

**Report to
Rapport au:**

**Council
Conseil**

25 November 2020 / 25 novembre 2020

**Submitted on November 25, 2020
Soumis le 25 novembre 2020**

**Submitted by
Soumis par:
Stephen Willis**

General Manager / Directeur général

**Planning, Infrastructure and Economic Development Department / Services de
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and/et

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2020-PIE-GEN-0009

SUBJECT: Briefing on proposed changes to the *Conservation Authorities Act* contained in Bill 229, *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020.

OBJET: Compte rendu sur les modifications proposées à la Loi sur les offices de protection de la nature qui sont présentées dans le projet de loi 229, Loi de 2020 sur la protection, le soutien et la relance face à la COVID-19 (mesures budgétaires)

REPORT RECOMMENDATIONS

Staff recommend that Council authorize the Mayor send a letter to the Province of Ontario, prior to the enactment of Bill 229, Schedule 6, *Conservation Authorities Act*, to express concerns with changes proposed to board membership composition and duties (Section 14 of the Act). Staff have included a recommended letter for the Mayor to send to the Province, which summarizes these concerns, as Document 1.

RECOMMANDATIONS DU RAPPORT

Le personnel recommande que le Conseil autorise le maire à envoyer une lettre au gouvernement de l'Ontario, avant l'adoption du projet de loi 229, Annexe 6, Loi sur les offices de protection de la nature, afin d'exprimer ses inquiétudes quant aux modifications que l'on propose d'apporter à la composition du conseil et aux responsabilités (article 14 de la Loi). Le personnel a inclus, en tant que document 1, une lettre recommandée qui résume ces préoccupations et que le maire pourra faire parvenir au gouvernement de l'Ontario.

BACKGROUND

This report provides an overview of the changes to the *Conservation Authorities Act* proposed by Bill 229, the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* (“**Bill 229**”). It also includes a draft letter (Document 1) that staff recommend Council authorize the Mayor send to the Province prior to enactment of the Bill. The letter highlights the City’s core concern with Bill 229, Schedule 6, which deals with the *Conservation Authorities Act*. Specifically, the City has concerns with changes to Section 14 of the *Act*, which outline board membership and duty requirements. If approved, the *Act* would require members of a conservation authority that are appointed by participating municipalities to be municipal councillors. More information on the impacts of this change are included in the letter (Document 1).

Bill 229 amends 99 separate statutes. This report addresses only those changes to the *Conservation Authorities Act* and minor related changes to the *Planning Act, Building Better Communities and Conserving Watersheds Act, 2017*, and *More Homes, More Choice Act, 2019*.

Bill 229 is not yet in force. It received first reading on November 5, 2020 and second reading and debate on November 17 and 18, 2020. Though not formally confirmed, conservation authority staff have reported that the Province has indicated an intent to implement these changes by 2022 if not earlier.

DISCUSSION

Legislative History

Bill 229 adds to changes to the *Conservation Authorities Act* which were already passed by the previous Provincial government on December 12, 2017 as [Building Better Communities and Conserving Watersheds Act, 2017](#) (Bill 139)(**BBCCWA**) but have not yet been proclaimed into force. Bill 229 did not repeal the *BBCCWA* as a whole, though the changes in Bill 229 do modify that legislation.

Additionally, the [More Homes, More Choice Act, 2019](#) (introduced as Bill 108)(“**MHMCA**”), passed by the current government on June 6, 2019, had proposed certain changes to the approach adopted by the *BBCCWA*. The changes to the *Conservation Authorities Act* in the *MHMCA* are also not yet proclaimed into force. Bill 229 also modifies the *MHMCA*.

The changes proposed in the *BBCCWA* and *MHMCA* are summarized below where necessary in order to understand Bill 229. It has also been noted below where Bill 229 would create a change to the proposed approach under the *BBCCWA* and/or *MHMCA*.

Changes to membership composition and duties

Currently, Municipalities appoint Conservation Authority members whose only qualification is that they must be residents of a municipality in which the authority has jurisdiction. The Bill proposes to add the additional requirement that members of any given authority shall be sitting municipal councillors chosen by each municipal council from among its own councillors.

Ottawa currently has nine seats filled by citizen appointees which, if the Bill is adopted, would need to be replaced by Councillors. Specifically:

Mississippi Valley Conservation Authority (“MVCA”) Board - five Ottawa members

- Two Councillors (Gower and El-Chantiry)
- Three public representatives

Rideau Valley Conservation Authority (“RVCA”) Board - six Ottawa members

- Two councillors (Moffatt and Darouze)
- Four public representatives

South Nation Conservation Authority (“SNCA”) Board - four Ottawa members

- Two councillors (Kitts and Darouze)
- Two public representatives

Further changes are proposed to the composition of the authority's membership:

- The Minister may appoint an additional member "as a representative of the agricultural sector". No further qualifications or requirements for this member are specified, nor are specific voting privileges specified.
- The position of chair or vice-chair is for a one-year term. A member cannot serve as chair or vice-chair for more than two consecutive years.

The Bill would specifically state the duty of each member to require that they must "act honestly and in good faith and shall generally act on behalf of their respective municipalities". No specific duty of care is currently included in the *Act*, though such may be inferred as a matter of law. A similar duty with slightly different wording was proposed under the 2019 *MHMCA*.

As indicated, the City has concerns with the changes proposed to Conservation Authority board membership and duties. A summary of these concerns has been included in the letter, which staff are recommending Council send to the Province prior to enactment of the Bill (Document 1).

Conservation Authority Service Provision and Budgets

The current *Act* (as well as under the *Act* as was proposed to be amended under the *BCCWA*) provides a mechanism by which the Minister could prescribe mandatory services to be provided by conservation authorities, but does not include specific mandatory services in the body of the legislation and to date no mandatory services have been prescribed. Under Bill 229, certain mandatory services will be set out, while allowing the Minister to prescribe additional mandatory services by regulation. A regulation has not yet been proposed. The currently proposed mandatory services are:

1. Programs and services related to the risk of natural hazards.
2. Programs and services related to the conservation and management of lands owned or controlled by the authority, including any interests in land registered on title.
3. Programs and services related to the authority's duties, functions and responsibilities as a source protection authority under the *Clean Water Act*, 2006.

4. Programs and services related to the authority's duties, functions and responsibilities under an *Act* prescribed by the regulations.

Bill 229 continues to permit authorities to provide municipal programs and services further to a memorandum of understanding or other agreement between the authority and the municipality. These memoranda/agreements would be required to be made available to the public. Additionally, a new power to enact regulations to prescribe program standards and requirements or prescribe or limit the types of programs a conservation authority can provide to a municipality is proposed. No specific regulations are yet proposed in this regard.

The *Act* currently permits authorities to provide "other" services that the authorities "determine advisable to further its objects". This was retained in the *BBCCWA*. *MHMCA* would have removed the ability to provide such other services. Bill 229 would reintroduce this power to provide "other" services, but changes the language, requiring authorities to provide other services which further the "objectives of the *Act*". The purpose of the *Act* is already described in s. 0.1 as to "provide for the organization and delivery of programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario". It is currently unclear whether this change in wording would narrow, in practice, the authorities' ability to provide other services or not.

Staff are advised by conservation authorities that the Province has indicated that program changes would be implemented in 2022 budgets which means agreements with municipalities would need to be finalized by mid summer 2021.

Bill 229 would empower the Minister to enact regulations with respect to conservation authority budgets, including governing the apportionment of a authority's capital costs and operating expenses, the amount that municipalities are required to pay, prohibitions on types of operating expenses, the amount of any fee a conservation authority charges, and/or the manner in which the conservation authority fees are calculated. The specifics of these regulations are not yet proposed.

Ministry oversight and LPAT appeal routes

Bill 229 proposes to remove Conservation Authorities as a "public body" for the purposes of the *Planning Act*. This means that CAs will not be able to appeal *Planning Act* decisions in that capacity (e.g. Official Plan and Zoning By-law amendments, etc.) to the LPAT.

Appeals from a refusal of an application for Conservation Authority permission for development under s. 28 would now go to the Local Planning Appeal Tribunal (LPAT). Previously these appeals were heard by the Mining and Lands Tribunal.

The Minister of Environment, Conservation and Parks would be permitted to order a CA to issue or not issue a Section 28 permit and may issue a permit directly with or without conditions. Minister's permits would not require a hearing and would not be subject to appeal.

Other changes

The authority to issue "stop work orders" for activity contravening a permit, which was proposed under the 2017 *BBCCWA* but not yet in effect, would be removed by Bill 229. Other enforcement powers proposed under *BBCCWA* are carried forward in Bill 229 with minor amendments in some cases (right to enter onto land without warrant, search without warrant, offence for contravening Act, rehabilitation orders).

The power of conservation authorities to expropriate land (i.e. acquire it without permission but with statutory compensation to the former owner) for the purposes of accomplishing their objects would be repealed by Bill 229.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

There was no public consultation for this report.

LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendations of this report. Council is permitted to receive a statement on changes to these statutes and direct staff to send a letter with approved comments.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

ASSET MANAGEMENT IMPLICATIONS

There are no asset management implications associated with the recommendations of this report.

ACCESSIBILITY IMPACTS

There are no accessibility implications associated with this report.

TERM OF COUNCIL PRIORITIES

Not applicable.

SUPPORTING DOCUMENTATION

Document 1 Recommended letter to the Province

DISPOSITION

If approved, staff will finalize the draft letter contained in Document 1 and send it to the Minister.

DOCUMENT 1 – Recommended letter to the Province

25 November 2020

The Honourable Rod Phillips

Minister of Finance

The Honourable Jeff Yurek

Minister of the Environment, Conservation and Parks

The Honourable Rod Phillips

Minister of Municipal Affairs and Housing

Dear Ministers,

Re: Bill 229 and Proposed Changes to Conservation Authorities Act

I, the Mayor, am writing on behalf of Council to express concerns with the proposed changes to the *Conservation Authorities Act* contained in Schedule 6 of Bill 229. We are concerned about the potential impacts of changes to Section 14 of the Act, which will require that the members of a conservation authority that are appointed by participating municipalities are municipal Councillors.

The City of Ottawa shares the jurisdiction of three (3) Conservation Authorities: Mississippi Valley Conservation Authority, Rideau Valley Conservation Authority, and South Nation Conservation, referred to collectively as our “Conservation Partners”. Currently Ottawa is responsible for filling a total of 15 seats among the three Conservation Authorities, of which only six are filled by Councillors. The remaining seats are filled by Council-appointed community members. If Bill 229 passes in its current form, Ottawa City Council would have to fill all 15 seats with sitting Councillors. This would greatly increase the administrative burden on Council members, while excluding valuable input from qualified people within the community. We believe that the appointment of municipal representatives should continue to be at Council’s discretion and should not be limited to elected Councillors.

The City of Ottawa has previously participated in several consultation sessions during the review of the *Conservation Authorities Act*, including the online consultation in March 2020. We encourage the Province to return to this consultative and collaborative approach by withdrawing Schedule 6 from Bill 229 and allowing municipalities that are directly affected by the proposed changes to provide suggestions and feedback in a more meaningful way. At a minimum, we strongly recommend that the changes to Section 14 of the *Conservation Authorities Act* be removed from the Bill, so that municipalities may continue to appoint members as they deem appropriate.

We thank you for your consideration of these issues.

Sincerely,

Mayor Watson

City of Ottawa

cc: Steve Kanellakos, City Manager

Stephen Willis, General Manager, Planning, Infrastructure, and Economic Development

David White, City Solicitor

Rick O'Connor, City Clerk

Sally McIntyre, General Manager, Mississippi Valley Conservation Authority

Sommer Casgrain-Robertson, General Manager, Rideau Valley Conservation Authority

Angela Coleman, General Manager, South Nation Conservation