



# Staff Report

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## Planning and Development Services – Planning Division

**Report To:** Committee of the Whole  
**Meeting Date:** January 14, 2019  
**Report Number:** PDS.19.08  
**Subject:** Green Energy Act Repeal (Bill 34) Information Report  
**Prepared by:** Denise Whaley, Planner II

### A. Recommendations

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THAT Council receive Staff Report PDS.19.08 Green Energy Act Repeal (Bill 34) Information Report;

AND THAT Council authorize staff to initiate the process, including public and agency consultation, to update the Town's Official Plan policies and Town's Zoning By-law to guide development of renewable energy undertakings in the Town.

### B. Overview

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The purpose of this report is to inform Council about recent changes to renewable energy legislation resulting from the repeal of the Green Energy Act 2009, through Bill 34.

### C. Background

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The provincial government recently introduced and passed Bill 34, an Act to repeal the Green Energy Act, 2009 and to amend the Electricity Act, 1998, the Environmental Protection Act, the Planning Act, and various other statutes. The repeal of the Green Energy Act now provides a framework for municipal consultation and approvals of renewable energy projects. Bill 34 was passed and received Royal Assent on December 6, 2018. Note that a portion of the Bill is not yet in effect and requires proclamation of the Lieutenant Governor (date not yet determined).

The Green Energy Act was enacted in 2009 in order to facilitate the creation of renewable energy projects in the province and to provide economic and employment benefits through the creation of these projects. Green energy, by the Act's definition, included wind, solar, biomass and biogas, where these energy sources were used to create electricity. Provisions in the Green Energy Act also supported energy conservation through energy efficiency, small energy projects through Microfit programs, and aimed to remove red tape by removing local municipal approvals for energy projects.

As part of removing “red tape”, the Green Energy Act did not allow municipalities to pass by-laws that would restrict green energy projects, such as using the zoning by-law to prohibit wind turbines or solar farms. While some supporters of this legislation approved of removing politics from the decision making, others criticized the lack of municipal input.

The changes under Bill 34 amended several provisions of the Planning Act that will now empower the province and municipalities to allow or restrict these applications through the Planning Act application tools.

In addition, some of the decision making authority of the Municipality would be sheltered from appeals to the Local Planning Appeal Tribunal (LPAT):

- There is no right to appeal to the LPAT regarding a **refusal or failure** by a municipality to adopt or approve requested amendments to an official plan that proposes to authorize a renewable energy generation facility, project, testing facility or testing project
- There is no appeal in respect of all or any part of an application for **an amendment to a zoning by-law** if the amendment or part of the amendment proposes to permit a renewable energy undertaking.

Although some municipalities had previously developed Official Plan policies and Zoning restrictions on renewable energy projects, most of these were removed from Planning documents after the introduction of the Green Energy Act, since these policies and/or provisions then had no effect. The lack of Official Plan Policies and Zoning restrictions has left a vacuum after the repeal of the Green Energy Act, where municipalities do not have any legislative authority to restrict locations and/or parameters for development of renewable energy projects.

## D. Analysis

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The repeal of the Green Energy Act provides an opportunity for the Town to engage its citizens in the development new policies to help evaluate renewable energy proposals, such as wind, solar, biogas and so on.

The framework for evaluating renewable energy proposals could include matters such as:

- Where appropriate places might be for such projects
- Criteria to be used to review and identify environmental, social, economic impacts
- Size or scale considered appropriate
- Priorities (including landscapes, natural environment, public safety and so on)

Creating this framework will inform the development of policies within the Town’s Official Plan. The policies would then need to be implemented through the Zoning By-law by inserting zoning restrictions for the location of renewable energy projects. For example, if the zoning by-law does not allow any renewable energy projects in a property’s zone category, the applicant for a renewable energy project would need to apply for rezoning. The zoning application would be evaluated against the Town’s Official Plan policies and would need to be consistent with the

intent and direction of these policies. The Official Plan policies would need to include the specific criteria that must be satisfied in order for a zoning amendment to be supported.

Developing the framework, policies and zoning provisions requires significant public and agency consultation (as required by the Planning Act). As part of this report, staff are requesting Council authorization to move forward to engage the public and create draft documents for Council's review.

If the Town does not create policy direction in the Town's Official Plan, when projects are brought forward, there will be no set evaluation criteria to review them; and with no policy framework in the Town's Official Plan, the Town could not create Zoning Provisions to control the location, scale or other parameters. Waiting until a renewable energy project is proposed would mean Council would not have all the Planning Act tools available to the municipality. The ability to effectively engage the public would also be lost.

Based on the above, staff recommend Council authorize Planning Division Staff to initiate the process in 2019 to initiate public and agency consultation, and create draft Official Plan policies and Zoning Provisions for Council's review. The exact timing and amount of consultation has not be determined, however staff would create a consultation plan as part of this project, with regular reporting back to Council at major project milestones.

## **E. The Blue Mountains Strategic Plan**

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The recommendations in this report support the following goals and objectives of the Town's strategic plan:

**Goal #1:** Create Opportunities for Sustainability, **Objective #3** Promote a Diversified Economy

**Goal #2:** Engage Our Communities & Partners, **Objective #1** Improve External Communication with our Constituents

**Goal #3:** Support Healthy Lifestyles, **Objective #4** Commit to Sustainability

## **F. Environmental Impacts**

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None at this time.

## **G. Financial Impact**

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Moving ahead with drafting policies will result in the typical financial costs of public consultation processes as associated with the Planning Act, including any advertising and staff resources.

## **H. In consultation with**

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Nathan Westendorp, Director of Planning and Development Services.

## I. Public Engagement

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The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. Moving forward with the recommended process **will require** extensive consultation with internal staff, agencies and the public.

Comments regarding this report should be submitted to Denise Whaley, Planner [planning@thebluemountains.ca](mailto:planning@thebluemountains.ca).

## J. Attached

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1. Further Reading Resource – Aird & Berlis LLP Energy Insider: Ontario Repeals Green Energy Act, 2009 (Oct 12, 2018)

Respectfully submitted,

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Planner II

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Nathan Westendorp, RPP  
Director of Planning and Development Services

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Oct 12, 2018

## Ontario Repeals Green Energy Act, 2009

By Zoë Thoms and Jonathan Yantzi

The Ontario Minister of Energy, Northern Development and Mines recently introduced legislation to repeal the *Green Energy Act, 2009* and its regulations. The *Green Energy Act, 2009* was enacted ten years ago to expand renewable energy production, encourage energy conservation and create jobs in the renewable energy sector. In addition to repealing the *Green Energy Act, 2009*, *Bill 34, Green Energy Repeal Act, 2018*, also includes changes to the *Planning Act* and *Environmental Protection Act* that increase the power of the province and municipalities to reject renewable energy projects.

The repeal of the *Green Energy Act, 2009* will eliminate the Renewable Energy Facilitation Office located within the Ministry of Energy to help proponents navigate renewable energy project approvals. Also repealed will be the requirement that government facilities be constructed, acquired, operated and managed in an environmentally-responsible way, including the use of renewable energy sources, energy and water efficient planning and design, and the transparent reporting of energy and water use and GHG emissions.

Bill 34 re-enacts a limited number of provisions of the *Green Energy Act, 2009* in the *Electricity Act, 1998* that permit the government to create regulations in a number of areas. Until such regulations are enacted under the *Electricity Act, 1998*, however, these re-enacted provisions will have little effect. These sections provide for the creation of regulations:

- To allow for the designation of renewable energy projects, sources and testing projects for the purposes of removing barriers to, and to promote opportunities for, the use of renewable energy sources, and to promote access to transmission systems and distribution systems for proponents of renewable energy projects;
- To require an electricity, natural gas or water distributor to make data available with respect to the consumption or use of electricity, gas or water to persons required to report on energy consumption and water use;
- To allow for the use of designated goods, services and technologies in such circumstances, despite any restriction imposed at law (i.e., the “clothesline law”); and
- To require a public agency to prepare and submit an energy conservation and demand management plan and to achieve targets and meet energy and environmental standards, including standards for energy conservation and demand management.

Bill 34 amends several provisions of the *Planning Act* that will empower the province and municipalities to reject renewable energy projects by:

- Adding a new clause that provides that there is no appeal to the Local Planning Appeal Tribunal (LPAT) in respect of a refusal or failure by a municipality or planning board to adopt or approve requested amendments to an official plan that proposes to authorize a renewable energy generation facility, project, testing facility or testing project;
- Adding a new clause that provides that there is no appeal to the LPAT in respect of an application for an amendment to a zoning by-law if the amendment proposes to permit a renewable energy undertaking;
- Ending exemptions from subdivision control and part-lot control for certain transactions entered into for the purposes of renewable energy generation facilities or renewable energy projects; and

- Ending exemptions for renewable energy undertakings from a number of other requirements, including the application of policy statements, provincial plans, official plans, demolition control by-laws and others.

In addition, Bill 34 amends the *Environmental Protection Act* to enable the government to refuse to approve renewable energy projects where demand for the electricity that would be generated by the project has not been demonstrated to the satisfaction of the government.

Bill 34 is currently awaiting second reading in the Ontario legislature.

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