIL

cc:

TRCA: John MacKenzie, Chief Executive Officer
Chandra Sharma, Director, Watershed Strategies
David Burnett, Senior Manager, Provincial and Regional Policy