

Summary

The Municipality is **legislatively required to amend the Comprehensive Zoning Bylaw** to increase the natural vegetative buffer along shorelines from 15 metres to 30 metres. Currently, development of buildings and structures is not permitted within 30 metres of waterbodies and permanent watercourses.

The Ontario Ministry of Natural Resources and Forestry (MNRF) “Fire Smart” Initiative is a recommendation from the Ontario Ministry. The MNRF “Fire Smart” Initiative is not a legislative requirement.

Legislation

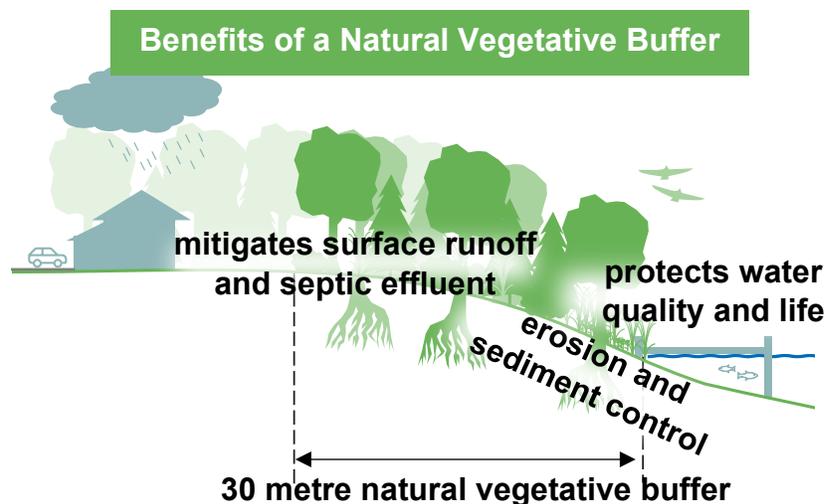
The Ontario *Planning Act* governs how Zoning Bylaws can be used for regulating the use and development of land. The *Planning Act* states that all decisions of Council shall be consistent with the Provincial Policy Statement.

Subsection 26(9) of the *Planning Act* requires the Comprehensive Zoning Bylaw to be updated and amended to conform with the County of Hastings Official Plan when the Official Plan is updated. The Official Plan was updated in 2018. The proposed Bylaw 2022-005 will conform with the policies in the Official Plan as Ontario’s planning legislation requires.

Is a 30 metre natural vegetative buffer consistent with the Provincial Policy Statement?

The Ontario Ministry of Environment, Conservation and Parks (MECP) “recommends a minimum 30 metre setback from the highwater mark of water bodies as a standard in local Official Plans and related Comprehensive Zoning Bylaw and is consistent with Section 2.2.1 of the Provincial Policy Statement Part h) ‘ensuring consideration of environmental lake capacity.’ This is also in addition to Section 2.2.2 of the Provincial Policy Statement which states that ‘Development and site alteration shall be restricted in or near sensitive surface water features and sensitive ground water features such that these features and their related hydrologic function will be protected, improved or restored’.”

The Ontario Ministry of Environment, Conservation and Parks (MECP) supports a minimum setback of 30 metres “to provide protection to lakes, rivers and streams from inputs of nutrients and suspended sediment consistent with Section 2.2. Water - of the Provincial Policy Statement. These contaminants originate primarily from the disturbance



of soils, removal of natural vegetation, hardening of the landscape which results in increased surface runoff in addition from the migration of septic effluent from tile fields. The minimum setback of 30 metres from a water body is also recommended for water quality protection purposes. Generally, the greater the setback from the water; the greater the level of water quality protection. The 30 m buffer strip has become a standard and has been supported before the Local Planning Appeal Tribunal (LPAT)."

Will a 30 metre natural vegetative buffer conform with the County of Hastings Official Plan?

Section 5.4.5.7 of the County of Hastings Official Plan states:

"In Waterfront areas, residential dwellings shall be set back as far from the shoreline as is practical, taking into consideration the size, shape and topography of the lot in question. Wherever feasible, the setback should be at least 30 metres from the high water mark and should remain undisturbed and naturally vegetated. Where the placement of an existing road will not allow this setback, the distance may be reduced to half the distance between the road and the water body, subject to approval of a variance to the implementing Zoning By-law and to site plan approval and provided the setback is not less than 20 metres. Residential infill structures may be set back from the high water mark in accordance with the established building line."

Section 5.4.5.8 of the County of Hastings Official Plan states:

"In Waterfront areas and adjacent to watercourses, a natural vegetative buffer strip a minimum of 30 metres in width should be maintained wherever possible from the seasonal high water mark to filter pollutants from run-off. Within this buffer area, the clear cutting of trees shall be discouraged. On existing lots of record where a 30 metre setback from the high water mark is not possible, the setback may be reduced to the maximum setback possible, subject to the approval of a minor variance to the implementing Zoning By-law and to site plan approval. In order to determine the most appropriate building location of an existing lot of record, consideration should be given to reductions in other yard setbacks before considering reductions to the setback to the high water mark. A lesser buffer area may be required as determined by an approved environmental impact statement or site evaluation report pursuant to Part A - Sections 7.8.6 and 7.8.8 of this Plan that demonstrates that there will be no negative impact on the fish habitat and its ecological function."

But the County of Hastings Official Plan says "should" which means it is not mandatory... right?

Section 5.4.5.8 states "a natural vegetative buffer strip a minimum of 30 metres in width should be maintained wherever possible," and does not say "shall be maintained." Sections 5.4.5.7 and 5.4.5.8 are written with leniency and flexibility to permit "exceptions" to these Sections to provide enough flexibility for property owners to apply for minor variances from the zoning bylaw.

The Committee of Adjustment consists of five members and is tasked to decide whether a Minor Variance Application meets the following tests:

1. Minor in nature;

2. Desirable for the appropriate development or use of the land, building or structure;
3. Maintain the general intent and purpose of the Comprehensive Zoning Bylaw; and
4. Maintain the general intent and purpose of the County of Hastings Official Plan.

If Section 5.4.5.8 states "a natural vegetative buffer... shall be maintained," then a property owner proposing any development within 30 metres of the high water mark will fail the fourth test of a Minor Variance Application because the general intent and purpose of the Official Plan does not permit exceptions for development within 30 metres of the high water mark. The use of "shall" is very restrictive and prohibitive.

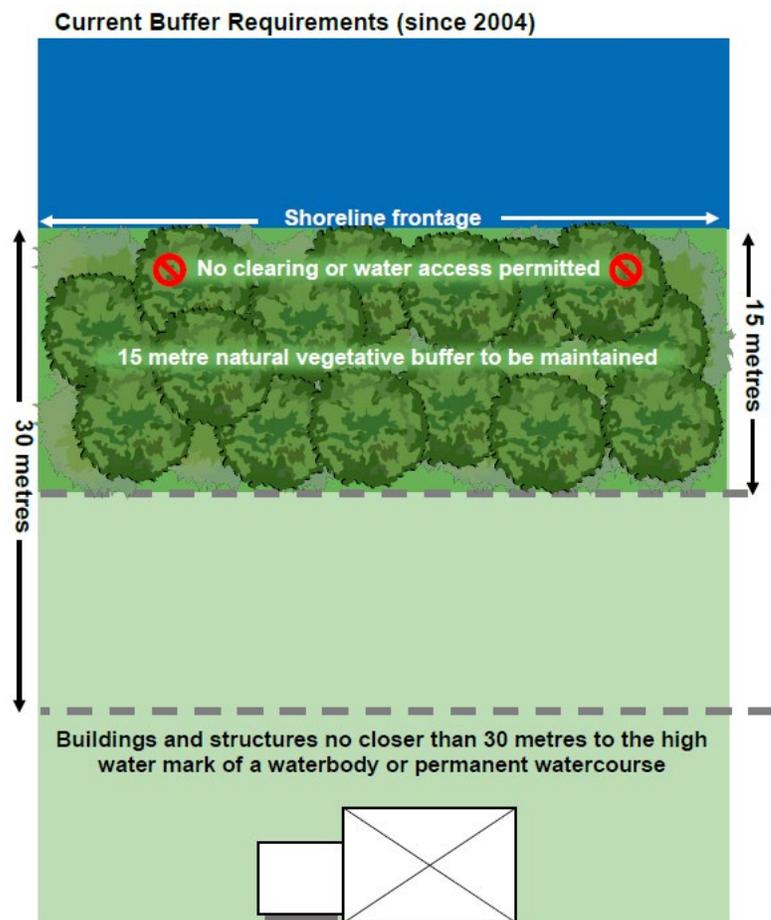
Instead, Section 5.4.5.8 of Official Plan states "a natural vegetative buffer strip... should be maintained" which grants exceptions to this Section of the Official Plan and makes it possible to meet the fourth test of a minor variance, depending upon the Minor Variance Application. The use of "should" in the Official Plan is less restrictive than "shall" and allows for the possibility for relief from the Official Plan. If "shall" was used in the Official Plan, there would be no possibility for relief from the Official Plan without first obtaining approval for an Official Plan Amendment (OPA) before getting relief in a Minor Variance Application.

What is changing?

Currently, no development is permitted within 30 metres of the high water mark and a 15 metre natural vegetative buffer is required to be maintained along the shoreline.

Currently, there are no exceptions to clear within the 15 metre natural vegetative buffer.

The current 15 metre natural vegetative buffer does not conform with the updated County of Hastings Official Plan (2018).



The proposed Bylaw will increase the natural vegetative buffer from 15 metres to 30 metres while amending the zoning to permit exceptions in the natural vegetative buffer. The exception will allow the clearing of 25% of the shoreline frontage or up to 23 metres (75 feet), whichever is the lesser, of the 30 metre natural vegetative buffer.

The “Fire Smart” Initiative

Previously, the Hastings Highlands Fire Department (HHFD) created a synopsis of the Ontario Ministry of Natural Resources and Forestry (MNRF) “Fire Smart” initiative.

The MNRF’s “Fire Smart” Initiative contains variations and different recommendations to mitigate

fires, including home maintenance, building materials, and choosing plants, shrubs and trees that are fire-resistant.

For example, the “FireSmart” Initiative recommends planting certain trees, such as poplar and birch trees, between 1.5 metres and 10 metres of a home as they are resistant to wildfire while avoiding highly flammable trees, such as spruce and fir. The full [“FireSmart Begins at Home Manual”](#) is available online.

The MNRF “Fire Smart” Initiative is a recommendation from the Ontario Ministry. It is not a legislative requirement.

Fire Safety Recommendations and Legislation for a Natural Vegetative Buffer

In most cases property owners are able to meet the **legislative requirement** contained within the Municipality’s Comprehensive Zoning Bylaw and the **recommended** wildfire management strategies provided in the MNRF’s “FireSmart” Initiative.

However, in unique circumstances where property owners have a legal non-conforming residence that falls within the vegetative buffer and they have concerns with wildfire protection strategies, the Property Owner should consult with the Planning and Bylaw department prior to commencing any work. Providing a detailed work plan with site drawings and measurements will allow the applicable municipal department to provide any recommendations that may be required.

