



CITY OF HAMILTON
CORPORATE SERVICES
Legal Services

TO:	Mayor and Members of General Issues Committee
COMMITTEE DATE:	June 21, 2017
SUBJECT/REPORT NO:	Conservation Authorities Act Review (LS15027(b)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Eleonora Filippone, Solicitor Ext 4707
SUBMITTED BY:	Nicole Auty City Solicitor Ext 4636
SIGNATURE:	

RECOMMENDATION

That the Mayor forward a submission to the Minister of Natural Resources and Forestry, consistent with the contents of Appendix "A" attached to Report LS15027(b) and in a form acceptable to the City Solicitor, regarding the proposed amendments to the Conservation Authorities Act as part of Bill 139, the Building Better Communities and Conserving Watersheds Act, 2017.

EXECUTIVE SUMMARY

On May 30, 2017, Bill 139, the Building Better Communities and Conserving Watersheds Act, 2017 received First Reading in the provincial legislature. Schedule 4 of the Bill proposes amendments to the Conservation Authorities Act.

The amendments proposed in Schedule 4 follow periods of consultation with stakeholders, including municipalities, about the roles, responsibilities, funding and governance of conservation authorities. The City made submissions to the Ministry of Natural Resources and Forestry (MNR) during these consultation periods by letters dated September 23, 2015, October 16, 2015 and September 1, 2016.

The City's submission dated September 1, 2016 is attached as Appendix "A" to this Report LS15027(b). This submission is an aggregate of the City's submissions dated September 23, 2015 and October 16, 2015, and the latter are therefore not attached to this report.

In addition to many housekeeping amendments, the Bill proposes more substantial amendments which include:

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- enabling the Lieutenant Governor in Council to prescribe the manner in which municipal levies are apportioned and appealed;
- enabling MNRF to conduct reviews of conservation authority programs, services and operations;
- clarifying that conservation authorities must provide programs and services prescribed by the Lieutenant Governor in Council, together with standards and requirements as prescribed;
- clarifying that conservation authorities may provide programs and services on behalf of municipalities in accordance with memoranda of understanding between municipalities and conservation authorities;
- enabling the regulation of requirements for consultation and outreach undertaken by conservation authorities, including the ability for the Lieutenant Governor in Council to make regulations mandating the use of advisory boards;
- enabling the Minister to determine classes of programs and services in respect of which a conservation authority may charge a fee;
- enabling the Lieutenant Governor in Council to prescribe board composition and qualifications for board members.

Details pertaining to many of the proposed amendments, including how a conservation authority may apportion capital costs and operating expenses among its member municipalities, will be provided by regulations.

At the time of writing, draft regulations were not yet proposed; however, the MNRF advised that “[i]n the coming weeks the ministry will be posting ‘Conserving our Future: A Modernized Conservation Authorities Act’ which outlines the suite of legislative, regulatory, policy and program changes proposed to be made as a result of the review.” Staff will report back at the time those changes are known.

Submissions on Schedule 4 of the Bill are due to MNRF by June 30, 2017.

In the absence of regulations prescribing the details of the amendments, staff proposes to submit comments to MNRF reiterating the submissions made in the earlier consultation periods.

This report addresses only Schedule 4 of the Bill. The balance of the Bill, as it relates to changes to the Ontario Municipal Board, will be presented to Planning Committee by separate report.

Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS (for recommendation(s) only)

Financial: Schedule 4 of Bill 139 enables the Lieutenant Governor in Council to prescribe how a conservation authority may apportion capital costs and operating expenses among its member municipalities. The regulation prescribing such apportionment was not released at the time of writing.

Staffing: None.

Legal: Schedule 4 of Bill 139 proposes many amendments to the Conservation Authorities Act regarding the roles, responsibilities, funding and governance of conservation authorities. Details with respect to many amendments will be prescribed by regulation, which were not released at the time of writing.

HISTORICAL BACKGROUND (Chronology of events)

MNRF launched a review of the Conservation Authorities Act in July 2015 with the release of a Discussion Paper. During Phase 1 of the review process, the City made a submission by letters dated September 23, 2015 and October 16, 2015.

Phase 2 of the review process was launched in May 2016, at which time the MNRF identified five priorities for updating the Act:

1. Strengthening oversight and accountability in decision-making.
2. Increasing clarity and consistency in roles and responsibilities, processes and requirements.
3. Improving collaboration and engagement among all parties involved in resource management.
4. Modernizing funding mechanisms to support conservation authority operations.
5. Enhancing flexibility for the province to update the Act framework in the future.

During Phase 2, the City made a submission to MNRF by letter dated September 1, 2016.

The City's submission dated September 1, 2016 is attached as Appendix "A" to this Report LS15027(b). This letter combines and reflects the City's submissions during Phase 1.

Following such review process, the province has proposed amendments to the Conservation Authorities Act as set out in Schedule 4 of Bill 139, the Building Better Communities and Conserving Watersheds Act, 2017.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The legislative changes proposed by the province to the Conservation Authorities Act are set out in this report under the Executive Summary and Analysis and Rationale for Recommendation. The extent of their implications on City policies will not be known until new regulations under the Act are released.

RELEVANT CONSULTATION

Feedback from Financial Planning, Administration & Policy was received and incorporated into this report.

During the earlier consultation periods, all City Departments were asked to provide feedback on improvements to the Conservation Authorities Act. Responses were received from Corporate Services, Public Health Services, Public Works, and Planning and Economic Development and were incorporated in the previous submissions made to MNRF. Staff proposes to reiterate those submissions in response to Schedule 4 of Bill 139.

ANALYSIS AND RATIONALE FOR RECOMMENDATION (Include Performance Measurement/Benchmarking Data if applicable)

Highlights of the proposed amendments to the Act include:

Governance

- Municipalities shall set the term of their representatives on the conservation authority boards and may replace such representatives as appropriate. The number of representatives to which municipalities are entitled remains unchanged.
- The Lieutenant Governor in Council may make regulations governing the composition of conservation authorities and prescribing additional requirements regarding the appointment and qualifications of members of conservation authorities.
- Conservation authorities may determine its governance practices by way of (corporate) by-laws instead of regulations. Such by-laws may not conflict with the Municipal Conflict of Interest Act or the Municipal Freedom of Information and Protection of Privacy Act. The Minister may direct a conservation authority to amend its by-laws.
- MNRF may conduct reviews of conservation authority programs, services and operations. This partially addresses the City's request to increase provincial oversight of conservation authorities' operations and activities; however, the details of how and when such reviews will be invoked are not outlined in the proposed amendments.

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Public Notice

- Meetings of conservation authorities shall be open to the public, unless the authority adopts a by-law creating an exception.
- Public notice of a meeting is required to amalgamate authorities or dissolve an authority. Members of the public shall be permitted an opportunity to make representations.
- Conservation authorities' by-laws, fee schedules, and any memorandum of understanding with a municipality shall be made available to the public.

Programs and Services

- Conservation authorities shall provide: (1) mandatory programs and services required by regulation; (2) municipal programs and services that they agree to provide on behalf of their member municipalities under a memorandum of understanding; and (3) such other programs and services they determine are advisable to further their objects.
- The Lieutenant Governor in Council may set standards and requirements for mandatory programs and services. This partially addresses the City's request to improve consistency among conservation authorities' operations and activities; however, the details of how and when such standards and requirements will be mandated are not known.
- The Lieutenant Governor in Council may assign the delivery of additional programs and services to all or individual conservation authorities in the future.

Funding

- Capital costs of a project shall be apportioned to member municipalities in accordance with the regulations. A member municipality may apply to the Ontario Municipal Board, or such other body prescribed by regulation, for a review of the apportionment.
- The terms "maintenance costs" and "administration costs" are repealed and replaced with "operating expenses". Operating expenses shall be apportioned to member municipalities in accordance with the regulations. A member may apply to the Mining and Lands Tribunal (formerly Mining and Lands Commissioner), or such other body prescribed by regulation, for a review of the apportionment.
- The Minister may determine the classes of programs and services in respect of which conservation authorities may charge a fee. Each conservation authority shall adopt a written policy with respect to its fees, a policy review process, and a procedure allowing a person to request a reconsideration of a fee.
- No provision for commitment of funding from the province.

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Collaboration and Engagement

- The Lieutenant Governor in Council may make regulations governing the establishment of advisory boards and prescribing requirements with respect to the composition, functions, powers, duties, activities and procedures of such advisory boards.
- The Minister may make regulations governing consultations that conservation authorities must carry out with respect to their programs and services.
- These proposed amendments partially speak to the City's request for increased collaboration and engagement in resource management; however, the City's request for defined collaboration in the context of protection of the biodiversity of regionally rare native Ontario plants has not been addressed. Furthermore, the proposed amendments do not set guidelines for how and when collaboration will be required and the role municipalities will be given.

The implications of the proposed amendments to the Conservation Authorities Act are not yet known, as Bill 139 allows MNR and Lieutenant Governor in Council to prescribe regulations on the programs, services, funding, powers and governance of conservation authorities. Staff proposes making a submission to MNR, consistent with the previous submissions made by the City, on the details which are yet to be released and may have significant consequences to the City.

The Act applies to all of Ontario with a variety of complex situations, and thus it would be difficult to provide a definitive approach to levy distribution and other issues that would be fair to all conservation authorities and all municipalities in all situations. However, the Act should include broad guiding principles and clarify the intent of the law so that such principles may guide the application of the regulations. Such principles would also protect against unintended consequences of the mechanical application of the regulations.

In the development of the regulations, the province should place great emphasis on equity, fairness and accountability.

For example, if the regulation contains alternate options for levy distribution, then the sequence and circumstances in which such options are to be considered should be defined. There should also be some clause in such regulations that would ensure that unreasonable conduct by any one party is not protected or rewarded; that is, all parties should have an incentive to be reasonable.

As well, a member municipality paying the levy should have the right to request, at its discretion, information concerning administration expenditures and proposed

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expenditures on the watershed lands covered within its jurisdiction as well as the expected benefits of such expenditures. In reviewing the levy for a new budget year, the municipality may require the conservation authority to confirm the actual results in comparison to the expenditures and outcomes related to the previous year.

Submissions on Schedule 4 of the Bill are due to MNRF by June 30, 2017.

ALTERNATIVES FOR CONSIDERATION

(Include Financial, Staffing, Legal and Policy Implications and Pros and Cons for each alternative)

The City could refrain from submitting comments on the Bill and, rather, submit comments once regulations are proposed by the province, when and if consultation is extended to municipalities and other stakeholders at that time. There is no guarantee that such a consultation opportunity will be provided, so this alternative is not being recommended.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” City of Hamilton’s submission dated September 1, 2016 to the Ministry of Natural Resources and Forestry