

Calgary Metropolitan Region Board  
**Governance Committee Meeting Agenda**

December 17, 2020 – 9:30 AM

Go-To Meeting

**\*Meetings are recorded & live-streamed\***

***The purpose of this meeting is to convene, discuss and make decisions regarding recommendations to be made to the Calgary Metropolitan Region Board.***

- |  |         |           |
|--|---------|-----------|
| 1. Call to Order & Opening Remarks   | Sheard  |           |
| 2. Adoption of Agenda<br><i>To adopt and/or revise the Agenda</i>  | All     |           |
| 3. Approval of Minutes (Attachment)<br><b><i>For Decision:</i></b> Motion that the Committee approve the Minutes of November 26, 2020 meeting  | All     | <b>3</b>  |
| 4. Reserve Funds Policy (Attachment)<br><b><i>For Decision:</i></b> That the Committee review and recommend for approval to the Board the proposed Reserve Funds Policy                            | Copping | <b>7</b>  |
| 5. Dispute Framework (Attachment)<br><b><i>For Discussion:</i></b> Motion that the Committee discuss and provide feedback on the proposed Dispute Framework  | Copping | <b>11</b> |
| 6. REF Appeal Process (Attachment)<br><b><i>For Discussion:</i></b> Motion that the Committee discuss and provide feedback on the proposed REF Appeal Process                                      | Copping | <b>16</b> |
| 7. Non-REF Reconsideration Process (Attachment)<br><b><i>For Discussion:</i></b> Motion that the Committee discuss and provide feedback on the proposed Non-REF Decision Reconsideration Process   | Copping | <b>31</b> |
| 8. Treaty 7 Lands Acknowledgement (Attachment)<br><b><i>For Decision:</i></b> Motion that the Committee recommend to the Board the proposed wording of the Treaty 7 Territory Land Acknowledgement | Copping | <b>44</b> |
| 9. Proposed Next Meeting: Friday February 5 @ 9:30 AM  | Sheard  |           |
| 10. Adjournment  |         |           |

Governance Committee Members:

Mayor Peter Brown (Airdrie)	Cllr Jamie Kinghorn (High River)
Cllr George Chahal (Calgary)	Mayor Bill Robertson (Okotoks)
Reeve Dan Henn (Rocky View)	Reeve Amber Link (Wheatland)
Reeve Suzanne Oel (Foothills)	
Mayor Jeff Genung (Cochrane)	
Mayor Marshall Chalmers (Chestermere) Vice Chair	
Christopher Sheard, Committee Chair	

Upcoming Meetings:

Land Use & Servicing Committee	Jan 21 @ 9:30 AM	Go-To Meeting
Board Meeting	Jan 15 & 29 @ 9:30 AM	Go-To Meeting
Advocacy Committee	Jan 14 @ 1:00 PM	Go-To Meeting
Governance Committee	Feb 5 @ 9:30 AM	Go-To Meeting

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Minutes of the meeting of  
the Governance Committee of the  
Calgary Metropolitan Region Board held by  
GoToMeeting on Thursday November 26, 2020

**Delegates in Attendance:**

Deputy Mayor Tina Petrow – City of Airdrie  
Mayor Jeff Genung – Town of Cochrane  
Reeve Suzanne Oel – Foothills County  
Mayor Bill Robertson – Town of Okotoks  
Reeve Dan Henn – Rocky View County  
Councillor Jamie Kinghorn – Town of High River  
Reeve Amber Link – Wheatland County

**CMRB Administration:**

Chris Sheard, Chair  
Jordon Copping, Chief Officer  
Shelley Armeneau, Office Manager

**1. Call to Order**

Called to order at 9:30 AM.

**2. Adoption of Agenda**

**Moved by** Reeve Link, **Seconded by** Councillor Kinghorn, accepted by Chair.

**Motion:** That the Committee approve the agenda of the meeting.

**Motion carried unanimously.**

**3. Approval of Minutes**

**Moved by** Reeve Oel, **Seconded by** Councillor Kinghorn, accepted by Chair.

**Motion:** That the Committee approve the Minutes of the October 22, 2020 meeting.

**Motion carried unanimously.**

**4. 2021 Budget**

**Moved by** Mayor Genung, **Seconded by** Reeve Henn, accepted by Chair.

**Motion:** That the Committee review and recommend for approval to the Board the 2021-23 Budget.

**Motion carried unanimously.**

## 5. Reserve Funds Policy

Members discussed the following:

- o How contractual obligations, including the office lease, would affect a contingency fund,
- o Revenue sources, and
- o Dispute Mechanisms costs.

**Moved by** Mayor Robertson, **Seconded by** Mayor Genung, accepted by Chair.

**Motion:** That the Committee provide feedback on and direct Administration to finalize the proposed Reserve Funds Policy.

**Motion carried unanimously.**

## 6. Cost Sharing Formula

In consultation with member CAOs, CMRB Administration will restart work on developing an equitable membership funding framework by establishing principles for funding mechanisms. Members noted their concerns about municipalities contributing to a provincially mandated organization. The cost sharing formula will give members an idea of what their municipality's contribution would be if the province reduced funding and the Board decided to pursue additional work streams.

**Moved by** Mayor Robertson, **Seconded by** Mayor Genung, accepted by Chair.

**Motion:** That the Committee direct Administration to restart work on developing a fair and equitable membership funding framework for the CMRB to be finalized no later than December, 2021.

**Motion carried unanimously.**

## 7. Vice Chair Selection

CMRB Administration had previously circulated an email to members of the Committee asking for nominations for the Vice Chair position. Mayor Marshall Chalmers put his name forward for the position via email. Reeve Link formally nominated Mayor Chalmers and Councillor Kinghorn seconded the nomination. With no other nominations coming forward, Mayor Robertson moved that nominations cease. Mayor Genung seconded the motion.

**Moved by** Reeve Link, **Seconded by** Councillor Kinghorn, accepted by Chair.

**Motion:** That the Committee elect Mayor Chalmers as the Vice Chair of the Governance Committee.

**Motion carried unanimously.**

**8. Posting Recorded CMRB Meetings**

**Moved by** Reeve Oel, **Seconded by** Deputy Mayor Petrow, accepted by Chair.

**Motion:** That the Governance Committee recommend to the Board that Administration post all recorded meetings with the appropriate technology, starting with the March 20, 2020 Board meeting.

**Motion carried unanimously.**

**9. Chair Contract Extension**

Mayor Genung advised that the Board Chair Recruitment Subcommittee is in the short-list stage and moving into interviews in early December. Although there may be a new Chair selected before the end of the year, ideally there would be an overlap so that Chair Sheard could remain in the position to assist the incoming Chair.

**Moved by** Deputy Mayor Petrow, **Seconded by** Mayor Robertson, accepted by Chair.

**Motion:** That the Governance Committee recommend for approval by the Board an extension of the Chair's contract by two (2) months.

**Motion carried unanimously.**

**10. Appeal/Reconsideration Mechanism**

In the interest of advancing the development of the Appeal and Reconsideration mechanisms Jordon Copping has reached out to member CAOs for input to further explore the options.

A number of documents were circulated, one set exploring the appeal process which would be attached to REF decisions, the other exploring the facilitation and/or mediation process attached to non-REF decisions.

CAO input will help further shape the documents and the ideas for discussion with the Governance Committee at the December 17 meeting.

Members requested that adequate lead time be given for review by councils and administration once a recommendation is made.

**Moved by** Mayor Robertson, **Seconded by** Reeve Henn, accepted by Chair.

**Motion:** That the Governance Committee receive for information a verbal update on the appeal/reconsideration mechanism.

**Motion carried unanimously.**

**11. Next Meeting** Thursday December 17.

**12. Adjourned at 10:55 AM.**

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**CMRB Chair, Christopher Sheard**

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<b>Agenda Item</b>	<b>4</b>
<b>Submitted to</b>	<b>Governance Committee</b>
<b>Purpose</b>	<b>For Decision</b>
<b>Subject</b>	<b>Reserve Funds Policy</b>
<b>Meeting Date</b>	<b>December 17, 2020</b>
That the Committee recommend to the Board for approval the Reserve Funds Policy	
<p>Background</p> <ul style="list-style-type: none"> <li>• The CMRB is funded by the Government of Alberta through the Alberta Community Partnership (ACP) grant program.</li> <li>• The Government of Alberta has begun a staged funding reduction to Growth Management Boards in the province to 50% of 2019 funding levels, from \$2M to \$1M annually.</li> <li>• The CMRB was gifted \$1.8M from the Calgary Regional Partnership which provides a cushion against the reduced funding in upcoming years.</li> <li>• The CMRB has the authority to create administrative policy and procedure to govern its operations.</li> <li>• At the October 22 Governance Committee meeting feedback was provided to CMRB Administration, which was incorporated and brought forward to the November 26 meeting for discussion.</li> </ul>	
<p>Attachments</p> <ul style="list-style-type: none"> <li>• Proposed Reserve Funds Policy</li> </ul>	

## 1. Introduction

The CMRB is nearing the completion of the mandated drafting of the Growth and Servicing Plans. Future discussions will determine efforts of the CMRB in 2021 and beyond.

The proposed budget, and in particular the line item for “Regional Initiatives” contains flexibility to support the efforts of the Board. This work may include examining: regional water sharing mechanisms, regional economic development and/or any other initiatives as determined by the Board.

At the October 22 Governance Committee meeting the following feedback was provided to CMRB Administration:

- a) Develop a multi-year forecast in order to have a better understanding of the longer-term impacts to the reserve funds and the level of provincial funding;
- b) As part of the budgeting process to engage the Board in a strategic discussion to establish priorities for 2021; and
- c) That the Board develop guidance or principles on how to use the reserve fund.

This feedback was incorporated and brought forward to the November 26 meeting for discussion. The Policy is now coming forward for approval to the Board.

## 1.1 Funding Summary

<b>Funded Activity</b>	<b>Grant Total</b>
2017/18 CMRB Start-up and Core Administration	\$2,070,000
	(\$1,500,000 + \$570,000 (CRP Surplus))
2019/20 CMRB Core Administration	\$2,000,000
2020/21 CMRB Core Administration	\$1,750,000
<b>Total CMRB Core Administration Approved Funding</b>	<b>\$5,820,000</b>
<b>Future Estimated Funding</b>	
2021/22 CMRB Core Administration Costs*	\$1,500,000
2022/23 CMRB Core Administration Costs*	\$1,000,000
2023/24 CMRB Core Administration Costs*	\$1,000,000
	* Estimates – subject to Minister Approval

## 1.2 CMRB Account Balances at November 18, 2020

Current Account~	\$1,115,000.00
GIC~	\$1,932,000.00
 Total~	 \$3,047,000.00



## 2. Background

The Department of Municipal Affairs has expressed a viewpoint that Growth Management Boards benefits both the provincial government and the municipal governments and, due to this joint benefit, both orders of government should be responsible for funding these Boards.

Based on a very preliminary three-year budget, the CMRB current reserves will be drawn down to approximately \$50,000 by December 31, 2023.

Sound financial practices require a certain level of reserves to be able to cover financial obligations in the event of the disruption of funds.

Current best practice suggests that a not-for-profit should have between three to six months of operating costs held in reserves, and that an absolute minimum level of reserve should be one month of operating costs.

## 3. Policy Rationale

The CMRB is a unique organization with an average of roughly 40% of budgeted expenses for Budgets 2019 – 2021 attributed to consultants. The other 60% of the Budget is core operating expenses.

CMRB contracts allow the CMRB to terminate contracted work without notice, owing only the balance for work completed to the contractor. As such, contractor expenses can be terminated with relative ease.

Core expenses include the following expenses: Staffing, Lease, Office Operation, Meeting and Travel costs.

The rationale for the proposed policy rests on the fact that contracted work can be stopped and restarted rather easily and at minimal cost to the organization whereas core expenses are more fundamental to the operation of the organization. As such, the policy proposes that the reserve fund be kept at a level equivalent to, or greater than, **6 months of a two-year average of budgeted core expenses** consisting of the current year and the upcoming budget year. The minimum reserve level would become part of the budget approval process and budget documents.

If this policy rationale is accepted, the minimum level for reserve funds in 2021 would be set as below:

2019 Budgeted Core Operating Expenses	\$1,223,000
<u>2020 Budgeted Core Operating Expenses</u>	<u>\$1,210,000</u>
Average	\$1,216,500
<b>2020 Reserve Fund Minimum</b>	<b>\$608,250</b>

## 4. Recommendation

That the Committee recommend to the Board for approval the Reserve Funds Policy.

### **Proposed Reserve Funds Policy**

#### *Policy Purpose*

The Reserve Funds Policy ensures that the Calgary Metropolitan Region Board retains enough reserves in its accounts to fund core operating expenses for a six month period.

#### *Scope*

This policy applies to all CMRB budgeting and banking activities.

#### *Policy*

The Calgary Metropolitan Region Board shall, in each budget year, determine a reserve fund minimum, below which reserves funds are not allowed to fall. The reserve fund minimum will represent six (6) months of the average of budgeted core operating expenses for the current fiscal year and the upcoming fiscal year.

Core expenses are Staffing, Lease, Office Operation, Meeting and Travel Expenses.

The reserve fund minimum shall be calculated as follows:

Fifty (50) percent of the Average of Current Fiscal Year Budgeted Core Expenses and Upcoming Fiscal Year Budgeted Core Expenses.

This figure will be reported in budget documents for review by the Governance Committee and approval by Board.

<b>Agenda Item</b>	<b>5</b>
<b>Submitted to</b>	<b>Governance Committee</b>
<b>Purpose</b>	<b>For Discussion</b>
<b>Subject</b>	<b>CMRB Dispute Framework</b>
<b>Meeting Date</b>	<b>December 17, 2020</b>
<i>That the Committee discuss and provide feedback on the proposed dispute framework.</i>	
<p><b>Summary</b></p> <ul style="list-style-type: none"> <li>• The subsequent two agenda items will bring forward work to date regarding the two-streamed dispute process for REF and Non-REF decisions.</li> <li>• CAOs were asked broad questions to help refine some of the documents. Not all municipalities chose to provide feedback.</li> <li>• The following framework summarizes some of the process and asks questions of the Governance Committee. Committee feedback will be incorporated into the next steps, including drafting bylaws and revising terms of reference</li> <li>• It is important to recognize the work of the EMRB which has set a path for CMRB to follow with respect to this Dispute Framework.</li> </ul>	
<p><b>Attachments:</b></p> <ul style="list-style-type: none"> <li>• <b>Draft CMRB Appeal and Reconsideration Framework</b></li> </ul>	

## 1. Next Steps

The intent of the discussion today is to gain feedback from the Committee on the proposed framework for both REF and non-REF decisions. That feedback, plus further consultation with municipal administrations, will help inform a final draft bylaw which will be voted on at the February 4, 2021 meeting of the Committee. If it is recommended to the Board, the final version would go to the Board on February 19, 2021.

## Recommendation

That the Committee discuss and provide feedback on the proposed dispute framework.

## DRAFT CMRB APPEAL AND RECONSIDERATION FRAMEWORK

	<b>Working Framework / Recommendations</b>	<b>Questions for Discussion</b>
<p><b>WHEN</b> and <b>HOW</b> is a dispute submitted for resolution?</p>	<ul style="list-style-type: none"> <li>• Within 28 days of the disputed decision. The Board has the authority to extend this deadline by an additional 14 days, to account for special or extenuating circumstances.</li> <li>• By a member municipality filing a written Notice of Dispute which sets out:               <ul style="list-style-type: none"> <li>○ the grounds on which the decision is disputed (for example, breach of process or discriminatory treatment );</li> <li>○ reasons for the dispute; and</li> <li>○ a copy of the Council resolution authorizing the filing of the Notice of Dispute.</li> </ul> </li> <li>• The Board is required to acknowledge receipt of a Notice of Dispute within three (3) business days.</li> <li>• <b>REF decision</b> dispute referred to Dispute Resolution Committee and, if necessary, Appeal Committee</li> <li>• <b>Non-REF decision</b> dispute referred to Dispute Resolution Committee only</li> </ul>	<ul style="list-style-type: none"> <li>• Does Board Administration have the authority to reject a Notice of Dispute which does not satisfy these mandatory requirements?</li> <li>• Is there a filing fee payable to the Board?</li> </ul>
<p><b>WHAT</b> decisions are subject to the dispute resolution process?</p>	<ul style="list-style-type: none"> <li>• Grounds for submitting a Board decision for dispute resolution:               <ul style="list-style-type: none"> <li>○ Breach of process</li> <li>○ Discriminatory treatment</li> <li>○ Decisions which impose a significant financial hardship on a member municipality, or impact a municipality's sustainability.</li> </ul> </li> <li>• Decisions that would be exempt from the dispute resolution process:               <ul style="list-style-type: none"> <li>○ Preparation of Growth Plan and Servicing Plan (ss. 7 and 14 of Regulation)</li> </ul> </li> </ul>	

	<ul style="list-style-type: none"> <li>○ Preparation of REF (s. 12(1) of Regulation).</li> </ul>	
<p><b>WHAT</b> is the REF Appeal process?</p>	<ul style="list-style-type: none"> <li>● A three stage appeal process:               <ol style="list-style-type: none"> <li>(1) Facilitated Discussions</li> <li>(2) Mediation</li> <li>(3) Appeal Committee .</li> </ol> </li> <li>● The complainant and the Board must participate in each step of the dispute resolution process.</li> <li>● The Appeal Committee’s decision is final, i.e., there is no further right of dispute or appeal.</li> </ul>	
<p><b>WHAT</b> is the Non-REF reconsideration process?</p>	<ul style="list-style-type: none"> <li>● A two stage reconsideration process:               <ol style="list-style-type: none"> <li>(1) Facilitated Discussions</li> <li>(2) Mediation</li> </ol> </li> <li>● The complainant and the Board must participate in each step of the reconsideration process.</li> <li>● The Dispute Resolution Committee’s decision is final, i.e., there is no further right of dispute or appeal.</li> </ul>	<ul style="list-style-type: none"> <li>● Requires direction from Governance Committee regarding whether or not to include Mediation in Non-REF reconsideration process.</li> </ul>
<p><b>WHO</b> is the decision maker and <b>HOW</b> is the decision made? (Stage 1, Facilitated Discussions)</p>	<ul style="list-style-type: none"> <li>● A Dispute Resolution Committee (the “DRC”) to be established in accordance with Terms of Reference adopted by the Board, to make recommendations to the Board on matters for both REF Appeal and Non-REF Disputes.</li> <li>● The DRC will participate in a facilitated discussion with the complainant within thirty (30) days of receipt of the Notice of Dispute; continuations may be scheduled by agreement of the parties. The Board has the authority to extend the 30 day deadline by an additional 14 days, to account for special or extenuating circumstances.</li> <li>● The Board will pay the costs of the facilitator, and any</li> </ul>	<ul style="list-style-type: none"> <li>● See draft Terms of Reference.</li> </ul>

	<p>other external costs incurred by the Board with respect to the facilitated discussions.</p>	
<p><b>WHO</b> is the decision maker and <b>HOW</b> is the decision made? (Stage 2, Mediation )</p>	<ul style="list-style-type: none"> <li>• The parties. Any resolution would be subject to approval by the Board and Council of the municipality at subsequent meetings.</li> <li>• Representatives from the Board and municipality participate in a non-binding without prejudice mediation. <ul style="list-style-type: none"> <li>○ Board is represented by DRC.</li> <li>○ The municipality is represented by its appointed representative, alternate, and CAO or designate.</li> <li>○ The parties may agree to additional persons being present during the mediation.</li> </ul> </li> <li>• The mediator is appointed by administration from a roster of mediators approved by the Board.</li> <li>• The mediation must commence within thirty (30) days of the conclusion of the unsuccessful facilitated discussions; continuations may be scheduled with the agreement of the parties.</li> <li>• The parties will share the cost of the mediator and facilities, and pay their own costs with respect to the mediation process.</li> </ul>	<ul style="list-style-type: none"> <li>• See draft Terms of Reference</li> <li>• This stage may not be applicable for Non-REF Disputes, in which case, only REF Appeals would utilize stage 2, Mediation</li> </ul>
<p><b>WHO</b> is the decision maker and <b>HOW</b> is the decision made? (Stage 3, Appeal Committee )</p>	<ul style="list-style-type: none"> <li>• An Appeal Committee is established and appointed by the Board.</li> <li>• The Appeal Committee will act in an adjudicative capacity, hearing from representatives of the Board and municipality, and rendering a binding decision on REF Dispute only. This Stage would not apply to Non-REF decision disputes</li> <li>• The hearing must commence within thirty (30) days of the conclusion of the unsuccessful mediation. The Appeal Committee s has the discretion to conduct a</li> </ul>	<ul style="list-style-type: none"> <li>• How are costs apportioned? Does the Appeal Committee have the ability to award costs?</li> <li>• See draft Terms of Reference</li> </ul>

	<p>hearing in person, electronically, or by written submissions.</p> <ul style="list-style-type: none"> <li>• The Appeal Committee must issue a decision or within fifteen (15) days of the conclusion of the hearing. The Appeal Committee's decision is binding.</li> </ul>	
<p><b>GENERAL CONSIDERATIONS</b></p>		<ul style="list-style-type: none"> <li>• Which timelines and requirements should be incorporated into the Bylaw (which requires Ministerial approval) and which should be included in the Terms of Reference, which can be amended by Board resolution from time to time?</li> </ul>

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<b>Agenda Item</b>	<b>6</b>
<b>Submitted to</b>	<b>Governance Committee</b>
<b>Purpose</b>	<b>For Discussion</b>
<b>Subject</b>	<b>CMRB REF Appeal Process</b>
<b>Meeting Date</b>	<b>December 17, 2020</b>

*That the Committee discuss and provide feedback on the proposed REF Appeal process.*

### Summary

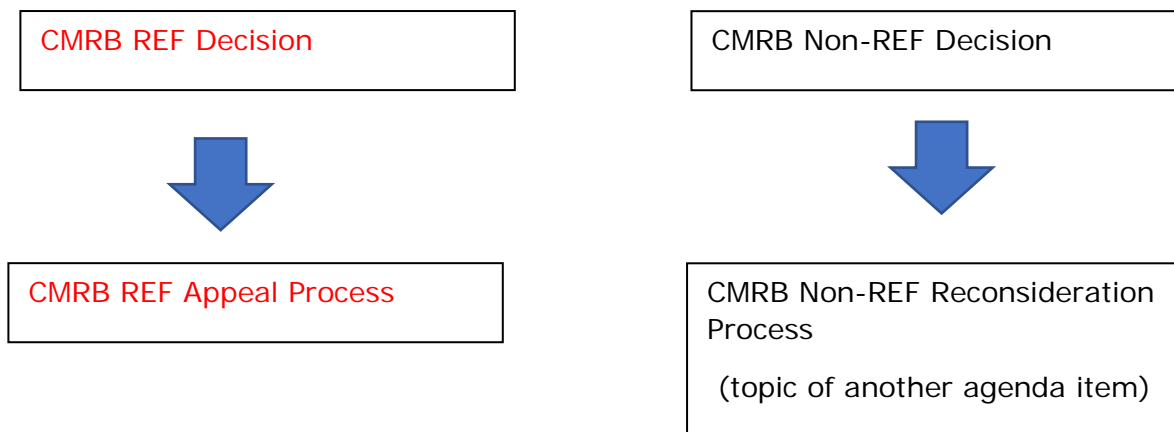
- The *Municipal Government Act* (MGA) requires the CMRB to approve an appeal mechanism or dispute resolution mechanism by bylaw for the purposes of resolving disputes arising from actions taken or decisions made by the growth management board.
- In response to a request of all ten municipalities by 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.
- At the February 21, 2020 meeting of the Governance Committee the following direction was given to Administration:
  - Eliminate option “Appeal to the Minister of Municipal Affairs”.
  - Administration to consult with Municipal Government Board to ask if they would consider creating a review track specific to CMRB.



- Consider discussion on IREF process and whether the Board should be removed from that decision.
- Bring back to Governance Committee meeting for additional vetting before going to the Board.
- At the July 2, 2020 meeting of the Committee a two track appeal mechanism was put forward by Administration, as well as the possibility of working with the Edmonton Metropolitan Region Board on a possible appeal mechanism.
  - The Committee was not ready to support recommending a two stream appeal mechanism to the Board at the time and the City of Calgary and Foothills County requested time to provide further input into the development of the mechanism.
  - CMRB Administration continued to work with the EMRB to explore areas of joint interest and possible cooperation.
- At the October 2020 meeting of the Committee, the Committee approved using a two track appeal mechanism. One track was for appeals pertaining only to REF decisions and the other track was for reconsideration pertaining to non-REF decisions. Administration was asked to explore the details of the REF appeals and also non-REF decision reconsiderations to include the option for mediation.
- CMRB Administration prepared the following process **for REF decisions** and seeks the input of the Governance Committee. A summary of benefits and drawbacks for the proposed approach is also included for discussion.

**Attachments:**

- Process Diagram: REF Decision Appeal Process
- Draft TOR Dispute Resolution Committee
- Draft TOR Appeal Committee



## 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).

## Background

The full text of the pertinent section of the MGA and of the CMRB Regulation is 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.

## 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 put forward a two pronged methodology for consideration by the Committee.

## 5.1. Top Tier Decisions

By member suggestion, and agreed upon by the Governance Committee, it is recommended that the Board consider separating decisions into 'Top Tier' decisions and other decisions. Top Tier decisions would include decisions such as passing the Growth and Servicing Plans and would be passed only by consensus of the entire membership of the Board. Top Tier decisions would not be subject to an appeal process.

Other decisions, which would not require consensus, would fall into two categories as outlined by the flow chart one page 1 of this brief. Other decisions are either REF decisions, or non-REF decisions.

## 5.2. Applicability of the Appeal Mechanism to REF Decisions

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 mechanism. At the October meeting of the Governance Committee, the committee agreed that the Appeal Mechanism be applicable only to REF decisions of the Board.

A separate reconsideration mechanism is to be applicable to non-REF decisions, and is to be established through bylaws adopted by the Board. **The non-REF decision reconsideration mechanism is the subject of a separate agenda item of this meeting.**

## 5.3. Work of the Edmonton Metropolitan Region Board

EMRB is currently working on creating an appeal mechanism or dispute resolution mechanism as directed in section 708.23 of the MGA. Similar to the work previously done in the CMRB, the EMRB has a CAO Working Group to develop this process. One potential solution which has been raised in the Edmonton Metropolitan Region is the creation of a roster of knowledgeable individuals who would be able to hear appeals from the EMRB.

In order to enact this idea, the Board would create a pool of individuals who are knowledgeable regarding the MGA, Statutory Plans who would serve on a roster to hear

appeals of decisions made by the CMRB. The Governance Committee supported CMRB Administration exploring this option at the October 2020 meeting. This avenue offers a number of benefits for the CMRB:

- Requires no regulatory change
- Allows the CMRB to maintain control of the process
- Allows the CMRB to control timing and cost
- Is an outside body, which addresses concerns raised by some members

Borrowing elements of the work products developed by the EMRB, CMRB Administration propose the attached three (3) staged process to a REF Appeal Mechanism.

## Proposed REF Appeal Process

This process has three stages of potential resolution, each with escalating level of effort and cost, encouraging the parties to come to agreement. Those stages are:

Stage 1: Facilitated discussion (Dispute Resolution Committee and facilitator)

Stage 2: Mediation (Dispute Resolution Committee and mediator)

Stage 3: Appeal (Appeal Committee)

This proposed process involves striking two committees. They are:

- An internal Dispute Resolution Committee of the Board for the purposes of participating in facilitated discussion and, failing that, mediations on behalf of the Board and making recommendations to the Board regarding Notices of Dispute. Draft Terms of Reference are attached.
- An external Appeal Committee to adjudicate a hearing from members of the Board and municipalities, with respect to Notices of Dispute rendering a binding decision. Draft Terms of Reference are attached.

The process is outlined in the draft Dispute Resolution and Appeal Bylaw attachment.

### 6.1. Pros / Cons of the Proposed REF Appeal Process

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

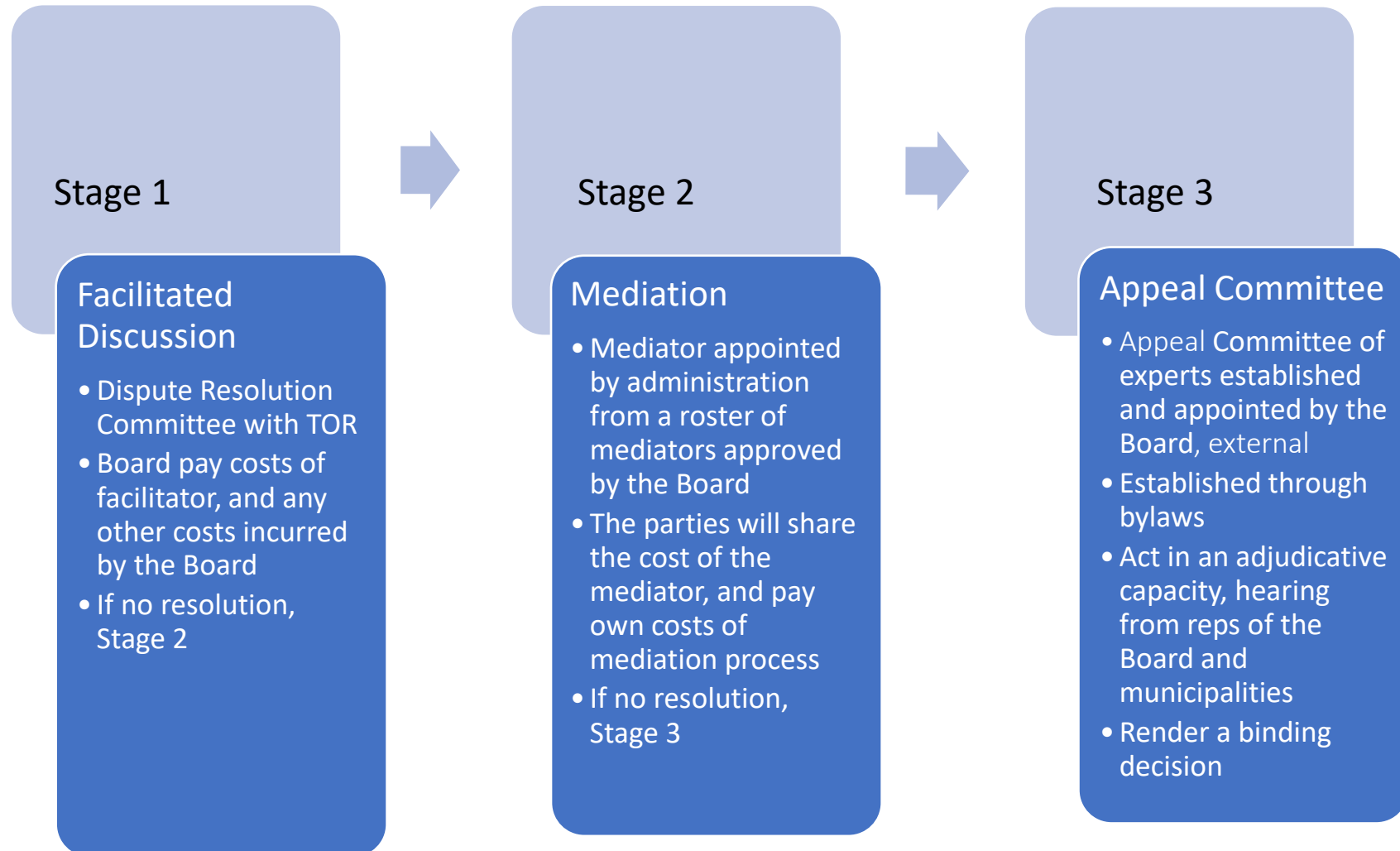
Mechanism	Pros	Cons
Create an internal appeal process from a pool of knowledgeable individuals	External body – perception of independence	Cedes primacy of the CMRB on decisions in the Region
	Potential to access expertise of individuals not part of the CMRB	Increased cost to municipalities
	Able to better control timing/ costs than utilizing the MGB	
Staged Approach	Escalating level of effort and cost encourages parties to come to agreement	Costs incurred

	More control of timing by bylaws and clear TOR	
	Demonstrates effort to collaborate, build trust	

## Recommendation

That the Committee discuss and provide feedback on the proposed REF Appeal process.

# REF Decision Appeal Process



**PROPOSED TERMS OF REFERENCE  
DISPUTE RESOLUTION COMMITTEE**

NTD: Note to Draft

The Bylaw allows a member municipality to dispute an action taken or decision made by the CMRB by filing a written Notice of Dispute with the CMRB. The Dispute Resolution Committee (“the Committee”) plays a key role in the initial assessment of and response to Notices of Dispute.

	<b>Description</b>
<b>Purpose</b>	<p>The purpose of the Committee is to:</p> <ul style="list-style-type: none"> <li>• Review any Notice of Dispute filed with the CMRB by a member municipality (the “<b>Complainant</b>”);</li> <li>• Participate in facilitated discussions and mediations with the Complainant regarding the Notice of Dispute; and</li> <li>• Make recommendations to the CMRB regarding Notices of Dispute, including with respect to the validity of the Notice of Dispute and procedural and substantive matters.</li> </ul>
<b>Authority</b>	<p>The Committee is an advisory body to the CMRB. Recommendations by the Committee to the CMRB will require a motion of the Committee.</p>
<b>Membership</b>	<p>The membership of the Committee shall consist of four (4) representatives of participating municipalities or their designated alternates, appointed by the CMRB as follows:</p> <ul style="list-style-type: none"> <li>• One (1) representative from the City of Calgary;</li> <li>• One (1) representative from a City;</li> <li>• One (1) representative from a Town, and;</li> <li>• One (1) representative from a County.</li> </ul> <p>In addition to the above, the CMRB shall appoint three (3) alternate members, which shall consist of one (1) alternate representative from a City, one (1) alternate representative from a Town, and one (1) alternate representative from a County, that are not otherwise represented on the Committee. An alternate shall participate as a member of the Committee only when a Committee member is the Complainant. [NTD: Need to consider what happens in the event that the City of Calgary is the Complainant. Does the Committee sit with three (3) members, does the City alternate participate, or some other option?]</p>



<p><b>Term</b></p>	<p>The CMRB will appoint Committee members for a term to be determined by the CMRB. The CMRB may, but is not required to, appoint members for varying or staggered terms. Committee members shall be prepared to serve for a minimum term of two (2) years.</p> <p>The CMRB will appoint new Committee members as required, including following municipal elections. [NTD: Consider whether you want to expressly provide for the removal of a member by the CMRB.]</p>
<p><b>Ex Officio Members</b></p>	<p>The CMRB Chair and Chief Officer shall be <i>ex officio</i> non-voting members of the Committee.</p>
<p><b>Chair and Vice Chair</b></p>	<p>The members of the Committee shall appoint a Chair and Vice Chair from amongst themselves. The Chair and Vice Chair must be representatives of member municipalities and voting members of the Committee.</p> <p>[NTD: Alternatively, “The CMRB will appoint a Chair and Vice Chair for the Committee. The Chair and Vice Chair must be representatives of member municipalities and voting members of the Committee.” ]</p>
<p><b>Duties and Responsibilities</b></p>	<p><u>Facilitated Discussions</u></p> <p>The Committee shall meet within thirty (30) days of receipt of a Notice of Dispute by the CMRB, for the purpose of participating in a facilitated discussion with the Complainant regarding the Notice of Dispute.</p> <p>The Committee may, with the agreement of the Complainant, hold one or more additional meetings for the purpose of continuing facilitated discussions with the Complainant.</p> <p>The Committee shall provide a recommendation to the CMRB regarding a Notice of Dispute at the CMRB Meeting following the conclusion of the CMRB’s facilitated discussions with the Committee. The Committee’s recommendation shall include:</p> <ul style="list-style-type: none"> <li>• The Committee’s assessment of the validity of the dispute; and</li> <li>• The Committee’s recommendation regarding any actions to be taken or decisions made by the CMRB in response to the Notice of Dispute, including any recommendations regarding the procedure to be followed in response to the Notice of Dispute.</li> </ul> <p><u>Mediation</u></p> <p>The Committee shall participate in a mediation with a</p>

	<p>Complainant within thirty (30) days of the conclusion of unsuccessful facilitated discussions regarding the Notice of Dispute.</p> <p>The Committee may, with the agreement of the Complainant, participate in one or more additional sessions for the purpose of continuing mediations with the Complainant.</p> <p>The Committee shall provide a recommendation to the CMRB regarding a Notice of Dispute at the CMRB Meeting following the conclusion of the mediation.</p> <p>[NTD: For Notice of Dispute on a Non-REF Decision, the Committee may or may not include Mediation step, depending on recommendations of the Governance Committee and Board approval]</p>
<b>Quorum</b>	<p>Quorum is defined as a simple majority (50% plus one) of the membership of the Committee.</p>
<b>Decision Making</b>	<p>Representatives of participating municipalities shall be voting members of the Committee and shall have one (1) vote each. <i>Ex officio</i> members of the Committee shall not have voting rights.</p> <p>In the event that a member of the Committee represents the Complainant, the member shall not participate in any meetings regarding the Notice of Dispute and the alternate member shall participate as a member of the Committee for all purposes related to the Notice of Dispute. For further clarity, the alternate member shall represent the same type of municipality (i.e., City, Town of County) as the Complainant.</p> <p>In making decisions and recommendations, the Committee shall act:</p> <ul style="list-style-type: none"> <li>• In accordance with the <i>Municipal Government Act</i>, Calgary Metropolitan Region Board Regulation, Bylaw, and any other applicable CMRB bylaw or policy; and</li> <li>• In the best interest of the Calgary Metropolitan Region.</li> </ul> <p>All Committee motions must be moved by a voting member. A simple majority (50% plus one) of members in attendance is required to pass a motion.</p>
<b>Meetings</b>	<p>The Committee shall meet as necessary to fulfill its duties and responsibilities and otherwise as directed by the CMRB.</p> <p>Administration will endeavor to provide meeting agendas, minutes, reports, briefings, and supporting materials to Committee members in electronic format in advance of scheduled Committee meetings. Any materials not provided in advance of a</p>

	<p>scheduled Committee meeting will be provided to Committee members at the meeting. [NTD: Please confirm whether you want to specify these procedures and if so whether this is acceptable.]</p> <p>The Committee is required to conduct its meetings in public unless a matter to be discussed is within one of the exceptions to disclosure in Division 2 of Part 1 of the <i>Freedom of Information and Protection of Privacy Act</i>, pursuant to s. 708.04 of the <i>Municipal Government Act</i>. In the event that a meeting is closed to the public, all Committee members and other individuals present during the closed portion of the meeting shall keep matters disclosed in the closed portion of the meeting in confidence until disclosed or discussed at a Committee or CMRB meeting held in public. [NTD: Should it be left in the discretion of the Committee to decide whether to close a meeting to the public, if there is a basis for doing so, or do you want to specify that the facilitated discussions and/or mediations will be on a without prejudice basis and the Committee meetings shall be closed to the public? Dispute resolution discussion and mediations are typically conducted on a without prejudice basis.]</p>
<p><b>Support and Resources</b></p>	<p>The Committee shall be supported by the Chief Officer, and CMRB Administration and outside consultants and professionals as determined to be necessary and directed by the Chief Officer.</p> <p>The Chief Officer shall engage the services of a facilitator to assist in discussions between the Committee and a Complainant. The facilitator shall be selected from a list of qualified individuals approved by the CMRB from time to time.</p> <p>The Chief Officer shall engage the services of a mediator to conduct mediation between the Committee and a Complainant. The mediator shall be selected from a list of qualified individuals approved by the CMRB from time to time.</p>
<p><b>Amendments to the Terms of Reference</b></p>	<p>The Committee may, from time to time, consider changes to its Terms of Reference and recommend proposed changes to the Terms of Reference to the CMRB for consideration and approval.</p>

**PROPOSED TERMS OF REFERENCE  
APPEAL COMMITTEE**

NTD: Note to Draft

The Bylaw allows a member municipality to dispute an action taken or decision made by the CMRB by filing a written Notice of Dispute with CMRB Administration. The Appeal Committee is the final step in the dispute resolution and appeal process.

	<b>Description</b>
<b>Purpose</b>	<p>The purpose of the Appeal Committee is to:</p> <ul style="list-style-type: none"> <li>• Conduct a hearing with respect to a Notice of Dispute filed with the CMRB by a member municipality (the “<b>Complainant</b>”) and which cannot be resolved through facilitated discussion or mediation, and;</li> <li>• Issue a written decision within respect to the Notice of Dispute.</li> </ul>
<b>Authority</b>	<p>The Appeal Committee has the authority to make final and binding decisions with respect to a Notice of Dispute.</p> <p>Notwithstanding any other provision of this Terms of Reference, the Appeal Committee may not make a decision which has the effect of exercising the CMRB’s power to make bylaws, borrow money, adopt budgets, approve financial statements, appoint an auditor or recommend the approval of a growth plan, each of which are powers that may only be exercise by the CMRB in accordance in s. 708.07 of the <i>Municipal Government Act</i>.</p>
<b>Membership</b>	<p>The membership of the Appeal Committee shall consist of the following persons:</p> <ul style="list-style-type: none"> <li>• The representatives of participating municipalities;</li> <li>• The Chief Administrative Officers (or equivalent) of participating municipalities;</li> <li>• Seven (7) individuals appointed by the CMRB from time to time with knowledge and/or experience that in the opinion of the CMRB will assist the Appeal Committee in determining appeals before it.</li> </ul> <p>[NTD: Consider whether (1) all representatives and CAOs will be members of the Committee, or only specified municipalities – for example, those municipalities that are <u>not</u> involved in the Dispute Resolution Committee -- and (2) whether to provide for alternates/designates, taking into account that if a representative</p>

	or CAO is unable to sit on a panel there are other representatives and CAOs to select from.]
<b>Term</b>	<p>Representatives and CAOs of participating municipalities shall be appointed to the Appeal Committee by virtue of their position, for the duration of their appointment or office.</p> <p>The CMRB will appoint additional Appeal Committee members for a term to be determined by the CMRB. The CMRB may, but is not required to, appoint members for varying or staggered terms. Appeal Committee members shall be prepared to serve for a minimum term of two (2) years.</p> <p>[NTD: Consider whether you want to expressly provide for the removal of a member by the CMRB.]</p>
<b>Chair and Vice Chair</b>	The panel of the Appeal Committee hearing an appeal shall appoint a Chair and Vice Chair from amongst themselves.
<b>Duties and Responsibilities</b>	The Appeal Committee shall conduct a hearing regarding a Notice of Dispute in accordance with the timelines set out in the Bylaw, and issue a written decision with reasons within fifteen (15) days of the conclusion of the hearing.
<b>Quorum</b>	Quorum is defined as a simple majority (50% plus one) of the membership of the Appeal Committee.
<b>Procedures and Decision Making</b>	<p>A panel of the Appeal Committee hearing shall consist of one (1) representative of a participating municipality, one (1) CAO from a participating municipality, and three (3) other members of the Appeal Committee. The panel shall be appointed by Board Administration.</p> <p>In no event shall the representative or CAO of:</p> <ul style="list-style-type: none"> <li>• the Complainant, or;</li> <li>• a participating municipality whose representative participated in meetings of the Dispute Resolution Subcommittee with respect to the Notice of Appeal</li> </ul> <p>be appointed to the panel hearing an appeal of the Notice of Dispute. [NTD: Consider whether you want to establish any further criteria for the composition of a panel.]</p> <p>No person shall participate in a hearing as a member of the Appeal Committee if that person has been previously involved in a decision-making process related to the matter under appeal or if that person has any conflict or interest, bias or reasonable apprehension of bias.</p> <p>Members of the Appeal Committee shall have one (1) vote each.</p>

	<p>In making decisions and recommendations, the Appeal Committee shall act in accordance with the <i>Municipal Government Act</i>, Edmonton Metropolitan Region Board Regulation, Bylaw, and any other applicable CMRB bylaw or policy.</p> <p>A simple majority (50% plus one) of the members of the panel is necessary to be required to make a decision.</p> <p>The Appeal Committee shall conduct its hearing in accordance with procedures to be established by the Appeal Committee from time to time. [NTD: Consider the Board wants to establish rules of procedure, or is satisfied with having these established by the Appeal Committee generally or on an appeal by appeal basis.]</p> <p>The Appeal Committee is required to conduct its meetings in public unless a matter to be discussed is within one of the exceptions to disclosure in Division 2 of Part 1 of the <i>Freedom of Information and Protection of Privacy Act</i>, pursuant to s. 708.04 of the <i>Municipal Government Act</i>. In the event that a meeting is closed to the public, all Appeal Committee members and other individuals present during the closed portion of the meeting shall keep matters disclosed in the closed portion of the meeting in confidence until disclosed or discussed at a Appeal Committee or CMRB meeting held in public. [NTD: Should it be left in the discretion of the Committee to decide whether to close a meeting to the public, if there is a basis for doing so, or do you want to specify that the hearing will be in public but deliberations will be closed to the public?]</p>
<p><b>Support and Resources</b></p>	<p>The Appeal Committee shall be supported by the Chief Executive Office, and CMRB Administration and outside consultants and professionals as determined to be necessary and directed by the Chief Executive Officer. [NTD: Should the Terms of Reference specifically provide for the appointment of a Clerk for the Appeal Committee?]</p>
<p><b>Amendments to the Terms of Reference</b></p>	<p>The Appeal Committee may, from time to time, consider changes to its Terms of Reference and recommend proposed changes to the Terms of Reference to the CMRB for consideration and approval.</p>

<b>Agenda Item</b>	<b>7</b>
<b>Submitted to</b>	<b>Governance Committee</b>
<b>Purpose</b>	<b>For Discussion</b>
<b>Subject</b>	<b>CMRB Non-REF Reconsideration Process</b>
<b>Meeting Date</b>	<b>December 17, 2020</b>

*That the Committee discuss and provide feedback on the proposed Non-REF decision reconsideration process.*

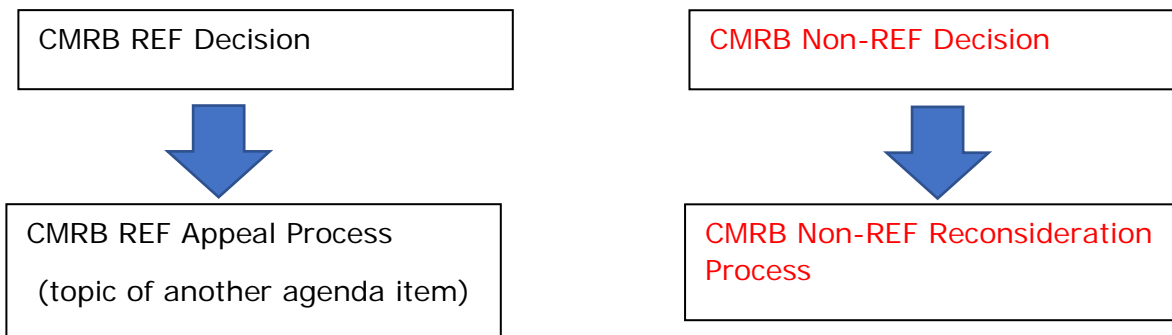
### Summary

- 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.
- At the February 21, 2020 meeting of the Governance Committee the following direction was given to Administration:
  - Eliminate option "Appeal to the Minister of Municipal Affairs".
  - Administration to consult with Municipal Government Board to ask if they would consider creating a review track specific to CMRB.

- Consider discussion on IREF process and whether the Board should be removed from that decision.
- Bring back to Governance Committee meeting for additional vetting before going to the Board.
- At the July 2, 2020 meeting of the Committee a two track appeal mechanism was put forward by Administration, as well as the possibility of working with the Edmonton Metropolitan Region Board on a possible appeal mechanism.
  - The Committee was not ready to support recommending a two stream appeal mechanism to the Board at the time and the City of Calgary and Foothills County requested time to provide further input into the development of the mechanism.
  - CMRB Administration continued to work with the EMRB to explore areas of joint interest and possible cooperation.
- At the October 2020 meeting of the Committee, the Committee approved using a two track appeal mechanism. One track was for appeals pertaining only to REF decisions and the other track was for reconsideration pertaining to non-REF decisions. Administration was asked to explore the details of the REF appeals and also non-REF decision reconsiderations to include the option for mediation.
- CMRB Administration prepared the following process **for Non-REF decisions** and seeks the input of the Governance Committee. A summary of benefits and drawbacks for the two proposed options (Option A & Option B) are also included for discussion.

**Attachments:**

- Option A: Non-REF Decision Reconsideration Process
- Option B: Non-REF Decision Reconsideration Process
- Draft TOR Dispute Resolution Committee





## 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).

## Background

The full text of the pertinent section of the MGA and of the CMRB Regulation is 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.

## 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 put forward a two pronged methodology for consideration by the Committee.

## 5.1. Applicability of the Reconsideration Mechanism to Non-REF Decisions

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 mechanism. A separate reconsideration mechanism is to be applicable to non-REF decisions, and is to be established through bylaws adopted by the Board.

At the October meeting of the Governance Committee, the committee agreed that the Appeal Mechanism be applicable only to REF decisions of the Board. **The proposed REF Appeal mechanism is the subject of a separate agenda item of this meeting.**

## 5.2. Work of the Edmonton Metropolitan Region Board

EMRB is currently working on creating an appeal mechanism or dispute resolution mechanism as directed in section 708.23 of the MGA. Similar to the work previously done in the CMRB, the EMRB has a CAO Working Group to develop this process. One potential solution which has been raised in the Edmonton Metropolitan Region is the creation of a roster of knowledgeable individuals who would be able to hear appeals from the EMRB.

In order to enact this idea, the Board would create a pool of individuals who are knowledgeable regarding the MGA, Statutory Plans who would serve on a roster to hear appeals of decisions made by the CMRB. The Governance Committee supported CMRB Administration exploring this option at the October 2020 meeting. This avenue offers a number of benefits for the CMRB:

- Requires no regulatory change
- Allows the CMRB to maintain control of the process
- Allows the CMRB to control timing and cost
- Is an outside body, which addresses concerns raised by some members

Borrowing elements of the work products developed by the EMRB, CMRB Administration propose two-staged (Option A) or one-staged (Option B) process for disputes regarding a non-REF decision by the Board.

## Option A – Proposed Non-REF Reconsideration Process

This proposed process has two stages of potential resolution, each with escalating level of effort and cost, encouraging the parties to come to agreement. Those stages are:

Stage 1: Facilitated discussion (Dispute Resolution Committee and facilitator)

Stage 2: Mediation (Dispute Resolution Committee and mediator)

This proposed process involves utilizing one committee, assuming the Dispute Resolution Committee of the proposed REF Appeal process exists. The proposed committee, an internal Dispute Resolution Committee of the Board, struck for the purposes of participating in facilitated and making recommendations to the Board regarding Notices of Dispute. Draft Terms of Reference are attached.

The process is outlined in the attached process diagram, entitled Option A: Non-REF Decision Reconsideration Process.

## Option B– Proposed Non-REF Reconsideration Process

This proposed process has one stage of potential resolution and involves facilitated discussions among the parties, through the Dispute Resolution Committee using a facilitator. The process would utilize an internal Dispute Resolution Committee of the Board for the purposes of participating in facilitated discussions and making recommendations to the Board regarding Notices of Dispute. Draft Terms of Reference for the Dispute Resolution Committee are attached. **Note that the Dispute Resolution Committee functions of mediation in the TOR would be reserved for REF Appeals only, under this option.**

The process is outlined in the attached process diagram, entitled Option B: Non-REF Decision Reconsideration Process.

## Pros/Cons of the Proposed Non-REF Reconsideration Process – Option A and Option B

The below chart identifies pros and cons of the proposed reconsideration process, Option A versus Option B.

Mechanism	Pros	Cons
Option A (two stage approach)	Utilizes expertise in mediation	Increased cost to municipalities for mediation stage
	Escalating level of effort and cost encourages parties to come to agreement	Potential for longer process due to additional stage

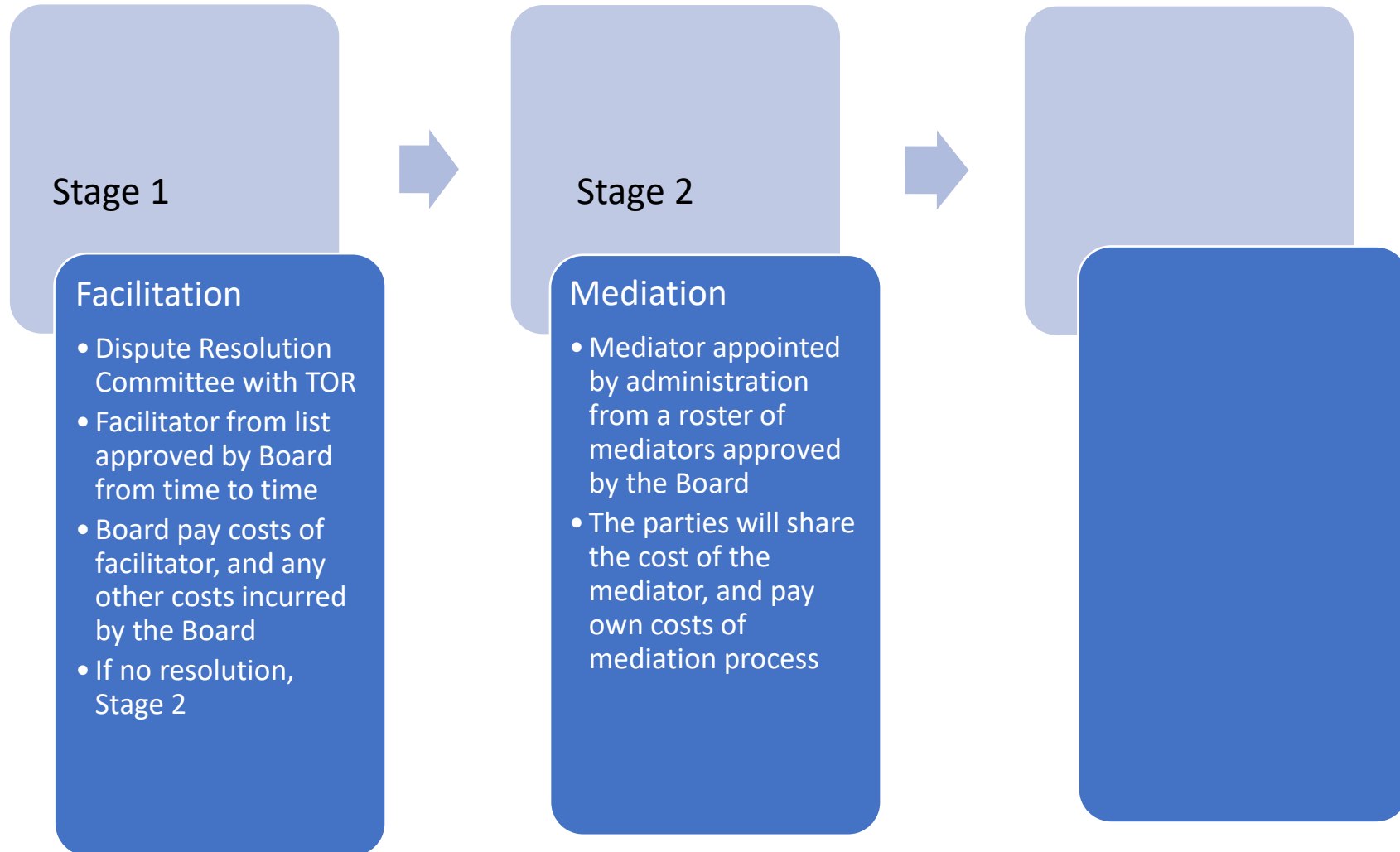
Option B (one stage approach)	Lower cost option as no mediation stage	No option for reconsideration through mediation
	Fewer stages may shorten process timeline	
	Demonstrates effort to collaborate, build trust	

## Recommendation

Motion that the Committee discuss and provide feedback on the proposed Non-REF Decision Reconsideration Process

# Option A

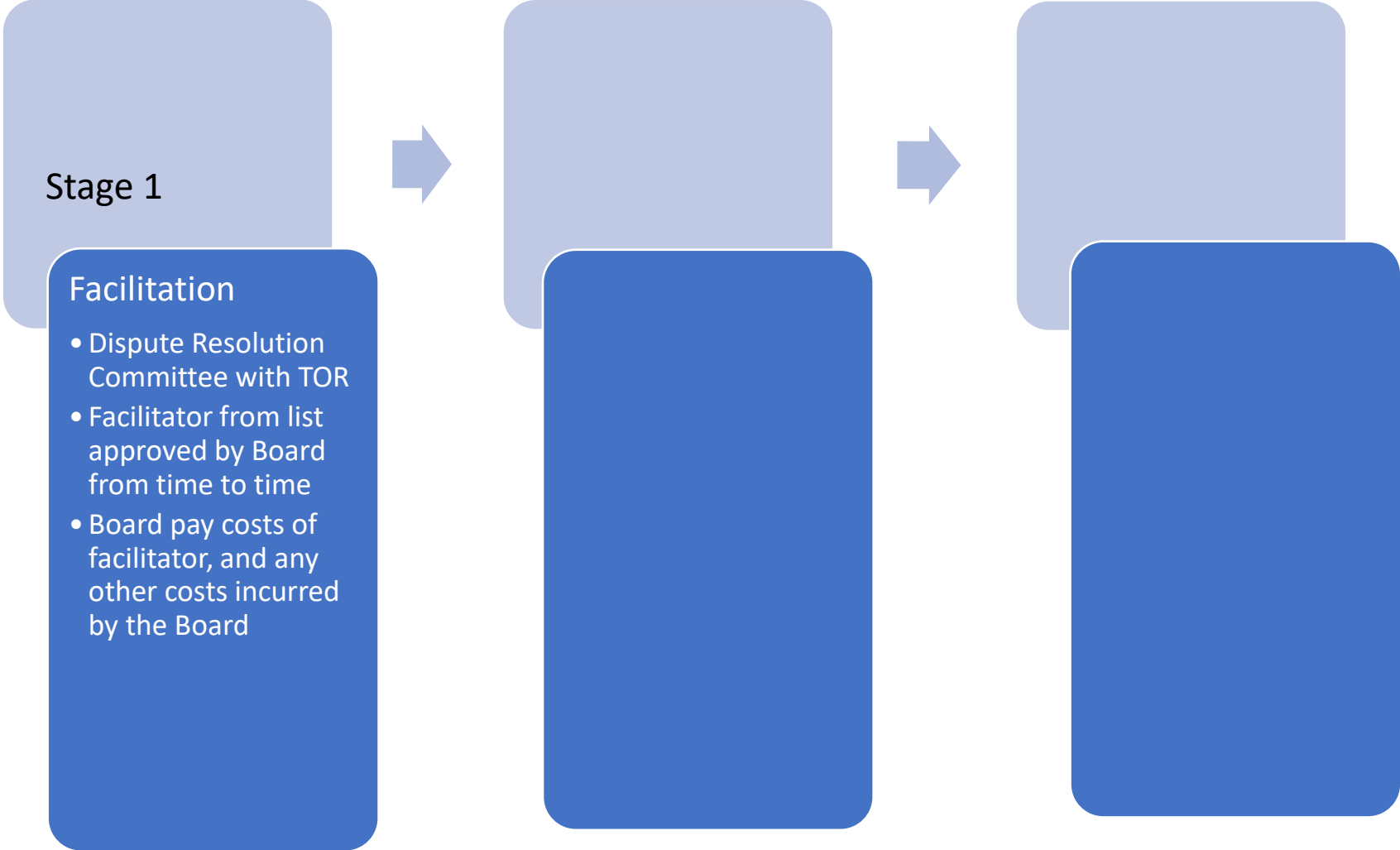
## Non-REF Decision Reconsideration Process



Agenda Item 7i Attachment

# Option B

## Non-REF Decision Reconsideration Process



**PROPOSED TERMS OF REFERENCE  
DISPUTE RESOLUTION COMMITTEE**

NTD: Note to Draft

The Bylaw allows a member municipality to dispute an action taken or decision made by the CMRB by filing a written Notice of Dispute with the CMRB. The Dispute Resolution Committee (“the Committee”) plays a key role in the initial assessment of and response to Notices of Dispute.

	<b>Description</b>
<b>Purpose</b>	<p>The purpose of the Committee is to:</p> <ul style="list-style-type: none"> <li>• Review any Notice of Dispute filed with the CMRB by a member municipality (the “<b>Complainant</b>”);</li> <li>• Participate in facilitated discussions and mediations with the Complainant regarding the Notice of Dispute; and</li> <li>• Make recommendations to the CMRB regarding Notices of Dispute, including with respect to the validity of the Notice of Dispute and procedural and substantive matters.</li> </ul>
<b>Authority</b>	<p>The Committee is an advisory body to the CMRB. Recommendations by the Committee to the CMRB will require a motion of the Committee.</p>
<b>Membership</b>	<p>The membership of the Committee shall consist of four (4) representatives of participating municipalities or their designated alternates, appointed by the CMRB as follows:</p> <ul style="list-style-type: none"> <li>• One (1) representative from the City of Calgary;</li> <li>• One (1) representative from a City;</li> <li>• One (1) representative from a Town, and;</li> <li>• One (1) representative from a County.</li> </ul> <p>In addition to the above, the CMRB shall appoint three (3) alternate members, which shall consist of one (1) alternate representative from a City, one (1) alternate representative from a Town, and one (1) alternate representative from a County, that are not otherwise represented on the Committee. An alternate shall participate as a member of the Committee only when a Committee member is the Complainant. [NTD: Need to consider what happens in the event that the City of Calgary is the Complainant. Does the Committee sit with three (3) members, does the City alternate participate, or some other option?]</p>



<p><b>Term</b></p>	<p>The CMRB will appoint Committee members for a term to be determined by the CMRB. The CMRB may, but is not required to, appoint members for varying or staggered terms. Committee members shall be prepared to serve for a minimum term of two (2) years.</p> <p>The CMRB will appoint new Committee members as required, including following municipal elections. [NTD: Consider whether you want to expressly provide for the removal of a member by the CMRB.]</p>
<p><b>Ex Officio Members</b></p>	<p>The CMRB Chair and Chief Officer shall be <i>ex officio</i> non-voting members of the Committee.</p>
<p><b>Chair and Vice Chair</b></p>	<p>The members of the Committee shall appoint a Chair and Vice Chair from amongst themselves. The Chair and Vice Chair must be representatives of member municipalities and voting members of the Committee.</p> <p>[NTD: Alternatively, “The CMRB will appoint a Chair and Vice Chair for the Committee. The Chair and Vice Chair must be representatives of member municipalities and voting members of the Committee.” ]</p>
<p><b>Duties and Responsibilities</b></p>	<p><u>Facilitated Discussions</u></p> <p>The Committee shall meet within thirty (30) days of receipt of a Notice of Dispute by the CMRB, for the purpose of participating in a facilitated discussion with the Complainant regarding the Notice of Dispute.</p> <p>The Committee may, with the agreement of the Complainant, hold one or more additional meetings for the purpose of continuing facilitated discussions with the Complainant.</p> <p>The Committee shall provide a recommendation to the CMRB regarding a Notice of Dispute at the CMRB Meeting following the conclusion of the CMRB’s facilitated discussions with the Committee. The Committee’s recommendation shall include:</p> <ul style="list-style-type: none"> <li>• The Committee’s assessment of the validity of the dispute; and</li> <li>• The Committee’s recommendation regarding any actions to be taken or decisions made by the CMRB in response to the Notice of Dispute, including any recommendations regarding the procedure to be followed in response to the Notice of Dispute.</li> </ul> <p><u>Mediation</u></p> <p>The Committee shall participate in a mediation with a</p>

	<p>Complainant within thirty (30) days of the conclusion of unsuccessful facilitated discussions regarding the Notice of Dispute.</p> <p>The Committee may, with the agreement of the Complainant, participate in one or more additional sessions for the purpose of continuing mediations with the Complainant.</p> <p>The Committee shall provide a recommendation to the CMRB regarding a Notice of Dispute at the CMRB Meeting following the conclusion of the mediation.</p> <p>[NTD: For Notice of Dispute on a Non-REF Decision, the Committee may or may not include Mediation step, depending on recommendations of the Governance Committee and Board approval]</p>
<b>Quorum</b>	<p>Quorum is defined as a simple majority (50% plus one) of the membership of the Committee.</p>
<b>Decision Making</b>	<p>Representatives of participating municipalities shall be voting members of the Committee and shall have one (1) vote each. <i>Ex officio</i> members of the Committee shall not have voting rights.</p> <p>In the event that a member of the Committee represents the Complainant, the member shall not participate in any meetings regarding the Notice of Dispute and the alternate member shall participate as a member of the Committee for all purposes related to the Notice of Dispute. For further clarity, the alternate member shall represent the same type of municipality (i.e., City, Town of County) as the Complainant.</p> <p>In making decisions and recommendations, the Committee shall act:</p> <ul style="list-style-type: none"> <li>• In accordance with the <i>Municipal Government Act</i>, Calgary Metropolitan Region Board Regulation, Bylaw, and any other applicable CMRB bylaw or policy; and</li> <li>• In the best interest of the Calgary Metropolitan Region.</li> </ul> <p>All Committee motions must be moved by a voting member. A simple majority (50% plus one) of members in attendance is required to pass a motion.</p>
<b>Meetings</b>	<p>The Committee shall meet as necessary to fulfill its duties and responsibilities and otherwise as directed by the CMRB.</p> <p>Administration will endeavor to provide meeting agendas, minutes, reports, briefings, and supporting materials to Committee members in electronic format in advance of scheduled Committee meetings. Any materials not provided in advance of a</p>

	<p>scheduled Committee meeting will be provided to Committee members at the meeting. [NTD: Please confirm whether you want to specify these procedures and if so whether this is acceptable.]</p> <p>The Committee is required to conduct its meetings in public unless a matter to be discussed is within one of the exceptions to disclosure in Division 2 of Part 1 of the <i>Freedom of Information and Protection of Privacy Act</i>, pursuant to s. 708.04 of the <i>Municipal Government Act</i>. In the event that a meeting is closed to the public, all Committee members and other individuals present during the closed portion of the meeting shall keep matters disclosed in the closed portion of the meeting in confidence until disclosed or discussed at a Committee or CMRB meeting held in public. [NTD: Should it be left in the discretion of the Committee to decide whether to close a meeting to the public, if there is a basis for doing so, or do you want to specify that the facilitated discussions and/or mediations will be on a without prejudice basis and the Committee meetings shall be closed to the public? Dispute resolution discussion and mediations are typically conducted on a without prejudice basis.]</p>
<p><b>Support and Resources</b></p>	<p>The Committee shall be supported by the Chief Officer, and CMRB Administration and outside consultants and professionals as determined to be necessary and directed by the Chief Officer.</p> <p>The Chief Officer shall engage the services of a facilitator to assist in discussions between the Committee and a Complainant. The facilitator shall be selected from a list of qualified individuals approved by the CMRB from time to time.</p> <p>The Chief Officer shall engage the services of a mediator to conduct mediation between the Committee and a Complainant. The mediator shall be selected from a list of qualified individuals approved by the CMRB from time to time.</p>
<p><b>Amendments to the Terms of Reference</b></p>	<p>The Committee may, from time to time, consider changes to its Terms of Reference and recommend proposed changes to the Terms of Reference to the CMRB for consideration and approval.</p>

<b>Agenda Item</b>	<b>8</b>
<b>Submitted to</b>	<b>Governance Committee</b>
<b>Purpose</b>	<b>For Decision</b>
<b>Subject</b>	<b>Treaty 7 Territory Land Acknowledgement</b>
<b>Meeting Date</b>	<b>December 17, 2020</b>
<i>That the Committee recommend to the Board the proposed wording of the Treaty 7 Territory Land Acknowledgement</i>	
<p>Background</p> <ul style="list-style-type: none"> <li>• Since 2018, the CMRB has been working on building relationship with Indigenous communities within and adjacent to the geographic boundaries of the CMR.</li> <li>• During the startup phase of the CMRB, this issue was informally discussed and it was decided at that time that a statement of acknowledgement of territory lands would not be incorporated into meetings.</li> <li>• Many member municipalities read a Treaty 7 Territory Land Acknowledgement at the start of their council meetings.</li> <li>• The Government of Alberta does not have a standardized land acknowledgement.</li> <li>• Acknowledging the land is an important part of reconciliation.</li> <li>• As the CMRB Indigenous engagement efforts continue to advance, and as this issue was brought up through meeting agenda reviews with Chair and Vice-Chairs, there is interest in discussing the possibility of adding an Acknowledgement of Treaty 7 Territory Lands at the opening of CMRB Board and Committee meetings.</li> </ul>	
Attachment: Proposed Treaty 7 Territory Land Acknowledgement	

## 1. Next Steps

CMRB Administration will incorporate any feedback given by the Committee and bring forward wording for approval and recommendation to the Board at the next Committee meeting.

In addition, if the Board approves the recommendation, CMRB Administration would seek input on the wording from the Indigenous Nations with the intent of refining the wording of the Treaty 7 Territory Land Acknowledgement throughout 2021.

**2. Recommendation:** Administration recommends that the Committee recommend to the Board the proposed wording of the Treaty 7 Territory Land Acknowledgement.

## Proposed Treaty 7 Territory Land Acknowledgement<sup>1</sup>

In the spirit of reconciliation, we acknowledge that we live, work and play on the traditional territories of the Blackfoot Confederacy (Siksika, Kainai, Piikani), the Tsuut'ina, the Stoney Nakoda Nations (Chiniki, Wesley, Bearspaw), the Métis Nation (Region 3), and all people who make their homes in the Treaty 7 region of Southern Alberta.

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<sup>1</sup> Adapted from the Calgary Foundation, from Vital Priorities of the Calgary Foundation 'Strengthening Relationships with Indigenous Communities'. Accessed at <https://calgaryfoundation.org/about-us/vital-priorities/strengthening-relationships-with-indigenous-communities/land-acknowledgement/>, on December 7, 2020.