## Special Board Meeting

### Comprehensive Agenda

March 12, 2020 8:30 AM to 12:00 PM

Château Louis Conference Centre, Grand Ballroom
11727 Kingsway NW, Edmonton, AB

### 1. Opening

1.1 **Call to Order**
   
   *Action: Declaration*
   
   *Lead: Chair Abbott*

1.2 **Chair’s Opening Remarks**
   
   *Action: Information*
   
   *Lead: Chair Abbott*

### 2. Approval of Meeting Agenda

*Action: Approval*

*Lead: Chair Abbott*

**Recommended Motion:** That the Edmonton Metropolitan Region Board approve the Meeting Agenda of March 12, 2020.

### 3. EMRB Member Municipality Voting Rights

*Action: Discussion*

*Lead: Chair Abbott*

### 4. Appeal or Dispute Resolution Mechanism

*Action: Discussion*

*Lead: Chair Abbott*

### 5. Next Meeting

- Special Board Meeting – March 27, 2020, 8:30 a.m. – Noon, Chateau Louis Conference, Grand Ballroom

### 6. Adjournment

*Action: Approval*

*Lead: Chair Abbott*
Recommended Motion: That the Edmonton Metropolitan Region Board meeting of March 12, 2020 be adjourned.
EMRB Member Municipality Voting Rights – Historical Origins and Basis for Adoption of Current Voting Model

Background

Two significant reports commissioned by the Government of Alberta sought to formulate recommendations in relation to the establishment of a regional governance model and the development of an integrated growth management plan for the Capital Region.

In December of 2000, An Agenda for Action: Final Report and Recommendations of the Alberta Capital Region Governance Review was presented to government following two years of extensive studies, consultation with citizens and municipal leaders, and in exploring trends and options in jurisdictions around the world. Lou Hyndman, Chair of the Alberta Capital Region Governance Review concluded “Strengthening the Region is not a choice – it’s a necessity. And the time to start is now.”

The Hyndman report reflected several basis assumptions and ideas in acknowledging that new solutions cannot be imposed, there are no quick fixes and that regional approaches must respect the identities and aspirations of new communities. These assumptions guided the development of an agenda for action and supporting recommendations.

Recommendation 2 of the Agenda for Action sought to strengthen and formalize decision making on a regional basis and:

- “Include a voting formula that is predictable, known and understood, and that enables formal votes to be taken on motions where consensus is not possible. The formula should reflect population, diversity and geography.”


- “I was surprised at what little real progress has been made during the last seven years on creating the cooperative regional approach to planning and development within the capital region envisioned by Mr. Hyndman in 2000.”

Mr. Radke further noted that finalization of a binding decision-making process that included a way to ensure decisions can be made in situations where there is not unanimous agreement had not been reached by the member municipalities of the Capital Region.
The Radke report proposed “A comprehensive framework for a regional growth management plan identifying growth projections, current plans, projected needs and gaps in land use, core infrastructure…and social infrastructure…”.

The report further identified:

- key issues to be addressed by the provincial government.
- estimates of costs and benefits of a regional approach
- a transition plan to support establishment of a regional board
- a governance model that outlined the nature and makeup of a new regional board, its functions and services, and how decisions should be made.

The substantive recommendations of the Report of the Capital Region Integrated Growth Management Plan Project Team were adopted by government and provided for the foundation of the Capital Region Board Regulation and the inception of the Capital Region Board in 2008.

Report Recommendations and Rationales Regarding Voting Structure

An Agenda for Action: Final Report and Recommendations of the Alberta Capital Region Governance Review

- “Representation and voting are complex but essential issues. There must be effective mechanisms in place to ensure that decisions can be made and votes can be taken on motions where consensus is not possible. The voting mechanism should ensure that a majority of the municipalities are not able to impose services in an unwilling municipality. Conversely, the mechanism should also ensure that a small number of municipalities are not able to prevent the majority from proceeding on an initiative.”

Report of the Capital Region Integrated Growth Management Plan Project Team

- “Voting is perhaps the most contentious issue in the proposed governance model. The project team considered a range of options for voting including:
  
  - Voting by population range – Municipalities would be allocated a certain number of votes based on their population and a proposal would require the majority of votes.
  
  - Double majority based on incorporation type – Municipalities would be categorized by type (e.g. cities, towns counties, etc.) A proposal would have to be passed by at least 17 municipalities (two thirds of the total) which include at least 50 percent of each incorporation type grouping.”
- Double majority with override – Each municipality would have one vote but for a proposal to pass, it would require the support of at least 15 municipalities with 75 percent of the population. However, regardless of population, any 21 municipalities could vote to pass a motion.

- Double majority with a super-majority – Each municipality would have one vote. For a motion to pass, it must have the support of 17 municipalities with at least 75 percent of the population of the member municipalities.”

- “Following extensive evaluation of each of these options as well as other possible modifications, a double majority voting model with a super-majority is recommended. As part of the voting process, attendance of Board members at decision making should be mandatory. Abstentions by those entitled to vote should not be permitted. In the case of absence or non-participation of a member municipality, its vote should be registered as in agreement with the proposal.”

**Recommended and Adopted Voting Model (also current model)**

- “Consistent with the terms of reference, the governance model recommended in this report does not establish a new order of government. Instead, it ensures balance between the principles of one municipality/one vote and representation by population, and it provides a mechanism for timely, effective decision making.”

- “The supermajority model:

  - Requires two thirds of municipalities in the Capital Region to agree before a motion is passed.
  - Respects the principle of one municipality/one vote but balances this with the principle of representation by population.
  - Recognizes that Edmonton is the predominant player in the region when it comes to many services, especially social services, and deserves to have a substantial voice in the determination of what happens in the region
  - Recognizes that Edmonton has the majority of the population in the region.
  - Ensures that Edmonton must seek out a large majority (16) of its neighbours in order to achieve its objectives and secure a positive vote.
  - Does not allow a group of municipalities with a smaller population base to block votes and prevent progress.
  - Is easier to understand than many of the more complex approaches reviewed in this project.”

- “As the largest municipality in the Capital Region, the City of Edmonton has pushed for a regional approach, an objective with which we agree. The voting model requires the City
to act responsibly and cooperatively with its neighbors in order to achieve that objective. It presumes that Edmonton would not be willing to jeopardize its opportunity for a truly regional partnership because, if this model is not successful, the alternative is long and protracted debates on options that include annexation and amalgamation. We choose to take a more positive outlook. We believe that, if municipalities give this voting model a decent chance, it will be in the best interests of all municipalities and particularly, the citizens and taxpayers in the Capital Region”

Attachments

1. EMRB Backgrounder – Voting Rights
2. 2018-2019 Board Motions
Backgrounder Item – Voting Rights

FOUNDATION IN LEGISLATION / REGULATION

*Municipal Government Act*

708.02(3) (3) The regulation establishing a growth management board may deal with one or more of the following matters: (d) the voting rights of the participating municipalities.

*Edmonton Metropolitan Region Board Regulation 189/2017*

**Voting rights of representatives**

5(1) Subject to section 708.03(2) of the Act and section 4(4) and (6) of this Regulation, each representative has one vote.

(2) If a decision of the Board is to be made by a vote, the decision must be supported by not fewer than 2/3 of the representatives from participating municipalities that collectively have at least 2/3 of the population in the Edmonton Metropolitan Region.

(3) Subject to section 2(5), if a representative is not present for a vote of the Board, or abstains from voting, the representative is deemed to have voted in the affirmative.

**VOTING MECHANISMS AND INTENTS**

**SUPER MAJORITY OR QUALIFIED MAJORITY**

- The requirement for a proposal to gain a specified level or type of support which exceeds a simple majority in order to have effect.
- In some jurisdictions, for example, parliamentary procedure requires that any action that may alter the rights of the minority has a supermajority requirement (such as a two-thirds majority).

**TWO-THIRDS RULE**

- Requiring that two thirds rather than a simple majority of the members of a group must concur in order to exercise the power to make decisions binding upon the whole group.
- Used in multiple jurisdictions, at all levels of government and in many social and political organizations to prevent the dominance of a small majority over a large minority.
- A means of balancing the rights of the entire group with the rights of individuals, decisions require the affirmative consent of at least twice the number of members as are not in favor.
- Constitutes a clear mandate.
DOUBLE MAJORITY PRINCIPLE

- Based on two sets of weights in voting: one given by the number of votes in a decision-making body and the second by proportion of population.
- Applies a two-part test to a vote outcome before a measure is passed.
- Addresses circumstance of disproportional representation within a decision-making body. (e.g. population disparity)
- The mechanism is usually used to require strong support for any measure considered to be of significance.
- This mechanism is used to prevent a small group from enacting decisions that affect the entire population.
- Double majorities are frequently used in municipal annexations wherein majorities of both the residents in the annexing territory and the territory to be annexed must support the annexation.

RELEVANT HISTORY

*An Agenda for Action: Final Report and Recommendations of the Alberta Capital Region Governance Review*

Lou Hyndman

December 2000

*The implementation issues listed below must be addressed by the municipalities through a regional partnership agreement. In some cases, suggestions have been provided for resolving these issues, but those suggestions are negotiable between municipalities and the Province. It is the responsibility of the municipalities to reach an agreement on the best way of addressing these implementation issues.*

Recommendation 2:

4. Representation and voting – Specific mechanisms for representation and voting should be consistent with the following criteria:

- Specify how shared policies will be developed and implemented.
- Recognize the anchor role and predominance of the City of Edmonton.
- Provide representation for every municipality in the region.
- Include a voting formula that is predictable, known and understood, and that enables formal votes to be taken on motions where consensus is not possible. The formula should reflect population, diversity and geography.

*Representation and voting are complex but essential issues. There must be effective mechanisms in place to ensure that decisions can be made and votes can be taken on motions where consensus is not possible. The voting mechanism should ensure that a majority of the municipalities are not able to impose services in an unwilling municipality.*
Conversely, the mechanism should also ensure that a small number of municipalities are not able to prevent the majority from proceeding on an initiative. (pages 19-20)


**Project Team**

CD (Doug) Radke

December 2007

While ACRA [Alberta Capital Region Alliance] has had some successes around specific initiatives and projects, the history of ACRA was not without its challenges. At the heart of many of these was the continuing disagreement over representation and voting. (page 11)

IN 2006, Edmonton City Council voted to end its membership in ACRA, calling on the province to step in and resolve the issues once and for all. (page 11)

In an attempt to address Edmonton’s concerns about decision making, ACRA adopted a double majority voting model in January 2007. With the requirement to achieve a double majority by incorporation type, this model does not reduce the rural / urban tensions that have characterized the history of the region and it did not result in municipalities rejoining ACRA. (page 11)

“…the March 2007 report from the Minister’s Council on Municipal Sustainability recommended that: …Each regional agency must also have the authority to make decisions in the absence of consensus, but the decision process must incorporate some form of ‘double majority (e.g. decisions require the support of a majority of the region’s municipalities that collectively represent a majority of the region’s population) in order to properly balance the interests of communities large and small” (page 12)

The inability to move forward in the face of a lack of consensus had led to the inability to make decisions on key issues. In order for regional planning and decision making to be effective, there must be certainty that once decisions are made on a regional basis, they cannot be overturned by individual municipalities. For that reason, any model that does not bind it members to the decisions made will be ineffective. (page 14)

As several municipal representatives have pointed out, it does not make sense for decisions about future development in the region to proceed without the active involvement and participation of Edmonton. (page 14)

Recognizing the previous ACRA consensus model did not work, they recommend a voting structure currently used by ACRA, which unfortunately tends to encourage faction building
by only passing a vote if a two-thirds majority involving municipalities of every incorporation type agree.17 (page 57)

17 The current ACRA model involves a complex two-step voting procedure. The first step is to get a two-thirds majority of ACRA members in support of a resolution. The second step is to get the support of at least the following: Edmonton or all four other member cities, plus two of the four ACRA counties (counting Strathcona as a county), plus seven of the 14 towns and villages in ACRA. This model was developed when ACRA still had 23 members (including Edmonton) and after Edmonton had served notice it would be withdrawing from ACRA. (page 57)

Consistent with the terms of reference, the governance model recommended in this report does not establish a new order of government. Instead, it ensures balance between the principles of one municipality/one vote and representation by population, and it provides a mechanism for timely, effective decision making. (page 58)

The Board should seek to generate decisions which enjoy the consensus (general agreement) of all participants. (page 64)

In the event the Chair determines that consensus cannot be reached by the end of the meeting next following the meeting in which a proposal arose, a decision about the proposal should be obtained through a vote. (page 64)

Decisions based on Voting at Second Instance
Voting is perhaps the most contentious issue in the proposed governance model. The project team considered a range of options for voting including:

- Voting by population range – Municipalities would be allocated a certain number of votes based on their population and a proposal would require the majority of votes.
- Double majority based on incorporation type – Municipalities would be categorized by type (e.g. cities, towns counties, etc.) A proposal would have to be passed by at least 17 municipalities (two thirds of the total) which include at least 50 percent of each incorporation type grouping.
- Double majority with override – Each municipality would have one vote but for a proposal to pass, it would require the support of at least 15 municipalities with 75 percent of the population. However, regardless of population, any 21 municipalities could vote to pass a motion.
- Double majority with a super-majority – Each municipality would have one vote. For a motion to pass, it must have the support of 17 municipalities with at least 75 percent of the population of the member municipalities.
Following extensive evaluation of each of these options as well as other possible modifications, a double majority voting model with a super-majority is recommended. As part of the voting process, attendance of Board members at decision making should be mandatory. Abstentions by those entitled to vote should not be permitted. In the case of absence or non-participation of a member municipality, its vote should be registered as in agreement with the proposal.

The supermajority model:
- Requires two thirds of municipalities in the Capital Region to agree before a motion is passed.
- Respects the principle of one municipality/one vote but balances this with the principle of representation by population.
- Recognizes that Edmonton is the predominant player in the region when it comes to many services, especially social services, and deserves to have a substantial voice in the determination of what happens in the region.
- Recognizes that Edmonton has the majority of the population in the region.
- Ensures that Edmonton must seek out a large majority (16) of its neighbours in order to achieve its objectives and secure a positive vote.
- Does not allow a group of municipalities with a smaller population base to block votes and prevent progress.
- Is easier to understand than many of the more complex approaches reviewed in this project.

As the largest municipality in the Capital Region, the City of Edmonton has pushed for a regional approach, an objective with which we agree. The voting model requires the City to act responsibly and cooperatively with its neighbors in order to achieve that objective. It presumes that Edmonton would not be willing to jeopardize its opportunity for a truly regional partnership because, if this model is not successful, the alternative is long and protracted debates on options that include annexation and amalgamation. We choose to take a more positive outlook. We believe that, if municipalities give this voting model a decent chance, it will be in the best interests of all municipalities and particularly, the citizens and taxpayers in the Capital Region. (page 65)

Interpretation of s5(2) of the EMRB Regulation
Reynolds Mirth Richards & Farmer LLP
August 29, 2019

The proper interpretation of section 5(2) of the Regulation is that a motion requires the support of two-thirds of the participating Board members, and those Board members supporting the motion must represent two-thirds of the total population of the Edmonton Metropolitan Region. This is consistent with the colloquial reference to a "double majority".
It is important to examine the wording of the Regulation in context, cognizant of the scheme and object of the Regulation. The Regulation functions by appointing a board from all participating municipalities who, together, prepare a growth and service plan for the entirety of the Edmonton Metropolitan Region, as well as make recommendations to the Minister regarding implementation of those plans. The first "guiding principle" set out in the current growth plan is to "Collaborate and coordinate as a Region to manage growth responsibly."

Further, the purpose of the Regulation can be ascertained by reviewing other parts of it. The Regulation contains a provision referencing the mandate of the Board. Section 3(1)(a) states that the Board shall ... "strive towards consensus regarding matters before the Board". The Regulation was drafted in a fashion to encourage consensus among the participating municipalities in resolving disputes and in making any decisions that are before it.

The defining clause in s 5(2) is the portion of the sentence that follows that, namely "... collectively have at least 2/3 of the population in the Edmonton Metropolitan Region." The two-thirds population requirement further identifies what is required for a vote to pass. Put simply, the plain language meaning of s 5(2) is that in order for any decision of the board to be effective, it must have the following support:

- At least two-thirds of the representatives from participating municipalities; and
- The total population of the participating municipalities voting in favour must be at least two-thirds of the population of the Edmonton Metropolitan Region.

This interpretation would mean that Edmonton does have the ability to prevent the passage of any vote given its population. However, Edmonton is not able to force through a motion given the requirement that two-thirds of the members must support it. Our view is that this interpretation better accomplishes the objective of the Regulation, as it requires that Edmonton ensure cooperation with at least some of its regional partners to ensure that a vote succeeds. Therefore, in our opinion, a plain language reading of s 5(2) confirms the "double majority" interpretation set out above.

While the correct interpretation does indicate that, without Edmonton’s support, a vote would not satisfy the threshold set out in section 5(2), we have also reviewed minutes from meetings of the Capital Region Board which indicate that Edmonton has not employed this fact to stand alone against motions supported by other members (based on the previous threshold of 75 percent). On the contrary, it appears that where Edmonton has voted against a motion, it has been joined by other member municipalities.
EMRB Special Board Meeting

Agenda Package Mar. 12/20

Board Strategic Initiative Related Motions

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<tr>
<th>Motion #</th>
<th>Meeting Date</th>
<th>Moved By</th>
<th>Outcome</th>
<th>Motion</th>
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</thead>
<tbody>
<tr>
<td>B2018-06</td>
<td>Feb.8/18</td>
<td>Mayor Young - Leduc</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Regional Agriculture Master Plan Task Force Terms of Reference as amended.</td>
</tr>
<tr>
<td>B2018-02</td>
<td>Feb.8/18</td>
<td>Mayor Young - Leduc</td>
<td>Carried 12-1</td>
<td>That the Edmonton Metropolitan Region Board appoint the Town of Morinville, and Town of Beaumont to the Regional Agriculture Master Plan Task Force.</td>
</tr>
<tr>
<td>B2018-08</td>
<td>Feb.8/18</td>
<td>Mayor Young - Leduc</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Metropolitan Region Servicing Plan Project Charter.</td>
</tr>
<tr>
<td>B2018-09</td>
<td>Feb.8/18</td>
<td>Mayor Young - Leduc</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Metropolitan Region Servicing Plan Task Force Terms of Reference.</td>
</tr>
<tr>
<td>B2018-10</td>
<td>Feb.8/18</td>
<td>Mayor Young - Leduc</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board appoint the Town of Devon, Town of Stony Plain, City of Fort Saskatchewan, City of St. Albert, Leduc County, and Strathcona County to the Metropolitan Region Servicing Plan Task Force.</td>
</tr>
<tr>
<td>B2018-30</td>
<td>Apr.12/18</td>
<td>Mayor Doblanko - Leduc County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board confirm Mayor Rod Shapec as Chair of the Regional Agriculture Master Plan Task Force as of March 2, 2018.</td>
</tr>
<tr>
<td>B2018-40</td>
<td>May.10/18</td>
<td>Mayor Doblanko - Leduc County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board confirm Mayor Ray Ralph as Chair of the Metropolitan Region Servicing Plan Task Force as of April 26, 2018.</td>
</tr>
<tr>
<td>B2018-57</td>
<td>Jun.14/18</td>
<td>Mayor Katchur - Fort Saskatchewan</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the 2018 Regional Transportation Priorities Report.</td>
</tr>
<tr>
<td>B2018-60</td>
<td>Aug.9/18</td>
<td>Mayor Turner - Morinville</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve that a Task Force be used for the Shared Investment for Shared Benefit Project with Board workshops at key points in the project for input and direction.</td>
</tr>
<tr>
<td>B2018-85</td>
<td>Dec.13/18</td>
<td>Mayor Young - Leduc</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board endorse the overall direction of collaboratives for each of the four service areas - Fire/EMS, Emergency Management, Solid Waste and Stormwater.</td>
</tr>
<tr>
<td>B2018-86</td>
<td>Dec.13/18</td>
<td>Mayor Iveson - Edmonton</td>
<td>Carried 10-3</td>
<td>That the Edmonton Metropolitan Region Board approve the Integrated Regional Transportation Master Plan Task Force Terms of Reference to include all 13 members of the Board.</td>
</tr>
<tr>
<td>B2018-87</td>
<td>Dec.13/18</td>
<td>Mayor Heron - St. Albert</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve that the Shared Investment for Shared Benefit Task Force Terms of Reference be amended.</td>
</tr>
<tr>
<td>B2019-05</td>
<td>Feb.14/19</td>
<td>Mayor Shapec - Parkland County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board appoint Mayor Cathy Heron as Vice Chair.</td>
</tr>
<tr>
<td>B2018-06</td>
<td>Feb.14/19</td>
<td>Mayor Ralph - Devon</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board receive the Metropolitan Region Servicing Plan Environmental Scan for information.</td>
</tr>
<tr>
<td>B2019-14</td>
<td>Apr.11/19</td>
<td>Mayor Doblanko - Leduc County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Regional Energy Corridors Advocacy Strategy Project Charter as amended.</td>
</tr>
<tr>
<td>B2019-17</td>
<td>Apr.11/19</td>
<td>Mayor Hnatyshin - Sturgeon County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board appoint Mayor Rod Frank as Chair.</td>
</tr>
<tr>
<td>B2019-18</td>
<td>Apr.11/19</td>
<td>Mayor Katchur - Fort Saskatchewan</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board appoint Mayor Marty Nycholak as Chair.</td>
</tr>
<tr>
<td>B2019-25</td>
<td>Jun.13/19</td>
<td>Mayor Hnatyshin - Sturgeon County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Regional Broadband Project Charter (Phase 1).</td>
</tr>
<tr>
<td>B2019-26</td>
<td>Jun.13/19</td>
<td>Mayor Ralph - Devon</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Integrated Regional Transportation Master Plan Project Charter.</td>
</tr>
<tr>
<td>B2019-27</td>
<td>Jun.13/19</td>
<td>Mayor Iveson - Edmonton</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Integrated Regional Transportation Master Plan Task Force Terms of Reference.</td>
</tr>
<tr>
<td>B2019-28</td>
<td>Jun.13/19</td>
<td>Mayor Iveson - Edmonton</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board appoint the City of Edmonton, City of Beaumont, City of Fort Saskatchewan, Town of Morinville, Town of Stony Plain, Sturgeon County and Strathcona County to the Integrated Regional Transportation Master Plan Task Force.</td>
</tr>
<tr>
<td>B2019-32</td>
<td>Jun.13/19</td>
<td>Mayor Choy - Stony Plain</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board endorse the Metropolitan Region Servicing Plan Task Force Draft Principles.</td>
</tr>
<tr>
<td>B2019-33</td>
<td>Jun.13/19</td>
<td>Mayor Iveson - Edmonton</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board endorse the overall direction of collaboratives for each of the four service areas - Fire/EMS, Emergency Management, Solid Waste and Stormwater.</td>
</tr>
<tr>
<td>B2019-49</td>
<td>Oct.10/19</td>
<td>Mayor Doblanko - Leduc County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board seek a 6-month extension from the Government of Alberta to bring the final MRSP Report to the Task Force, Board, and inform member municipalities in the completion of the inaugural MRSP.</td>
</tr>
<tr>
<td>B2019-61</td>
<td>Dec.12/19</td>
<td>Mayor Frank - Strathcona County</td>
<td>Carried 12-1</td>
<td>That the Edmonton Metropolitan Region Board approve the Strategic Guidance document to inform the Shared Investment for Shared Benefit strategic initiative.</td>
</tr>
<tr>
<td>B2019-62</td>
<td>Dec.12/19</td>
<td>Mayor Choy - Stony Plain</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board confirm Mayor Gale Katchur as Chair of the Integrated Regional Transportation Master Plan Task Force as of October 24, 2019.</td>
</tr>
<tr>
<td>B2019-63</td>
<td>Dec.12/19</td>
<td>Mayor Katchur - Fort Saskatchewan</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board confirm Mayor John Stewart as Vice Chair of the Integrated Regional Transportation Master Plan Task Force as of October 24, 2019.</td>
</tr>
<tr>
<td>B2019-64</td>
<td>Dec.12/19</td>
<td>Mayor Ralph - Devon</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Metropolitan Region Servicing Plan.</td>
</tr>
<tr>
<td>B2019-65</td>
<td>Dec.12/19</td>
<td>Mayor Choy - Stony Plain</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board resolve to create an MRSP Standing Committee by February 2020, and that the MRSP Standing Committee is subject to change based on the current governance review.</td>
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Board REF Related Motions

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<td>B2018-45</td>
<td>Jun.14/18</td>
<td>Mayor Iveson - Edmonton</td>
<td>Carried Unanimously</td>
<td>That Edmonton Metropolitan Region Board Administration develop criteria for evaluation of Regional Evaluation Framework (REF) applications that consist of amendments to statutory plans as outlined in Section 5.7.1 (e) of the Edmonton Metropolitan Region Growth Plan in order to provide clarity on expectations of density targets, beyond or in addition to what is included in the existing planning toolkit.</td>
</tr>
<tr>
<td>B2018-82</td>
<td>Dec.13/18</td>
<td>Mayor Hnatyshin - Strurgeon County</td>
<td>Carried 12-1</td>
<td>That the Edmonton Metropolitan Region Board approve the Strurgeon Valley Special Study Area Negotiated Policies.</td>
</tr>
<tr>
<td>B2019-66</td>
<td>Dec.12/19</td>
<td>Mayor Doblanko - Leduc County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board affirm the June 14, 2018 member motion REF Amendment Evaluation Criteria has been achieved.</td>
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<td>B2017-50</td>
<td>Dec.14/17</td>
<td>Mayor Doblanko - Leduc County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board appoint Leduc, Morinville, and Parkland County to the Executive Committee.</td>
</tr>
<tr>
<td>B2017-51</td>
<td>Dec.14/17</td>
<td>Mayor Choy - Stony Plain</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board appoint Beaumont, Devon, Leduc County and St. Albert to the Audit &amp; Finance Committee.</td>
</tr>
<tr>
<td>B2018-03</td>
<td>Feb.8/18</td>
<td>Mayor Young - Leduc</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Executive Committee Terms of Reference as amended.</td>
</tr>
<tr>
<td>B2018-13</td>
<td>Feb.8/18</td>
<td>Mayor Doblanko - Leduc County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the revised Audit &amp; Finance Committee Terms of Reference.</td>
</tr>
<tr>
<td>B2018-14</td>
<td>Feb.8/18</td>
<td>Mayor Stewart - Beaumont</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board confirm Mayor Tanni Doblanko as Chair of the Audit &amp; Finance Committee as of January 11, 2018.</td>
</tr>
<tr>
<td>B2018-12</td>
<td>May.10/18</td>
<td>Mayor Young - Leduc</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Executive Committee Terms of Reference.</td>
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### Board Finance Related Motions

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<th>Outcome</th>
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<td>B2018-16</td>
<td>Feb.8/18</td>
<td>Mayor Doblanko - Leduc County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the 2018/19 Budget and Workplan.</td>
</tr>
<tr>
<td>B2018-29</td>
<td>Apr.12/18</td>
<td>Mayor Doblanko - Leduc County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Adjusted 2018/19 Budget.</td>
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<tr>
<td>B2019-04</td>
<td>Feb.14/19</td>
<td>Mayor Young - Leduc</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the 2018/19 Budget Review &amp; Adjustments.</td>
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<tr>
<td>B2019-15</td>
<td>Apr.11/19</td>
<td>Mayor Doblanko - Leduc County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Draft 2019/20 Budget.</td>
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<tr>
<td>B2019-48</td>
<td>Oct.10/19</td>
<td>Mayor Doblanko - Leduc County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the Revised 2019-2020 Budget.</td>
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### Board Planning Related Motions

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<th>Outcome</th>
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<tr>
<td>B2018-17</td>
<td>Feb.8/18</td>
<td>Mayor Iveson - Edmonton</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve the draft Stakeholder Engagement Plan.</td>
</tr>
<tr>
<td>B2018-18</td>
<td>Feb.8/18</td>
<td>Mayor Hnaty - Sturgeon County</td>
<td>Carried Unanimously</td>
<td>That during In Camera sessions of the Board or Committee meeting, attendees shall include; Board members or Alternates; CAOs and the CEO, EMRB staff or other expert advisors as appropriate and only where relevant for the topic under discussion.</td>
</tr>
<tr>
<td>B2018-61</td>
<td>Aug.9/18</td>
<td>Mayor Iveson - Edmonton</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board approve Policy G005 - Board Meeting Procedures.</td>
</tr>
<tr>
<td>B2018-70</td>
<td>Aug.9/18</td>
<td>Mayor Choy - Stony Plain</td>
<td>Carried Unanimously</td>
<td>That the appointment of the successful candidate be announced by the Chair and Vice Chair on behalf of the Edmonton Metropolitan Region Board.</td>
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<tr>
<td>B2019-42</td>
<td>Oct.10/19</td>
<td>Mayor Stewart - Beaumont</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board appoint a non-elected Board Chair.</td>
</tr>
<tr>
<td>B2019-50</td>
<td>Oct.10/19</td>
<td>Mayor Heron - St. Albert</td>
<td>Carried 11-2</td>
<td>That the Edmonton Metropolitan Region Board conduct a strategic review of activities as part of its 2019 Strategic Planning Process with an increased emphasis on good governance, process improvements, impact on municipal operations, and red-tape reduction, to ensure continued alignment with regional and Provincial outcomes.</td>
</tr>
<tr>
<td>B2019-51</td>
<td>Oct.10/19</td>
<td>Mayor Heron - St. Albert</td>
<td>Carried 12-1</td>
<td>Acid that the EMRB reaffirm their commitment to the mandate, the work of the board and to advancing the Region’s prosperity.</td>
</tr>
<tr>
<td>B2019-52</td>
<td>Oct.10/19</td>
<td>Mayor Shaigec - Parkland County</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Regional Board (EMRB) conduct a strategic review of the EMRB activities related to their mandate and impact on municipal operations, as amended.</td>
</tr>
<tr>
<td>B2019-54</td>
<td>Nov.22/19</td>
<td>Mayor Ralph - Devon</td>
<td>Carried Unanimously</td>
<td>That the Edmonton Metropolitan Region Board direct the Chair and the CEO to send a letter to the Minister of Municipal Affairs outlining the motion passed at the October 10, 2019 Board meeting and include the Message from the Board from the 2018-2019 EMRB Annual Report.</td>
</tr>
</tbody>
</table>
Appeal or Dispute Resolution Mechanism

Background

Acknowledging the complex process and jurisdictional matters at issue in consideration of an appeal or dispute resolution mechanism, EMRB Administration sought guidance in this regard from legal counsel to the Board, as represented by Reynolds Mirth Richards and Farmer (RMRF).

In addition, the Calgary Metropolitan Region Board (CMRB) has undertaken significant similar research regarding an appeal or dispute resolution mechanisms and the potential options for consideration.

Therefore, attached (1), please find a comprehensive overview for Board consideration as outlined by RMRF. Also attached (2/3), please find an examination of the matter as prepared by CMRB.

Attachments:

1. RMRF Letter to the EMRB – Appeal or Dispute Resolution Mechanism for Growth Management Boards
2. CMRB – Appeal or Reconsideration Mechanism – February 21, 2020
3. CMRB – Dispute Resolution Mechanism – September 20, 2019
March 6, 2020

Delivered by Email

Edmonton Metropolitan Region Board.
#1100 Bell Tower
10104 103 Avenue
Edmonton, AB T5J 0H8

Dear Sir/Madam:

Re: Appeal or Dispute Resolution Mechanism for Growth Management Boards

You have requested that we provide an outline of the applicable legislation, regulations, and preliminary considerations with respect to the development of an appeal or dispute resolution mechanism by the Edmonton Metropolitan Region Board (the “EMRB”).

This letter sets out the following:

(1) The statutory requirement for an appeal or dispute resolution mechanism;

(2) The dispute resolution mechanism which previously applied to the EMRB;

(3) A summary of dispute resolution and appeal mechanisms under the Municipal Government Act (the “MGA”), and;

(4) Considerations that the EMRB may take into account in determining how to begin the process of preparing an appeal or dispute resolution mechanism.

There are many possible forms of appeal and dispute resolution mechanisms. The prior dispute resolution mechanism for the Capital Region Board, and appeal and dispute resolution mechanisms under the current MGA, provide a number of examples of possible approaches.

However, the EMRB is not required to adopt any particular model or limited to adopting the models discussed in this letter. In preparing an appeal or dispute resolution mechanism, the ERMB will need to consider a broad range of matters including what types of Board decisions will be subject to review, who will adjudicate on matters and based on what criteria, timelines, procedures, and associated costs.
(1) Statutory Requirement for an Appeal or Dispute Resolution Mechanisms

Section 708.23 of the MGA imposes a requirement that a growth management establish, by bylaw, an appeal mechanism or dispute resolution mechanism:

Appeal or dispute resolution mechanism

708.23(1) A growth management board must at its inception establish by bylaw an appeal mechanism or dispute resolution mechanism, or both, for the purposes of resolving disputes arising from actions taken or decisions made by the growth management board.

(2) Section 708.08(2) and (3) apply to a bylaw made under this section as if the bylaw were made under that section.

The effect of subsection (2) is that a bylaw of this nature will not come into force until it has been approved by the Minister.

The Edmonton Metropolitan Region Board Regulation (the “EMRB Regulation”) does not contain any further information or requirements in respect to this requirement. However, Section 13 of the EMRB Regulation does acknowledge that the appeal or dispute resolution mechanism may be applicable to EMRB hearings or decisions with respect to the approval of statutory plans under the Regional Evaluation Framework.

(2) Prior Appeal and Dispute Resolution Mechanism

The Capital Region Board Regulation (the “CRB Regulation”), which predated the current EMRB Regulation, contained a dispute resolution clause that was applicable to the Capital Region Board (as it then was) specifically:

Dispute resolution

25(1) A participating municipality may make a complaint in writing to the Capital Region Board if the participating municipality is of the view that there has been a breach of process, improper administration or discriminatory treatment by the Capital Region Board.

(2) On receipt of a complaint under subsection (1), the Capital Region Board shall attempt to resolve the complaint informally with the participating municipality.

(3) If a complaint cannot be resolved under subsection (2), the Capital Region Board may refer the matter to mediation.

(4) If the parties are not able to resolve the matter through mediation, the Capital Region Board may refer the matter to arbitration under the *Arbitration Act.*
Under the CRB Regulation, decisions of the Capital Region Board with respect to the approval of statutory plans under the Regional Evaluation Framework were stated to be "final and not subject to appeal" (s. 22(5)), and were not subject to the dispute resolution process in s. 25.

(3) Dispute Resolution and Appeal Mechanisms under the Municipal Government Act

The MGA established a number of mechanisms for the review of decisions, complaints, disputes, and appeals.

The following is an overview of some of the procedures established by the MGA, which may be informative or illustrative for the EMRB to consider in determining how to begin the task of preparing a bylaw to establish a dispute resolution or appeal mechanism.

Administrative Bodies (Other Legislation)

The MGA enables certain applications and appeals to be made to administrative bodies established by legislation other than the MGA, and grants the administrative bodies in question the authority to resolve certain disputes.

For example, if a municipality has given notice of intention to expropriate a portion of a parcel of land, the owner may apply to the Land Compensation Board (the "LCB"). The LCB may direct the municipality to expropriate the whole parcel if, in the LCB's opinion, the expropriation of only a part of the parcel is unfair to the owner (s. 15). Other examples of matters to be determined by the LCB are the compensation for damages caused by a road closure or temporary road or right of way closure (ss. 23 to 26), compensation payable by a municipality for conservation reserve (s. 664.2) and the amount of compensation payable for injurious affection as a result of the construction of a public work (s. 534(10)). In proceedings under s. 534, the claimant and municipality may (as an alternative to proceedings before the LCB) agree to have the amount determined by a binding arbitration under the Arbitration Act (s. 534(9)). Decisions of the LCB under s. 534 are subject to appeal to the Alberta Court of Appeal (s. 534(13)).

Section 534 of the MGA is an example of a situation where more than one possible dispute resolution mechanism (i.e., arbitration or proceedings before the LCB) has been provided for, dependent upon the agreement of the parties.

Another example is the Alberta Utilities Commission (the "AUC"). The MGA authorizes the AUC to hear and resolve appeals with respect to municipal public utility service charges, rates or tolls (s. 43) as well as disputes involving municipalities, regional services commissions and controlled corporations with respect to public utility matters (ss. 44, 75.4 and 602.14). The AUC's proceedings are governed by its enabling legislation, the Alberta Utilities Commission Act. Decisions of the AUC are subject to appeal to the Alberta Court of Appeal, on limited grounds (s. 29 of Alberta Utilities Commission Act).
Review by a Municipal Council

Section 547 of the MGA authorizes Council to review a written order issued by a designated officer under s. 545 (order to remedy) or s. 546 (dangers and unsightly properties) of the MGA.

A person affected by a decision of a council under s. 547 may appeal to the Court of Queen’s Bench, but only if:

(a) the procedure required to be followed by this Act is not followed, or

(b) the decision is patently unreasonable.

MGA, ss. 548(1)

Section 548 also sets out timelines and requirements for appeals to the Court of Queen’s Bench, and specifies that the Court of Queen’s Bench may confirm the decision or declare it invalid and send it back to Council with directions.

Bodies or Boards Established by Council

The MGA also provides for certain complaints and appeals to be heard by boards established by a municipal council either at the local level or on an intermunicipal basis. For example, a municipal council must establish a subdivision and development appeal board or intermunicipal subdivision and development appeal board to hear appeals from subdivision and development decisions, in accordance with the procedures and requirements set out in Part 17, Division 10 of the MGA. The MGA provides for a further right of appeal, to the Alberta Court of Appeal, from decisions of an SDAB or ISDAB, however, an application for permission to appeal is required and appeals are limited to questions of law or jurisdiction which is of sufficient importance to warrant a further appeal and which has a reasonable prospect of success (s. 688).

Another example is an assessment review board established by Council under Part 11 of the MGA, to hear assessment complaints. These boards conduct hearings in accordance with the requirements established by the MGA, and their decision are subject to judicial review by the Court of Queen’s Bench in accordance with s. 470 of the MGA.

Arbitration

Under ss. 708.34 and 708.35 of the MGA, municipalities that are required to create an intermunicipal collaboration framework (“ICF”) must refer a matter to arbitration in any of the following situations:

- The municipalities cannot create an ICF within the time required;
- The municipalities are reviewing an existing ICF, and do not agree that the ICF continues to serve the interest of the municipalities. This requires one of the municipalities to
provide written notice to the other municipality or municipalities, and the Minister, identifying the disagreement, or;

- The municipalities are party to an existing ICF, but have been unable to resolve a dispute under the ICF using the dispute resolution process provided for in the ICF within one year of beginning the dispute resolution process.

The arbitrator is chosen by the municipalities, or the Minister if the municipalities cannot agree (s. 708.35(2)). The Arbitration Act generally applies to the process (s. 708.35(6)), unless the Arbitration Act conflicts or is inconsistent with the MGA.¹ The arbitrator is generally required to resolve the issues in dispute within one year (s. 708.36(1)). The arbitrator may attempt mediation as a part of the arbitration process, and if the mediation is successful the arbitrator may require the municipalities to complete an ICF accordingly within a specified time (s. 708.36(2)).

The arbitration proceedings are open to the public unless the arbitrator orders otherwise (s. 708.36(5)). Section 708.38 of the MGA specifically identifies the matters that may be considered by an arbitrator in resolving a dispute. There are restrictions on the arbitrator’s authority, however, an arbitrator may direct a municipality to transfer revenue to another municipality if the transfer is directly related to the services provided by a municipality that the transferring municipality derives benefit from, and the arbitrator considers it equitable (s. 708.36(7)). Once the arbitrator has made a decision, the municipalities have 60 days to adopt an ICF in accordance with the arbitrator’s decision (s. 708.4(1)) and 2 years to adopt their bylaws as necessary to reflect the framework (s. 708.4(2)).

The arbitrator has the authority to require a party to pay or share in the payment of costs, fees and disbursements related to the arbitration process (s. 708.36(3)). In the absence of any direction from the arbitrator or agreement of the parties, the costs of an arbitration are apportioned between the municipalities on the basis of their respective equalized assessments (s. 708.41).

**General Ministerial Powers**

Part 14 of the MGA grants the Minister powers with respect to a number of matters, including the ability to become involved in a disagreement between municipalities. If an intermunicipal disagreement is referred to the Minister, or the Minister decides to become involved in an intermunicipal disagreement, the Minister is authorized to conduct investigations or inquiries, appoint a mediator, and/or make a decision to settle the dispute and order the municipalities to implement the decision (s. 570).

The Minister may also make an order, if the Minister considers it appropriate to further the development or an ICF, at any time; even when an arbitration is occurring. This may include an

¹ The Arbitration Act sets out processes for court intervention, the arbitrator’s jurisdiction, the conduct of arbitrations, award and termination of arbitration, and remedies including appeals to the Court of Queen’s Bench and/or Court of Appeal.
order establishing an ICF that is binding on the municipalities.

**Municipal Government Board ("MGB")**

The MGB’s jurisdiction is set out in s. 488(1) of the MGA:

(a) to hear complaints about assessments for designated industrial property,

(b) to hear any complaint relating to the amount set by the Minister under Part 9 as the equalized assessment for a municipality,

(c) repealed 2009 c29 s34,

(d) to decide disputes between a management body and a municipality or between 2 or more management bodies, referred to it by the Minister under the *Alberta Housing Act*,

(e) to inquire into and make recommendations about any matter referred to it by the Lieutenant Governor in Council or the Minister,

(e.1) to perform any duties assigned to it by the Minister or the Lieutenant Governor in Council,

(f) to deal with annexations in accordance with Part 4,

(g) to decide disputes involving regional services commissions under section 602.15 [*disputes between Regional Services Commissions or Regional Services Commission and a municipality*],

(h) to hear appeals pursuant to section 619 [*appeal of municipality’s failure to approve an application to amend a statutory plan or land use bylaw to the extent that it complies with certain federal or provincial licences, permits, approvals or authorizations*]

(i) to hear appeals from subdivision decisions pursuant to section 678(2)(a)

(j) to decide intermunicipal disputes pursuant to section 690 and

(k) to hear appeals pursuant to section 648.1 [*appeal of off-site levy for specified purposes*].

Part 12, Division 2 of the MGA sets out processes with respect to hearings before the MGB including the filing of complaints, disputes and appeals, notice of hearing, proceedings before the MGB, MGB decisions, costs of proceedings, and rehearing, amongst other matters. As of June 1, 2018, the MGB has established procedural rules with respect to annexation, subdivision,

\[2\] Mediation is a prerequisite to an appeal to the MGB with respect to an intermunicipal dispute.
intermunicipal disputes, assessment complaints, and residual matters.

The MGB’s authority with respect to these matters is determined by reference to the MGA. For example, in the case of an appeal of an off-site levy, the MGB may declare the bylaw or a portion of the bylaw to be invalid, and provide that the bylaw may be repassed or amended as determined by the MGB (ss. 648.1(2)(b)).

Part 12, Division 3 of the MGA sets out guidelines for the judicial review of MGB decisions, which must be filed within 60 days of the date of the MGB’s decision.

**Judicial Review of Decisions**

In addition to the existing appeal and dispute resolution processes set out in the MGA, which may be informative, it is important to remember that any appeal and dispute resolution process established by the EMRB will ultimately operate alongside the process of judicial review.

As a general principle, decisions of public bodies such as the EMRB are subject to judicial oversight by the superior courts of the Province. A person who claims to be affected by a decision could bring an application for judicial review of the EMRB’s decision to the Court of Queen’s Bench of Alberta. However, the purpose of a judicial review application is not for the Court to re-hear or re-consider the matter before the body and substitute its own judgement or decision. The principles of judicial review are founded in the principle of judicial restraint, and are intended to preserve the legality, rationality and fairness of the decision making process.

(4) **Matters for Consideration by the Board**

A review of the various appeal and dispute mechanism procedures provided for under the MGA, when consider alongside the overriding remedy of judicial review, illustrates that there are a number of matters for consideration when considering the establishment of a process of this nature, key elements of which are summarized below.

**Decision Maker or Reviewing Body**

The MGA provides for a number of different decision makers or avenues of review, depending on the type of appeal or dispute. These include individual municipal councils, boards or bodies established by a municipal council in accordance with the MGA, administrative bodies established under other provincial legislation, arbitrators, the MGB, the Minister, or the Courts.

An important consideration is the EMRB has the direct authority to require a decision maker or body to resolve appeals or disputes. For example, if the EMRB were to provide for a dispute resolution and appeal process which required arbitration, no external approvals (other than the requirement for Ministerial of the bylaw) would be required. An example would be the previous dispute resolution mechanism under the CRB Regulation. If, however, the EMRB wanted to provide for a dispute resolution or appeal process which involved, for example, the Minister, the MGB, or the Courts, then the involvement of the Minister, Cabinet or the Legislature would be
required, depending on the specifics of the proposal.

**Scope of Review**

The MGA also demonstrates that appeal and dispute resolution mechanisms frequently contain restrictions, in terms of the types of decisions or dispute that are subject to review and the basis on which they can be reviewed. For example, s. 548 of the MGA limits appeals to the Court of Queen’s Bench with respect to council decisions with respect to situations where the procedure required under the MGA was not followed, or the decision is patently unreasonable. Similarly, certain appeals to the Court of Appeal are limited to question of law or jurisdiction which are of sufficient importance to warrant a further appeal and which have a reasonable prospect of success (s. 688). In contrast, other appeal and dispute resolution processes are *de novo*, and no deference is required.

The CRB Regulation is also illustrative on this point, as it applied only in the event of a breach of process, improper administration or discriminatory treatment by the Capital Region Board (as it then was).

**Criteria for Decision Making**

A dispute resolution or appeal process may set out criteria which bind the decision maker, or which the decision-maker must take into account when making its decision. For example, SDABs and ISDABs are directed to comply with or have regard to various legislative and regulatory requirements and municipal bylaws when making their decisions. Similarly, an arbitrator considering an ICF dispute must consider the criteria expressly provided for in the MGA. It would be open to the EMRB, in establishing its own process, to provide direction to a decision maker in terms of the applicable requirements and criteria.

**Timelines and Procedures**

Dispute resolution and appeal processes have the potential to be time consuming, and expensive. An important consideration is the EMRB’s expectations with respect to timelines and procedures, in terms of how expeditiously matters will be dealt with and the expenditure of time and resources that will be required on behalf of the participants in the process including the EMRB. Costs are a related consideration, not only in terms of how the process that is chosen will affect the costs, but also in terms of who will be responsible for the payment of costs and whether the decision maker has the authority to make awards with respect to costs.

**Further Rights of Appeal**

A dispute resolution or appeal process may also provide for further review or appeal. As identified above, requiring the involvement of the Minister, MGB or Courts, will involve action on behalf of the Minister, Cabinet or Legislature.
Thank you for having sought our assistance in this matter. If you require additional information or assistance as the EMRB considers these issues, we would be pleased to assist.

Yours truly,

REYNOLDS MIRTH RICHARDS & FARMER LLP

PER:

DAINA J. YOUNG
DJY/mln
2653225.doc;March 6, 2020
**Agenda Item 8**

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<td>Purpose</td>
<td>For Discussion</td>
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<tr>
<td>Subject</td>
<td>CMRB Appeal or Reconsideration Mechanism</td>
</tr>
<tr>
<td>Meeting Date</td>
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That the Governance Committee provide input to craft the next version of the document to share for input with the CAOs.

**Summary**

- The *Municipal Government Act* (MGA) requires the CMRB to approve an appeal mechanism or dispute resolution mechanism by bylaw for the purposes of resolving disputes arising from actions taken or decisions made by the growth management board.

- In response to a request of all ten municipalities by the Chair, Rocky View County submitted a proposal detailing potential mechanisms to be explored by the CMRB.

- At its May 2018 meeting, the Governance Committee provided the following direction to CMRB Administration, “Convene a workshop of member CAOs, providing them with resources needed -including legal if necessary, in order to make a recommendation to the Board regarding a dispute resolution mechanism or appeal process that will satisfy the requirements of the legislation and provide a workable mechanism for the Board in the future.”

- CAO workshops were held on July 11, September 11 and December 5, 2018. These meetings were productive and led to a consensus position among the CAOs that there is need to develop a dispute resolution mechanism. This mechanism would be used to mediate disagreements between municipalities in the event a challenge is filed against a recommendation of approval of an IREF application by CMRB Administration.

- At the September 2019 Board meeting, the Governance Committee recommended Proposed Option 2 of the CMRB Dispute Resolution Mechanism for approval by the Board.

- At the October 2019 meeting of the Board, this issue was referred back to the Governance Committee for further discussion.
1. Introduction

The MGA requires the creation of an appeal or dispute resolution mechanism. There are several dispute mechanisms which could be considered by the Board including, but not limited to: mediation, arbitration, mediation-arbitration, referral to an adjudicative body or referral to the courts.

However, Section 13 of the CMRB Regulation states:

(4) Subject to an appeal or dispute resolution mechanism established under section 708.23(1) of the Act or as otherwise provided in the Framework, a participating municipality has no right to a hearing before the Board in respect of its approval or rejection of a statutory plan.

(5) Subject to section 708.23(1) of the Act, a decision of the Board under this section is final and not subject to appeal.

(6) This section applies only to statutory plans to be adopted by a participating municipality after the establishment of the Framework.

It is important to note that the Regulation recognizes the supremacy of the Board in approving statutory plans which are reviewed under the Interim Region Evaluation Framework (IREF).

2. Background

The full text of the pertinent section of the MGA and of the CMRB Regulation are as below.

Municipal Government Act

708.23(1) A growth management board must at its inception establish by bylaw an appeal mechanism or dispute resolution mechanism, or both, for the purposes of resolving disputes arising from actions taken or decisions made by the growth management board.

(2) Section 708.08(2) and (3) apply to a bylaw made under this section as if the bylaw were made under that section

CMRB Regulation

Approval of statutory plan

13(1) Statutory plans to be adopted by a participating municipality that meet the criteria set out in the Framework must be submitted to the Board for approval.
(2) In accordance with the Framework, the Board may approve or reject a statutory plan.

(3) A statutory plan referred to in subsection (1) has no effect unless it is approved by the Board under subsection (2).

(4) Subject to an appeal or dispute resolution mechanism established under section 708.23(1) of the Act or as otherwise provided in the Framework, a participating municipality has no right to a hearing before the Board in respect of its approval or rejection of a statutory plan.

(5) Subject to section 708.23(1) of the Act, a decision of the Board under this section is final and not subject to appeal.

(6) This section applies only to statutory plans to be adopted by a participating municipality after the establishment of the Framework.

3. Work to Date

At the request of the Governance Committee CMRB Administration convened three CAO workshops in an attempt to reach a consensus position on what type of appeal/dispute resolution mechanism would best suit the needs of the CMRB.

The three workshops were successful in framing the issue, exploring the need and applicability of such a mechanism, and determining in what circumstances an appeal mechanism would best serve the needs of the CMRB.

There was wide-ranging discussion at all three workshops, and consensus was reached that a mediation process should be implemented for IREF decisions where another municipality lodges a challenge against a recommendation of approval from the CMRB Administration (this will be discussed further below); however, there was no consensus reached on two critical issues:

1. Whether or not an appeal mechanism should remain internal to the Board or if there should be an external body to which a member can appeal.
   - There were three options discussed on this topic:
     i. That an appeal should be made to an external body, such as the Municipal Governance Board.
     ii. That an appeal should be made to the Minister of Municipal Affairs.
     iii. That it should be a reconsideration process by the CMRB.

2. Whether the appeal mechanism should be available on decisions other than IREF decisions.
   - While much of the discussion on this topic focussed on appeals relating to a denied IREF application, there were municipal representatives who wanted to explore the possibility that the appeal mechanism could have broader applicability.
Considering the lack of consensus among the ten members, the Chief Officer of the CMRB has put forward two questions for feedback from the Governance Committee.

### 4. Appeal vs. Reconsideration Process

The below chart identifies pros and cons of each potential process.

<table>
<thead>
<tr>
<th>Mechanism</th>
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<th>Cons</th>
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<tr>
<td>Appeal to the Municipal Government Board</td>
<td>External body – perception of independence</td>
<td>Cedes primacy of the CMRB on decisions in the Region</td>
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<td></td>
<td>Potential to access the expertise of individuals from outside the Region</td>
<td>Requires legislative change</td>
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<td>Timing no longer controlled by the Board – likely longer process</td>
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<td>Increased cost to municipalities</td>
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<td>Appeal to the Minister of Municipal Affairs</td>
<td>External body – perception of independence</td>
<td>Cedes primacy of the CMRB on decisions in the Region</td>
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<td>Limited additional cost to municipalities</td>
<td>Requires Ministerial agreement to the process</td>
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<td></td>
<td>Potential to access expertise of individuals from outside the Region</td>
<td>Timing no longer controlled by the Board – potentially longer process</td>
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<tr>
<td>Refer the matter to arbitration before a single arbitrator in accordance with the <em>Alberta Arbitration Act</em></td>
<td>External body – perception of independence</td>
<td>Cedes primacy of the CMRB on decisions in the Region</td>
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<td>Requires no legislative changes</td>
<td>Timing no longer controlled by the Board – potentially longer process</td>
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<td>Reconsideration process by the CMRB</td>
<td>Requires no legislative changes</td>
<td>Internal body – perception of bias</td>
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<tr>
<td></td>
<td>Timing remains in control of the Board</td>
<td>No ability to access expertise of individuals from outside the Region</td>
</tr>
<tr>
<td></td>
<td>Limited additional cost to municipalities</td>
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<tr>
<td></td>
<td>Cedes primacy of the CMRB on decisions in the Region</td>
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</table>
CMRB Administration is seeking feedback on the four potential mechanisms from the Governance Committee.

5. Applicability of the Appeal/Reconsideration Mechanism

The CMRB has been enabled to provide a number of coordinating functions to member municipalities in the Region. The Regulation provides significant latitude in the range of endeavours the Board can direct Administration to undertake as long as those endeavours are focused on benefiting the members of the Region. One key role of the Region is to develop the Growth and Servicing Plans, the policies necessary to implement these plans, and the Regional Evaluation Framework necessary to ensure member municipalities are meeting the agreed upon commitments made in Growth and Servicing Plans.

The Board has the authority to determine which Board decisions will be subject to an appeal/reconsideration mechanism.

<table>
<thead>
<tr>
<th>Scope</th>
<th>Pros</th>
<th>Cons</th>
</tr>
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<tbody>
<tr>
<td>Applicable solely to REF/IREF decisions</td>
<td>IREF decisions follow an agreed upon process, measured against mutually agreed upon criteria</td>
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<td></td>
<td>IREF decisions give a clear approval/ refusal – clear what is being appealed</td>
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<tr>
<td></td>
<td>Recognizes the role of the Board</td>
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<tr>
<td>Applicable to all decisions of the Board</td>
<td>Other decisions of the Board are not measured against a mutually agreed upon criteria</td>
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<td></td>
<td>The Board has an existing procedural policy motion in place</td>
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<td></td>
<td>Creates potential to use appeal process to bog down the work of the Board</td>
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</table>

It is the opinion of CMRB Administration that limiting the scope of the appeal/reconsideration mechanism to REF/IREF decisions is the most appropriate use of this tool. This is because REF/IREF decisions:

- follow an agreed upon process,
- are subjected to third party evaluation, and
- are measured against a mutually agreed upon criteria.
Other decisions made by the Board are not made or measured in this way, therefore there is no basis to appeal/reconsider a decision.

CMRB Administration requests the feedback of the Governance Committee on this matter. Does the Committee agree that an appeal/reconsideration process should be applicable solely to REF/IREF decisions?

6. Next Steps

Administration will take the input from the Governance Committee to craft the next version of the document to share for input with the CAOs.
<table>
<thead>
<tr>
<th>Agenda Item</th>
<th>6</th>
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<tr>
<td>Submitted to</td>
<td>Governance Committee</td>
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<tr>
<td>Purpose</td>
<td>For Decision</td>
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<tr>
<td>Subject</td>
<td>CMRB Dispute Resolution Mechanism</td>
</tr>
<tr>
<td>Meeting Date</td>
<td>September 20, 2019</td>
</tr>
</tbody>
</table>

**That the Governance Committee RECOMMEND FOR APPROVAL to the Board Option 2 of the proposed dispute resolution and appeal mechanisms.**

**Background**

- The *Municipal Government Act* (MGA) requires the CMRB to approve an appeal mechanism or dispute resolution mechanism by bylaw for the purposes of resolving disputes arising from actions taken or decisions made by the growth management board.

- In response to a request of all ten municipalities by the Chair, Rocky View County submitted a proposal detailing potential mechanisms to be explored by the CMRB.

- At its May, 2018 meeting, the Governance Committee provided the following direction to CMRB Administration, "Convene a workshop of member CAOs, providing them with resources needed -including legal if necessary, in order to make a recommendation to the Board regarding a dispute resolution mechanism or appeal process that will satisfy the requirements of the legislation and provide a workable mechanism for the Board in the future."

- CAO workshops were held on July 11, September 11 and December 5, 2018. These meetings were productive and led to a consensus position among the CAOs that there is need to develop a dispute resolution mechanism. This mechanism would be used to mediate disagreements between municipalities in the event a challenge is filed against a recommendation of approval of an IREF application by CMRB Administration.

- In discussion with Alberta Municipal Affairs regarding the intent of the drafters with respect to the applicability of the appeal mechanism or dispute resolution mechanism, Municipal Affairs responded that, "... the dispute resolution mechanism referenced in 708.23 is intended for all things, including the statutory plans, if the Board so chooses..."

**Attachments**

- Draft Bylaws
1. Introduction

The MGA requires the creation of an appeal or dispute resolution mechanism. There are several dispute mechanisms which could be considered by the Board including, but not limited to: mediation, arbitration, mediation-arbitration, referral to an adjudicative body or referral to the courts.

However, Section 13 of the CMRB Regulation states:

(4) Subject to an appeal or dispute resolution mechanism established under section 708.23(1) of the Act or as otherwise provided in the Framework, a participating municipality has no right to a hearing before the Board in respect of its approval or rejection of a statutory plan.

(5) Subject to section 708.23(1) of the Act, a decision of the Board under this section is final and not subject to appeal.

(6) This section applies only to statutory plans to be adopted by a participating municipality after the establishment of the Framework.

It is important to note that the regulation recognizes the supremacy of the Board in approving statutory plans which are reviewed under the Interim Region Evaluation Framework (IREF).

2. Background

The full text of the pertinent section of the MGA and of the CMRB Regulation are as below.

*Municipal Government Act*

**708.23(1)** A growth management board must at its inception establish by bylaw an appeal mechanism or dispute resolution mechanism, or both, for the purposes of resolving disputes arising from actions taken or decisions made by the growth management board.

**2** Section 708.08(2) and (3) apply to a bylaw made under this section as if the bylaw were made under that section.

*CMRB Regulation*

Approval of statutory plan

**13(1)** Statutory plans to be adopted by a participating municipality that meet the criteria set out in the Framework must be submitted to the Board for approval.

**2** In accordance with the Framework, the Board may approve or reject a statutory plan.
(3) A statutory plan referred to in subsection (1) has no effect unless it is approved by the Board under subsection (2).

(4) Subject to an appeal or dispute resolution mechanism established under section 708.23(1) of the Act or as otherwise provided in the Framework, a participating municipality has no right to a hearing before the Board in respect of its approval or rejection of a statutory plan.

(5) Subject to section 708.23(1) of the Act, a decision of the Board under this section is final and not subject to appeal.

(6) This section applies only to statutory plans to be adopted by a participating municipality after the establishment of the Framework.

3. Work to Date

At the request of the Governance Committee CMRB Administration convened three CAO workshops in an attempt to reach a consensus position on what type of appeal/dispute resolution mechanism would best suit the needs of the CMRB.

The three workshops were successful in framing the issue, exploring the need and applicability of such a mechanism, and determining in what circumstances an appeal mechanism would best serve the needs of the CMRB.

There was wide-ranging discussion at all three workshops, and consensus was reached that a mediation process should be implemented for IREF decisions where another municipality lodges a challenge against a Recommendation for Approval from the CMRB Administration (this will be discussed further below); however, there was no consensus reached on two critical issues:

1. Whether or not an appeal mechanism should remain internal to the Board or if there should be an external body to which a member can appeal.
   - There were three options discussed on this topic:
     i. That an appeal should be made to an external body, such as the Municipal Governance Board.
     ii. That an appeal should be made to the CMRB.
     iii. That an appeal should be made to the Minister of Municipal Affairs.

2. Whether the appeal mechanism should be available on decisions other than IREF decisions.
   - While much of the discussion on this topic focused on appeals relating to a denied IREF application, there were municipal representatives who wanted to explore the possibility that the appeal mechanism have broader applicability.
Considering the lack of consensus among the ten members, the Chief Officer of the
CMRB has considered the input of the CAOs and drafted four proposed bylaws for
discussion by the members of the Governance Committee.

4. Bylaw Options

Four Bylaw options have been drafted to reflect four potential options. It should be
noted that all four options contain a dispute resolution mechanism tied to the 28-day
review period for the IREF. This is independent of the appeal or reconsideration
process.

1. Dispute Resolution Mechanism is included during the 28-day Review Period of the
IREF. Appeal is made to an external body; appeal mechanism is applicable to
IREF applications.
2. Dispute Resolution Mechanism is included during the 28-day Review Period of the
IREF. Request for Reconsideration is made to the CMRB; reconsideration is
applicable to IREF applications.
3. Dispute Resolution Mechanism is included during the 28-day Review Period of the
IREF. Appeal is made to an external body; appeal mechanism is applicable to all
CMRB decisions.
4. Dispute Resolution Mechanism is included during the 28-day Review Period of the
IREF. Request for Reconsideration is made to the CMRB; reconsideration is
applicable to all CMRB decisions.

5. Recommendation

CMRB Administration recommends Option 2 be recommended to the Board for approval.
Draft Dispute Resolution and Appeal Bylaw

Option 1

BEING A BYLAW OF THE CALGARY METROPOLITAN REGION BOARD TO ESTABLISH A DISPUTE RESOLUTION MECHANISM AND AN APPEAL MECHANISM IN RELATION TO THE IREF PROCESS.

WHEREAS the Calgary Metropolitan Region Board is tasked with promoting the long-term sustainability of the Calgary Metropolitan Region and ensuring environmentally responsible land use planning, growth management and efficient use of land; and

WHEREAS the members of the Calgary Metropolitan Region Board are mandated to strive for consensus in all decisions; and

WHEREAS the members of the Calgary Metropolitan Region Board recognize they have a duty to act in the best interests of the Board when taking actions or making decisions; and

WHEREAS, under the provisions of the Municipal Government Act, the Calgary Metropolitan Region Board is required, at inception, to establish by bylaw an appeal mechanism or dispute resolution mechanism, or both, for the purposes of resolving disputes arising from actions taken or decisions made by the growth management board;

NOW THEREFORE the Calgary Metropolitan Region Board enacts as follows:

1. Short Title

   This Bylaw may be cited as the “Dispute Resolution and Appeal Bylaw”.

2. Definitions

In this Bylaw:

   a) “Act” means the Municipal Government Act, R.S.A. 2000, c. M-26;
   b) “Applicant” means the Participating Municipality who filed an application under the IREF;
   c) “Board” or “CMRB” means the Calgary Metropolitan Region Board;
   d) “Challenging Member” means a Participating Municipality who has filed a challenge against the CMRB Administration’s recommendation of approval of an IREF application;
   e) “CMRB Administration” means the administrative personnel or consultants employed or retained by CMRB to review and make recommendations to the Board with respect to IREF applications, but not members of or representatives on the Board;
f) "Interim Growth Plan (IGP)" means the approved document which provides
guidance to municipalities, the development industry and other regional
stakeholders, and enables all Participating Municipalities to proceed with
planning and development approvals, prior to the formal adoption of the final
Growth Plan and Servicing Plan referenced in the Regulation.

g) "Interim Regional Evaluation Framework (IREF)" means the framework which
provides the Board with the authority to evaluate and approve new statutory
plans and amendments to existing statutory plans submitted by Participating
Municipalities to ensure alignment with the principles, objectives, and policies
of the IGP;

h) "IREF Process" means the review process that is applied to each IREF
application as approved by the Board and the Minister, which is set out in full
at Appendix I of this Bylaw;

i) "Participating Municipality" means a municipality that is listed as a
"participating municipality in the Schedule of the Regulation and that has a
representative on the Board;

j) "Regulation" means the Calgary Metropolitan Region Board Regulation issued
under the Act, Alta. Reg. 190/2017;

k) "Review Period" means the 28-day period which follows the CMRB
Administration making a recommendation of approval for an IREF application,
during which time Participating Municipalities may file a challenge to the
recommendation of approval.

3. Application

a) This Bylaw applies only to decisions made by the Board to approve or reject
applications submitted pursuant to the IREF Process.

b) In the event there is a conflict between this Bylaw and the Regulation or the
Act, the Regulation and the Act shall prevail.

4. Initiation of Dispute Resolution During the IREF Process

a) If a Participating Municipality disputes the CMRB Administration’s
recommendation of approval of an application submitted under the IREF
Process, the Participating Municipality must submit a challenge of such
recommendation in writing to the Board and circulate it to all Participating
Municipalities as soon as reasonably practicable, and in any event prior to the
expiry of the Review Period. Any such challenge shall include detailed written
reasons justifying such challenge.

b) If a Participating Municipality challenges a recommendation:
   i. The Applicant may request, by notice in writing to the CMRB
      Administration and the Challenging Member, to engage in voluntary
      mediation with the Challenging Member to resolve the dispute.
   ii. The Challenging Member may request, by notice in writing to the CMRB
      Administration and the Applicant, to engage in voluntary mediation with
      the Applicant to resolve the dispute.
c) If more than one Participating Municipality challenges the CMRB Administration’s recommendation of approval, any or all Challenging Members may elect to participate in the mediation process with the Applicant.

5. Acceptance or Rejection of Mediation

a) If the Applicant or Challenging Member issues a mediation request in accordance with section 4(b), each responding Participating Municipality shall accept or decline the mediation request in writing within 3 business days. If every responding Participating Municipality declines the mediation request, the mediation shall not proceed.

b) If the Applicant and Challenging Member(s) agree to proceed with mediation, an appropriate mediator shall be selected within 10 business days of the initial request for mediation in accordance with the process set out in section 6. All costs arising out of the mediation process, including all costs associated with the mediator, shall be split equally between all Participating Municipalities participating in the mediation.

6. Mediator Selection

a) If the Applicant and any Challenging Member(s) agree to proceed to mediation, the CMRB Administration shall forward to the Applicant and Challenging Member(s) the names of no fewer than three individual candidates to serve as a mediator. The Applicant and Challenging Member(s) shall agree on a mediator from this list of candidates within 3 business days of receipt of the list. If no agreement is reached on the selection of a mediator within this time frame, the CMRB Administration shall forward a further list of three additional candidates for consideration by the Applicant and Challenging Member(s). The Applicant and Challenging Member(s) shall agree on a mediator from among this expanded list of candidates within 3 business days of receipt of the further list.

b) If no agreement is reached on the selection of a mediator within this further time frame, the CMRB Administration shall appoint a mediator from among the list of six names previously circulated.

c) After the mediator is selected, the mediator shall promptly arrange an initial discussion with the Applicant and Challenging Member(s) to finalize the process and timing of the mediation. The mediation shall take place within 20 days of the selection of the mediator.

7. Mediation Outcome and Board Decision

a) After the mediation is completed, the mediator shall prepare a report summarizing the details and outcome of the mediation, which shall be delivered to the Applicant, the Challenging Member(s) and the CMRB Administration no later than 30 days after the appointment of the mediator.

b) Upon delivery of the mediator’s report, the CMRB Administration shall circulate the report to all Participating Municipalities and give notice that the IREF application giving rise to the mediation will be placed on the agenda of the next Board meeting for decision by the Board.
c) The conduct and timing of the mediation shall not affect the Review Period of the IREF Process, provided that the Board’s decision on the IREF application that is the subject of any mediation shall be postponed under the delivery of the mediator’s report in accordance with section 7(b). Once the Review Period has expired, no further challenges to the relevant application may be submitted, whether or not any mediation in respect of any prior challenges submitted within the Review Period has been requested or is proceeding.

8. Appeal of a Board IREF Decision

a) A Participating Municipality may make a complaint in writing to the CMRB within 30 days of any Board decision on an IREF application only if the Participating Municipality is of the view that there has been a breach of the IREF Process, improper conduct by the CMRB Administration in rendering its recommendation, or bias or discriminatory treatment by the Board in the approval or rejection of the application. In all other cases, Board decisions shall be final and binding.

b) On receipt of a complaint, the CMRB shall attempt to resolve the complaint informally through good faith negotiations with the Participating Municipality.

c) If a complaint cannot be resolved informally, the CMRB may at its discretion refer the matter to mandatory mediation, in which event the process set out in section 6 shall apply mutatis mutandis to any such mediation.

d) If the parties are not able to resolve the complaint through mediation, the CMRB shall refer the matter to arbitration before a single arbitrator in accordance with the Alberta Arbitration Act, R.S.A. 2000, c. A-43. The arbitration shall take place in Calgary, Alberta.

Appendix I – IREF Process
Draft Dispute Resolution and Reconsideration Bylaw

Option 2

BEING A BYLAW OF THE CALGARY METROPOLITAN REGION BOARD, TO ESTABLISH A DISPUTE RESOLUTION MECHANISM AND A RECONSIDERATION MECHANISM IN RELATION TO THE IREF PROCESS.

WHEREAS the Calgary Metropolitan Region Board is tasked with promoting the long-term sustainability of the Calgary Metropolitan Region and ensuring environmentally responsible land use planning, growth management and efficient use of land; and

WHEREAS the members of the Calgary Metropolitan Region Board are mandated to strive for consensus in all decisions; and

WHEREAS the members of the Calgary Metropolitan Region Board recognize they have a duty to act in the best interests of the Board when taking actions or making decisions; and

WHEREAS, under the provisions of the Municipal Government Act, the Calgary Metropolitan Region Board is required, at inception, to establish by bylaw an appeal mechanism or dispute resolution mechanism, or both, for the purposes of resolving disputes arising from actions taken or decisions made by the growth management board;

NOW THEREFORE the Calgary Metropolitan Region Board enacts as follows:

1. Short Title

This Bylaw may be cited as the “Dispute Resolution and Reconsideration Bylaw”.

2. Definitions

In this Bylaw:

a) “Act” means the Municipal Government Act, R.S.A. 2000, c. M-26;

b) “Applicant” means the Participating Municipality who filed an application under the IREF;

c) “Board” or “CMRB” means the Calgary Metropolitan Region Board;

d) “Challenging Member” means a Participating Municipality who has filed a challenge against the CMRB Administration’s recommendation of approval of an IREF application;

e) “CMRB Administration” means the administrative personnel or consultants employed or retained by CMRB to review and make recommendations to the Board with respect to IREF applications, but not members of or representatives on the Board;

f) “Interim Growth Plan (IGP)” means the approved document which provides guidance to municipalities, the development industry and other regional stakeholders, and enables all Participating Municipalities to proceed with planning and development approvals, prior to the formal adoption of the final Growth Plan and Servicing Plan referenced in the Regulation.
g) “Interim Regional Evaluation Framework (IREF)” means the framework which provides the Board with the authority to evaluate and approve new statutory plans and amendments to existing statutory plans submitted by Participating Municipalities to ensure alignment with the principles, objectives, and policies of the IGP;

h) “IREF Process” means the review process that is applied to each IREF application as approved by the Board and the Minister, which is set out in full at Appendix I of this Bylaw;

i) “Participating Municipality” means a municipality that is listed as a “participating municipality in the Schedule of the Regulation and that has a representative on the Board;

j) “Regulation” means the Calgary Metropolitan Region Board Regulation issued under the Act, Alta. Reg. 190/2017;

k) “Request for Reconsideration” means a formal written request by a Participating Municipality to the Board asking it to reconsider a decision it has made on an IREF application, which request must include the detailed grounds on which such reconsideration is sought;

l) “Review Period” means the 28-day period which follows the CMRB Administration making a recommendation of approval for an IREF application, during which time Participating Municipalities may file a challenge to the recommendation of approval.

3. Application

a) This Bylaw applies only to decisions made by the Board to approve or reject applications submitted pursuant to the IREF Process.

b) In the event there is a conflict between this Bylaw and the Regulation or the Act, the Regulation and the Act shall prevail.

4. Initiation of Dispute Resolution During the IREF Process

a) If a Participating Municipality disputes the CMRB Administration’s recommendation of approval of an application submitted under the IREF Process, the Participating Municipality must submit a challenge of such recommendation in writing to the Board and circulate it to all Participating Municipalities as soon as reasonably practicable, and in any event prior to the expiry of the Review Period. Any such challenge shall include detailed written reasons justifying such challenge.

b) If a Participating Municipality challenges a recommendation:

   i. The Applicant may request, by notice in writing to the CMRB Administration and the Challenging Member, to engage in voluntary mediation with the Challenging Member to resolve the dispute.

   ii. The Challenging Member may request, by notice in writing to the CMRB Administration and the Applicant, to engage in voluntary mediation with the Applicant to resolve the dispute.

c) If more than one Participating Municipality challenges the CMRB Administration’s recommendation of approval, any or all Challenging Members may elect to participate in the mediation process with the Applicant.
5. Acceptance or Rejection of Mediation

a) If the Applicant or Challenging Member issues a mediation request in accordance with section 4(b), each responding Participating Municipality shall accept or decline the mediation request in writing within 3 business days. If every responding Participating Municipality declines the mediation request, the mediation shall not proceed.

b) If the Applicant and Challenging Member(s) agree to proceed with mediation, an appropriate mediator shall be selected within 10 business days of the initial request for mediation in accordance with the process set out in section 6. All costs arising out of the mediation process, including all costs associated with the mediator, shall be split equally between all Participating Municipalities participating in the mediation.

6. Mediator Selection

a) If the Applicant and any Challenging Member(s) agree to proceed to mediation, the CMRB Administration shall forward to the Applicant and Challenging Member(s) the names of no fewer than three individual candidates to serve as a mediator. The Applicant and Challenging Member(s) shall agree on a mediator from this list of candidates within 3 business days of receipt of the list. If no agreement is reached on the selection of a mediator within this time frame, the CMRB Administration shall forward a further list of three additional candidates for consideration by the Applicant and Challenging Member(s). The Applicant and Challenging Member(s) shall agree on a mediator from among this expanded list of candidates within 3 business days of receipt of the further list.

b) If no agreement is reached on the selection of a mediator within this further time frame, the CMRB Administration shall appoint a mediator from among the list of six names previously circulated.

c) After the mediator is selected, the mediator shall promptly arrange an initial discussion with the Applicant and Challenging Member(s) to finalize the process and timing of the mediation. The mediation shall take place within 20 days of the selection of the mediator.

7. Mediation Outcome and Board Decision

a) After the mediation is completed, the mediator shall prepare a report summarizing the details and outcome of the mediation, which shall be delivered to the Applicant, the Challenging Member(s) and the CMRB Administration no later than 30 days after the appointment of the mediator.

b) Upon delivery of the mediator's report, the CMRB Administration shall circulate the report to all Participating Municipalities and give notice that the IREF application giving rise to the mediation will be placed on the agenda of the next Board meeting for decision by the Board.

c) The conduct and timing of the mediation shall not affect the Review Period of the IREF Process, provided that the Board's decision on the IREF application that is the subject of any mediation shall be postponed under the delivery of the mediator's report in accordance with section 7(b). Once the Review Period
has expired, no further challenges to the relevant application may be submitted, whether or not any mediation in respect of any prior challenges submitted within the Review Period has been requested or is proceeding.

8. Request for Reconsideration of a Board Decision

a) Only the Board has the authority to reconsider a decision which it has made.
b) If a Participating Municipality wishes the Board to reconsider any decision on an IREF application, it shall submit a Request for Reconsideration to the Chief Officer of the CMRB within 30 days of such Board decision. Once this time period has elapsed, that Board decision shall be final and binding and shall no longer be eligible for reconsideration.
c) The submission of a Request for Reconsideration shall not affect a Participating Municipality’s future right to re-submit an IREF application through the IREF Process.

9. Reconsideration Process

a) Upon receipt of a Request for Reconsideration, the CMRB shall circulate the request to all Participating Municipalities and give notice that item will be placed on the next Board agenda for decision.
b) Reconsideration of a Board IREF application decision may be sought in relation to:
   i. The Board’s application and interpretation of the Interim Growth Plan,
   ii. The Board’s application and interpretation of the Interim Regional Evaluation Framework, or
   iii. The Board’s compliance with the IREF Process.

c) Nothing in the description of the reconsideration process above shall limit the Board’s discretion to make the decision it determines to be in the best interests of the Calgary Metropolitan Region. The Board retains the discretion to maintain, amend or reverse its initial decision upon consideration of the Request for Reconsideration. The Board’s decision in response to the Request for Reconsideration shall be communicated to all Participating Municipalities and shall be final and binding.

Appendix I – IREF Process

Agenda Item 6
Option 3

BEING A BYLAW OF THE CALGARY METROPOLITAN REGION BOARD, TO ESTABLISH A DISPUTE RESOLUTION MECHANISM AND AN APPEAL MECHANISM.

WHEREAS the Calgary Metropolitan Region Board is tasked with promoting the long-term sustainability of the Calgary Metropolitan Region and ensuring environmentally responsible land use planning, growth management and efficient use of land; and

WHEREAS the members of the Calgary Metropolitan Region Board are mandated to strive for consensus in all decisions; and

WHEREAS the members of the Calgary Metropolitan Region Board recognize they have a duty to act in the best interests of the Board when taking actions or making decisions; and

WHEREAS, under the provisions of the Municipal Government Act, the Calgary Metropolitan Region Board is required, at inception, to establish by bylaw an appeal mechanism or dispute resolution mechanism, or both, for the purposes of resolving disputes arising from actions taken or decisions made by the growth management board;

NOW THEREFORE the Calgary Metropolitan Region Board enacts as follows:

1. Short Title

This Bylaw may be cited as the “Dispute Resolution and Appeal Bylaw”.

2. Definitions

In this Bylaw:

a) “Act” means the Municipal Government Act, R.S.A. 2000, c. M-26;

b) “Applicant” means the Participating Municipality who filed an application under the IREF;

c) “Board” or “CMRB” means the Calgary Metropolitan Region Board;

d) “Challenging Member” means a Participating Municipality who has filed a challenge against the CMRB Administration’s recommendation of approval of an IREF application;

e) “CMRB Administration” means the administrative personnel or consultants employed or retained by CMRB to review and make recommendations to the Board with respect to IREF applications, but not members of or representatives on the Board;

f) “Interim Growth Plan (IGP)” means the approved document which provides guidance to municipalities, the development industry and other regional stakeholders, and enables all Participating Municipalities to proceed with planning and development approvals, prior to the formal adoption of the final Growth Plan and Servicing Plan referenced in the Regulation.

g) “Interim Regional Evaluation Framework (IREF)” means the framework which provides the Board with the authority to evaluate and approve new statutory plans and amendments to existing statutory plans submitted by Participating
Municipalities to ensure alignment with the principles, objectives, and policies of the IGP;

h) "IREF Process" means the review process that is applied to each IREF application as approved by the Board and the Minister, which is set out in full at Appendix I of this Bylaw;

i) "Participating Municipality" means a municipality that is listed as a "participating municipality in the Schedule of the Regulation and that has a representative on the Board;

j) "Regulation" means the Calgary Metropolitan Region Board Regulation issued under the Act, Alta. Reg. 190/2017;

k) "Review Period" means the 28-day period which follows the CMRB Administration making a recommendation of approval for an IREF application, during which time Participating Municipalities may file a challenge to the recommendation of approval.

3. Application

a) This Bylaw applies to all final decisions made by the Board.

b) In the event there is a conflict between this Bylaw and the Regulation or the Act, the Regulation and the Act shall prevail.

4. Initiation of Dispute Resolution During the IREF Process

a) If a Participating Municipality disputes the CMRB Administration’s recommendation of approval of an application submitted under the IREF Process, the Participating Municipality must submit a challenge of such recommendation in writing to the Board and circulate it to all Participating Municipalities as soon as reasonably practicable, and in any event prior to the expiry of the Review Period. Any such challenge shall include detailed written reasons justifying such challenge.

b) If a Participating Municipality challenges a recommendation:
   i. The Applicant may request, by notice in writing to the CMRB Administration and the Challenging Member, to engage in voluntary mediation with the Challenging Member to resolve the dispute.
   ii. The Challenging Member may request, by notice in writing to the CMRB Administration and the Applicant, to engage in voluntary mediation with the Applicant to resolve the dispute.

c) If more than one Participating Municipality challenges the CMRB Administration’s recommendation of approval, any or all Challenging Members may elect to participate in the mediation process with the Applicant.

5. Acceptance or Rejection of Mediation

a) If the Applicant or Challenging Member issues a mediation request in accordance with section 4(b), each responding Participating Municipality shall accept or decline the mediation request in writing within 3 business days. If every responding Participating Municipality declines the mediation request, the mediation shall not proceed.
b) If the Applicant and Challenging Member(s) agree to proceed with mediation, an appropriate mediator shall be selected within 10 business days of the initial request for mediation in accordance with the process set out in section 6. All costs arising out of the mediation process, including all costs associated with the mediator, shall be split equally between all Participating Municipalities participating in the mediation.

6. Mediator Selection

a) If the Applicant and any Challenging Member(s) agree to proceed to mediation, the CMRB Administration shall forward to the Applicant and Challenging Member(s) the names of no fewer than three individual candidates to serve as a mediator. The Applicant and Challenging Member(s) shall agree on a mediator from this list of candidates within 3 business days of receipt of the list. If no agreement is reached on the selection of a mediator within this time frame, the CMRB Administration shall forward a further list of three additional candidates for consideration by the Applicant and Challenging Member(s). The Applicant and Challenging Member(s) shall agree on a mediator from among this expanded list of candidates within 3 business days of receipt of the further list.

b) If no agreement is reached on the selection of a mediator within this further time frame, the CMRB Administration shall appoint a mediator from among the list of six names previously circulated.

c) After the mediator is selected, the mediator shall promptly arrange an initial discussion with the Applicant and Challenging Member(s) to finalize the process and timing of the mediation. The mediation shall take place within 20 days of the selection of the mediator.

7. Mediation Outcome and Board Decision

a) After the mediation is completed, the mediator shall prepare a report summarizing the details and outcome of the mediation, which shall be delivered to the Applicant, the Challenging Member(s) and the CMRB Administration no later than 30 days after the appointment of the mediator.

b) Upon delivery of the mediator’s report, the CMRB Administration shall circulate the report to all Participating Municipalities and give notice that the IREF application giving rise to the mediation will be placed on the agenda of the next Board meeting for decision by the Board.

c) The conduct and timing of the mediation shall not affect the Review Period of the IREF Process, provided that the Board’s decision on the IREF application that is the subject of any mediation shall be postponed under the delivery of the mediator’s report in accordance with section 7(b). Once the Review Period has expired, no further challenges to the relevant application may be submitted, whether or not any mediation in respect of any prior challenges submitted within the Review Period has been requested or is proceeding.
8. Appeal of a Board IREF Decision

a) A Participating Municipality may make a complaint in writing to the CMRB within 30 days of any final Board decision only if the Participating Municipality is of the view that there has been a breach of process, improper conduct by the CMRB Administration, or bias or discriminatory treatment by the Board in the making of the decision. In all other cases, Board decisions shall be final and binding.

b) On receipt of a complaint, the CMRB shall attempt to resolve the complaint informally through good faith negotiations with the Participating Municipality.

c) If a complaint cannot be resolved informally, the CMRB may at its discretion refer the matter to mandatory mediation, in which event the process set out in section 6 shall apply mutatis mutandis to any such mediation.

d) If the parties are not able to resolve the complaint through mediation, the CMRB shall refer the matter to arbitration before a single arbitrator in accordance with the Alberta Arbitration Act, R.S.A. 2000, c. A-43. The arbitration shall take place in Calgary, Alberta.

Appendix I - IREF Process
Draft Dispute Resolution and Reconsideration Bylaw

**Option 4**

BEING A BYLAW OF THE CALGARY METROPOLITAN REGION BOARD, TO ESTABLISH A DISPUTE RESOLUTION MECHANISM AND A RECONSIDERATION MECHANISM.

WHEREAS the Calgary Metropolitan Region Board is tasked with promoting the long-term sustainability of the Calgary Metropolitan Region and ensuring environmentally responsible land use planning, growth management and efficient use of land; and

WHEREAS the members of the Calgary Metropolitan Region Board are mandated to strive for consensus in all decisions; and

WHEREAS the members of the Calgary Metropolitan Region Board recognize they have a duty to act in the best interests of the Board when taking actions or making decisions; and

WHEREAS, under the provisions of the *Municipal Government Act*, the Calgary Metropolitan Region Board is required, at inception, to establish by bylaw an appeal mechanism or dispute resolution mechanism, or both, for the purposes of resolving disputes arising from actions taken or decisions made by the growth management board;

NOW THEREFORE the Calgary Metropolitan Region Board enacts as follows:

**1. Short Title**

This Bylaw may be cited as the “Dispute Resolution and Reconsideration Bylaw”.

**2. Definitions**

In this Bylaw:


b) “Applicant” means the Participating Municipality who filed an application under the IREF;

c) “Board” or “CMRB” means the Calgary Metropolitan Region Board;

d) “Challenging Member” means a Participating Municipality who has filed a challenge against the CMRB Administration’s recommendation of approval of an IREF application;

e) “CMRB Administration” means the administrative personnel or consultants employed or retained by CMRB to review and make recommendations to the Board with respect to IREF applications, but not members of or representatives on the Board;

f) “Interim Growth Plan (IGP)” means the approved document which provides guidance to municipalities, the development industry and other regional stakeholders, and enables all Participating Municipalities to proceed with planning and development approvals, prior to the formal adoption of the final Growth Plan and Servicing Plan referenced in the Regulation.

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g) “Interim Regional Evaluation Framework (IREF)” means the framework which provides the Board with the authority to evaluate and approve new statutory plans and amendments to existing statutory plans submitted by Participating Municipalities to ensure alignment with the principles, objectives, and policies of the IGP;

h) “IREF Process” means the review process that is applied to each IREF application as approved by the Board and the Minister, which is set out in full at Appendix I of this Bylaw;

i) “Participating Municipality” means a municipality that is listed as a “participating municipality in the Schedule of the Regulation and that has a representative on the Board;

j) “Regulation” means the Calgary Metropolitan Region Board Regulation issued under the Act, Alta. Reg. 190/2017;

k) “Request for Reconsideration” means a formal written request by a Participating Municipality to the Board asking it to reconsider a decision it has made on an IREF application, which request must include the detailed grounds on which such reconsideration is sought;

l) “Review Period” means the 28-day period which follows the CMRB Administration making a recommendation of approval for an IREF application, during which time Participating Municipalities may file a challenge to the recommendation of approval.

3. Application

a) This Bylaw applies to all final decisions made by the Board.

b) In the event there is a conflict between this Bylaw and the Regulation or the Act, the Regulation and the Act shall prevail.

4. Initiation of Dispute Resolution During the IREF Process

a) If a Participating Municipality disputes the CMRB Administration’s recommendation of approval of an application submitted under the IREF Process, the Participating Municipality must submit a challenge of such recommendation in writing to the Board and circulate it to all Participating Municipalities as soon as reasonably practicable, and in any event prior to the expiry of the Review Period. Any such challenge shall include detailed written reasons justifying such challenge.

b) If a Participating Municipality challenges a recommendation:

i. The Applicant may request, by notice in writing to the CMRB Administration and the Challenging Member, to engage in voluntary mediation with the Challenging Member to resolve the dispute.

ii. The Challenging Member may request, by notice in writing to the CMRB Administration and the Applicant, to engage in voluntary mediation with the Applicant to resolve the dispute.

c) If more than one Participating Municipality challenges the CMRB Administration’s recommendation of approval, any or all Challenging Members may elect to participate in the mediation process with the Applicant.
5. Acceptance or Rejection of Mediation

a) If the Applicant or Challenging Member issues a mediation request in accordance with section 4(b), each responding Participating Municipality shall accept or decline the mediation request in writing within 3 business days. If every responding Participating Municipality declines the mediation request, the mediation shall not proceed.

b) If the Applicant and Challenging Member(s) agree to proceed with mediation, an appropriate mediator shall be selected within 10 business days of the initial request for mediation in accordance with the process set out in section 6. All costs arising out of the mediation process, including all costs associated with the mediator, shall be split equally between all Participating Municipalities participating in the mediation.

6. Mediator Selection

a) If the Applicant and any Challenging Member(s) agree to proceed to mediation, the CMRB Administration shall forward to the Applicant and Challenging Member(s) the names of no fewer than three individual candidates to serve as a mediator. The Applicant and Challenging Member(s) shall agree on a mediator from this list of candidates within 3 business days of receipt of the list. If no agreement is reached on the selection of a mediator within this time frame, the CMRB Administration shall forward a further list of three additional candidates for consideration by the Applicant and Challenging Member(s). The Applicant and Challenging Member(s) shall agree on a mediator from among this expanded list of candidates within 3 business days of receipt of the further list.

b) If no agreement is reached on the selection of a mediator within this further time frame, the CMRB Administration shall appoint a mediator from among the list of six names previously circulated.

c) After the mediator is selected, the mediator shall promptly arrange an initial discussion with the Applicant and Challenging Member(s) to finalize the process and timing of the mediation. The mediation shall take place within 20 days of the selection of the mediator.

7. Mediation Outcome and Board Decision

a) After the mediation is completed, the mediator shall prepare a report summarizing the details and outcome of the mediation, which shall be delivered to the Applicant, the Challenging Member(s) and the CMRB Administration no later than 30 days after the appointment of the mediator.

b) Upon delivery of the mediator’s report, the CMRB Administration shall circulate the report to all Participating Municipalities and give notice that the IREF application giving rise to the mediation will be placed on the agenda of the next Board meeting for decision by the Board.

c) The conduct and timing of the mediation shall not affect the Review Period of the IREF Process, provided that the Board’s decision on the IREF application that is the subject of any mediation shall be postponed under the delivery of the mediator’s report in accordance with section 7(b). Once the Review Period
has expired, no further challenges to the relevant application may be submitted, whether or not any mediation in respect of any prior challenges submitted within the Review Period has been requested or is proceeding.

8. Request for Reconsideration of a Board Decision

a) Only the Board has the authority to reconsider a decision which it has made.

b) If a Participating Municipality wishes the Board to reconsider any decision on an IREF application, it shall submit a Request for Reconsideration to the Chief Officer of the CMRB within 30 days of such Board decision. Once this time period has elapsed, that Board decision shall be final and binding and shall no longer be eligible for reconsideration.

c) The submission of a Request for Reconsideration shall not affect a Participating Municipality’s future right to re-submit an IREF application through the IREF Process.

9. Reconsideration Process

a) Upon receipt of a Request for Reconsideration, the CMRB shall circulate the request to all Participating Municipalities and give notice that item will be placed on the next Board agenda for decision.

b) Reconsideration of a Board IREF application decision may be sought in relation to:
   i. The Board’s application and interpretation of the Interim Growth Plan,
   ii. The Board’s application and interpretation of the Interim Regional Evaluation Framework, or
   iii. The Board’s compliance with the IREF Process.

c) Reconsideration of any other final Board decision may be sought in relation to:
   i. The Board’s application and interpretation of relevant Board policies,
   ii. The Board’s application and interpretation of relevant Board procedures, or
   iii. The Board’s compliance with the established decision-making process.

d) Nothing in the description of the reconsideration process above shall limit the Board’s discretion to make the decision it determines to be in the best interests of the Calgary Metropolitan Region. The Board retains the discretion to maintain, amend or reverse its initial decision upon consideration of the Request for Reconsideration. The Board’s decision in response to the Request for Reconsideration shall be communicated to all Participating Municipalities and shall be final and binding.

Appendix I – IREF Process