

## Report to Planning and Environment Committee

**To:** Chair and Members  
Planning & Environment Committee

**From:** Gregg Barrett  
Director, City Planning and City Planner

**Subject:** Bill 229, *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020, and Ontario's Flooding Strategy

**Meeting on:** March 29, 2021

## Recommendation

That, on the recommendation of the Director, City Planning and City Planner, the attached report with respect to Bill 229 and the Ontario's Flooding Strategy **BE RECEIVED** for information.

## Executive Summary

In early March 2020, the Province released Ontario's Flooding Strategy. The Strategy is composed of five priority areas based on a 2019 report by the Province's Special Advisor, and is intended to strengthen preparedness and resiliency for, and response to, flooding. Several of the Province's actions reflect updates of the existing legislation and regulations, including the Provincial Policy Statement and the *Conservation Authorities Act*, and are intended to improve the flood management policy framework across the Province.

On November 5, 2020, the province introduced Bill 229, *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020, and passed this Bill into law on December 8, 2020. This Bill proposed key amendments to the role and function of conservation authorities in the permitting and municipal planning processes under the *Conservation Authorities Act* and the *Planning Act*. Portions of the amendments came into force and effect on February 2, 2021, while the remaining un-proclaimed changes are expected to be proclaimed through phased regulations. Some key changes to the *Conservation Authorities Act* and the *Planning Act* include:

- The objects and powers of conservation authorities under Section 21 are limited to mandate consent of property owners and occupiers and no expropriation of land.
- 70% of conservation authority members are required to be elected officials with an additional member from the agricultural sector.
- Chairs and vice-chairs are appointed on a rotating basis between different municipalities and their terms are limited to one year or two consecutive terms.
- The Minister has new powers to appoint investigators and administrators for conservation authorities' operations.
- Conservation authorities' programs and services are confined to three categories: mandatory programs and services; municipal programs and services; and other programs and services.
- The Minister has new powers to issue S.28 permits and circumvent science-based decisions of conservation authorities.
- Applicants have new abilities to request a review of a conservation authority's decision to the Minister or appeal to the Local Planning Appeal Tribunal (LPAT).
- The Minister can force conservation authorities to issue mandatory permits for Minister's zoning orders.

- Appeal rights of conservation authorities in *Planning Act* appeals are limited to certain circumstances.

## Analysis

### 1.0 Background

#### 1.1 Ontario's Flooding Strategy

A Special Advisor on Flooding was appointed by the Province to conduct an independent review of 2019 flooding events and flood management. The Special Advisor reviewed flooding events, examined the existing flood management framework, and explored various roles of the governments, agencies and organizations involved in flood management, including conservation authorities. Released on November 28, 2019, the report provides recommendations for flood management in Ontario.

In response to the recommendations, the province released Ontario's Flooding Strategy in early March 2020. The strategy is designed to improve public awareness and strengthen preparedness for and response to flooding. The strategy outlines next steps for better preparedness for flooding events and management of flood risks. There are five key areas for action:

1. Understanding flood risks;
2. Strengthening governance of flood risks;
3. Enhanced flood preparedness;
4. Enhanced flood response and recovery; and
5. Invest in flood risk reduction.

#### 1.2 Bill 229, *Ontario's Budget Measures Act, 2020*

On November 5, 2020, Bill 229 was introduced proposing amendments to 44 statutes, including the *Conservation Authorities Act* (Schedule 6) that will significantly impact the roles and abilities of conservation authorities. On December 8, 2020, this Bill passed and received Royal Assent. The stated intention of the changes is to improve transparency and consistency in conservation authority operations, strengthen municipal and provincial oversight and streamline conservation authority roles in permitting and land use planning.

On February 2, 2021, portions of the changes came into force and effect which include:

- The replacement of the Minister of the Natural Resources and Forestry with the Minister of the Environment, Conservation and Parks to define "Minister"
- Limited objects and powers of conservation authorities under Section 21 (e.g. no expropriation of land)
- New provisions for makeup of conservation authorities requiring that 70% of members appointed by a municipality be members of municipal council, and permitting the Ministry to appoint an additional member from the agricultural sector
- Limited terms of chair/vice-chair(s) and rotating of chair/vice-chair(s) between different municipalities
- New ability of the Minister to appoint an investigator and administrator for a conservation authority's operations

The remaining changes that have yet to be proclaimed are more significant in terms of the roles and functions of conservation authorities related to programs and services, appeals, permitting and land use planning decisions. These changes are following:

- Limiting conservation authorities' programs and services to three categories: mandatory programs and services; municipal programs and services; and other programs and services
- New appeal processes under Section 28 involving the Minister and Local Planning Appeal Tribunal (LPAT)
- New abilities for applicants to request reconsideration of a fee or a ministerial review of conservation authorities' decisions or to appeal to the LPAT
- Allowing the Minister to order conservation authorities not to issue a permit without the opportunity for hearing and conservation authorities' decision making
- Ability to force conservation authorities to issue mandatory permits for Minister's zoning orders
- Limiting appeal rights of conservation authorities in *Planning Act* appeals

A conservation authority working group was established by the Province to help implement the changes to the *Conservation Authorities Act*. The working group, comprised of representatives from conservation authorities, Association of Municipalities of Ontario, and the development and agricultural sectors, have been tasked to provide input on the still un-proclaimed provisions. The proclamation of these provisions will be phased in two stages. The first stage includes provisions related to natural hazard management, mandatory programs and services, agreements between municipalities and conservation authorities, transition period associated with non-mandatory programs and services, and community members' participation through community advisory boards. Provisions related to municipal levies and standards and requirements for non-mandatory programs and services are expected to be developed in the second phase.

## **2.0 Ontario's Flooding Strategy Key Features**

The Ontario's Flooding Strategy is broken down into 5 priorities or action areas for consideration when updated municipal planning policies and approaches to managing flood risks. The five priorities are understanding flooding risks, strengthening governance of flood risks, enhanced flood preparedness, enhanced flood response and recovery, and invest in flood risk reduction.

### **2.1 Understanding Flood Risks (Priority #1)**

The strategy identifies that municipal and government understanding of flood risks in Ontario as a first step in improving the province's commitment to reducing impacts of flooding. To advance and enhance flooding mapping, the Province will establish a multi-agency flood mapping technical team to develop a multi-year approach. The team will be made up of staff from provincial and federal government agencies, municipalities, conservation authorities and academia and clarify their roles in updating flood mapping.

The province also seeks to improve accurate elevation mapping through a provincial elevation mapping program. Provincial standards for flood mapping will be updated to provide flood mapping technical guidance aligned with provincial elevation data acquisition and maintenance targets.

This priority also seeks to increase public awareness through a public education and outreach program, establishing communication protocols informing of watershed conditions, improving the public's access to flood-related information, such as traveller information and road closure.

### **2.2 Strengthening Governance of Flood Risks (Priority #2)**

The intention of the priority is to strengthen governance with respect to managing flood risks in greater collaboration with municipalities and conservation authorities, as well as other agencies and to direct local development away from areas where risks are present due to natural hazards. The priority seeks to clarify provincial, municipal, and

conservation authority roles and responsibilities in identifying natural hazards, as well as to establish an Urban Flooding Work Group. The group will identify and address urban flooding issues and develop a provincial framework for urban flooding policy.

This priority indicates a need for review of the existing flooding management policy framework. The Province will evaluate the policies and approach related to structural measures, such as berms, dykes and flood protection land forms, to increase the use of these measures, as well as to adopt a risk-based approach to flood mitigation in collaboration with municipalities, conservation authorities, and the development sector. This priority also refers to changes to the existing regulations and technical guidelines, including the Provincial Policy Statement and *Conservation Authorities Act* to update in response to recommendations in the 2019 Special Advisor's report. The PPS 2020 was revised to require the province to work together with municipalities and conservation authorities on mitigating risk from natural hazards and those associated with climate change. Furthermore, changes to the *Conservation Authorities Act* are considered to update the regulation of hazard lands and their relationship to land use planning approvals under the *Planning Act*.

### **2.3 Enhanced Flood Preparedness (Priority #3)**

The stated goal of this priority is to increase preparedness for future flood events through the use of science and technology. The Province will work to identify and advance science and research projects that will strengthen flood forecasting and warning. The priority includes leveraging satellite data, monitoring watershed conditions, exploring the use of remotely sensed imagery and micro-computer-based data collection and transmission system, and sharing water and climate data.

To support the sharing of data, the strategy mentions a federal collaborative climate monitoring agreement between the province and other agencies. The agreement will help flood forecasting and warning professionals to make better informed decisions and improve the public's access to timely information, such as the Ontario 511. The construction of 24 new Road Weather Information Systems stations is considered to share municipal station data and increase the public access to flood information, such as road washouts or highway closures.

### **2.4 Enhanced Flood Response and Recovery (Priority #4)**

The strategy seeks to improve how the Province and municipalities response to flood events and recover from flood emergencies through emergency response and recovery programs.

The province will review the implementation of municipal disaster recovery assistance programs to consider changes that would make the programs more responsive. The province will also finalize the procurement of an emergency management software solution to provide a more effective means of communicating and tracking support requests from municipalities. Municipalities will work with the province to enhance emergency response activities by improving their understanding of the process for requesting assistance during preparedness activities and emergencies.

There is a federal commitment to create a new low-cost national flood insurance program to protect homeowners at high risk of flooding and to develop a national action plan to assist potential relocation for those at the highest risk of repeat flooding.

### **2.5 Invest in Flood Risk Reduction (Priority #5)**

The strategy recognizes strategic and collaborative financial investment in flood risk reduction and seeks to secure funding for flood protection and mitigation. This priority mentions the province's actions to work with the federal government to increase investment in flood mapping of critical areas and flood infrastructure and work with municipalities and CAs to increase financial investment in local flood risk reduction initiatives. The province will leverage the existing funding programs, such as the Ontario Community Infrastructure Fund and the Water and Erosion Control Infrastructure Program to maintain and upgrade municipal and conservation authority infrastructure. In addition, the province will continue to fund core flood-related activities of conservation authorities through the Section 39 of the *Conservation Authorities Act*.

The strategy reflects these actions which will impact the roles and responsibilities of municipalities and conservation authorities in mapping, monitoring, forecasting, emergency management activities, and the planning process. In addition, the strategy indicates legislative changes to support conservation authority operations in flood risk mitigation and reduction. The changes were considered and proposed through Bill 229, *Ontario's Budget Measures Act, 2020*.

### **3.0 Bill 229 Key Changes**

The key changes to the *Conservation Authorities Act* and *Planning Act* made through Bill 229 can be summarized as relating to member appointment, objects and powers of conservation authorities, limited rights in *Planning Act* appeals, issuance of permits, Minister's Zoning Orders, enforcement tools, and powers of the Minister.

#### **3.1 Member Appointment**

Bill 229 requires that at least 70% of the member of a conservation authority appointed by a participating municipality be municipal councillors (new S.14(1.1)). The Minister of the Environment, Conservation and Parks may permit an exception to the 70% requirement upon an application by a municipality (new S.14(1.2)). The Minister has also the discretion to appoint an additional member who represents the agricultural sector (new S.14(4)).

The changes to the conservation authority membership are in effect as of February 2, 2021, however, some transition considerations have also been considered. Current members should complete the remaining period of their appointments, and new appointments should achieve the 70% requirement over time.

An agreement on total number of conservation authority members and the number of members per participating municipality must be submitted to the Minister and be publicly available on a conservation authority's website within 60 days of approval of such an agreement. Any existing council resolution regarding the numbers is required to be submitted by April 3, 2021, the 60 days of February 2, 2021.

#### **3.2 Objects and Powers of Conservation Authorities**

Bill 229 narrows the scope and range of activities that conservation authorities are permitted to undertake. Objects of conservation authorities under Section 20 are limited from providing programs and services designed to further the conservation, restoration, development and management of natural resource, other than gas, oil, coal and minerals, to three types of programs and services: mandatory programs and services (new S.21.1); municipal programs and services (new S.21.1.1); and other programs or services (new S.21.1.2). All programs and services are subject to standards and requirements as may be prescribed by regulation. Such standards and requirements for non-mandatory programs and services (i.e. municipal and other programs and services) may prevail over the terms and conditions set out in a local agreement or memorandum of understanding.

Further, mandatory programs and services identified by the Act are confined to those related to the risk of natural hazards, management and conservation of lands, source protection under the *Clean Water Act*, and other duties and responsibilities prescribed by regulations. This could limit the role and ability of conservation authority in watershed planning as a core mandatory program and in identifying the broader environmental issues, including resource management associated with the watershed.

A memorandum of understanding is mandatory for a conservation authority to provide municipal programs and services on behalf of a municipality. Further, conservation authorities are required to enter into agreements to negotiate funding for non-mandatory programs and services. Under new Section 21.1.3, conservation authorities are required to develop and implement a transition plan for the funding of these programs and services despite the unidentified transition period.

Other programs and services may be determined by conservation authorities and would rely on municipal levies or other municipal financial resources under an agreement. This could result in increasing financial pressures on the provision of non-mandatory programs and services, including educational and outreach programs to improve public awareness regarding flood risks as noted in the Ontario's Flooding Strategy.

Limitations to the powers of conservation authorities under Section 21 are now in force. A conservation authority's power has focused on studying and investigating the watershed and determining programs and services whereby the natural resources of the watershed may be conserved, restored, developed and managed under Section 21(1)(a). However, the power is now narrowed to research, study, and investigate the watershed to support the development and implementation of programs and services. This amended clause appears to limit the roles of conservation authorities in watershed conservation and management.

Consent of the occupant or owner of any land is mandatory for a conservation authority to enter the land for the purpose of a conservation authority project. In addition, conservation authorities cannot expropriate land to further the conservation, restoration, development, and management of natural resources, as well as flooding protection. They are now be able to acquire property or land only by purchase or lease and would need to request municipalities or the province to expropriate land.

### **3.3 Limited rights in *Planning Act* appeals**

Bill 229 proposes a consequential amendment to the *Planning Act* which removes conservation authorities from "public body" defined under Section 1 of the Act. If proclaimed, conservation authorities will no longer be able to appeal a municipal council's decision to the LPAT or to be a party to an appeal before the LPAT (new S.1(4.1)). The appeal rights of conservation authorities, however, will be retained under certain circumstances, only where a decision is related to prescribed natural hazard risks or a consent of lands owned by conservation authorities.

### **3.4 Issuance of Permits**

Currently, an applicant must obtain a permit from a conservation authority for development in areas that are regulated under Section 28. The authority has the power to grant or refuse the permit with or without conditions. Where the permit is refused or issued subject to conditions, the applicant has the ability to appeal to the Minister of Natural Resources and Forestry who may either grant or refuse the permit with or without conditions. The Mining and Lands Tribunal is responsible for adjudicating Section 28 appeals.

Bill 229 introduces new appeal processes that will replace the Mining and Lands Tribunal with the LPAT. Further, the processes allow the applicant to choose one of two options: a request to review the authority's decision by the Minister of the Environment, Conservation and Parks (S.28.1(9)) or appeal the decision to the LPAT (S.28.1(20)). The applicant may request a review of the decision to the Minister within 15 days of receiving reasons for conditions or refusal. The Minister has the discretion whether or not to conduct a review of the conservation authority's decision and is required to make a reply within 30 days of receiving a request. Where the Minister refuses to review or fails to make a decision within 90 days of giving a reply, the applicant may appeal to the LPAT. A hearing is not mandatory for ministerial review, while the Minister may confer with a person that the Minister considers may have an interest in the matter. The Minister must base the decision on the same criteria the authority is required to consider. Upon conducting the review, the Minister may confirm or vary the authority's decision, or make any decision the Minister considers appropriate, including issuing a permit with conditions.

Alternatively, the applicant may appeal the authority's decision to the LPAT within 90 days of receiving reasons for the decision. If the applicant has submitted a request for a review to the Minister, the applicant cannot appeal to the LPAT unless the Minister refuses to conduct a review or the Minister fails to make a reply within the 30-day timeline. The applicant is also able to appeal directly to the LPAT if the authority does not make a decision within 120 days after the application is made. Upon receiving a

notice of appeal, the LPAT is required to hold a hearing, on notice to all interested parties. The LPAT may refuse the permit or order the authority to issue the permit with or without conditions.

New Section 28.1.1 grants the Minister a new order making power to overturn a conservation authority's permitting power. The Minister may order a conservation authority not to issue a permit to a person who wishes to engage in an activity that would be prohibited under S.28 without the permit. An order may be made either before or after an application for a permit has been submitted to the authority. Upon making an order, the Minister must give notice of order to certain parties. Whereas an applicant may appeal to the LPAT only where the Minister fails to make a decision within 90 days of making a permit application, conservation authorities cannot appeal the decision. The new provisions also allow the Minister to issue a permit subject to conditions that the Minister considers appropriate without the opportunity for hearing.

While there is no criteria the Minister would use to whether to issue a permit, the amendment sections remove the opportunity for science-based decision making and curtail the ability of conservation authorities to appeal the LPAT.

### **3.5 Minister's Zoning Orders (MZOs)**

New Sections 28.0.1 and 28.1.2 provide new procedures related to Minister's zoning orders issued by the Minister of Municipal Affairs and Housing (MMAH) under Section 47 of the *Planning Act*. A conservation authority is now required to grant an applicant permission to carry out a development in non-greenbelt land where a MZO has been issued. Such a mandatory permission is subject to conditions prescribed by regulations. Although conservation authorities still have the ability to impose conditions on the permission to mitigate impacts that could jeopardize public health and safety or are related to flooding, erosion, dynamic beaches, or pollution or the conservation of land, these conditions may be subject to a review by the Minister or an appeal to the LPAT. Further, the Minister may override these conditions which conflict with the zoning order under sections 28.0.1(34) and 28.1.2(20). New procedural and appeal rights of an applicant on conditions specified by a conservation authority will be implemented in the same manner as a request for a review by the Minister and an appeal to the LPAT. An applicant may either request conditions to the Minister for review or appeal to the LPAT. The Minister is not required to hold a hearing upon conducting a review and may make a final decision to confirm or vary the conditions. If the applicant appeals to the LPAT, the LPAT has similar powers of review of these conditions at a hearing.

Where permission is granted, the conservation authority must implement an agreement with the holder of the permission, which would allow the holder to compensate for any harms or impacts on the environment that result from a development. There are penalties for committing an offence to contravene any condition of a permission or begin a development before entering into such an agreement. In addition to the penalties, a court, upon conviction, may issue a rehabilitation order. Where the holder does not comply with the order, the conservation authority may arrange for removal, repair or rehabilitation and recover the costs.

### **3.6 Enforcement Tools**

Bill 229 adds new provisions to the not-yet-proclaimed provisions with respect to entry (S.30.2) and stop work orders (S.30.4) introduced through Bill 139 in 2017. If proclaimed, an officer, appointed by a conservation authority, will be able to enter land under specific circumstances to witness contraventions of the amended Section 28 regulation.

An officer may issue stop work orders to activities that cause significant threats and impacts to the environment or human health and safety, including the effects related to flooding, erosion, dynamic beaches, or pollution or the conservation of land, as well as damages to property.

Section 30.2 provisions set out conditions for officers to enter lands without warrant, however, it appears to limit the powers of entry for conservation authorities. Any person (e.g. an expert) other than an officer would need to get a warrant to enter to land when

considering a S.28 permit application. The officer is required to give reasonable notice to the owner or occupier of the property prior to entry when considering the application.

Further, where compliance associated with a S.28 permit, including mandatory permission under a ministerial zoning order, is a concern, the officer is required to have reasonable grounds for concern that a contravention has occurred, that they believe could impact the environment or public health and safety, including the effects related to flooding or erosion.

### **3.7 Powers of the Minister**

New provisions to section 23 introduce appointments of investigators and administrators and immunity for those position to any act done, as well as any alleged neglect or default in good faith in the performance of their duties. These provisions grant the Minister additional powers and duties upon investigation of a conservation authority's operation under new Sections 23.2 and 23.3. An investigator appointed by the Minister may conduct an investigation of a conservation authority's operations, including programs and services. A conservation authority may be responsible for paying all or part of the cost of the investigation. Upon receiving the investigator's report, the Minister may order a conservation authority to avoid, prevent or remedy non-compliance with the Act, or recommend to the Lieutenant Governor in Council that an administrator be appointed to take over the conservation authority's operations, including the provision of programs and services.

### **3.8 Other Notable Changes**

New subsections to S.15 with respect to agendas and minutes of meetings of conservation authorities or their executive committee add further transparency and consistency with the *Municipal Freedom of Information and Protection of Privacy Act*. The subsections, now in effect, require these agendas and minutes to be publicly available on conservation authorities' websites and other appropriate means.

As of February 2, 2021, appointed chair or vice-chair(s) are now required to hold office for a term of one year, however, not more than two consecutive terms (new S.17(1.1)). The chair or vice-chairs rotate among participating municipalities (new S.17(1.2)). An exception may be granted by the Minister to allow a chair or vice-chair to hold office for more than one year or two terms, or a member to succeed an outgoing chair or vice-chair, appointed from the same participating municipality (new S.17(1.3)). A chair or vice-chair may be appointed at the first meeting held this year, following the proclamation date of February 2, 2021 or at any other meeting specified by the authority's by-laws.

Additional provisions to Section 21.2 grant applicants new procedural rights of an applicant to request for reconsideration of a fee charged for a permit application and new appeal rights to the LPAT. A conservation authority must make a decision upon reconsideration of the fee within 30 days. If the conservation authority fails to render a decision within the timelines, a person may appeal the amount of the fee to the LPAT which is responsible for making a decision to dismiss the appeal, vary the amount of the fee or order that no fee be levied.

## **4.0 Next Steps and Conclusion**

Bill 229 limits the powers of conservation authority in permitting and land use planning processes, while enhancing the Minister's powers to override conservation authorities' decisions through a Minister's zoning order. Other changes could also result in delays with respect to S.28 permits, as well as administrative and financial burdens for municipalities and conservation authorities to deliver non-mandatory programs.

The Ontario's Flooding Strategy seeks to strengthen the protection from and responses to flood risks in Ontario, and provides guidance for policies that may achieve those objectives. Some of the Bill 229 changes, such as limiting powers of Conservation Authorities and authorizing Minister's zoning orders to override permits could result in development that does not conform with the intended outcomes of the strategy, especially those of the Priority #2 – Strengthening Governance of Flood Risk. The



London Plan policies also provide direction on protection from flood risks and will ensure development in the London area gives appropriate consideration to flooding issues.

Details related to the un-proclaimed portions of the Act and their implementation is still pending, and the working group appointed by the Province is working to provide information on mandatory programs and services, the agreements between municipalities and conservation authorities, the transition period associated with non-mandatory programs and services, and how local community members can participate in their conservation authorities through community advisory boards. To date, no further information has been provided. Public consultation on these outstanding matters through the Environmental Registry is expected.

At this time, there are no changes required to the London Plan in response to these legislative changes and proposals. As the province implements Ontario's Flooding Strategy, possible amendments to the Natural and Human-Made Hazards policies may be considered to align with new guidance arising from the Ontario's Flooding Strategy.

<b>Prepared by:</b>	<b>Joanne Lee Planner I, Planning Policy</b>
<b>Submitted by:</b>	<b>Justin Adema, MCIP, RPP Manager, Planning Policy</b>
<b>Recommended by:</b>	<b>Gregg Barrett, AICP Director, City Planning and City Planner</b>
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Planning Services	

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JL/jl