

Staff Report

Report To: City Council
Report From: Jacklyn Iezzi, Junior Planner
Meeting Date: February 28, 2022
Report Code: CS-22-021
Subject: Phase 2 Regulations under the Conservation Authorities Act

Recommendations:

THAT in consideration of Staff Report CS-22-021, respecting Phase 2 regulations under the *Conservation Authorities Act*, City Council:

1. Endorses the comments within this report; and
2. Directs staff to provide a copy of this report, together with Council's resolution, to the Bruce-Grey-Owen Sound MPP, the County of Grey, the Grey Sauble Conservation Authority, and the Environmental Registry of Ontario as the City's comment on the matter.

Highlights:

- On May 12, 2021, the province launched the first of a two-phase consultation process on proposed regulations under the CA Act to support legislative amendments enacted under Bill 229.
- The City provided comment on the first phase of regulations through Staff Report CS-21-074. The final regulations were filed in October of 2021 and most changes came into force and effect as of January 1, 2022.
- The province has now launched consultations on the second phase of regulations under the CA Act focused on cost apportioning methods to be used for CAs and related budgetary matters, a published list of classes of programs and services for which a CA

may charge a fee, and complementary regulations to increase transparency of authority operations.

Strategic Plan Alignment:

This report supports the delivery of Core Service.

Background:

In December of 2020, legislative amendments to the Conservation Authorities Act (CA Act) came into force and effect under Bill 229, *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020*.

On May 12, 2021, the Ministry of Environment, Conservation, and Parks (MECP) launched the first of a two-phase consultation process on proposed regulations under the CA Act to support the legislative amendments enacted under Bill 229.

The City provided comment on the first phase of regulations through [Staff Report CS-21-074](#). As a result of feedback received through the consultation process, the province amended the first phase of regulations to include low maintenance, passive recreational lands and areas as a mandatory (category 1) program/service to be delivered by conservation authorities (CAs) and has extended the deadline for CAs to establish the necessary agreements with participating municipalities for the funding of non-mandatory programs/services by one year, to January 1, 2024 (see [ERO Decision](#)).

The final regulations were filed in October of 2021 and most changes came into force and effect as of January 1, 2022. On January 26, 2022, MECP released a second Regulatory and Policy Proposal Consultation Guide, attached as Schedule 'A', detailing the second phase of regulations.

The second phase of regulations is focused on the following:

1. A "Municipal Levies Regulation" governing the apportionment by CAs of their capital costs and operating expenses to be paid by their participating municipalities through municipal levies, as well as related CA budgetary matters.
2. A Minister's regulation governing the determination by a CA of costs owed by "specified municipalities".
3. A Minister's published list of classes of programs and services in respect of which a CA may charge a user fee.

4. Complementary regulations to increase transparency of authority operations.

The deadline to submit comments on the proposed regulations through the [Environmental Registry](#) is **February 25, 2022**. In consideration of Committee and Council meeting times, Staff have submitted this report through the ERO indicating that Council's formal resolution on the matter is to follow. Unfortunately, given very tight timelines around the Province's release of information, it was not possible to take this policy review report through Community Services Committee, as is customarily done.

The purpose of this report is to provide Council with an overview of the proposed regulatory changes and advise on any potential impacts to the City.

Analysis:

This section provides an analysis of the proposed regulations under the CA Act in consideration of City interests.

Municipal Levies Regulation

The purpose of the Municipal Levies Regulation is predominantly to align existing CA budgeting methods with the new categories of programs/services implemented under the first phase of regulations.

This includes:

- a) Category 1 Programs/Services – those mandatory programs/services required to be delivered by CAs (e.g., any programs/services associated with the risk of natural hazards).
- b) Category 2 Programs/Services – those programs/services that a municipality request the CA to provide (e.g., input on the water and natural heritage policies of the Provincial Policy Statement).
- c) Category 3 Programs/Services – those programs/services that a CA deems advisable to further its objects under the CA Act (e.g., research and development services to landowners and others, not including participating municipalities).

Category 1 programs/services may be funded by provincial grants and in some cases, self-generated revenue. Where such revenue cannot finance the entire cost of these programs/services, under the Municipal Levies Regulation, a CA will have the authority to levy their participated municipalities to finance these programs/services without any separate

agreement. For CAs to fund Category 2 and 3 programs/services, a Memorandum of Understanding (MOU) and/or cost apportioning agreement must be in place with one or more participating municipalities. Agreements must be in place on or before January 1, 2024, for authorities to be able to levy for Category 2 and 3 programs and services.

Three (3) existing methods of cost apportioning are proposed within the Municipal Levies Regulation. These include:

1. Modified Current Property Value Assessment, where municipalities with a higher property tax value would pay more than those with a lower property tax value, combined with geographical area within the CA jurisdiction.
2. By agreement between the CA and one or more municipalities and,
3. As determined on the basis of the benefit afforded or derived by the participating municipalities.

The Municipal Levies Regulation also proposes to prescribe several procedures that must be completed by CAs in determining the Authority budget. These include:

- Requiring the authority to publicly post the draft budget to its website a minimum of 30 days before a vote on the final budget.
- Prescribing two (2) methods of voting including the one member, one vote method and the weighted vote method (weighted by the percentage of municipal levy an appointing municipality pays to the authority).
- Requiring the authority to provide a minimum of 30 days notice to participating municipalities of the authority meeting to decide on the municipal levy component of the annual budget.
- Requiring the authority to make the final approved budget publicly available by posting it on their website.

The proposed budget procedures generally consolidate the requirements of existing provincial policy and regulations (e.g., [O. Reg. 139/96](#) under the CA Act) and formalize processes that CAs and participating municipalities have already developed at the local level.

The effective date of phase two of the regulations and related policy changes is proposed to align with municipal and CA calendar year budget cycles,

beginning January 1, 2023. Therefore, 2024 budgets and levy processes would follow the updated regulations.

City Comment:

City Staff generally have no concerns with the proposed Municipal Levies Regulation given that the cost apportioning methods remain unchanged.

Under the first phase of regulatory changes, CAs were required to develop a transition plan with an inventory of all programs and services and their respective category (i.e., category 1, 2 or 3) by December 31, 2021. The Grey Sauble Conservation Authority (GSCA) Board of Directors adopted a [transition plan](#) pursuant to Ontario Regulation 687/21 on December 22, 2021 (see Board [meeting package](#)). The transition plan indicates that GSCA intends to provide its inventory of programs and services to municipalities in the first quarter of 2022 (January to March) with consultation taking place between April and June.

City Staff expect to receive GSCA’s inventory of programs and services imminently. Once received, impacts to the municipal levy and necessary changes to the City’s existing MOU with the GSCA to fund non-mandatory programs and services will become clearer. A separate report respecting the updated MOU will be brought forward to Committee/Council for consideration.

Lastly, City Staff generally have no concerns with the budget procedures required to be completed by CAs in determining the authority budget. The City is required to follow similar processes (i.e., public notice) in determining its own budget. Similarly, the proposed transition date (January 1, 2023, for 2024 budget and levy processes) appears appropriate and aligns with the prescribed date for CAs to have agreements in place with participating municipalities for the funding of non-mandatory programs/services under phase one of the regulations, being January 1, 2024.

Minister’s Regulation for “Specified Municipalities”

A “specified municipality” is one that is geographically outside of any conservation authority jurisdiction, is not a participating municipality in a conservation authority, and is designated as a participating municipality for source protection authority under the Clean Water Act or in the Lake Simcoe

Region Conservation Authority, for the purposes of the Lake Simcoe Protection Act.

City Comment:

These changes are not applicable within the City’s context. The City of Owen Sound is not a specified municipality.

Minister’s List of Classes of Programs and Services

In order for a CA to charge a fee, it is proposed that the program or service for which the fee is being charged must fall within a Minister’s approved list of fee classes. Once an Authority is granted the power to charge a fee (through the Minister’s regulation), the authority may determine the amount to charge.

The proposed Minister’s classes of programs and services captures “user fees”. User fees are fees paid by a person or organization that requests a service they explicitly benefit from. An example would include the use of a public resource (e.g., facility rental) or the privilege to do something (e.g., receive approval through a permit). The “user pay” principle is considered appropriate when a program or service is delivered by a CA to a requestor (i.e., person or organization) that is the primary beneficiary of the program or service. Conversely, the principle holds that those who do not benefit from the delivery of a program or service should not be obliged to pay. For these types of programs and services, such as the delivery of programs and services by the CA that generate a public good or service, it is intended that the municipal levy should be the primary funding mechanism.

The following is proposed to be the published list of classes of programs and services that conservation authorities may charge fees for:

List of Classes	Qualifications
Category 1 Programs/Services	All mandatory programs and services where the “user pay” principle is appropriate. Examples include permits, responses to public inquiries, and access to authority owned/controlled land for passive recreation.
Category 2 Programs/Services and	All Category 2 programs and services and all Category 3 programs and services requiring a

<p>Category 3 Programs/Services with a cost apportioning agreement with participating municipalities.</p>	<p>cost apportioning agreement where the “user pay” principle is appropriate and provisions for the charging of fees are set out in the MOU, cost apportioning agreement, or other agreement between the authority and participating municipalities for these programs/services.</p> <p>Examples may include commenting on Planning Act applications for matters other than natural hazards.</p>
<p>Category 3 Programs/Services without cost apportioning agreement with participating municipalities</p>	<p>All Category 3 programs and services with no cost apportioning agreement (i.e., where funding from the municipal levy is not required), where the “user pay” principle is appropriate.</p> <p>Examples may include programs/services offered by CAs on authority owned land (e.g., rental of authority land, facilities, and services).</p>

In addition to the above list of classes of programs and services that a CA may charge a fee for, the Minister’s regulation proposes to prescribe the following requirements for CAs:

- Adopt and publish a written fee policy and fee schedule that lists the programs and services for which it charges a fee and the amount to be charged.
- Require public notice when a change to the fee schedule is proposed.
- Set out the frequency in which the authority will conduct a review of its fee policy, including its fee schedule, and the process for carrying out a review of the policy.
- Set out the circumstances and procedures under which any person may require the authority to reconsider a fee that was charged. It is proposed that a CA would be required to reconsider a fee at the request of any person who finds that a fee the authority has charged is contrary to the fee schedule or excessive in relation to the program or service for which it was charged.

City Comment:

The second phase of regulations appear to encourage, and in some cases, require CAs to consider opportunities for self-generated revenue. For example, as part of the consultation process on the authority budget with participating municipalities, it is proposed that CAs would be required to provide a summary of how the authority considered opportunities for self-generated revenue. The proposed Minister's regulation seems counterintuitive in that it could potentially prohibit a CA from charging a fee for programs/services that are not prescribed.

Despite this, it is recognized that the proposed classes of programs and services appears to be relatively broad and is intended to encompass all category 1, 2 and 3 programs and services being offered by CAs, provided that the "user pay" principle is appropriate.

Lastly, City Staff generally have no concerns with the prescribed requirement for CAs to develop a fee policy and fee schedule. In comparison, the City has a [Fees and Charges By-law](#), typically reviewed annually, that lists the programs and services for which it charges a fee and the amount to be charged.

The requirement for CAs to reconsider a fee that was charged, specifically in instances where the requestor is of the opinion that the fee is "excessive in relation to the program or service", seems onerous. Dealing with these types of requests will likely result in a greater administrative burden for CA staff or potentially, City Staff, in circumstances where the City is responsible for collecting a fee on behalf of the GSCA (e.g., fees for *Planning Act* applications). City Staff suggest that the circumstances in which a CA will reconsider a fee charged is best determined at the local level, through the prescribed fee policy.

Complementary Regulations

Lastly, a Minister's regulation is proposed that would require CAs to maintain a Governance section on their website in an easily accessible location for the public to access key information including, but not limited to, membership details and contact information, authority by-laws, draft and final budgets, and agreements with participating municipalities.

The regulation would also require CAs to include a notice on the website when it amends or enters into a new agreement with participating municipalities and ensure the most up-to-date version of the agreements are available online.

City Comment:

There is no anticipated impact to the City as a result of this proposal, City Staff have no concerns. Most of the prescribed information already appears to be readily accessible on [GSCA's website](#).

Financial Implications:

As noted, the methods for CAs to apportion costs are not proposed to change as a result of the proposed regulations. Impacts to the municipal levy and necessary charges to the City's existing MOU with the GSCA to fund programs and services will become clearer in the coming months, upon receipt of GSCA's inventory of programs and services.

Communication Strategy:

Staff are proposing to provide a copy of this report, together with Council's resolution, to the Bruce-Grey-Owen Sound MPP, the GSCA, the County of Grey, and the ERO, as the City's comment on the matter.

Consultation:

City Planning Staff attended a municipalities-focused webinar hosted by MECP on the proposed regulations on February 8, 2022.

Attachments:

Schedule 'A': Regulatory and Policy Proposal Consultation Guide

Recommended by:

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Reviewed by:

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Reviewed by:

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