

TO: Brockton Council

FROM: Deputy Mayor Dan Gieruszak

DATE: December 2, 2020

SUBJECT: Impact Assessment Bill 229: Protect, Support, and Recover from COVID-19 Act (Budget Measures), 2020

PURPOSE: The Province of Ontario has proposed amendments to the *Conservation Authorities Act* and the *Planning Act* in Schedule 6 of Bill 229, that present major implications for Conservation Authorities across the Province to fulfill their mandates at current funding levels.

BACKGROUND

On April 5th, 2019 the Ministry of Environment, Conservation and Parks (MECP) posted proposals to amend the *Conservation Authorities Act* (CA Act) with the intent to help conservation authorities (CA) focus and deliver on their core mandate and to improve governance

Since then, individual briefings with CAs were held with Minister's staff, ministry staff and local MPPs (October-November 2019), and general consultations on CAs with stakeholders were held in the winter of 2020. The results of those consultations have not been made public.

On November 5th, 2020, the province released budget Bill 229; Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020. Bill 229 includes amendments to 44 Acts, including Schedule 6, the *Conservation Authorities Act*.

The legislature is due to rise on December 10th and therefore Bill 229 is expected to be passed soon.

ANALYSIS

The changes can be categorized as:

1. Board Governance
2. Objects, Powers and Duties
3. Permitting
4. Land Use Planning
4. Enforcement
5. Other

The potential implications of these changes are discussed below under each of these categories.

1. Board Governance

Key Changes:

- a. 14(1.1) Mandate that the municipal councillors appointed by a particular municipality as members of a conservation authority be selected from that municipality's own councillors only.
- b. Replace the current discretion to set other "such additional requirements regarding the composition of the authority and the qualification of members" in a regulation (CA Act, s14(4)) with the discretion of the Minister to appoint a member "as a representative of the agricultural sector" (new CA Act provision 14(4))
- c. Replace the currently proclaimed duty of members to "act honestly and in good faith with a view to furthering the objects of the authority" (CA Act, s14.1) to require that members "act honestly and in good faith" and that, particularly, members appointed by participating municipalities, "generally act on behalf of their respective municipalities" (new CA Act provision 14.1)
- d. Limit the term of a Chair or Vice-Chair to one year and to no more than two consecutive terms (new CA Act provision 17(1.1))

Implications:

Saugeen Valley Conservation Authority (SVCA) remains supportive of any changes made to enhance the transparency and accountability of CAs and red tape. There are several amendments that require posting of documents, board agendas and minutes, financial audits and standard accounting practices that are already undertaken at SVCA. These are positive changes.

Good governance dictates that the Board acts on behalf of the organization and in the public interest. The proposed change conflicts with the standards of care for directors as set out under the *Business Corporations Act*:

"Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation shall, (a) act honestly and in good faith with a view to the best interests of the corporation....; and (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances".

Further, this change conflicts with the Auditor General of Ontario recommendation in their report on the Niagara Peninsula Conservation Authority that **"to ensure effective oversight of conservation authorities' activities through boards of directors, we recommend that the Ministry of the Environment, Conservation and Parks clarify board members' accountability to the conservation authority"** to which the ministry response was in agreement.

Recommendation: Remove the amendment to Section 14.1 "Duty of Members".

2. Objects, Powers and Duties

Key Changes:

- a. Narrows the objects of a conservation authority from providing "programs and services designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals" (CA Act, s20(1)) to one of three categories:

- (i) mandatory programs and services,
- (ii) municipal programs and services, and
- (iii) other programs and services (new CA Act provision 20(1)).

b. There are a number of proposed clauses that enable the Minister to make regulations that would prescribe standards and requirements for Municipal Programs and Services (i.e. service agreement between Municipality and CA) and Other Programs and Services (i.e. those determined by the Board and which use municipal levy would require all municipalities' agreement).

Implications:

The modifications to the objects help to clarify how CA's operate. However, since the regulations which detail the nature and scope of the mandatory programs have not been established, it is not possible to assess the extent of implications.

The proposed clause that allows the minister to dictate the standards and requirements for municipal or other programs and services agreed upon through service level agreements (non-mandatory programs) will not be possible to be negotiated within the allotted 12 months as agreement must be achieved between 15 municipalities, four counties and three Conservation Authorities. It should be noted that the province provides no funding for these programs or services where they propose to have the ability to dictate standards. This additional level of bureaucracy and oversight duplicates effort and usurps municipalities' ability to partner with CA's to define the programs and services that are in the best interests of their constituents.

3. Permitting

Key Changes:

- a. Authorizes the Minister of Natural Resources and Forestry to issue an order to take over and decide an application for a permit under section 28 of the Conservation Authorities Act in place of the conservation authority (i.e., before the conservation authority has made a decision on the application).
- b. Allows an applicant, within 15 days of a conservation authority issuing a permit with conditions or denying a permit, to request the minister to review the conservation authority's decision and allows the applicant to appeal directly to LPAT where the minister fails to make a decision within 30 days
- c. Where the minister has taken over a permit application or is reviewing a permit decision by a conservation authority, allows an applicant to appeal directly to LPAT where the minister fails to make a decision within 90 days.
- d. In addition to the provision to seek a minister's review, provide the applicant with the ability to appeal a permit decision to LPAT within 90 days after the conservation authority has made a decision.

- e. Allows an applicant, within 120 days of a conservation authority receiving a permit application, to appeal to the LPAT if no decisions by the conservation authority has been made.

Implications:

Establishing timelines is beneficial in creating consistency across the Province and across watersheds. However, establishing multiple paths of appeal process while not adding to clarity of regulation will reduce consistency across watersheds and the province. This proposal does not improve transparency, consistency in decision-making and nor does it streamline the process. The proposal will likely result in a significantly longer approval process, add significantly to red tape, jeopardizing the health and safety of people or destruction of property.

It has not been proposed that the Ministry will add technical expertise (i.e., water resources engineering, environmental planning and ecological expertise), or in the absence of a complete, technically sound permit applications require proponents to fund specialized expertise.

With multiple appeal paths, and no corresponding increase in clarity of regulations, decisions will lack consistency across the province and may result in cumulative negative impacts, risk to public safety and property damage. Once the damage is done problems are much more costly, if even possible, to remedy.

The current single path of appeal to the Mining and Lands Tribunal is at no cost to permit applicants. The LPAT has a filing fee which may exceed the cost of the permit for most individuals. While the development community may be familiar with LPAT, the Mining and Lands Tribunal has the history and experience in adjudicating *Conservation Authorities Act* cases

The proposed CA decision targets do not provide the ability for a CA to “stop the clock” when an applicant delays the application process. This will result in incomplete applications following the appeal path to the Minister or LPAT.

Lastly, an unintended consequence of multiple appeal paths and incomplete permit applications, in addition to more CA staff time attending LPAT and Ministry hearings reviewing incomplete applications, but will also require additional legal costs to ensure CA's and their member municipalities will not be held liable for decisions made by the Minister or LPAT. and adversarial process.

4. Land Use Planning

Key Changes:

- a. Schedule 6 proposes an amendment to the *Planning Act* to remove conservation authorities as public bodies by adding them to subsection 1 (2) of the *Planning Act*. This amendment, if passed, would make conservation authorities part of the Province's one window planning approach with no right to appeal municipal planning decisions or be party to an LPAT hearing.

Implications:

Changes to section 2(1) of the *Planning Act* specifically remove conservation authorities as public bodies under the Act. By doing so, the ability to assess cross border municipal planning impacts is minimised. This could result in planning decisions that fail to consider hazard risks and for which CA permits cannot be approved. Planning approvals should only be issued for development that can be permitted under current CA regulations.

This increases the Province's and municipalities' accountability and responsibility for protecting people and property from natural hazards. CA's attend LPAT hearings to ensure that policies and development conditions reduce flood risks and to ensure mitigation and setbacks are in place to address other natural hazards such as erosion hazards or along the Lake Huron shoreline. Extreme weather events and changing climate increase the risk and accountability of Municipalities in the planning process.

As a result of the 2019 Flood Advisor's recommendations, the 2020 PPS was revised to state that mitigating natural hazard risks, including those associated with climate change, will require the province, planning authorities, and CA's to work together. Similarly, the Made in Ontario Environment Plan asserts that within the context of environmental planning, conservation authorities' core mandate is protection from natural hazards and conserving natural resources.

Recommendations:

- i. Remove proposed change to *Planning Act* or limit a CA's ability to appeal planning decisions to those related to natural hazards.
- ii. Clarify intent of *Planning Act* changes with respect to CAs as a landowner.

5. Regulatory Enforcement

Key Changes:

- a. Eliminated the (not yet proclaimed) powers for officers appointed by conservation authorities to issue stop orders (CA Act provision 30.4)
- b. Clarified conditions for officers appointed by conservation authorities to enter lands without a warrant for the purposes of:
 - determining whether to issue a permit (amendment to unproclaimed CA Act provision 30.2(1))
 - ensuring compliance with the prohibitions, regulations, or permit conditions, only when the officer has "reasonable grounds to believe that a contravention" (new CA Act provision 30.2(1.1)).

Implications of Changes:

Changes to section 30.4 of the *Conservation Authorities Act* removes the power of CAs to issue stop orders to persons carrying out activities that are contravening the Act. This tool was recently added to the legislation (2019), to enable CAs to immediately stop activities which could cause high risk to life and property and environmental damage and allow time for timely resolution of the matter.

The removal of this tool and narrowing of the powers of entry (Sect. 28(20) and 30.2) curtails a CA's ability to "prevent or reduce the effects or risks" associated with illegal and egregious activities, such as illegal placement of fill, wetland destruction, etc., and puts the onus on CA's to engage in the time consuming and costly injunction process. It shifts the legal responsibility to CA's and increases cost of operation to both the local CA and the municipality.

Recommendation: Maintain the ability for stop work orders and reinstate the powers of entry for purposes of permitting and compliance.

6. Other

Key Changes:

- a. Requirement for a transition plan for making the changes to the non-mandatory programs and services and developing agreements or MOUs with partners, including provincial ministries.

Implications:

The transition period for the implementation of MOUs is one year, such that the changes would take effect January 2022. It is expected that to develop comprehensive agreements with 15 municipalities, 4 counties, and two neighboring CA's will take considerably more time than 12 months to ensure meaningful agreements with appropriate levels of accountability.

In the case of SVCA this will require:

- Change our budget model and annual budgeting process;
- Inventory all programs and determine apportionment and benefits to individual municipalities;
- Assess all programs and services against the regulations;
- Enter discussions with all municipalities and counties;
- Draft budgets for the selected programs and services;
- Assess legal implications; and
- Establish and potentially negotiate 2022 budget with member municipalities, prior to January 1 2022.

It is an unreasonable expectation and one that the municipalities would no doubt be unable to meet given continued COVID workloads

Recommendation: That the transition be effective no earlier than for fiscal year 2023 (January).

FINANCIAL IMPACT

The changes outlined in the act have the potential to fundamentally change the CA budget as well as limit revenue recovery from planning and permitting activities. Without knowing the extent of the changes to the regulations that CA's are accountable for implementing, the SVCA is unable to assess the full financial impact.

Respectfully Submitted by:

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Chair

Sagehen valley Conservation Authority.