



**City of Kingston  
Information Report to Council  
Report Number 21-162**

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**To:** Mayor and Members of Council  
**From:** Paige Agnew, Commissioner, Community Services  
**Resource Staff:** Tim Park, Acting Director, Planning Services  
**Date of Meeting:** June 22, 2021  
**Subject:** New Proposals by the Province: Proposed Updates to D-Series Guidelines; Proposed Regulation under the *Conservation Authority Act*

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**Council Strategic Plan Alignment:**

Theme: Regulatory & compliance

Goal: See above

**Executive Summary:**

The purpose of this report is to provide Council with a summary of the following new proposals by the Ministry of the Environment, Conservation and Parks, as posted on the Environmental Registry of Ontario (ERO):

- Four initiatives to help ensure compliance with environmental laws that help protect and preserve our air, land and water:
  - A new Land Use Compatibility Guideline as an update to a number of existing D-series guidelines for municipalities to use when making land use planning decisions regarding industrial facilities and sensitive uses ([ERO 019-2785](#));
  - Odour guideline to manage the impacts of odour emissions from industrial facilities ([ERO 019-2768](#));
  - Update to Ontario's environmental compliance policy and practices to prioritize high-risk incidents and better hold polluters accountable ([ERO 019-2972](#)); and
  - Expanding the Province's ability to issue administrative monetary penalties for a broader range of contraventions.

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- New proposed regulations (Phase 1) under the *Conservation Authorities Act* to implement the legislative changes previously made to the *Conservation Authorities Act* and those made through the *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020 ([ERO 019-2986](#)).

A 60-day posting to the Environmental Registry of Ontario has been initiated by the Province on the proposed changes related to environmental compliance initiatives, with comments due by July 3, 2021. Staff will be submitting comments prior to the July 3, 2021 deadline, which will focus primarily on the draft Land Use Compatibility Guideline.

A 45-day posting to the Environmental Registry of Ontario has been initiated on the proposed new regulations under the *Conservation Authorities Act*, with comments due by June 27, 2021. The regulations are proposed as part of the first phase and would set out the mandatory programs and services that conservation authorities would be required to provide, and a requirement for agreements between conservation authorities and their participating municipalities for the use of municipal levies to fund non-mandatory programs and services, among a few other matters. Planning Services staff have discussed this proposal with staff from the Cataraqui Region Conservation Authority. Based on the nature of the proposal, staff do not have comments to provide to the Province at this time.

**Recommendation:**

This report is for information only.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY COMMISSIONER

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**Paige Agnew, Commissioner,  
Community Services**

ORIGINAL SIGNED BY CHIEF  
ADMINISTRATIVE OFFICER

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**Lanie Hurdle, Chief  
Administrative Officer**

**Consultation with the following Members of the Corporate Management Team:**

Peter Huigenbos, Commissioner, Business, Environment & Projects	Not required
Brad Joyce, Commissioner, Corporate Services	Not required
Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required
Sheila Kidd, Commissioner, Transportation & Public Works	Not required

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**Options/Discussion:**

On May 4, 2021 the Ministry of the Environment, Conservation and Parks posted a notice on the Environmental Registry of Ontario (ERO) to highlight a series of initiatives to strengthen enforcement tools that hold polluters accountable and create consistent guidelines to prevent and address noise and odour issues.

On May 13, 2021, the MECP posted another notice on the ERO, which proposed new regulations to focus conservation authorities on their core mandate by prescribing mandatory programs and services they must provide, give municipalities greater control over what conservation authority programs and services they will fund, consolidate “Conservation Areas” regulations and to require community advisory boards.

The purpose of this report is to provide Council with a summary of these new proposals.

**Strengthening Ontario’s Environmental Compliance Approach**

To help ensure compliance with environmental laws that help protect and preserve our air, land and water, the Ontario government is moving forward with four important initiatives. These include:

- providing better tools and creating clear and consistent guidelines for municipalities that they may use to make land-use planning decisions that will reduce noise and odour impacts from industry;
- proposing guidance on how industrial facilities, development proponents and other members of the regulated community can anticipate, prevent, and address odour issues;
- updating the ministry’s environmental compliance policy to prioritize high-risk incidents and better hold polluters accountable; and
- expanding administrative monetary penalties to cover approximately 150,000 regulated entities, including individuals, small businesses and large corporations as well as public entities like municipalities and crown corporations.

**Land Use Compatibility Guideline (D-Series) ([ERO 019-2785](#))**

The MECP is proposing a [new Land Use Compatibility Guideline](#) as an update to a number of existing D-series guidelines for municipalities to use when making land use planning decisions. The proposed guideline is intended to help ensure certain land uses can co-exist and thrive for the long-term within a community, including major industrial facilities and more sensitive residential land uses. The existing D-series guidelines were developed in the 1990s and are out of date with the current Provincial Policy Statement (PPS), technical approaches and the Province’s role in the land use planning process.

The Land Use Compatibility Guideline implements the PPS, which focuses on ensuring that major facilities and sensitive land uses are planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects.

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The PPS defines major facilities as “facilities which may require separation from sensitive land uses, including but not limited to airports, manufacturing uses, transportation infrastructure and corridors, rail facilities, marine facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities.” Sensitive land uses are defined as “buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive land uses may be a part of the natural or built environment. Examples may include, but are not limited to residences, day care centres, and educational and health facilities.”

The guideline is intended to help to prevent impacts from noise, dust, odour and other potential sources of adverse effects to sensitive lands uses from industries, as well as clarify when compatibility studies related to the assessment of potential noise, odour, dust and other impacts are needed. The proposal notes that preventing the impacts of incompatible land uses and noise and odour issues is a key commitment in the [Made-in-Ontario Environment Plan](#).

The guideline applies to *Planning Act* decisions that may affect land use compatibility, including:

- Updates to Official Plans and zoning by-laws;
- Proponent-driven applications such as Official Plan amendments, zoning by-law amendments, site plans and subdivision approvals for:
  - A new or expanding sensitive land use (for example a residential subdivision or condominium) proposed near an existing or planned major facility;
  - A new or expanding major facility proposed near an existing or planned sensitive land use;
- Situations where the use of the land is not changing, but the nature and/or intensity of the land use is, and an application under the *Planning Act* is required;
- Situations where there is a new use proposed for an existing building and an application under the *Planning Act* is required.

Unless referenced under other applicable legislation, the guideline does not apply when there are existing incompatible land uses and no *Planning Act* approval is being triggered.

The guideline proposes updated areas of influence (AOIs) and minimum separation distances (MSDs) for major facilities where adverse effects on sensitive land uses nearby are likely to occur.

An area of influence (AOI) is defined in the guideline as an area surrounding the property boundary of an existing or planned major facility where adverse effects on surrounding sensitive land uses have a moderate likelihood of occurring. If a land use proposal would place a new or expanding sensitive land use within a major facility’s AOI, a compatibility study will be required. Compatibility studies assess potential impacts associated with a planning proposal, determine a recommended separation distance for the proposed use, and if required, identify necessary mitigation measures to prevent impacts and demonstrate the need for a sensitive land use in a specific location.

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AOIs are intended to be used as the study area as well as the default separation distance from a major facility unless compatibility studies recommend a different separation distance. The draft guideline notes that the separation distance used should be sufficient to permit the functioning of the two potentially incompatible land uses without an adverse effect to the sensitive land use or potential impacts to major facilities.

MSDs are smaller than the AOI and are the distance within which adverse effects and compatibility issues are highly likely to occur. Proposals should not result in sensitive land uses being located in MSDs, as adverse effects are highly likely to occur. Such proposals should only be considered where there is a demonstrated need for the proposed use in that location and no other location is feasible, and mitigation to prevent adverse effects is possible and will be implemented. If a new or expanding sensitive land use is proposed within a major facility's MSD or a new or expanding major facility would result in sensitive land uses within its MSD, compatibility studies and mitigation measures to address potential adverse effects on sensitive land uses and potential impacts to major facilities will be required.

The draft guideline assigns specific AOIs and MSDs to certain types of major facilities. The guideline notes that the proponent and planning authority should first determine whether a given major facility type has been assigned an AOI and MSD. Where available, the facility-specific AOIs and MSDs included in the guidelines are to be used. Where the specific major facility type is not listed in the guideline, a three-step process of classifying is proposed:

- Identify the type of major facility and seek information to better understand its operation and potential adverse effects;
- Identify the adverse effects commonly associated with the type of existing or proposed major facility and its operations; and
- Based on available information and professional expertise, select a facility class and associated AOI and MSD for a major facility. The planning authority will need to be satisfied that the classification is appropriate.

Where the draft guideline does not specify AOIs and MSDs for a major facility, the guideline provides the following class-related AOIs and MSDs, as shown in Table 1. The draft guideline includes five classes of major facilities. The table provides a description and examples of major facility classes to serve as a guide for determining an AOI and MSD.

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**Table 1 – Area of Influence and Minimum Separation Distance for Classes of Major Facilities**

<b>Class</b>	<b>Description of Major Facility</b>	<b>Area of Influence</b>	<b>Examples of Major Facility</b>	<b>Minimum Separation Distance</b>
Class 1	Operations with known smaller adverse effects.	500 metres	Food manufacturing Sewage lagoons Various Environmental Activity and Sector Registry (EASR) activities	200 metres
Class 2	Operations with moderate adverse effects. May include some outdoor operations.	750 metres	Manufacturing metal and glass parts	300 metres
Class 3	Operations with moderate to significant adverse effects that may be difficult to mitigate. May include larger outdoor operations.	1,000 metres	Aggregate operations (in relation to sensitive land use proposals)	500 metres
Class 4	Operations with significant adverse effects that may be difficult to mitigate. May include larger outdoor operations.	1,500 metres	Meat and meat product processes (slaughterhouses and rendering facilities)	500 metres
Class 5	Operations with the most significant adverse effects, that may be difficult to mitigate. May include larger outdoor operations.	2,000 metres	Chemical product manufacturing	500 metres

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In relation to specific areas or sites, the draft guideline allows that planning authorities may determine an alternate AOI, which may be smaller or larger than the AOI outlined in the guideline, if supporting studies are completed to justify this alternate AOI. An alternate AOI may be smaller, for example in locations with a planning objective of increasing intensification as well as avoiding conflicts. An alternate AOI may also be larger if the planning authority has determined that adverse effects may occur outside of the guideline's AOI, for example in consideration of other area or facility specific emissions. In either case, the planning authority may choose to implement policies that restrict uses and/or require compatibility studies based on their studies. The development of an alternate AOI is a voluntary activity undertaken by the planning authority that is intended to support its broader land use planning framework. As such, studies to justify an alternate AOI should be developed by the planning authority (supported by consultants as necessary), and should take place during a broader planning process (such as review of Official Plans, Secondary Plans and/or zoning by-laws) so that the alternate AOI can inform the overall community structure of a particular area surrounding a major facility or employment area, and inform policies setting the study requirements for future development applications in the area. Alternate AOIs should only be developed for a specific major facility or specific employment area, and not for a sector of major facilities. The alternate AOI must never be smaller than the MSD in the guideline.

The guideline supports the requirement for a "demonstration of need" to be completed in relation to a proposed sensitive land use if mitigation measures are the only possible way to prevent adverse impacts or if the proposed sensitive land use is within the MSD of a major facility. A demonstration of need is defined as an assessment that determines whether there is an identified need for the proposed use in the proposed location and evaluates alternative locations for the proposed use if avoidance is not possible. This assessment is only required for proponents of sensitive land uses.

The guideline proposes the following guiding hierarchy for land use compatibility planning:

- Avoid incompatible land uses (if possible)
  - Locate a sensitive land use outside of the AOI of a major facility and locate a major facility to an area where sensitive land uses are not captured within its AOI.
  - Avoidance does not include mitigation measures, only separation between uses.
  - Designate appropriate transition areas between major facilities and sensitive land uses (such as an area where heavy industrial is buffered by lighter industrial, and subsequently may be buffered by commercial or office uses)
- Assess impacts in terms of types of impact and magnitude (if avoidance is impossible)
  - For proposals within the AOI, compatibility studies are required.
  - Proponents should pre-consult with planning authorities to understand requirements.
  - A compatibility study will determine a specific separation distance for that proposal that would avoid adverse effects. That separation distance should be used if possible.
- Minimize and mitigate impacts
  - If the separation distance is not possible, the compatibility study must identify mitigation measures to ensure no adverse effects will remain post-mitigation.



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- Even with proposed mitigation, the separation distance should be maximized to minimize impacts, and should not be less than the MSD.
- Once implemented, monitor, and maintain required mitigation measures over time to avoid future compatibility issues.

If avoidance and mitigation/minimization is not possible, the proposed incompatible land use must not be permitted.

The draft guideline defines a compatibility study as a “study that assesses potential adverse effects and recommends separation distances between land uses and mitigation measures, if needed, to prevent impacts to surrounding sensitive land uses.” Technical guidance on preparing compatibility studies addressing noise, dust and odour is provided in Appendix B of the guideline. For proponents of sensitive land uses and major facilities, in order to meet the test of no adverse effects, provincial noise limits for various noise sources must be met. For new sensitive land uses, Appendix B indicates that planning authorities have the option to designate future areas as Class 4 areas as per the Environmental Noise Guideline – Stationary and Transportation Sources - Approval and Planning (NPC-300). The Class 4 designation is intended for areas where a mix of incompatible uses may be unavoidable or very difficult to avoid. The guideline states that if required, a compatibility study for odour must follow the procedure listed in the Odour Guideline. The proposed Odour Guideline is discussed in the next section of this report.

Staff note that the proposed areas of influence and minimum separation distances proposed in the draft guideline are greater than those that exist in the current guideline. Staff will continue to review the proposed Land Use Compatibility Guideline in greater detail and submit comments to the Province before the July 3<sup>rd</sup> commenting deadline.

### **Odour Guideline ([ERO 019-2768](#))**

In addition to the Land Use Compatibility Guideline, the Province is proposing guidance on how industrial facilities, development proponents and other members of the regulated community can anticipate, prevent, and address odour issues to better protect the environment and hold polluters accountable.

The proposed [Odour Guideline](#) is intended to clarify requirements for potentially odorous facilities that are applying for an Environmental Compliance Approval or preparing an odour study as a requirement of a Renewable Energy Approval, includes resources for addressing odour issues, and supports the proposed Land Use Compatibility Guideline to better prevent and manage odour issues in the Province. This proactive approach was intended to provide more regulatory certainty for facilities, better coordination with land planning decisions, and more effective remediation of issues caused by odour mixtures.

The proposed guidance is based on a review of 10 years of historical complaint data (2005-15) which identify different classes of facilities or processes that could be odorous; review of other jurisdictions’ odour management approaches and current ministry practices; and experience from field staff.

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Based on the review, odorous facilities and processes were identified and grouped into three tiers based on the potential to cause odour / odour complaints. Table 2 below includes example activities and processes in each of the three tiers and the odour setback. The odour setback distances indicate the distance between a major facility and a sensitive land use at which additional measures may need to be incorporated by a facility to avoid negatively impacting the sensitive land use from odour.

**Table 2: Tiers and Odour Setback**

<b>Example Activities &amp; Processes</b>	<b>Odour Setback</b>
<b>Tier 1 (potential to cause some odours):</b>	
Blowing or expanding foam products	500 metres
Meat and poultry processing	300 metres
Plastic extrusion or melting	100 metres
Low volume printing and spraying operations	100 metres
<b>Tier 2 (potential to cause significant odours):</b>	
Asphalt paving mixture and block manufacturing	500 metres
Vulcanized rubber product manufacturing	500 metres
Composting –leaf and yard waste only	500 metres
High volume printing and spraying operations	500 metres
<b>Tier 3 (likely to cause significant odours):</b>	
Animal or poultry slaughtering	Not developed (see note below)

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Example Activities & Processes	Odour Setback
Large wastewater treatment plants	Not developed (see note below)
Rendering or tallow production	Not developed (see note below)
Composting other than leaf and yard waste	Not developed (see note below)

No odour setback distances have been developed for Tier 3 activities and processes. In general, all facilities with Tier 3 activities and processes would develop and implement a Best Management Practices Plan (BMPP) to ensure odours are minimized.

The proposed guidance is intended to provide more clarity on how to identify, prevent, manage, and remediate human health and environmental impacts caused by emitted odour. It includes:

- clarification on the requirements for potentially odorous facilities applying for an Environmental Compliance Approval (ECA) under section 20.2 of the *Environmental Protection Act*;
- clarification for facilities preparing an Odour Study required by the Renewable Energy Approvals Regulation (*Ontario Regulation 359/09*);
- tools to more effectively anticipate and prevent odour issues for new sources of odour and speed up remediation efforts;
- a process for assessing, mitigating and minimizing odour impacts when a new development is proposed, which supports the proposed Land Use Compatibility Guideline;
- additional resources for facilities when assessing odours or when preparing a Technology Benchmarking Report for odour;
- considerations for laboratories in Ontario that assess odour.

By using this guidance, facilities will be able to identify potential odour sources before they are operational and speed up remediation efforts. They will also have best practices and recommendations available to help them mitigate odorous sources over time.

### Compliance policy ([ERO 019-2972](#))

The Province is updating Ontario's decade-old environmental compliance policy and practices to prioritize high-risk incidents and better hold polluters accountable. The proposed changes include updated tools and resources for environmental officers to help determine the level of intervention needed and apply more stringent tools in cases where organizations and individuals have repeatedly broken environmental laws.

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The proposed new compliance policy continues to support and build on the Ministry of Environment, Conservation and Parks' approach in responding to:

- high-risk human-health or environmental incidents
- noise and odour incidents from facilities that require a ministry permission and have established requirements, including landfills, organic waste facilities, energy from waste facilities and steel manufacturing

The new compliance policy being proposed continues to direct use of an informed judgement matrix and a risk-based approach during case-by-case reviews of complaints and responses to incidents.

The Ministry is also proposing public service standards and a referral tool for:

- responding to incidents;
- providing the public with information on the incident referral tool.

Ministry staff will use this new, proposed tool when referring low-risk incidents to more appropriate agencies or levels of government. This will ensure transparency in the Ministry's decision-making processes.

### **Administrative monetary penalties**

The Province is expanding its ability to issue administrative monetary penalties for a broader range of contraventions and providing our front-line staff with stronger tools to seek compliance and enforce Ontario's environmental laws.

Funds collected from the penalties will be made available for environmental restoration and remediation projects as well as projects that build resilient communities and provide local solutions to environmental issues.

The Province has indicated that it will be consulting with stakeholders through virtual stakeholder engagement sessions in 2021 on the implementation of this new administrative monetary penalties framework.

### **Proposed Regulation under the *Conservation Authorities Act***

In June 2019, the *More Homes, More Choice Act, 2019* amended the *Conservation Authorities Act* to identify the categories of mandatory programs and services which conservation authorities are required to provide where applicable in their specific jurisdictions. The *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* re-enacted this provision.

The Ministry of the Environment, Conservation and Parks is proposing to move forward with first of two phases of regulatory amendments to implement the legislative changes previously made to the *Conservation Authorities Act* and those recently made through the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020*.

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The regulations the government proposes to introduce as part of the first phase would set out the following:

- Mandatory programs and services that conservation authorities would be required to provide, including core watershed-based resource management strategies.
- A requirement for agreements between conservation authorities and their participating municipalities for the use of municipal levies to fund non-mandatory programs and services an authority determines are advisable in its jurisdiction.
- The proposed regulation may set out a specific time in which the agreements must be reviewed and to determine whether or not the agreements will be renewed.
- Details of the transition plan conservation authorities must prepare, including an inventory of the authority's programs and services, the consultation process with participating municipalities on the inventory, and steps taken to enter into these agreement(s) with participating municipalities for the use of municipal levies for non-mandatory programs and services the authority determines are advisable in its jurisdiction.
- The consolidation of each of the current individual conservation authority 'Conservation Areas' regulations made under Section 29 of the *Conservation Authorities Act* into one Minister's regulation. This would set out, for example, prohibited activities and activities requiring permits on conservation authority owned lands.
- Requirements for each conservation authority to establish a community advisory board to include members of the public, and providing that conservation authority by-laws may govern the operation of these and other advisory boards that may be established by the authority.

The two main aspects of these proposed changes relate to the Province establishing the mandatory services and the subsequent funding impacts.

The categories of mandatory programs and services are related to the following:

- Risk of natural hazards
  - Flooding, erosion, dynamic beaches, hazardous sites, as defined in the PPS;
  - Low water/ drought monitoring as part of Ontario's Low Water response;
  - Section 28 of the *Conservation Authorities Act* (development permits);
  - Planning on behalf of the Ministry of Natural Resources and Forestry for natural hazards;
  - Flood forecasting;
  - Operation and maintenance of flood and erosion control structures;
  - Ice management as part of flood prevention;
  - Collection, provision and management of information related to the above services (studies to delineate and understand hazards);
  - Communications, public awareness, education regarding risk of natural hazards.
- Management of lands owned by conservation authorities:
  - Develop a strategy for lands, policy for acquisition/disposition of land, require management plans for each parcel;

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- Recreation and environmental education are not mandatory programs and lands operated for these purposes would require different funding sources.
- Conservation authority duties, functions and responsibilities as a source
- protection authority under the *Clean Water Act, 2006*.
- Programs related to Lake Simcoe
- Responsibilities prescribed under other legislation. Proposed to be:
  - On-site sewage systems approvals by North Bay-Mattawa Conservation Authority as prescribed under the *Building Code Act, 1992*.
- Other programs or services prescribed by the regulation within a year of the end of the transition period. Proposed to be:
  - Core Watershed-based Resource Management Strategy; and
  - Provincial Water Quality and Quantity Monitoring.

The mandatory programs and services delivered by conservation authorities may be funded by provincial grants and/or conservation authority self-generated revenue (for example user fees). Where such revenue sources cannot finance the entire costs of those programs, the costs must be raised through the municipal levy.

Non-mandatory programs and services that may be provided by a conservation authority at the request of and on behalf of one or more participating municipalities under the *Conservation Authorities Act*, if a memorandum of understanding (MOU) or other agreement has been entered into between the parties to have the program or service be funded by municipal levy or by other funding mechanisms that may be set out in the MOU or service contract. An example of a non-mandatory program and service that a municipality may request a conservation authority to provide on the municipality's behalf and that would require a MOU would be conservation authority input on municipal land use planning matters outside of natural hazard policies; such as natural heritage policies.

Regulatory authority for agreements for municipal funding of non-mandatory programs and services and the regulatory authority for a transition period/plan to develop the agreements is proposed to be combined into one Minister's regulation – Regulation for Municipal Agreements and Transition Period.

The proposed Agreements and Transition Period regulation could require that the agreements do the following:

- Include a provision that the participating municipality agrees to pay its apportioned levy (determined under sections 25 or 27 of the *Act* in accordance with the regulations) for the non-mandatory program or service.
- Set out the termination date of the agreement.
  - Certain time periods may also be specified for the purposes of reviewing and renewing any such agreements that are reached, such as review by the parties to the agreement at intervals to align with municipal elections and subsequent conservation authority appointments with some consideration to the authority and municipal budget cycles (for example, 6 months after municipal election).

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- Include provisions governing early termination and governing notice and resolution of breaches of the agreement.
- Include transparency provisions (for example, that agreements are available to the public online).

The Ministry of the Environment, Conservation and Parks is proposing January 1, 2023 as the prescribed date by which agreements must be in place for conservation authorities to use or continue to use the levy powers under the *Conservation Authorities Act* for their participating municipalities to fund non-mandatory programs and services the authority determines are advisable.

Staff note that the City has an existing MOU in place with the Cataraqui Region Conservation Authority, which was authorized by Council through the approval of the recommendation of [Report Number 19-233](#). Staff will continue to monitor the proposed regulations and will report back to Council with any changes that would be required to the MOU in 2022.

**Existing Policy/By-Law:**

*Planning Act*

Provincial Policy Statement

*Conservation Authorities Act*

**Notice Provisions:**

None

**Accessibility Considerations:**

None

**Financial Considerations:**

None

**Contacts:**

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**Other City of Kingston Staff Consulted:**

None

**Exhibits Attached:**

None