TORONTO

REPORT FOR ACTION

MM2.6: Impact of Bill 23 on Insurance and Liability Issues

Date: November 14, 2023
To: Planning and Housing Committee
From: Chief Financial Officer and Treasurer

SUMMARY

At the December 14 and 15, 2022 meeting of City Council, Council requested the City Manager in consultation with the Toronto and Region Conservation Authority ("TRCA") to solicit feedback from banks, insurance companies and mortgage brokers to report back on the potential of any insurance and liability issues that the City, the Toronto and Region Conservation Authority, tenants, homeowners may face from residential developments in previously Conservation Authority regulated areas that are approved by the City or the Province of Ontario.

This report has been prepared in response to the request of City Council.

RECOMMENDATIONS

The Chief Financial Officer and Treasurer recommends that:

1. The Planning and Housing Committee receive this report for information.

FINANCIAL IMPACT

There is no financial impact arising from the recommendations in this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

DECISION HISTORY

At its December 14 and 15, 2022 meeting, City Council requested the City Manager work with the Toronto and Region Conservation Authority to solicit feedback from banks, insurance companies and mortgage brokers to report back on the potential of any insurance and liability issues that the City, TRCA, tenants, homeowners may face from residential developments in previously Conservation Authority regulated areas that are approved by the City or the Province of Ontario.

[Agenda Item History - 2023.MM2.6 (toronto.ca)]

COMMENTS

As a preliminary comment, there are many considerations that one has to take into account in assessing what, if any, potential liability issues the City of Toronto (the "City"), TRCA, or any other party may face as a result of the approval, by the City or by the Province of Ontario, of a residential development in previously Conservation Authority regulated areas. Without reference to a specific set of facts, including details about the nature of the development and the circumstances of the approval, there is no basis upon which one can formulate a liability assessment. It is also important to note that the geographic areas regulated by Conservation Authorities have not yet changed. The only anticipated change to geographic areas that Conservation Authorities regulate pertains to the area around wetlands, which is proposed to be reduced from 120 to 30 metres. This change will not impact the City of Toronto.

Though, given the above, no liability assessment can be provided, a discussion of the *More Home Built Faster Act, 2022* ("Bill 23"), which received Royal Assent on November 28, 2022, and amended various acts including the *City of Toronto Act, 2006* and the *Conservation Authorities Act*, and a discussion of how these two acts were changed, is presented below.

As outlined in the February 10, 2023 report from the City Solicitor to City Council, Schedule 1 of Bill 23, amends the *City of Toronto Act, 2006*, and came into effect on November 28, 2022.

Schedule 1 amends Sections 111 and 114.

The change to section 111 created subsection 111(7), which provides that the Ministry of Municipal Affairs and Housing can make regulations imposing limits and conditions on the powers of the City to prohibit and regulate the demolition and conversion of residential rental properties. As of the writing of this report, no regulations have been issued by the Minister under subsection 111(7).

The change to section 114 altered the definition of the term "development" to exempt developments with 10 or fewer units from Site Plan control. Developments with 10 or fewer units amount to approximately 2% of the development applications submitted to the City. The City's ability to regulate – through the Site Plan process – the appearance of elements, facilities, and works with the street's right of way would be limited only to those circumstances where the appearance would also impact on matters of health, safety, and accessibility.

Changes to the Conservations Authorities Act

The *Conservation Authorities Act* (the "CAA"), was also amended by Bill 23.

Subsection 21.1.1(1) of the CAA provided that a Conservation Authority can provide municipal programs and services that it agrees to provide on behalf of a municipality under a memorandum of understanding (MOU). Schedule 2 of Bill 23 amended the CAA by introducing subsection 21.1.1(1.1). This new subsection precludes TRCA from providing non-mandatory programs and services to municipalities related to reviewing or commenting on a proposal, application or other matter made under a prescribed Act as set out in Ontario Regulation 586/22, including the *Planning Act*, the *Condominium Act*, and the *Environmental Assessment Act*. As a result, effective January 1, 2023, some technical services (e.g., technical reviews related to natural heritage conformity) that TRCA formerly provided can no longer be provided under a plan review MOU with the City of Toronto.

However, these restrictions do not affect TRCA's obligation to provide legislatively prescribed mandatory programs and services pursuant to section 21.1 of the CAA. These mandatory programs and services as set out in Ontario Regulation 686/21 include programs and services related to the risk of 'natural hazards' – a term that includes dynamic beach hazards, erosion hazards, flooding hazards, hazardous lands, hazardous sites, and low water or drought conditions. TRCA must, acting on behalf of the Ministry of Natural Resources or in its capacity as a public body under the *Planning Act*, ensure that decisions under the Planning Act are consistent with the natural hazard policies of the Provincial Policy Statement (PPS 2020) and conform to any natural hazard policies in a provincial plan. TRCA is also authorized to review and provide comments on the risks related to natural hazards arising from proposals under the *Environmental Assessment Act*. As part of the plan review process to assist with coordination and streamlining, TRCA provides any applicable regulatory permitting comments and requirements under Section 28 and 28.0.1 of the CAA.

There remain aspects of the legislative framework established by Bill 23 that must be fleshed out. Regulations that could impact on the nature and scope of TRCA's permitting and enforcement authority have not yet been issued. For example, the new subsection 28(4.1) of the CAA, being the clause to exempt permits for certain regulated areas in certain municipalities where there are certain *Planning Act* approvals, will not become operative until a regulation or regulations are made to prescribe activities, areas of municipalities and types of authorizations under the *Planning Act* that qualify for the exemption. Until the new Section 28 and 28.1 provisions of the CAA come into force and the new regulation replaces Ontario Regulation 166/06 (TRCA's permitting regulation), the impact cannot be assessed and until such time, it is business as usual in the administration of TRCA's mandatory permitting and enforcement responsibilities.

Those same reasons that preclude one from evaluating what liability issues might arise because of the City or the Province of Ontario approving a residential development in a Conservation Authority regulated area, prevent one from identifying any specific insurance issues that might arise as a result of any such approval. This report can comment, generally, on the effect that an increase in the number or nature of flood hazards can potentially have on homeowner insurance, property values, and mortgages. Those comments are presented below.

Insurance Implications

A homeowner or tenant's ability to secure property insurance is generally not impacted by changes in legislation. Property insurers underwrite risk based on factors including construction, occupancy, protection systems, distance to fire hall and fire hydrants, and exposure to natural hazards including earthquake, flood, wind, and hail. Insurers evaluate loss trends with a focus on managing their loss ratios. Changes to available capacity or underwriting guidelines are made when there are industry-wide impacts (e.g., losses across many insurers).

The principle of insurance is such that it responds in the event of an unforeseen occurrence of an insured peril. Events that increase the risk that a home could be impacted by a flooding event could, in turn, increase the likelihood that flood insurance may become unaffordable and possibly unavailable, especially for homes where flooding events occur frequently. In addition, when insurers experience widespread events there is some certainty that availability of property insurance for flood losses will be reduced and premiums will trend upwards.

According to a report written by The University of Waterloo, Intact Centre on Climate Adaptation, "the most costly impact of climate change affecting Canadians is residential basement flooding that is often made worst through poor land-use planning and management. With about 9% (3.3 million) and 11% (3.9 million) of the Canadian population residing in 1-in-100 and 1-in-200-year floodplains, respectively, these percentages are expected to increase as floodplains expand in response to more extreme precipitation driven by climate change and to the loss of natural infrastructure (e.g., forests, grasslands, and wetlands that act as "sponges"). Testimony to the adverse impact of flooding is the increase in Canadian home insurance premiums of 20-25% over the period 2015-2019, with more than half of this upturn attributable to flood damage. In addition to increasing residential insurance premiums, the maximum level of flood insurance available, for basement flooding are trending lower, while the percentage of homes in cities across Canada deemed uninsurable relative to flooding is migrating upwards."

Impact on Property Values

Although residential flooding is occurring more frequently across Canada, there has been no quantitative assessment to determine the impact of flooding on Canada's real estate and mortgage markets, according to the Canadian Mortgage Housing Corporation (CMHC). In response, the Intact Centre on Climate Adaptation, University of Waterloo, assessed the impact of community level flooding on Canada's housing market over the 2009-2020 timeframe, from four perspectives: 1) average sold price of housing, 2) average days on market to sell a house, 3) average change in number of houses listed for sale, and 4) change in mortgage arrears and deferrals. The key findings were as follows. The net impacts of catastrophic flooding on residential housing, averaged across five cities and six flood events (Grand Forks 2018, Burlington 2014, Toronto 2019, Ottawa 2019 and 2017, Gatineau 2017), for six months pre- vs. post-flood event, were as follows:

- 8.2% reduction in the final sold price of a house
- 19.8% more days on the market to sell a house
- 44.3% reduction in the number of houses listed for sale

As context, for a house that would sell at the Canadian average price of $713,500, if the neighborhood was subject to catastrophic flooding, and assuming the average 8.2% impact of flooding on price, the house would be sold for $654,993 reflecting a "flood discount" of $58,507. Net change in Toronto was 3.3% lower.

A 19.8% longer time to sell a house in a flooded community may indicate caution on the part of buyers when purchasing a home in a flood prone community.

A 44.3% reduction in houses listed for sale by homeowners following a catastrophic flood may be due to: (a) expectation of a lower listing price in the aftermath of flooding, (b) waiting for the "stigma" of flooding to pass, and/or (c) time required to remediate a house following flood damage prior to listing.

The report from the Intact Centre on Climate Adaptation continues to note that the insurance ramifications and general stigma of flooding may affect the price that buyers are willing to pay for a home. Beyond the mental stress of owning a flood prone home, the financial burden of a higher insurance premium, lower flood risk cap and / or lack of insurance coverage, may make a property undesirable to a potential buyer in the absence of an adjustment on purchase price.

Mortgage Securitization

According to CMHC, flood risk could influence the potential for mortgage arrears although the study showed that flooding is not debilitating relative to Canada's residential mortgage market, particularly considering that impacts would generally last only a few months.

This suggests that the criteria to qualify for a mortgage in Canada appears to be sufficiently robust that homeowners have adequate resources to absorb flood costs and restore their homes, post-flood, without compromising their mortgage.

Devaluation of a residential property due to flooding is relevant to both mortgage providers and their insurance (e.g., CMHC). Mortgage approvals and rates depend, in part, on the loan-to-value ratio of an insured property. If the "value" of a mortgaged property is compromised by "unanticipated flood risk", lenders and insurers may erroneously approve, or misprice, mortgage rates and mortgage insurance.

CONTACT

Laurie Nelson, Director, Policy Planning, Toronto Region Conservation Authority
Laurie.Nelson@trca.ca, 437-880-2282

Mark Siboni, Lawyer, Litigation Section, Legal Services Division
Mark.Siboni@toronto.ca, 416-392-9786

Melissa Ferreira, Director, Insurance & Risk Management, Office of the Chief Financial Officer, Melissa.Ferreira@toronto.ca, 416-562-8216

SIGNATURE

Stephen Conforti
Chief Financial Officer and Treasurer