



100 John West Way
Aurora, Ontario
L4G 6J1
(905) 727-3123
aurora.ca

Town of Aurora
Information Report
No. PDS21-018

Subject: Update on Bill 229 and the Conservation Authorities Act

Prepared by: Matthew Volpintesta, Senior Policy Planner

Department: Planning and Development Services

Date: October 5, 2021

In accordance with the Procedure By-law, any Member of Council may request that this Information Report be placed on an upcoming General Committee or Council meeting agenda for discussion.

Recommendation

- 1. That Report No. PDS21-118 be received for information.**

Executive Summary

On December 8, 2020, Bill 229, the Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020, which implemented changes to various legislation, including the Conservation Authorities Act and the Planning Act, received Royal Assent.

In May 2021, the Ministry of the Environment, Conservation and Parks (MECP) released the first of two phases of regulatory amendments to implement the legislative changes previously made to the Conservation Authorities Act and those recently made through the Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020.

Between May and June, public comments were accepted on the released Regulatory proposals (Phase 1). Phase 2 is expected later this year at which point the Town will be able to better assess any fiscal implications and changes to procedure in working with Lake Simcoe Region Conservation Authority (LSRCA).

- On December 8, 2020, Bill 229, the Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020 received Royal Assent. Bill 229 incorporates several changes to the Conservation Authorities Act.

- LSRCA sent a letter to the Mayor and members of Aurora Council in November 2020, stating their concern for the proposed changes to the Conservation Authorities Act.
- In May 2021, the Province released phase 1 of 2, of the Regulatory Proposal Consultation Guide, which include listing of mandatory and non mandatory functions of the Conservation Authority, and potential funding mechanisms.
- Next steps for the Town of Aurora will require transition planning before January 1, 2023.

Background

On December 8, 2020, Bill 229, the Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020 received Royal Assent. Bill 229 incorporates several changes to the Conservation Authorities Act.

In 2018, the Province of Ontario, as part of the More Homes, More Choice Act, 2019 which received Royal Assent on June 6, 2019 implemented amendments to the Conservation Authorities Act. Beginning in late 2019, the Ministry undertook consultations with municipalities, the public, landowners, development, agricultural, environmental and conservation organizations as well as conservation authorities, regarding the core role of conservation authorities. The legislative amendments to the Conservation Authorities Act that were made through Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020 passed on December 8, 2020.

The first of version of changes was read February 2, 2021 and included provisions related to conservation authority governance as well as items related to housekeeping amendments, government requirements and the Minister's powers. The regulatory proposal consultation guide (Phase 1) was released in May 2021 and outlines several mandatory and non mandatory conservation authority (CA) programs and services, including delivery, and responsibilities of both the CA and partnering municipalities.

The proposed regulations of Phase 1 are focused on:

- the mandatory programs and services to be delivered by conservation authorities,
- the proposed agreements that may be required with participating municipalities to fund non-mandatory programs and services through a municipal levy,
- the transition period to establish those agreements,
- the requirement to establish 'community' advisory boards, and

- the Minister's Section 29 regulation relating to conservation authority operation and management of lands owned by the authority.

LSRCA sent a letter to the Mayor and members of Aurora Council in November 2020, stating their concern for the proposed changes to the Conservation Authorities Act.

In a letter to the Town of Aurora dated November 13, 2020, LSRCA outlined a summary of concerns, citing limitations on the Conservation Authority's science-based watershed approach (see Attachment 1). Further, the letter highlighted concerns over Bill 229's proposal to remove the ability of the Authority to appeal permitting and planning applications among other changes.

In May 2021, the Province released phase 1 of 2, of the Regulatory Proposal Consultation Guide, which include explanation of mandatory and non mandatory functions of the Conservation Authority, and potential funding mechanisms

Under Phase 1 of the Regulatory Proposal Consultation Guide, programs and services delivered by conservation authorities can be mandated by the Province and may be funded by provincial grants and/or conservation authority self-generated revenue (e.g. user fees). Where such revenue sources cannot finance the entire costs of those programs, the costs must be raised through the municipal levy.

Non-mandatory programs and services that may be provided by a conservation authority at the request of the municipality under the Conservation Authorities Act, would require a memorandum of understanding (MOU) or other agreement between the parties to have the program or service be funded by municipal levy or by other funding mechanisms that may be set out in the MOU or service contract.

Non-mandatory programs and services that the authority determines are advisable to meet the purpose of the Conservation Authorities Act in their jurisdiction and that require municipal funding through, would be determined at the local CA level and would be beyond those that the Province has set out as being required, or that a municipality has indicated it would like the CA to deliver on its behalf. Other funding sources such as self-generated revenue (e.g. user fees), project funding from other government agencies or other organizations may also fund (in whole or in part) conservation authority determined non-mandatory programs and services.

The Province is proposing to address organizational costs of conservation authorities that are not directly related to the delivery of any specific program or service through a fixed minimal amount as the portion of the conservation authority's operating expenses that a participating municipality is required to pay each year. Such an amount would

need to be carefully determined, so as to balance the needs of the conservation authority while respecting taxpayer dollars. This proposal will be subject to consultation in Phase 2 of the Ministry's regulatory development along with a proposed levy regulation. Release of the Phase 2 proposed regulations is expected before the end of 2021.

Analysis

Next steps for the Town of Aurora and transition planning before January 1, 2023.

Included within Phase 1 of the regulation consultation guide are proposed transition periods with details on agreement requirements. The proposed regulation would require each conservation authority to develop and implement a transition plan. Conservation authorities would be required to submit copies of their transition plan to the Minister of the Environment, Conservation and Parks for information purposes and to its participating municipalities.

Key requirements of the transition plan include a workplan and timeline outlining the steps the conservation authority plans to take to develop and enter into agreements with its participating municipalities. This requires taking an inventory of all programs and services the Town participates in with LSRCA and Toronto and Region Conservation Authority (TRCA) (if applicable), and which of the three categories the program or service fits into:

1. Mandatory programs and services where municipal levy could be used without any agreement;
2. Non-mandatory programs and services at the request of a municipality with municipal funding through a MOU;
3. Non-mandatory programs and services an authority determines are advisable, and how they are funded (e.g., provincial, federal, municipal funding, municipal levy, and self generated revenue).

As part of next steps, Town staff will be evaluating the current programs and services provided by the conservation authority and highlight programs or services that may be impacted and/or impact the 2023 budget and onward.

This work includes:

- a full inventory list of current programs/services provided by the CAs;

- analysis of any potential impacts to the Town based on mandatory/non-mandatory program status changes;
- Consult with LSRCA and TRCA, and confirm list of mandatory programs the Town must enroll in within the transition period and beyond;
- monitoring Bill 229 Phase 2 releases; and,
- analyze and report back on any potential budget impacts associated with the program/services analysis.

The proposed date at which a CA can only use the municipal levy, with agreements in place with municipalities that agree to pay for non-mandatory programs and services, is January 1, 2023. Since the Conservation Authorities Act also allows for the prescribing of 'other' programs and services not listed in previous mandatory categories, the 'other' programs and services must be prescribed within a year after the end of the transition period, January 2024.

Once the Phase 2 proposed regulations are released, the Town will be able to better assess any changes to municipal funding contributions and impact to the budget.

Advisory Committee Review

None

Legal Considerations

After January 1, 2023, MOUs will be required with LSRCA and TRCA (if applicable) for most non-mandatory programs and services. Once a full inventory of active programs and services provided by the CA is detailed, and Phase 2 of the proposed regulations are released, the Town will be able to better understand impact.

Financial Implications

A full understanding of the required changes, if any, to the Town's budget requirements relating to LSRCA or TRCA services and their resultant incremental tax levy impact will be better understood once the Province releases Phase 2 of the regulations.

Communications Considerations

The Town of Aurora will use 'Inform' as the level of engagement for this project. There are five different levels of community engagement to consider, with each level providing the community more involvement in the decision-making process. These levels are: Inform, Consult, Involve, Collaborate and Empower. Examples of each can be found in the Community Engagement Policy. These options are based on the International Association of Public Participation (IAP2) Spectrum and assist in establishing guidelines for clearly communicating with our public and managing community engagement. In order to inform the public, this report will be posted to the Town's website.

Link to Strategic Plan

This report supports the Strategic Plan objective of Investing in the Natural Environment through sustainable infrastructure, in working with community partners to promote environmental protection and build a culture of environmentalism in the community, while ensuring development is ecologically conscious, and safe for residents.

Alternative(s) to the Recommendation

Not applicable

Conclusions

The proposed changes to the Conservation Authority Act through Bill 229 mandate the core responsibilities of conservation authorities, and list differences between non-mandatory programs and services, and proposed funding mechanisms.

Through Phase 1 of the proposed regulations, there is limited understanding of the financial impact to the Town. While phase 1 details potential funding sources for both mandatory and non-mandatory programs, the process of forming agreements and collection of municipal levies is clear.

Town staff will begin preparing for the transition ahead of the proposed January 1, 2023 implementation date, which would include a full inventory of programs and services currently enrolled in with the LSRCA and TRCA. This should incorporate which category (mandatory or non mandatory) each program or service fits into, and current budget

allocation for said item. Once Phase 2 of the Regulatory Proposal Guide is released for comment, the Town will be better prepared to assess future impact.

Attachments

Attachment 1 – LSRCA Letter of November 13, 2020

Previous Reports

Not applicable.

Pre-submission Review

Agenda Management Team review on September 16, 2021

Approvals

Approved by David Waters, MCIP, RPP, PLE, Director, Planning & Development Services

Approved by Doug Nadorozny, Chief Administrative Officer



November 13, 2020

Lake Simcoe Watershed CAOs
(via email distribution list)

Dear Lake Simcoe Watershed CAOs:

Re: Provincial Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020

I am writing on behalf of the Lake Simcoe Region Conservation Authority to seek your municipality's support to address several changes introduced by the Province to the *Conservation Authorities Act* and the *Planning Act* in [Bill 229, Protect, Support and Recover from COVID-19 Act \(Budget Measures\), 2020](#).

These changes significantly limit the ability of conservation authorities to protect Ontario's environment, ensure people and property are safe from natural hazards and to apply watershed-based decisions on development. Ultimately, these changes in many ways, remove much of conservation authorities' ability to influence the overall health and protection of Ontario's citizens and the environment.

In 2018, the Province began to review Conservation Authority operations with three key goals in mind:

- Improve consistency and transparency of the programs and services that conservation authorities deliver,
- Provide additional oversight for municipalities and the province, and
- Streamline conservation authority permitting and land use planning reviews to increase accountability, consistency, and transparency.

Since the launch of the review, conservation authorities have been working to meet Provincial expectations regarding consistency and transparency of programs and services and to streamline planning and permitting processes. Since that time, authorities have worked collectively to:

- Adopt consistent By-Laws by December of 2018,
- Implement best management practices regarding governance and administration,
- Voluntarily reduce timelines for issuance of permits, and
- Initiate client centric service training and monitoring protocols to document improvements in service delivery.

Conservation authorities have demonstrated their willingness to work with the Province and change to meet provincial expectations. Unfortunately, the current changes introduced by the Province show no regard for these efforts and many of the proposed changes have consequences which are counterproductive and will increase red tape, cost taxpayers more, and place Ontario's residents and environment at risk.

The following is a summary of our concerns and a resolution that we would respectfully ask you to bring forward to your mayor and council to support.

Summary of Concerns

Provincial Bill 229 changes to both the *Conservation Authorities Act* and the *Planning Act* eliminates the conservation authorities' science-based watershed approach which currently protects Ontario's environment.

- Conservation authorities are important agencies who help protect Ontario's environment. Their science-based watershed information helps to steer development to appropriate places where it will not harm the environment or create risks to people.
- CAs bring watershed science and information to the various tables where development and growth are being reviewed and discussed.
- Provincial changes limit conservation authorities' ability to provide input to municipal planning applications and to permit decisions and appeals.
- The conservation authority watershed model has served Ontario well and is relied upon by many levels of government, businesses, and residents to protect the environment from upstream to downstream.
- Conservation authorities undertake watershed-scale monitoring, data collection, management and modelling; watershed-scale studies, plans, assessments and strategies; and watershed-wide actions including stewardship, communication, outreach and education activities that protect our environment on a watershed basis.

Bill 229 changes will create more costs, delays and red tape around permit and planning applications and appeals.

- There are new appeal processes proposed which will significantly slow down the permitting process, creating delays and more red tape. This will also result in additional costs which would need to be recovered by increasing permit fees or through increases to municipal levies.
- If applicants are not satisfied with decisions made by the Hearing Boards (CA Board of Directors and/or Executive), the new changes will allow applicants to appeal directly to the Minister, who could make his or her own decision and issue a permit.
- Alternatively, or in addition, the applicant can appeal a decision of the conservation authority to the Local Planning Appeal Tribunal (LPAT).
- These changes could add as many as 200 days to the application process.

Bill 229 changes will remove conservation authorities' ability to independently appeal decisions made around permits and municipal planning applications. This will put more people and infrastructure at risk of flooding and other natural hazards as well as add additional stressors to Ontario's biodiversity.

- Conservation authorities' regulatory role is not always a popular one, but it is very important. Being able to participate in appeal processes ensures that the watershed lens is being applied to planning and land use decisions and that people and their property are protected from natural hazards such as flooding.

- Without the ability to look at development applications on a watershed basis, we run the risk of the plan review process being piecemeal and exacerbate risks associated with natural hazards and for cumulative negative environmental impacts.

Bill 229 changes will remove the responsibility for municipally appointed CA Board members to represent the interests of the Conservation Authority.

- The Province has changed the 'Duty to Members' section of the Conservation Authorities Act to have municipal representatives on CA Boards act in the interests of their own municipality rather than the conservation authority's interests.
- This contradicts the fiduciary duty of board members to represent the best interests of the corporation they are overseeing. It puts an individual municipal interest above the conservation authority interests.
- It is contrary to a recent recommendation by the Auditor General that states Conservation Authority Board Members should act in the interest of the Conservation Authority and not their municipality.
- This change undermines the ability of Conservation Authority Boards to address the broader environmental and resource management issues facing our watersheds today. It limits discourse on these issues and other programs and services that address watershed-wide issues spanning municipal boundaries in a time of increasing climate change.

Bill 229 will reduce the ability for enforcement of the Section 28 Regulation, putting residents and the environment at risk by not providing Conservation Authorities the necessary tools to control illegal activities.

- The current revisions significantly limit a Conservation Authority's ability to enforce the regulation. Conservation authorities will have to continue to rely on search warrants to gain entry to a property where infractions/compliance is a concern taking time and costing money. Reasonable grounds for obtaining a search warrant now cannot be obtained unless the activity can be viewed without entry onto the property (i.e. from the road). This will protect would be violators of the regulation.
- The ability to issue Stop (work) Orders has been repealed. This is an important enforcement tool that conservation authorities have been requesting for years. Without this tool, conservation authorities must obtain an injunction to stop unauthorized activities. Obtaining injunctions takes further staff time and Authorities will incur significant costs for legal and court fees. Given the lack of Provincial funding this cost will be borne by our municipalities and ultimately the taxpayers. The time needed to obtain such an order can be lengthy resulting in unnecessary and significant damage to the environment, or alteration of a floodplain which then puts people at risk.
- This unintended consequence is contrary to the Province's Made in Ontario Plan which references getting tough with polluters. Illegal filling, dumping of contaminated materials, destruction of wetlands and significant habitat as identified in the Lake Simcoe Protection Plan are happening. Without the necessary tools, the public and environment are at risk.

Draft Resolution of Support

The following is a draft resolution of support for your consideration:

WHEREAS the Province has introduced Bill 229, Protect, Support and Recover from COVID 19 Act - Schedule 6 – Conservation Authorities Act;

WHEREAS the Legislation introduces several changes and new sections that could remove and/or significantly hinder conservation authorities' role in regulating development, permit appeal process and engaging in review and appeal of planning applications;

WHEREAS we rely on the watershed expertise provided by local conservation authorities to protect residents, property, and local natural resources on a watershed basis by regulating development and engaging in reviews of applications submitted under the *Planning Act*;

WHEREAS the changes allow the Minister to make decisions without conservation authority watershed data and expertise;

WHEREAS the Legislation suggests that the Minister will have the ability to establish standards and requirements for non-mandatory programs which are negotiated between the conservation authorities and municipalities to meet local watershed needs;

WHEREAS municipalities require a longer transition time to put in place agreements with conservation authorities for non-mandatory programs;

WHEREAS municipalities believe that the appointment of municipal representatives on conservation authority boards should be a municipal decision; and the Chair and Vice Chair of the conservation authority boards should be duly elected;

WHEREAS the changes to the 'Duty of Members' contradicts the fiduciary duty of a conservation authority board member to represent the best interests of the conservation authority and its responsibility to the watershed;

WHEREAS conservation authorities have already been working with the Province, development sector and municipalities to streamline and speed up permitting and planning approvals through Conservation Ontario's Client Service and Streamlining Initiative;

WHEREAS changes to the legislation will create more red tape and costs for the conservation authorities, their municipal partners, and potentially result in delays in the development approval process;

AND WHEREAS municipalities value and rely on the natural habitats and water resources within conservation authority jurisdictions for the health and well-being of residents; municipalities value conservation authorities' work to prevent and manage the impacts of flooding and other natural hazards; and municipalities value conservation authorities' work to ensure safe drinking water;

THEREFORE, BE IT RESOLVED

- THAT the Province of Ontario work with conservation authorities to address their concerns by repealing and/or amending changes to the *Conservation Authorities Act* and the *Planning Act* set out in Bill 229;
- THAT the Province of Ontario delay enactment of clauses affecting municipal concerns;
- THAT the Province of Ontario provide a longer transition period up to December 2022 for non-mandatory programs to enable coordination of conservation authority municipal budget processes;
- THAT the Province respect the current conservation authority/municipal relationships;
- AND THAT the Province embrace their long-standing partnership with the conservation authorities and provide them with the tools and financial resources they need to effectively implement their watershed management role.

Thank you for your consideration and we look forward to continuing to work with your municipality into the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Walters".

Mike Walters
Chief Administrative Officer
m.walters@lsrca.on.ca

cc: Regional and Municipal Clerks