



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	February 27, 2018
SUBJECT/REPORT NO:	Conservation Authority Levies (FCS18029) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Tom Hewitson (905) 546-2424 Ext. 4159 Cyrus Patel (905) 546-2424 Ext. 7698
SUBMITTED BY:	Mike Zegarac General Manager Finance and Corporate Services
SIGNATURE:	

RECOMMENDATIONS

- (a) That staff be authorized to appeal any apportionment levied by a conservation authority against the City which staff determines does not comply with the *Conservation Authorities Act* and Ontario Regulation 670/00, in the discretion of the General Manager of Finance and Corporate Services and City Solicitor;
- (b) That any levy payment which the City is required to make pursuant to the *Conservation Authorities Act* pending the appeals shall be made under protest.

EXECUTIVE SUMMARY

For the 2015 budget cycle, Niagara Peninsula Conservation Authority (NPCA) revised its levy apportionment to the City, thereby departing from an agreement that had been in effect for 14 years. NPCA advised the City that there was no agreement in place for the apportionment of the municipal levy per Section 2(1)(a) of Ontario Regulation 670/00 under the *Conservation Authorities Act* and therefore, the levy apportionment would be made per the formula prescribed under section 2(1)(b) of that regulation. This action by NPCA resulted in a significant increase in the amount of levy apportioned to the City.

NPCA's new levy apportionment was appealed by the City to the Mining and Lands Commissioner. In December 2017, the Commissioner dismissed the City's appeal. By separate report, Council authorized staff to seek a judicial review of the Commissioner's decision.

Following the decision of the Mining and Lands Commissioner, the City has been advised that other Conservation Authorities with watershed lands within Hamilton's boundaries (that is, Grand River Conservation Authority, Conservation Halton and Hamilton Region Conservation Authority) may levy the apportionment amounts based on the Commissioner's decision, thereby resulting in a substantial increase in the City's payment obligations. In that context, staff seeks the authority to appeal any levies that are based on the Commissioner's decision or are otherwise not compliant with the *Conservation Authorities Act*.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: If all conservation authorities apply the formula to apportion their levy as interpreted by the Mining and Lands Commissioner, the net impact to the City will be approximately \$2.4 million.

Staffing: There are no staffing implications as a result of Report FCS18029.

Legal: The City is seeking a judicial review of the decision of the Mining and Lands Commissioner. Pending such review, it is recommended that the City assert its right of appeal where a Conservation Authority apportions a levy against the City which is based upon the Commissioner's decision.

HISTORICAL BACKGROUND

The following four Conservation Authorities have watershed areas within the boundaries of the City of Hamilton:

- Hamilton Conservation Authority;
- Conservation Halton;
- Grand River Conservation Authority; and
- Niagara Peninsula Conservation Authority.

The *Conservation Authorities Act* and Ontario Regulation 670/00 empower Conservation Authorities to recover their operating and capital expenditures via a levy on the municipalities within their watershed areas. Apportionment of a levy may be calculated in one of two ways: (1) by agreement or (2) by a prescribed formula.

From 2001 to 2014, the Conservation Authorities levied Hamilton based on an agreement which ensured Hamilton's share would not be impacted by the amalgamation in 2001. In 2015, the NPCA claimed that there was no agreement in place and applied their interpretation of the formula for the apportionment of its levy to the City. The City disputes the NPCA's claims and interpretation of the formula.

The City appealed the NPCA's levy apportionment to the Mining and Lands Commissioner. In December 2017, the City's appeal was dismissed. Other Conservation Authorities have indicated they may apply the formula as set out by the Commissioner in apportioning their levy to the City.

Council has directed staff to seek a judicial review of the Commissioner's decision (Report LS16020(a), January 24, 2018 Council).

The purpose of this Report is to authorize staff to appeal any conservation authority's levy that apportions the City's levy based on the Commissioner's decision.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The *Conservation Authorities Act* provides 30 days for a municipality to appeal the apportionment levied by a conservation authority. Approving the recommendations within this Report will assist in ensuring those timelines are met.

RELEVANT CONSULTATION

Corporate Services Department, Legal Services Division, was consulted and supports the recommendations in this Report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

See Executive Summary and Historical Background

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

None.

TH/CP/dt