

Memo

To: Mayor Burton and Members of Council
From: Gabe Charles, Director, Planning & Development
CC: Ralph Kaminsky, Commissioner (acting), Community Development
Jane Clohecy, Chief Administrative Officer
Date: October 15, 2024
Subject: Public Hearing Item 6.2 – Supplemental information.

Comments

On August 20, 2024, the province released a final Provincial Planning Statement (PPS 2024) and announced that it will come into effect on October 20, 2024. Changes to PPS 2024 are intended to align with amendments to the *Planning Act* through Bill 97 (*Helping Homebuyers, Protecting Tenants Act*) from April 6, 2023.

At the same time the province released PPS 2024, it sought feedback through the Environmental Registry of Ontario posting (ERO 019-9065) as to whether there are any specific planning matters in process that should be addressed through a transition regulation under the *Planning Act* to facilitate the implementation of the new PPS 2024.

Staff provided comments to the province in response to the ERO posting on two areas: Midtown Oakville and employment areas, that should be considered for transition regulations. Those staff comments are attached to this memo on the following pages.

Those comments are provided as supplemental information for Public Hearing Item 6.2 titled *Public Meeting and Recommendation Report - Town initiated Official Plan Amendments to preserve the Town's protected employment areas per subsections 1(1.1) and (1.2) of the Planning Act* (file No. 52.57.03).

Staff will review this supplemental information in the presentation tonight as it relates to the changes and transition to the town's employment areas.

Memo

To: Ministry of Municipal Affairs and Housing
From: Planning & Development Department, Town of Oakville
CC: Gabe Charles, Director, Planning & Development
Date: October 4, 2024

Subject: Town of Oakville comments regarding ERO 019-9065 – Transition considerations for land use planning matters to facilitate the introduction of a new policy statement issued under the *Planning Act*

This memo provides comments in response to the Environmental Registry of Ontario posting (ERO 019-9065) that seeks feedback as to whether there are any specific planning matters in process that should be addressed through a transition regulation under the *Planning Act* to facilitate the implementation of the new Provincial Planning Statement 2024 (PPS 2024). Staff advises of two items, Midtown Oakville and employment areas, that should be considered for transition regulations.

1. Midtown Oakville

With the replacement of A Place to Grow: Growth Plan for the Greater Golden Horseshoe 2020 (Growth Plan), the concept of “urban growth centres” (UGC) is not being carried forward. When this concept was first introduced in 2006, Midtown was identified as a UGC.

Given the amount of work the town has already undertaken over the past approximately 15 years to implement the UGC policies that specifically identify Midtown as one of 25 UGCs within the whole of the Greater Golden Horseshoe and required a minimum density target of 200 residents and jobs per hectare by 2031, Midtown should be included in a transition regulation to enable the continued application of PPS 2020 and Growth Plan policies. Although the changes in the new PPS related to minimum density targets are a lesser minimum, they still represent a minimum, and there are other policy considerations from the PPS 2020 and Growth Plan that are relevant to planning for Midtown.

There may also be implications if certain private applications for lands in Midtown Oakville are subject to requests to include in a transition regulation. This would result in the Tribunal having to deal with planning matters in the same area but having to implement (conform with/be consistent with) different planning policies. As such, all matters that relate to Midtown should be subject to a transition regulation to ensure the same policy framework applies to all of them.

2. Employment Areas

On August 20, 2024, the province provided a final Provincial Planning Statement (PPS 2024) and announced that the PPS 2024 and a new definition for “area of employment” under subsection 1 (1) of the *Planning Act* will come into effect on October 20, 2024.

Staff has provided comments and recommendations to the province on two earlier consultations (ERO No. 019-6821 and ERO No. 019-8462). Oakville is prepared to implement the provincial direction with respect to employment areas. However, given that the changes will require an employment area review to determine areas that will remain within an “area of employment” per the new legislative and policy direction, and then require amendments to the town’s official plans and zoning by-laws, staff advises the province that two months is not adequate time to implement the now final provincial direction.

Without added time before the employment related definition and policies come into effect and given that many parcels of land within the town’s currently protected employment areas are occupied by uses that are excluded from the new definition, staff is concerned that the town’s employment areas will be undermined in a haphazard fashion outside of any coordinated planning process. While the intent of the new PPS policies is to protect employment areas for economic development purposes, the policies will have the opposite effect of de-stabilizing these areas and constraining land uses that support and enhance the employment functionality of the areas.

Staff is bringing forward Official Plan Amendments for Council’s consideration on October 15, 2024, to implement the transition provision provided under subsections 1 (1.1) and (1.2) of the *Planning Act*. Until those proposed policies are in place, and even after, the town’s employment areas’ status as protected will be at risk of being compromised by these changes and the overall employment area could be reduced through individual applications.

This situation may adversely impact the town's ability to act in accordance with the purpose of the *Planning Act* to promote sustainable economic development by the means provided under the *Act* and uphold the provincial and town interest in providing adequate employment opportunities for the long-term. It will create confusion for applicants and the town and has the potential to generate more matters before the Ontario Land Tribunal (OLT) and hold up much needed housing construction.

Town of Oakville staff provides three specific issues related to how the changes to employment areas has been introduced and several potential solutions to prevent or resolve the identified issues. Staff requests that the province implement the suggestions to resolve the issues faced by the town because of these changes as appropriate.

Issues summary and details:

Issue 1: As-of-right Zoning Permissions

The town's employment areas' status as protected may be impacted by ongoing zoning regulations that will continue to permit uses excluded by the new definition for "area of employment" in the town's employment areas after the effective date and until the completion of an employment area review that determines the appropriate location of employment areas per the new definition, and subsequent official plan and zoning by-law amendments, which cannot feasibly be completed by October 20, 2024.

After October 20, 2024, all decisions related to a planning matter, including site plan approvals, must be consistent with the PPS 2024, which states that planning authorities shall prohibit in employment areas, residential uses, commercial uses, public service facilities and other institutional uses, as well as office and retail uses not accessory to an explicitly permitted use (PPS 2024 Chapter 1 Legislative Authority and Section 2.8.2.3 b), c), and d)).

Therefore, without additional time or other transitional assistance, these changes could have serious implications including: reducing the town's protected employment areas outside of a comprehensive process and despite action taken by the town; generating additional matters to the OLT for adjudication; creating a complicated process of determining lands that meet the definition and those that do not; and challenging the town's ability to remain consistent with the PPS 2024 while protecting its employment areas.

Issue 2: Appeals of OPAs to implement the transition provision related to the new definition for “area of employment” in the *Planning Act*

Town Council will consider OPAs per the transition provision under subsections 1 (1.1) and (1.2) of the *Planning Act* to preserve its employment areas as protected until the town is able to fully implement the provincial direction on employment. Given these interim, transitional OPAs will be subject to appeal, if appealed and until the appeal is resolved, lands occupied by uses excluded from the definition for “area of employment” will be at risk of being excluded from lands considered an “area of employment”.

This will reduce the town’s protected employment areas and affect the broader urban structure outside of a comprehensive process, removing strategically important employment lands.

Issue 3: Lack of clarity regarding meaning of “lawfully established” and continuation of excluded uses

Clarity is requested on any restrictions related to expansions and intensification of excluded uses lawfully established prior to the definition coming into effect that could undermine the “area of employment” per the provincial definition.

As the province has been silent on the definition of “lawfully established, as well as to how the continuation of excluded uses within employment areas are to be managed, clarity the meaning and on any restrictions related to expansions and intensification of excluded uses lawfully established prior to the definition coming into effect should be provided. Following any clarity or interpretations, an employment area review for the Town of Oakville will further inform whether it would better support the town’s urban structure to keep lands occupied by excluded uses as protected employment areas and apply legal non-conforming type provisions or to redesignate the lands.

Suggestions to resolve issues:

- i. Issue a regulation under the *Planning Act* for prescribed business and economic uses under subparagraph vi of subsection 1 (1) that permits institutional and commercial uses that are permitted by official plan policies and zoning by-law provisions that were in-effect as of October 19, 2024. Permission of institutional and commercial uses within an “area of employment” should be for at least 24 months. **(Addresses all issues)**

- ii. Issue a regulation under subsection 3 (6.1) of the *Planning Act* that delays the new definition for “employment areas” in the PPS 2024 from coming into effect for at least two years, until October 20, 2026. **(Addresses Issue 1)**
- iii. Restrict appeals to the Ontario Land Tribunal on a Council decision to implement the transition provision under subsections 1 (1.1) and (1.2) of the *Planning Act*. **(Addresses Issue 2)**
- iv. Revise the date that the “area of employment” definition and related transition provision come into effect so that it is delayed for at least two years, until October 20, 2026. **(Addresses all issues)**
- v. Clarify the intent of “lawfully established” under Subsection 1 (1.1) of the *Planning Act* and whether this could be interpreted as a zoning permission rather than the physical establishment of the facility that supports the use. **(Addresses issues 1 and 3)**

3. Conclusion

On Midtown Oakville, this area should be included in a transition regulation to ensure that a consistent approach is applied to this Urban Growth Area, for the town-initiated Official Plan Amendment as well as matters that are currently before the OLT.

On the changes to employment areas, given the two months of notice provided, the town is going ahead with an interim approach to implementing the provincial direction, with the first step being preserving the town’s protected employment areas under the transition provision under subsections 1 (1.1) and (1.2). The second step will be to carry out an employment area review to inform comprehensive official plan and zoning by-law amendments that establish the appropriate locations for the town’s employment areas that meet the definition of “area of employment”. However, even with the interim measures, there are still three significant issues related to the provincial changes to employment areas.

It is the Town’s recommendation that the province provide a regulation under the *Planning Act* for prescribed business and economic uses under subparagraph vi of subsection 1 (1) that allows institutional and commercial uses that are permitted by official plan policies and zoning by-law provisions that were in-effect as of October 19, 2024, per suggestion (i) above, as this would resolve all the issues. The added time this would provide would allow the town to fully implement the provincial direction at once,

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rather than have a complicated interim period, where more matters would likely have to be brought to the OLT for adjudication. It would also give the town time to figure out the approach with respect to excluded uses that are to continue within an “area of employment” and seek guidance from the province as it is understood that the province intends to provide training on the new PPS.

Your attention to the serious issues raised and suggestions to resolve them is greatly appreciated. We look forward to continuing to work with the province to gain more understanding on how the transition to the new direction related to employment areas is intended to work. We would be happy to meet to discuss these comments and the suggestions for resolution at any time.