

## COUNCIL REPORT

M&C No.	2019-250
Report Date	October 02, 2019
Meeting Date	October 07, 2019
Service Area	Growth and Community Development Services

His Worship Mayor Don Darling and Members of Common Council

***SUBJECT: Municipal Plan and Zoning By-law Amendments for Green Energy  
Supplemental Report – Planning Advisory Committee Outcomes***

### ***OPEN OR CLOSED SESSION***

This matter is to be discussed in open session of Common Council.

### ***AUTHORIZATION***

Primary Author	Commissioner/Dept. Head	City Manager
<b><i>Corey Cooper</i></b>	<b><i>Phil Ouellette/Jacqueline Hamilton</i></b>	<b><i>John Collin</i></b>

### ***RECOMMENDATION***

1. That Common Council adopt the attached by-law amendment entitled “By-Law Number C.P. 106-XX – A Law to Amend the Municipal Plan By-Law” as amended;
  - a. Deleting a portion of Section 7.8 Energy Efficiency and replacing it with the following:
    - i. “Policy NE-38 – Explore and encourage the development and use of alternative energy sources, such as solar, wind, geothermal, biomass, and energy recovery. Establish in the Zoning Bylaw standards to regulate green energy development to capitalize on this emerging opportunity, while minimizing impact on the community.
  - b. Deleting a portion of Section 2.5 Lands Common to the Primary Development Area and the Rural Areas and replacing it with the following:
    - i. “**Parks and Natural Areas** are currently in a primarily natural state or would benefit from re-naturalization and are not generally appropriate locations for development.”

2. That Common Council adopt the attached by-law amendment entitled “By-Law Number C.P. 111 – A Law to Amend the Zoning By-Law of The City of Saint John” as amended;

- a. Amending Section 3.1 by amending the following definitions:

- i. **“Green Energy Development”** means a project that accommodates renewable resource-related activities, such as a wind energy development or solar energy development, but excludes biomass facilities, and is developed for a commercial power production.”
- ii. **“Solar Collector System”** means a structure or array of structures, and ancillary equipment, designed to collect solar radiation and convert it to useable forms of energy. Solar collector systems may include, but are not limited to evacuated tubes, flat plate collectors, concentrating mirrors, and building-integrated photovoltaic materials, but does not include windows or greenhouses. May be used for servicing dwellings on the same site as a solar collector, but is intended for a commercial power production purpose.”, and
- iii. **“Solar Energy Development”** means a project in which one or more solar collector will be installed for a commercial power production purpose.”

- b. Amending Section 14.11 Green Energy (GE) Zone by making the following amendments:

- i. In Section 14.11(3) Zone Standards: Setbacks, amending the minimum separation distance of any habitable building external:
  1. i. 100 metres from a solar collector system;
- ii. In Section 14.11(5) Zone Standards: Screening, amending the requirements by replacing a) and b) with the following:
  1. a) A treed or earthen berm shall be in place prior to the operation of a solar energy development when abutting a residential lot or public road.
  2. b) When a treed or earthen berm is provided, the height shall be at least 2 metres.

- iii. Removing Section 14.11(11) Decommissioning & Site Rehabilitation.

### ***PREVIOUS RESOLUTION***

On July 8, 2019, a Public Presentation was held for Municipal Plan amendments that would help facilitate Green Energy Developments in accordance with the *Community Planning Act*. Following the Public Presentation, there was a 30-day period for Public comment on the proposed Municipal Plan amendments.

On August 19, 2019, the Municipal Plan amendments and accompanying Zoning By-law Amendments were referred to the Planning Advisory Committee for a report and recommendation and a Public Hearing was set for October 7, 2019 at 6:30pm.

### ***REPORT***

At its September 17, 2019 meeting, the Planning Advisory Committee (PAC) discussed the proposed Green Energy Municipal Plan and Zoning By-law amendments. PAC offered important and valuable feedback to the proposed amendments, and as a result, Staff are proposing a variety of changes to the initial draft amendments for Common Council's consideration.

It should be noted that the Green Energy Municipal Plan and Zoning By-law amendments have already undergone a 30 - day public feedback period, which also resulted in some changes to the initial draft amendments. It is important to note that the overall amendment package being proposed to Council will establish a regulatory approach to green energy development based on a study conducted by Dillon consulting which reflects industry best practices for regulating this emerging industry (Attached in Appendix 2).

#### Municipal Plan Amendments

The PAC felt the majority of the report and recommendation with regard to the Municipal Plan Amendments was acceptable. However, PAC believed that changes to Policy NE-38 were needed to ensure that Biomass projects could be considered in zones that are more appropriate, and as such, Staff have made changes to clarify the intent.

PAC felt that Section 2.5 contained contradictory language, and needed to be reviewed. To ensure that the intent of Section 2.5 was clarified, the wording describing Parks and Natural Areas was revised, clarifying the intent.

#### Zoning By-law Amendments

There was significant discussion regarding the proposed Zoning By-law

amendments, with most of the concerns associated with solar energy developments. It was the opinion of the Committee that the amendments relating to wind energy were acceptable; however, portions of the amendments relating to solar energy did not appear to be developed with the same level of rigor. It was felt that homeowners or commercial landowners would be restricted from pursuing their own solar projects. Since the intent of the Green Energy Zone is to regulate large commercial scale operations, Staff are proposing changes to the definitions to clarify this intent.

Concerns were raised in regards to the separation distance of solar collector systems from external habitable buildings. Following the PAC meeting, Staff conducted further analysis of other communities' regulations relating to solar energy, as well as reviewing the Dillon report. It was determined by Staff that there was a typographic error contained in the initial Staff report, and should be lowered to 100 metres from 1,000 metres.

Requirements for a treed or earthen berm around large-scale solar energy developments was also a topic of discussion, and it was PAC's opinion that this requirement should be removed, or significantly altered. Following the PAC meeting, Staff reviewed other municipalities' by-laws regarding these berms, and determined that a berm is often required, but the height of these berms is often lower than what was proposed by the consultant. Following consideration of PAC's discussion, Staff is recommending a reduction in the minimum height to 2 metres for the berm requirement.

The proposed requirement for a decommissioning plan was discussed at length, as it was seen as an additional barrier to applicants and may be outside the jurisdiction of municipal enforcement. After receiving an opinion from the City Solicitor's Office and reviewing the Provincial Environmental Impact Assessment (EIA) process, it was determined that this section of the proposed Zoning By-law amendments should be removed as it was outside of the jurisdiction of a Municipality and is a consideration of the Provincial environmental approvals.

It was PAC's opinion that the amendments related to solar energy development be removed at this time to provide Staff more time to research and properly develop the proposed amendments. It should be noted for Council's information that the package of amendments are based on third party expertise reflecting best practices across Canada for this emerging industry. Staff believe that the subsequent proposed changes outlined in this report should adequately address the concerns of the Committee and ensure the City has a proactive land use and zoning framework to capitalize on this emerging industry in a manner that minimizes impacts on the community.

### ***SERVICE AND FINANCIAL OUTCOMES***

N/A

### ***INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS***

The City Solicitor's Office has provided direction for some of the changes proposed in this report.

### ***ATTACHMENTS***

Appendix 1: **Key PAC Concerns & Staff Commentary**

Appendix 2: **Dillon Consulting Report**

Appendix 1 – Key PAC Concerns & Staff Commentary	
PAC Concern	Staff Commentary
Biomass energy is not addressed through the proposed Green Energy (GE) Zone.	Policy NE-38, in its current form prior to the proposed amendments mentions biomass, which is not within the scope of this proposal. Biomass was not intended for the Green Energy (GE) zone, as it would be more appropriate for Heavy Industrial (IH) zone due to its impact on surrounding properties and similar nature to a thermal electrical generating station. Staff have addressed this concern by amending the language of the green energy development definition to ensure that Biomass projects are not meant for the Green Energy (GE) zone.
The solar energy component of the proposed Zoning By-law amendments is less robust than the wind energy component. PAC recommends that Council only adopt the wind energy component to provide more time for regulation development of the solar energy regulations.	Comparatively, solar energy projects do not require as many regulations as wind energy projects. There are fewer concerns of the impacts of these projects. Staff have reviewed the concerns of the PAC and are proposing several amendments, which should address most of the committee's concerns. Staff recommend Council adopt the regulations with the suggested amendments.
The setback distance for solar collector systems 1,000 metres from a habitable building seems too restrictive.	The recommended distance was determined through a regulatory study done by Dillon Consulting. After further research, Staff are of the opinion that there may have been a typographical error within the report, as other municipalities require 100 metres for solar collector system setbacks.
The requirement of an earthen or treed berm may be restrictive and affect solar energy projects.	This requirement was recommended based upon a regulation review conducted by Dillon Consulting of maritime municipalities regulating solar energy projects. Following the PAC meeting, Staff conducted further research of other municipalities' across Canada. From this

	<p>review it was noted, a berm was a consistent requirement, though the heights varied (consistently lower than the height within the proposed amendments). Considering this information, Staff recommend the requirement of the berm be relaxed in terms of where it is required, and the minimum height be set at 1 metre.</p>
<p>A decommissioning plan seems to be overly excessive for any Green Energy development. There are concerns about the ability to enforce the plan.</p>	<p>Staff have proposed a decommissioning plan as the regulatory review conducted by Dillon Consulting showed this is a consistent requirement. Since the PAC discussion, subsequent review by the City Solicitor's Office has indicated they did not believe the Community Planning Act provided authority to regulate decommissioning of green energy facilities. In addition, after a review of the provincial Environmental Impact Assessment (EIA) process, it was determined that the decommissioning of the site would fall under the enforcement jurisdiction of the Province. Staff therefore recommends this requirement be removed.</p>
<p>Some members of PAC believe that a deposit (like those required for Pits &amp; Quarries) should be required for future decommissioning of the site.</p>	<p>Given the advice of the City Solicitor's Office, there would be no authority to require a deposit for decommissioning of these facilities.</p>