

DATE: December 13, 2020

TO: Mayor and Members of Council

FROM: Wendy Law, Deputy City Manager, Administrative Services and City Solicitor

RE: **STAFF COMMUNICATION – December 15, 2020 Council**
Bill 229, the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020 – Schedule 6, amendments to the Conservation Authorities Act and Planning Act*

1. Purpose

To provide information regarding the changes to the *Conservation Authorities Act* (“CAA”) and *Planning Act* (“PA”) by Schedule 6 to Bill 229, the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* (“Bill 229”). Bill 229 received Royal Assent on December 8, 2020.

2. Analysis

On November 5, 2020 the Province brought forward Bill 229 for first reading in the Ontario Legislature. Schedule 6 to Bill 229 was amended following consideration by the Standing Committee on Finance and Economic Affairs on December 4, 2020. Bill 229 received Royal Assent as amended on December 8, 2020.

Schedule 6 to Bill 229 proposes changes to the *Conservation Authorities Act* (“CAA”) and the *Planning Act* (“PA”).

Bill 229 changes how conservation authorities are involved in the land use planning process, institutes new statutory requirements for the issuance of permits involving lands subject to Ministerial Zoning Orders and institutes new appeal rights and processes regarding permits and fees.

Bill 229 can be accessed in its entirety here - <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-229>

The more consequential impacts of the proposed changes arising out of Schedule 6 are set out below:

Act	Section	Old Provision	Bill 229 Change	Impact on City of Vaughan
<u>Conservation Authority Board– Membership Structure</u>				
<i>Conservation Authorities Act</i> (“CAA”)	s. 14	<p>Members of a conservation authority board are appointed by the councils of participating municipalities.</p> <p>The members appointed by council are required to be a resident in the participating municipality.</p>	<p>At least 70 percent of the members of a conservation authority appointed by participating municipalities are to be municipal councillors. Upon application to the Minister, permission may be given to select less than 70 percent of the appointees as council members.</p> <p>The Minister has the authority to appoint an additional member to a conservation authority to represent the agricultural sector. This agricultural member has limited voting rights in that they cannot vote on resolutions regarding:</p> <ul style="list-style-type: none"> • Enlarging an authority’s area of jurisdiction; • Amalgamating an authority with another authority; • Dissolving the authority; • Budgetary matters. 	No City impact expected; the current Toronto and Region Conservation Authority (“TRCA”) board structure is consistent with the current composition.
<u>Conservation Authority Board – Term of a Vice-Chair or Chair</u>				
CAA	s. 17	The conservation authority shall appoint a Chair and one or more Vice-Chairs from among the members of the authority	<p>The term of a Vice-Chair or Chair is 1 year and for a maximum of two terms.</p> <p>In instances where there are multiple participating municipalities within a conservation authority board the Vice Chair/Chair must be appointed on a rotating basis. The effect of this change is that no single municipality can appoint a Chair/Vice Chair in consecutive terms.</p>	No City impact expected.

			The Minister has the authority to vary the restriction on the length of service, maximum terms and application of the rotating rule if a municipality applies for a change to the Minister	
<u>Objects of a Conservation Authority</u>				
CAA	20(1)	The objects of an authority are to provide, in the area over which it has jurisdiction, programs and services designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals.	Section 20(1) is substituted with narrower objects, limited to: (i) mandatory programs and services; (ii) municipal programs and services; and (iii) other programs and services.	The updated TRCA mandatory program and services based on the new legislation is not available at this time. Accordingly, the impact on the City is not known. However, if the programs and services are reduced, municipalities may want to consider whether to take the lead in the creation and implementation of those programs and services, for instance restoration planning, green infrastructure development, education and outreach. The City can assess its interest/mandate in such areas at that time.
<u>Powers - Modification of Conservation Authority Powers</u>				
CAA	21(1)	21(1)(a) - permits a conservation authority “to study and investigate the watershed and to determine programs and services whereby the natural resources of the watershed may be conserved, restored, developed and managed” 21(1)(b) - Currently conservation authorities can enter onto lands for any purpose connected to a	Section 21(1) is changed in the following ways: 1. Replaces 21(1)(a) with “to research, study and investigate the watershed and to support the development and implementation of programs and services intended to further the purposes of this Act”; 2. Amends 21(1)(b) and limits a conservation authority’s ability to enter onto and survey lands by requiring that	The biggest change in s. 21(1)(a) seems to be that in the current section, the conservation authority has the authority “to determine” the programs and services it is to provide re: natural resources of the watershed vs. the new wording “to support the development” of such programs. The exact implications of this change are not known at this time. If the TRCA’s programs and services are narrowed as

		<p>project considered or being done by the conservation authority.</p> <p>21(1)(c) – permitted a conservation authority to acquire by purchase, lease or otherwise and to expropriate any land that it may require</p>	<p>“consent of the occupant or owner” be obtained prior to entering onto lands;</p> <p>3. Amends 21(1)(c) and removes the power of a conservation authority to expropriate any land that it may require.</p>	<p>result of the amendments, the City may wish to supplement same, but this is likely to come at an additional cost to the City.</p>
Programs and Services (Mandatory, Municipal and Other)				
CAA	21.1	<p>The CAA generally sets out the programs and services that a conservation authority is required or permitted to provide within its area of jurisdiction.</p> <p>[Note – The stipulation of mandatory programs and services that a conservation authority shall provide and the requirements for a conservation authority to enter into memorandum of understandings (“MOUs”) or other agreements when providing municipal programs and services were amendments made to the CAA via Bill 108 - the <i>More Homes, More Choice Act, 2019</i>, S.O. 2019, c. 9. The Bill 108 amendments to this section did not come into effect. Bill 229 repeals and replaces those amendments.]</p>	<p>Section 21.1 requires an authority to provide mandatory programs and services that are prescribed by regulation and meet the requirements set out in that section, which include the following:</p> <ul style="list-style-type: none"> i. the risk of natural hazards; ii. the conservation and management of lands owned or controlled by the conservation authority; iii. duties, functions and responsibilities as a source protection authority under the <i>Clean Water Act</i>; iv. duties, functions and responsibilities that may be set out under other legislation prescribed by regulation. <p>All programs and services must be provided in accordance with any prescribed standards and requirements.</p> <p>Section 21.1.1 allows authorities to enter into agreements with participating municipalities to provide programs and services on behalf of the municipalities, subject to the regulations. The programs and services provided are required to be in line with the terms and conditions set out in the MOU and any requirements that may be set out in regulations. The requirements set out in regulation supersede the terms and</p>	<p>The new section 21.1 specifies in greater detail the services and programs that are mandatory (though the regulation has not been drafted) and the way conservation authorities are to provide municipal services through an MOU or other agreement. Discussions between Staff and the TRCA regarding the terms of an MOU commenced following the initial amendments proposed through Bill 108. We will take the amendments in Bill 229 into account as we continue to negotiate that MOU for Council’s consideration at a later date.</p> <p>With changes in this legislation and the future release of the regulations, staff will further assess the implications to determine whether there are potential changes in the services currently provided by the TRCA. Any gaps that staff determine to be of importance, we will assess and bring back to Council for further consideration as may be required. The details of the relationship</p>

			<p>conditions set out in the MOU if there is a conflict.</p> <p>Section 21.1.2 would allow authorities to provide such other programs and services as it determines are advisable to further the purposes of the Act, subject to the regulations.</p> <p>At a future date to be set by regulation, if municipal funding is required to fund a program, the authority must enter into an agreement for such funding and to set out the terms of the arrangement.</p>	<p>between the City and the TRCA will be flushed out in the MOU.</p> <p>MOU's that are entered into for municipal programs or services are required to be made public and the MOU is subject to periodic regular review by the TRCA and the City.</p> <p>At a future date to be set by regulation, the City may be required to enter into a funding agreement with the TRCA if the City intends to receive certain programs and services. This may have budget implications.</p>
Appeal Rights – Permit Application Fee				
CAA	21.2	New provisions creating a new right of appeal with respect to permit application fees.	<p>If a request is made to a conservation authority to reconsider its permit application fee, the conservation authority must decide within 30 days. If the conservation authority fails to decide within 30 days, the requester may appeal the matter to the Local Planning Appeal Tribunal (“LPAT”).</p> <p>In instances where the conservation authority decides within 30 days and the person making the request disagrees, they may pay under protest and appeal to the LPAT within 30 days of payment.</p> <p>The LPAT is empowered under the CAA to hear an appeal regarding fees, and after hearing the appeal may dismiss the appeal, vary the amount of the fee or order that no fee be charged.</p>	<p>The City generally does not have a role in these appeals, unless the LPAT decides to consolidate such hearings with appeals filed in relation to <i>Planning Act</i> applications. If LPAT chooses to do so, this may lead to longer hearings.</p>

Minister's Order regarding Compliance and Appointment of Administrator				
CAA	23.2	New provisions	<p>New sections 23.2 and 23.3 of the CAA would allow the Minister to take certain actions after reviewing a report on an investigation into an authority's operations.</p> <p>The Minister may order the authority to do anything to prevent or remedy non-compliance with the CAA.</p> <p>The Minister may also recommend that the Lieutenant Governor in Council appoint an administrator to take over the control and operations of the authority.</p>	This provision introduces the concept of the Minister as an oversight body.
Permission for development, Minister's Zoning Order under <i>Planning Act</i> ("MZO") (application for permission submitted to an authority under a regulation made by the Conservation Authorities under subsection 28 (1))				
CAA	28.0.1	<p>New provision</p> <p>[Note: s. 28(1) currently provides conservation authorities the ability to pass regulations with respect to water, wetlands, flooding and erosion control etc., as well as the appointment of enforcement officers. The current s. 28(1) is due to be repealed upon proclamation with replacement provisions passed by the legislature in 2017. Those provisions prohibit similar activities without the need for the conservation authorities to pass regulations.]</p>	<p>Conservation authorities are required to issue permission for developments subject to an MZO provided that the lands subject to the zoning order are not located in the Greenbelt Area.</p> <p>The conservation authority when granting the mandatory permit may apply conditions to mitigate:</p> <ul style="list-style-type: none"> a) any effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land; b) any effects created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; or c) any other matters that may be prescribed by regulation. 	<p>This provision is in effect as of December 8, 2020 when Bill 229 received Royal Assent. This section will be repealed upon proclamation.</p> <p>This change has implications for landowners within Vaughan for which Minister's Zoning Orders have recently been enacted.</p> <p>As a result of this change, the TRCA is required to issue permission with respect to the lands subject to the MZO but can issue conditions.</p> <p>If those conditions are not acceptable to the landowner, the landowner can ask the Minister to</p>

			<p>However, if the applicant disagrees with the conditions they can be reviewed by the Minister or appealed to the LPAT. The process for review and appeal are set out in the CAA. The Minister and LPAT have the authority to confirm, remove or add to the conditions when deciding.</p> <p>When permission to develop is granted, the permit holder must enter into an agreement with the conservation authority to compensate for ecological impacts.</p> <p>If the conditions of an issued permit conflict with the terms of an MZO, the MZO shall prevail.</p>	<p>review same, or appeal them to the LPAT.</p> <p>If appealed to the LPAT, the City would need to determine whether it wanted to be a party to the appeal, such as in instances where the permission may impact related planning approvals and/or appeals for which the City has an interest.</p>
Permit Decision – Appeal Rights				
CAA	28.1(8) and (9)	<p>Under the CAA a person who wishes to conduct development activities that may impact watercourses or wetlands are required to obtain a permit from the applicable conservation authority.</p> <p>Allows a person who applied to a conservation authority for a permit under subsection 28.1 (1) to appeal that decision to the Minister if the authority has refused the permit or issued it subject to conditions.</p>	<p>Bill 229 amends the CAA to allow an applicant to request a review by the Minister or appeal the permitting decision to the LPAT.</p> <p>Minister – Request for Review Process:</p> <p>An applicant may, within 15 days of decision, request a review by the Minister of a permit refusal or decision imposing conditions on a permit.</p> <p>The Minister, after receiving the request, is required to reply within 30 days whether they intend to hear the request or not.</p> <p>If the Minister chooses to conduct the review, the Minister must publish notice on the Environmental Registry within 30 days of reply.</p> <p>The Minister may choose not to conduct the review by providing a response saying so or if</p>	<p>The amendment, in addition to providing a review request of a decision to the Minister also provides an alternate route of appeal to the LPAT. The section also sets the process and stipulations regarding the appeal processes.</p> <p>The new review process permits the Minister the authority to issue a permit with or without conditions following its review.</p> <p>The ability to appeal permits to the LPAT increases the duties the Tribunal is responsible for. With the potential increase in workload, there may impacts on the timeliness of the scheduling and hearing of other matters before the LPAT, to accommodate these appeals. Also, and as referenced</p>

			<p>the Minister fails to give a reply to the request within 30 days.</p> <p>If the Minister refuses to conduct a review or fails to decide within 90 days of giving a reply, the applicant can appeal to the LPAT.</p> <p>The Minister when conducting a review can decide to refuse the permit or issue the permit, with or without conditions. The Minister's decision is final.</p> <p>LPAT Permit Appeals Process:</p> <p>Alternatively, an applicant may appeal a non-decision or decision regarding a permit application to the LPAT.</p> <p><u>Appeal of a Decision:</u></p> <p>An applicant can appeal a permit refusal or conditions of approval within 90 days of receiving reasons for the decision.</p> <p>However, a person who has submitted a Request for Review to the Minister cannot appeal to the LPAT unless the Minister has refused to conduct a review or has not replied to the review request within 30 days of submission.</p> <p><u>Appeal of a Non-Decision by the Conservation Authority</u></p> <p>An applicant can appeal a non-decision if no decision has been given within 120 days of an application.</p>	<p>above, appeals may be consolidated at the request of applicants with its <i>Planning Act</i> development application appeals, which could potentially lengthen hearings.</p>
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Power – Minister Order regarding non-issuance or issuance of Permits				
CAA	28.1.1	New Provision	<p>Bill 229 empowers the Minister to order a conservation authority to not issue a permit or class of permits for an activity that would otherwise be prohibited under section 28 (prohibitions re: watercourse, wetlands etc.).</p> <p>The Minister may subsequently issue a permit themselves if, in the Minister’s opinion, the following criteria are satisfied:</p> <ul style="list-style-type: none"> a. the activity is not likely to affect the control of flooding, erosion, dynamic beaches or pollution or the conservation of land; b. the activity is not likely to create conditions or circumstances that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; and c. any other requirements that may be prescribed by the regulations are met. 	<p>The Minister has the potential to exert greater influence in development proposals through the permitting process. The impacts, if any, will be determined based on the frequency of use and how this power is utilized in practice.</p>

			The Minister, when making an order, must give notice after an order is made and post it on the Environmental Registry within 30 days.	
Power – Mandatory Issuance of Permit and Minister Zoning Order (“MZO”) (permit application submitted to an authority under 28.1)				
CAA	28.1.2	New Provision	<p>This section, like section 28.0.1 of the CAA which came into effect on December 8, 2020, requires a conservation authority to grant a mandatory permit if an MZO has been made <u>and</u> the lands subject to the zoning order are not located in the Greenbelt Area.</p> <p>The Conservation Authority when granting the mandatory permit may apply conditions to this approval to mitigate:</p> <ul style="list-style-type: none"> a) any effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land; b) any effects created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; or c) any other matters that may be prescribed by regulation <p>However, if the applicant disagrees with the imposed conditions, they can seek its review by the Minister or appealed to the LPAT. The process for review and appeal are set out in the CAA. The Minister and LPAT have the authority to confirm, remove or add to the conditions when deciding.</p>	<p>Section 28.1.2 mirrors new section 28.0.1 in substance and is intended to be proclaimed when section 28.0.1 is repealed and the new section 28.1 of the CAA, which provides for permits to be issued by conservation authorities, comes into force. (The new s. 28.1 was passed in 2017 but not yet proclaimed into force.)</p> <p>The potential implications to the City are as noted above.</p>

			<p>When permission to develop is granted, the permit holder must enter into an agreement with the conservation authority to compensate for ecological impacts.</p> <p>If the conditions of an issued permit conflict with the terms of an MZO, the MZO prevails.</p>	
Appeal Rights - Cancellation of Permit/New Order by Conservation Authority				
CAA	28.3	New Provision	<p>Bill 229 provides new appeal rights for an applicant to appeal a conservation authority's decision to cancel a permit or when making another order that the permit holder objects to.</p> <p>A permit holder, within 90 days of receiving notice of the decision may appeal the decision to the LPAT.</p> <p>At a hearing the LPAT may decide to confirm the decision, rescind the decision or vary the decision to cancel the permit, with or without conditions.</p>	<p>If appealed to the LPAT, the City would need to determine whether it wanted to be a party to the appeal such as in instances where the permit appeal may impact related <i>Planning Act</i> approvals/appeals.</p>
Planning Act – Conservation Authority Appeal Rights and Party Status				
<i>Planning Act</i> ("PA")	1(4.1)	New section limiting a conservation authorities' ability to participate in appeals at the LPAT regarding certain matters.	<p>Unless the appeal or an issue in the appeal relates to a prescribed natural hazard risk, a conservation authority cannot appeal or become a party in the following instances:</p> <ol style="list-style-type: none"> 1. Decision of Official Plans/Amendments; 2. Passing of a Zoning Bylaw/ amendments; 3. Extension of an Interim Control Bylaw; 4. Decision of the Committee of Adjustment on Minor Variances; 5. Plans of Subdivision Decisions, including conditions of approval; and 	<p>The implication of the changes is that a conservation authority is unable to appeal decisions of a municipality when they approve or refuse planning applications, but it can seek party status in non-decision appeals.</p> <p>However, appeals of decisions are still permitted by the conservation authority when there is an issue of a natural hazard risk as prescribed.</p>

			6. Consents Decisions, including conditions of the consent, unless the conservation authority is the applicant.	
Transition – Conservation Authority Participation in LPAT Hearings				
PA	1(4.1)	New section addressing transition	A conservation authority that was a party to an appeal on December 7, 2020 may continue as a party to the appeal after that date until the final disposition of the appeal.	Conservation Authorities can continue to participate fully in appeals that they were given party status in prior to December 8, 2020.

In addition to the above, additional changes to the CAA arising out of Schedule 6 include, but are not limited to, the modification to the circumstances that an officer may enter onto lands, modification to the circumstances when Stop Work orders can be issued, inclusion of indemnification for officers when taking actions in the course of their duties and modifications to the regulation making authority of the Lieutenant Governor in Council regarding the CAA. Changes to TRCA enforcement abilities will require the City to assess current practices and whether there may be a need for additional enforcement and monitoring resources, i.e., fill permit process and by-law updates.

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