

City of Hamilton Letter to MECP ERO Number: 019-4610**Regulatory and Policy Proposals (Phase 2) under the *Conservation Authorities Act***

1. Municipal CA Levies Regulation: Budget, Apportionment and CA Budgetary Process

Description:

A Municipal Levies Regulation by the Lieutenant Governor in Council (LGIC) about the apportionment by CAs of their capital costs and operating expenses to be paid by their participating municipalities through municipal levies and CA budgetary matters, including requirements that CAs distribute their draft and final budgets to relevant municipalities and make them publicly available.

1A Municipal Levies Regulation: Budget and Apportionment

The proposal would proclaim un-proclaimed provisions of the *Conservation Authorities Act* that provide expanded regulatory authority for the LGIC to develop regulations which will govern the apportionment of the authority ‘operating expenses’ and ‘capital costs’ and conservation authority budgetary matters in general. ‘Operating expenses’ are defined in the *Conservation Authorities Act* and includes salaries of authority staff, per diems of authority members, rent and other office costs, program expenses, and costs related to the operation or maintenance of a project, and authority budgets break down these types of costs.

The City of Hamilton comments that it is supportive of clear and consistent definitions of financial terms. While the proposal does consider operating expenses and capital costs, it does not consider operating revenues, capital revenues, operating budget surpluses or deficits, capital project budget surpluses and deficits or reserves.

Operating revenues, such as user fees and provincial grants, contribute toward the operating expenses and result in a net municipal operating levy. As programs and services are delivered throughout the fiscal year, operations managers advise CA management about operating budget surpluses and deficits. With an operating budget surplus, the requirement to transfer it to CA reserves or refund the municipalities is not clear. With an operating budget deficit, the requirement to request or levy additional amounts from municipalities or draw it from CA reserves is not clear.

Similarly, capital revenues, such as provincial grants and other contributions, contribute toward the capital project costs and result in a net municipal capital project amount. As a capital project is being constructed, project managers advise CA management regarding expected budget surpluses and deficits. The method to allocate capital project surpluses and deficits is not clear. As time passes and through usage, wear and tear the condition of capital infrastructure assets deteriorates requiring its replacement. A long-term financial plan may require setting aside funds in CA capital reserves. The proposal is not clear about CA capital reserves. Aligning with the Province of Ontario’s Municipal Infrastructure Asset Management through *Infrastructure for Jobs and Prosperity Act, 2015* and O Reg 588/17, Phase 1 of the CA Act changes requires each CA to submit Asset Management Plans by Dec 31, 2024 and expected future capital budgets.

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As such, long-term financial plans from each CA for the capital budget will assist municipalities in their long-term planning. Similarly, long-term financial plans from each CA for the operating budget will assist municipalities in their long-term planning

The City of Hamilton requests that the regulations include:

- revenues or sources of financing, i.e. user fees, provincial grants and contributions, as means to calculate a net municipal operating levy and net municipal capital funding required.
- any requirements about the distribution of operating budget surpluses and capital project surpluses and allocation of operating budget deficits and capital project deficits and impact on municipal levies or CA reserves.
- requirements for the annual submission and CA Board approval, in principle, of long-term plan of at least four years for the operating budget for programs and services with all operating expenses and all operating revenues including the levy apportionment to each benefitting or participating municipality
- requirements for the annual submission and CA Board approval, in principle, of long-term financial plans from each CA of at least ten years for the capital budget with project description, project costs and all capital revenue including the apportionment to each benefitting or participating municipality
- requirements to establish CA capital reserves and the corresponding method to allocate contributions from the municipal levies to each benefitting or participating municipality

The proposal for the Municipal Levies Regulation would:

- incorporate the two current levies regulations (O. Reg. 670/00 “Conservation Authority Levies”; O. Reg. 139/96 “Municipal Levies”) and update as appropriate, including terminology such as ‘general levy’, ‘special project levy’, and removing ‘matching’, and ‘non-matching’ levy.
- incorporate the standards and policy for the authority budget process as currently set out in regulation and provincial policy.
- include the two existing voting methods (i.e., the ‘one member, one vote’ and ‘weighted vote’, as set out in current legislation and regulation).
- include the three current methods of apportioning expenses/costs (i.e., modified current property value assessment, agreement of the authority and participating municipalities, and as decided by the authority), while adapting the appropriate use of the apportionment and voting methods to the categories of programs and services where costs may be apportioned among all participating municipalities or to one or some.

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The City of Hamilton comments that it is supportive of the categorization of activities with the approval of Phase 1 of the changes to the *Conservation Authorities Act*. The activities of the CAs are to be classified into the following three categories:

- Category 1: mandatory programs and services;
- Category 2: municipally requested programs and services;
- Category 3: programs and services that a CA determines are advisable to deliver.

As per Phase 1 of the changes to the CA Act, it is expected that future CA Budgets will include details by the three categories, but the regulations are not that clear. In addition, Phase 2 of the changes to the CA Act in the Proposal don't appear to include regulations related capital budgets. Through the proclaiming of the un-proclaimed changes to the CA Act sections 24, 25 and 26, costs and apportionment of the benefit derived of capital project costs, notice of apportionment and the appeal process will be enacted but a long-term capital budget financial plan is not included.

Regarding operating expenses, the current Ontario Regulation 670/00 “CONSERVATION AUTHORITY LEVIES” apportions each CA's maintenance costs on the basis of derived benefit by agreement **or** by calculating the ratio that each participating municipality's modified assessment bears to the total CA's modified assessment and, likewise, it apportions each CA's administration costs by the same assessment method. The modified assessment or modified current value assessment (CVA) is calculated by adding the CVA of all lands within a municipality all or part of which are within an authority's jurisdiction and by applying various factors to the current value assessment of the land in the various property classes.

A participating municipality's modified assessment is the assessment calculated by dividing the area of the participating municipality within the authority's jurisdiction by its total area and multiplying that ratio by the modified current value assessment for that participating municipality. The total authority's modified assessment is calculated by adding the sum of all of the participating municipalities' modified assessments for that authority.

Though the principle of a fair allocation of the CA expenditures to the municipalities based on the relative ratio that each participating municipality's modified assessment bears to the total authority's modified assessment appears to be reasonable, it does not take into account the fact that neighbouring municipalities may vary significantly in terms of size, population, and degree of urbanization, which would have a major impact on the relative modified assessments thereby resulting in a distortion of the original intent of allocating the expenditures fairly based on the “benefit derived”.

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When the CA Act was first enacted in 1946, municipalities across Ontario were primarily **lower tier**. The Regulations under the CA Act were originally intended to apply to the **lower tier municipalities**, and their application resulted in reasonable, fair outcomes. However, when the Province embarked on a plan to amalgamate lower tier municipalities and some of the upper tier municipalities, the application of the municipal levy allocation formula under O. Reg 670/00 created a major imbalance in the “modified assessment” of the newly amalgamated municipalities vis a vis the other municipalities in the CAs that were not amalgamated.

On January 1, 2001, the new City of Hamilton was formed from the amalgamation of the upper tier municipality of Regional Municipality of Hamilton Wentworth and lower tier municipalities of Ancaster, Dundas, Flamborough, Glanbrook, Hamilton and Stoney Creek.

Within the boundaries of the newly amalgamated City of Hamilton, lay parts of the watershed pertaining to four different Conservation Authorities:

- Niagara Peninsula
- Grand River
- Halton
- Hamilton

After amalgamation, when the formula, based on the relative ratio that each participating municipality’s modified assessment bears to the total authority’s modified assessment, was applied, the new City of Hamilton was to be burdened with an allocation significantly higher than its share prior to the amalgamation. In this context, all four CAs and municipalities, jointly with the City of Hamilton, agreed that the amalgamation should not be the basis to skew the allocation and agreed jointly on a funding formula that would distribute the CA levies on the original basis prior to the amalgamation.

This agreement with all four CAs continued to be in force until 2014, by which time, nearly all of the original officers of the CAs had retired and were replaced by new ones. In 2014, the Niagara Peninsula CA advised that they would no longer honour the agreement; appeals followed and finally the City of Hamilton was advised that an agreement could be terminated at any time by any of the parties involved and that the regulation based on the ratio of the relative modified assessment would stand – without any reference to the “Benefit Derived”, which, according to the CA Act is the primary determinant factor.

The following is a summary of the impact for 2022 on the City of Hamilton, directly attributed to the change in the modified assessment resulting from amalgamation:

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Levy % Share for City of Hamilton				
Before and After Change in Methodology				
Impact Assessment Excludes Special Levy				
Conservation Authority	Post Amalgamation Practice	Per O. Reg. 670/00	Change	Impact on 2022 City Budget \$'000
Niagara Peninsula	3.99%	21.16%	17.17%	1,058.2
Grand River	2.40%	12.40%	10.00%	1,249.9
Halton	2.22%	7.19%	4.97%	528.6
Hamilton	99.30%	99.30%	0.00%	-
Total Impact				2,836.7

The City of Hamilton experience also proved that the alternate levy distribution method by agreement would only be possible if all the parties involved based their positions on the principle of fairness and reasonableness; and, as the individuals representing the different parties to the agreement change over time, the expectation of continued reasonable conduct is not likely to be realized.

The City of Hamilton is supportive of the approach which provides transparency behind the reasons for undertaking of the planned activities by the CAs and facilitates a fair and reasonable funding approach.

The City of Hamilton requests: that the regulations:

- emphasize the principle of "benefit derived" under the CA Act
- prescribe that each CA demonstrate the benefit derived by each municipality in each CA's jurisdiction for capital projects
- include a modified assessment method that uses the modified assessment of the rateable properties in each CA's jurisdiction rather than the modified assessment for all properties in the municipality using either:
 - If lower municipalities are part of the formula, then only the assessment of the previous lower tier area of the amalgamated city be considered; or,
 - For the purposes of determining the levy allocation, only the assessment of the upper tier and single tier municipalities be considered
- Regarding Category 1: Mandatory Programs and Services,
 - a. include some reasonable approaches to be used to determine the benefit derived in environmental and monetary terms by each municipality funding the CA
 - b. prescribe that each CA demonstrate the benefit derived by each municipality in each CA's jurisdiction for the net operating expenses

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- c. include a notification process of municipal levy and methodology used to determine benefit derived to the participating municipalities
- d. include a process for agreement with the participating municipalities regarding the proportion of levy distribution based on the principles of benefit derived
- e. include an appeal process to a body when a participating municipality requires a review or reconsideration of the municipal levy apportionment

1B Municipal Levies Regulation: CA Budgetary Process**The proposal also**

- a. incorporates the CA budgetary processes (consultation, notification) as currently set out in regulation and provincial policy (e.g. providing 30 days notice to participating municipalities of the CA meeting to decide on the municipal levy component of the annual budget). Additionally, requires CAs to publicly post the draft budget to their websites upon its circulation to participating and specified municipalities
- b. include the two existing voting methods (i.e. 'one member, one vote' and 'weighted vote,') as set out in current legislation and regulation and the three current methods of apportioning expenses/costs (i.e. modified current property value assessment, agreement of the CA and participating municipalities, and as decided by the CA), while adapting the appropriate use of the apportionment and voting methods to the new categories of programs and services
- c. as part of the consultation process on the budget with the participating municipalities, conservation authorities would be required to provide a summary of how the CA considered opportunities for self-generated revenue to support the programs and services they provide
- d. require CAs to provide a copy of the final approved CA budget to the Minister and their participating and specified municipalities and make it available to the public by posting it on their website and by any other means the CA considers advisable

The City of Hamilton comments that is supportive of part 1B items a, b, c and d. In addition, the proposal does not include any changes to CA Board membership to be representative to the municipal levy. Meaning, if municipality A has a levy of 50% then the number of representatives on the CA Board would be 50%. Further, the proposal and the regulations regarding apportionment of the budget of each CA need to clearly define "benefit derived" and modified current property value assessment of the participating municipalities within each CA's jurisdiction.

The City of Hamilton requests that the regulations:

- Include representation on each CA Board that fairly and reasonably reflects the relative proportionate share of the CA Budget

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2. Minister’s Regulation for Determining Amounts Owed by Specified Municipalities:

Description:

A ‘Determining Amounts Owed by Specified Municipalities Regulation’ that outlines details, through a Minister’s regulation, about the methods available to CAs to determine costs specified municipalities may need to contribute for the CA’s mandatory programs and services under the:

- Clean Water Act, 2006
- Lake Simcoe Protection Act, 2008

The proposal would proclaim the un-proclaimed provision (subsection 27.2(2)) of the *Conservation Authorities Act* that enables conservation authorities to determine amounts owed by any of its specified municipalities in connection with the mandatory programs and services the authority provides in respect of the Clean Water Act, 2006 and Lake Simcoe Protection Act, 2008 as set out in O. Reg. 686/21 “Mandatory Programs and Services Regulation.” The apportionment of the levy and the budget process for the specified municipalities are similar to Part 1.

The City of Hamilton comments that it is supportive of Part 2.

3. A ‘Fee Classes Policy’ that outlines classes of programs and services, through a Minister’s published list, for which a CA may charge a user fee

The proposal is to proclaim s. 21.2 of the *Conservation Authorities Act*, which provides that the Minister may determine a list of ‘classes of programs and services’ that a conservation authority may charge a fee for, publish this list and distribute it to each conservation authority. An authority would be permitted to charge a fee for a program or service only if it is set out in the Minister’s list of classes of programs and services. Once a conservation authority is granted the power to charge a fee for a program and service, the authority may determine the fee amount to charge.

The proclamation of s. 21.2 would ensure that a conservation authority administers fees in a transparent and accountable manner.

The following is a summary of the proposed classes of programs and services for which a CA may charge a fee:

- All mandatory programs and services where the user pay principle is met.
- All Category 2 programs and services (i.e. programs and services a municipality requests the conservation authority to undertake pursuant to a MOU or agreement) where the user pay principle is met and provisions for the charging of fees are set out in the memorandum of understanding or service level agreement between the CA and municipalities for these programs and services.

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- All Category 3 programs and services (i.e. programs and services the authority decides to adopt to further the purposes of the Act) requiring a cost apportioning agreement where the user pay principle is appropriate and provisions for charging of fees are set out in the cost apportioning agreement between the CA and participating municipalities for the program and service. However, there are exceptions related to where the cost apportioning agreement is to fund Category 3 park or non-passive recreational programs and services offered by CAs on CA owned or controlled land that are funded in part by the municipal levy (for example, for public access and use (rental) of authority land, facilities and services such as active recreation and equipment rentals) or community relations, information and education as well as product sales. A CA would be able to charge a fee as appropriate in these cases.
- All Category 3 programs and services with no cost apportioning municipal agreement (i.e. no levy required), where the user pay principle is appropriate.

The City of Hamilton comments that it is supportive.

4. Complementary regulations to increase transparency of CA operations

The proposal includes complementary regulations to increase transparency of CA operations. Specifically, for the Minister's list of fee classes for category 3 programs and services where cost apportioning agreements are in place for a program or service, if the 'user pay principle is appropriate, we are also proposing to amend the 'Transition Plans and Agreements for Programs and Services under Section 21.1.2 of the Act' regulation (O. Reg. 687/21). The amendment would enable participating municipalities and CAs to determine if user fees can be established for programs and services that a CA determines are advisable which can then be included in the cost-apportioning agreements. Requiring CAs and participating municipalities to include provisions in the cost apportioning agreements increases transparency with respect to the use of user fees.

The proposal includes, through a Minister's regulation, that CAs be required to maintain a Governance section on their website that must include CA membership information, draft and final budgets, agreements between CAs and municipalities for programs and services, meeting schedule, and could include other relevant governance documents, such as strategic plans. The CA would be required to include a notice on their website when the CA amends or enters into a new MOU or other agreement with municipalities and ensure the most up to date version of the agreements are available on the CA's website. The regulation would provide an exception for agreements that relate to the authority participating in a procurement process or portions of agreements that contain commercially sensitive information.

The City of Hamilton comments that it is supportive.