**Doubling Down: Planned Government Amendments to Schedule 6**

Planned government modifications to *Conservation Authorities Act* amendments (shoehorned as Schedule 6 of Bill 29, An Act to implement Budget measures and to enact, amend and repeal various statutes) would leave the most-problematic aspects of the controversial legislation largely or entirely in place. Even more troubling, it would double down on substituting the political decisions of the Minister of Natural Resources and Forestry for the science-based assessments of professional staff at Conservation Authorities and would **force** Authorities to issue permits for some development **despite** identified flooding, erosion and public safety risks.

Below are two Tables. The first outlines new amendments to Schedule 6 which allow the provincial government to order dangerous development projects to proceed against the science-based decisions of Conservation Authorities.

The second table looks at the most problematic existing sections of Schedule 6 and assesses whether proposed government amendments will address the problems or increase them.

TABLE 1: NEW AMENDMENTS TO SCHEDULE 6 PROPOSED BY GOVERNMENT

| New section of Legislation | **Impacts of new amendments of Schedule 6 if passed** |
|---|---|
| ss. 28.01 & 28.1.2 | 28.1.2 (1)-(4) and 28.0.1 (1)-(4) would **force Conservation Authorities to issue permits** for any development the Minister has approved (for *Planning Act* purposes) by way of Minister's Zoning Order **even if they determine it would cause flooding or erosion, jeopardize human health and safety,** or otherwise breach s.28 or s. 28.1.1 of the regulations, or violate the PPS or provincial plans.<br><br>28.1.2 (6) nominally empowers a Conservation Authority to issue conditions to the permission to "mitigate" adverse impact ,but this seems to be undermined by s. 28.1.2(20) and 28.0.1 (34) which indicate that the terms of the MZO prevail over those conditions. A Conservation Authority, it seems, would be forced to issue a permit even though the conditions required to protect public safety and natural resources are neutralized by conflict with the MZO.<br><br>s. 28.0.1(9) and s. 28.1.2 (9) let's the Minister override even the conditions required to mitigate harm of development (see commentary re: s. 28.1(8), above.)<br><br>Ss. 28.0.1(17) and 28.1.2(12) require only that the Minister "consider" the effects development is likely to have on flooding. It does not use phrasing which would require the minister to refuse if there is danger to health and safety.<br><br>s. 28.0.1(24)-(26) seem to require that Conservation Authorities let developers proceed with damaging development provided a proponent agrees to "compensate" for the harm. Such arrangements are dubious given the specificity. |

| | |
|---|---|
| | A related amendment to Schedule 6 ss. 29(2) of Bill 229 means that these "forced permit" provisions in 28.0.1 would come into force immediately upon receipt of Royal Assent, rather than at a later date, as with the rest of the schedule. **This appears calculated to influence the present dispute regarding a proposed casino development in Duffin's Creek wetlands.** |
| Ss. 40(5) | The innocuous-looking phrase added to the Minister's regulation-making power ("[a] regulation made under this section may be general or particular in its application), is concerning in this context. It could be interpreted as allowing the Minister to use different rules to determine the geographical boundaries of Conservation Authorities permitting powers, or even for different parts of the same watershed. |

TABLE 2: AMENDMENTS TO EXISTING SECTIONS OF SCHEDULE 6 PROPOSED BY GOVERNMENT

| **Affected Legislation** | **Problems in Original Bill 229, Schedule 6 (1st Reading Nov 5, 2020)** | **Impacts if Proposed Government-supported Amendments are approved (Standing Committee on Finance & Economic Affairs, Dec 5, 2020)** |
|---|---|---|
| ss. 28.1(8) | Would let unscrupulous rejected applicants who know they cannot convince experts their proposal is safe, circumvent any independent expert adjudicative body and request reconsideration by a partisan politician instead.<br><br>While the criteria applied by the minister are nominally the same, the internal process when a minister makes decisions of this sort are very different than they are at conservation authorities, for the Mining and Lands Commission, or for the Local Planning Appeal Tribunal. A Minister's office is not set up to disregard political calculations and make decisions that are strictly technical.<br><br>Even where Ministry staff are capable of providing expert analysis recommending a particular outcome, such analysis, and legal advice from Ministry counsel as to what | No improvement. |

| | | |
|---|---|---|
| | outcome the law demands, are only parts of a decision package that is presented to the Minister by political staff, whose chief concern and expertise is in optimizing the electoral and donor impact of a decision. | |
| S. 28.1.1 | Would allow the Minister, by Order, to usurp the whole authority of independent conservation authorities with respect to development permits.<br><br>Because (as ss. 28.1.1(3) makes clear) applicants would be allowed to apply to the Minister without any hearing at first instance, or even a processed application before the relevant Conservation Authority, the minister would lack even the minimum evidence required to make a non-arbitrary decision. The required analysis cannot reasonably be provided by Ministry staff, because Conservation Authorities and their staff are the collectors and repositories of the fine-grained scientific knowledge about each watershed that is required to assess the consequences of granting a permit, or altering its conditions. | No improvement. |
| s.14.1 | Would end the established implied duty of Conservation Authority members to prioritize the watershed-wide objects of the authority, and instead require them to privilege the interests of their respective municipalities. This would mean the weight Conservation Authorities accorded to the benefits and burdens of a decision becomes a function of the balance raw voting power among the particular municipalities involved instead of | Would be addressed. |

| | | |
|---|---|---|
| | in consideration of the Conservation Authority itself | |
| S. 14(1.1) | Would require that that all of the Conservation Authority members, now unleashed (per s. 14.1 changes) from duty to anything other than their own municipality, be actual politicians from those municipalities. | Partially addressed. Up to 30 per cent of Conservation Authority members (or more, with express permission from the Minister) could be persons other than members of the municipal council. |
| ss. 21(1)(b) | Would let landowners who know or suspect their property has features that make development risky, (and thus require permitting), refuse access for testing, and thus prevent Authorities from discovering that they have permitting authority. (Such features can often only be identified through testing.) | Not addressed. Conservation Authority staff need to have the right to enter property to determine if there are hazard features. They can not always know without a site visit. |
| 21(1)(c) | By denying Conservation Authorities access to expropriation, would empower bad actors to hold hostage lands which are of little market value, but indispensable to the protection of the public interest. | No improvement. |
| *Planning Act* ss. 1 (4.1) | Consequential amendments to the Planning Act would strip Conservation Authorities of the legal standing in Planning Act proceedings that they rely on to prevent and address acute and cumulative environmental threats to public safety that stem from parts of the watershed outside protected features themselves. | Only partially addressed.<br><br>Conservation Authorities would be permitted to be parties only to appeals relating to a narrow subset of "natural hazard risks" chosen by the Minister. The changes would not, however, preserve one of the core functions of a Conservation Authority's standing in Planning Act appeals, which is to ensure that watershed natural resources issues are properly looked after in large scale planning decisions within the watershed. For example, it may be important that a Conservation Authority have standing in appeals of Official Plan amendments that would substantially increase impermeable surfaces across one of its municipalities, |

| | | |
|---|---|---|
| | | and thus substantially increase flood and erosion risk |
| s. 30(4) | Schedule 6 would repeal this provision, which would otherwise, when brought into force, have empowered conservation authorities to order a stop to activities that could cause flooding or erosion or otherwise breach regulations or permit conditions. | Only partially addressed.<br><br>The stop order power would not be repealed in its entirety. However the power would seem to be limited very narrowly to the most visibly risky circumstances, where the contravening activity **has caused, is causing or is likely to cause significant damage** and *also* the damage is **likely to affect flooding** erosion, land conservation or **endanger health, safety or property**.<br><br>This peculiar wording raises some concern, also, because it may be read as encompassing activities that cause damage directly, and exclude activities causes damage *only through* the flooding, landslides, etc. themselves. |