

Section I – Items for Authority Action

TO: Chair and Members of the Authority
Meeting #7/18, Friday, September 28, 2018

FROM: John MacKenzie, Chief Executive Officer

RE: **BOARD OF DIRECTORS ADMINISTRATIVE BY-LAW**
Required Compliance with the *Conservation Authorities Act*

KEY ISSUE

Approval of the proposed Board of Directors Administrative By-law, a document required by the *Conservation Authorities Act*.

RECOMMENDATION

WHEREAS the *Conservation Authorities Act (Act)* amendment requires conservation authorities to have administrative practices that meet the requirements of Section 19.1 of the *Act*;

AND WHEREAS Toronto and Region Conservation Authority's (TRCA) Administration Regulation and Rules of Conduct were last updated on February 28, 1992 and June 24, 2016, respectively;

AND WHEREAS Conservation Ontario endorsed the Conservation Authority (CA) Administrative By-law Model at their meeting held on April 16, 2018;

AND WHEREAS TRCA's Use of Resources During an Election policy was approved by Resolution #A228/13 and is five years old and is due for review;

AND WHEREAS conservation authorities are named in Section 197 of the *Education Act*, R.S.O. 1990, CHAPTER E.2 as agencies which school boards may enter into agreements with for the provision of out-of-classroom learning;

THEREFORE LET IT BE RESOLVED THAT the proposed Board of Directors Administrative By-law be approved, and TRCA's existing Administration Regulation and Rules of Conduct be repealed, as of July 20, 2018;

THAT the Budget/Audit Advisory Board be disbanded, effective September 28, 2018;

THAT TRCA's Use of Resources During an Election policy, as amended to reflect the language of the draft Board of Directors Administrative By-law outlined in Appendix 1 of the Board of Directors Administrative By-Law, be approved and the existing standalone policy be repealed;

THAT TRCA's standalone Policy Review policy be repealed;

THAT creation of the multi-stakeholder Toronto and Region Outdoor Education Task Force as outlined in Appendix 8 be approved, with an initial term of 18 months;

Item 8.1

THAT a formal request be made to the Minister of Education and to area school boards for representation on the Task Force, and that staff report back on composition of the Task Force in January 2019;

AND FURTHER THAT the approved Board of Directors Administrative By-law be forwarded to the Minister of Natural Resources and Forestry, the Minister of Environment, Conservation and Parks, and Conservation Ontario, and posted on TRCA's website.

BACKGROUND

Authority Administrative By-law

In 1986, the Authority adopted an Administration Regulation and Rules of Conduct which govern procedures with respect to notices, agendas, meetings (open and closed), elections and rules of debate. The Rules of Conduct has been amended, as required, with the last amendment being in 2016. Any changes to the Rules of Conduct must be approved by the Authority, and changes to the Administration Regulation by the Lieutenant Governor in Council.

Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017* came into force on December 12, 2017, and this legislation amended the *Conservation Authorities Act*. Under the *Act*, each conservation authority has until December of 2018 to have their Section 19.1 compliant by-laws in place. Due to timing of the 2018 municipal elections (October 22, 2018), it is recommended that conservation authorities adopt their new by-laws in the late summer or fall of 2018, prior to a significant turnover in membership.

In anticipation of changes to the *Act*, all conservation authority by-laws received by Conservation Ontario in July and August 2017 were reviewed in order to prepare an Administrative By-law Model. A Conservation Ontario Working Group was established to provide additional input in order to prepare the draft By-law Model for review by all conservation authorities, on which TRCA was represented by its Clerk and Senior Manager, Corporate Records.

Along with the issues identified by the Working Group the following resources were used as reference to research and analyze best management practices (BMP's):

- existing conservation authority by-laws, Members briefing books, and policies and procedures received by Conservation Ontario from 12 conservation authorities, including TRCA;
- provincial and other best management practices for board governance: *Ontario Not-for-Profit Corporations Act*, Ministry of Municipal Affairs, Association of Municipalities Ontario, Board of Health Governance Toolkit, other local boards under the *Municipal Act*, Ontario Ombudsman Municipal Meetings FAQ, Ontario Ombudsman investigations, British Columbia Integrity Office, *Ontario Corporations Act*;
- not for profit best management practices for board governance: First Reference Policy Pro, Board Governance Classics, *Canada Not-for-Profit Corporations Act*;
- other Ontario legislation:
 - *Conservation Authorities Act*;
 - *Municipal Act*;
 - *Municipal Conflict of Interest Act*;
 - *Municipal Freedom of Information and Protection of Privacy Act*; and
 - *Accessibility for Ontarians with Disabilities Act*.

Item 8.1

The draft Administrative By-law Model was circulated to all 36 conservation authorities in November 2017 and amendments were made based on the comments received. It was presented to Conservation Ontario Council on December 11, 2017, and received endorsement in principle at that time.

South Nation Conservation coordinated a legal review of the document in February 2018. Ministry of Natural Resources and Forestry (MNRF) staff reviewed the document and sought feedback from the Ministry of Municipal Affairs and the Association of Municipalities of Ontario. The requested changes resulting from those discussions have been incorporated into the proposed By-law.

A final version of the Administrative By-law Model has received endorsement of MNRF. It was circulated to all 36 CA's and was endorsed by Conservation Ontario Council on April 16, 2018.

As part of TRCA's by-law development process, staff undertook a review of existing Authority committees. The Budget/Audit Advisory Board (BAAB) meetings are held infrequently throughout the year for the main purpose of recommending approval by the Authority of TRCA's budget, audited financial statements, changes to financial policies and financial updates, and consists of only five Board Members. Staff considered the feasibility of amalgamating BAAB with the Executive Committee for more timely reporting and to encourage greater discussion of issues amongst a larger contingent of Board Members.

In addition, the Chief Financial and Operating Officer reviewed the fiduciary responsibility of Members against applicable legislation for inclusion in the proposed by-law.

Conservation Education

Conservation education has been viewed as an integral part of the work of conservation authorities since the inception of the conservation authority movement. At the London Conference in 1944 delegates from across Ontario, which included representatives and officials from municipalities, federal and provincial governments, the education system, the agricultural sector, and representatives of naturalist and conservation organizations, convened to study and propose a response to a range of pressing issues related to natural resource management.

In addition to resolutions related to land acquisition, flood control and conservation projects, delegates at the 1944 London Conference identified the need to improve the engagement of students throughout the educational system in Ontario, specifically:

- R.1 (g) Fostering the direction of adequate attention to all phases of the conservation of natural resources in all the educational work of the province of Ontario.

The London Conference resolutions formed the basis of future educational activities at TRCA and conservation authorities in Ontario.

Throughout TRCA's history, education, training and outreach programs at TRCA have been developed in collaboration with a wide range of partners, including school boards, municipalities, federal and provincial governments, non-government organizations (NGOs), social service agencies and others. These programs have been designed to not only develop knowledge, but provide opportunities to translate this learning into action at home, as well as in the school, community and workplace. These programs respond to an evolving curriculum within the formal education system, as well as shifts in industry, immigration and demographic trends. Today, TRCA's education activities reach over 150,000 learners annually and are delivered at one of TRCA's education sites or conservation areas.

Item 8.1

Since 1953, TRCA has continued to develop new and innovative education programs and facilities across the region's watersheds through both formal and informal partnerships with the eight area school boards. These partnerships include formal land leases for the operation of school board outdoor education centres, the joint construction and operation of shared education facilities, or service delivery partnerships for the provision of outdoor education.

Conservation authorities are named in Section 197 of the *Education Act* as agencies which school boards may enter into agreements with for the provision of out-of-classroom learning. However, due to legislative changes in the 1990's that affected both school boards and conservation authorities, in the last 20 years there has been relatively little growth in partnerships with the specific focus on creating new opportunities for student out-of-class experiences. To address changes in how education programs are delivered, staff is recommending the establishment of an outdoor education task force which is reflected in Appendix 8 of the draft Board of Directors Administrative By-law.

RATIONALE

By-laws are considered a legal governing document. In the spirit of best management practices of transparency and accountability, the approach to the language and layout of the draft Board of Directors Administrative By-law Model is to ensure it is understandable to the general public.

Where municipal legislation conflicts with any part of this By-law (*Municipal Conflict of Interest Act* or the *Municipal Freedom of Information and Protection of Privacy Act* or a provision of a Regulation made under one of those Acts), the provision of that Act or regulation prevails.

Section 19.1 of the *Act* sets out the requirements for by-laws, as outlined in Appendix 10. TRCA's current Administration Regulation and Rules of Conduct do not fully meet the requirements of the *Act*, and as such TRCA followed Conservation Authority BMP's and the Administrative By-law Model to ensure adherence to the regulation and a high level of consistency among conservation authorities, with respect to governance. The By-law recommended by TRCA staff contains some modifications from the Model in order to meet specific TRCA needs and to adhere to previous direction of the Authority, while still maintaining the desired outcome of consistency with the Administrative By-law Model.

The proposed major changes or items to be highlighted in the proposed [Board of Directors Administrative By-law](#) are outlined as follows:

1. Section A – Definitions – Currently, 30 of 36 conservation authorities refer to their governing bodies as a 'Board of Directors'. Implementing the change in name for the governing body from Authority to Board of Directors will help staff and stakeholders understand the difference between the corporation of TRCA, also known as the Authority, and the Board.
2. Section B.1 – Board Members – Board Member accountability section has been expanded to discuss the fiduciary duties of Board Members. It is vital to remember that Board Members' duty is to TRCA and not their Member Municipalities, when acting as a Board Member of TRCA.

Item 8.1

3. Section B.4 – Representative to Conservation Ontario Council – Currently the Authority appoints by annual Resolution the Chair, Vice Chair (proposed to change the title to Vice-Chair in the proposed By-law to be consistent with the *Act*) and Chief Executive Officer as Voting Delegate, First Alternate and Second Alternate, respectively, to Conservation Ontario. Conservation Ontario requires either an annual resolution or appointment by the By-law of these positions. Staff recommends this appointment procedure be included in the By-law to eliminate the need for annual reporting on this procedural matter.
4. Section B.11 – Advisory Boards and Other Committees – In this section, the instances when advisory boards and committees shall follow the rules of procedure of the Board of Directors and the draft By-law are clearly laid out, whereas under current practice Terms of Reference for such committees were individualized by advisory boards without clear governance direction.
5. Section B.12 – Remuneration of Board Members – The amended *Act* removed the requirement for Board Members remuneration to be approved by the Ontario Municipal Board, but with this change the *Act* is unclear on the ability to pay remuneration to Members. As a not-for-profit organization that has never received Ontario Public Guardian and Trustee (PGT) approval to provide remuneration to Board Members, it is TRCA staff's current understanding that TRCA may not have the ability to pay Board Members remuneration and the Ontario Auditor General is currently assessing the issue of remuneration of Board Members by conservation authorities. Based on this ongoing exploration, staff will report back upon completion with recommendations for remuneration. Further, the By-law recommends that advisory board members not be eligible for remuneration, and expands on what expenses are eligible for reimbursement from the current allowances, subject to identified approvals.
6. Section B.13 – Records Retention – It is now a requirement of the *Act* to state records retention policies in the By-law. As such, staff has included the requirement that TRCA shall keep, retain and protect full and accurate records in accordance with TRCA's Records Management policy and the *Municipal Freedom of Information and Protection of Privacy Act*.
7. Section B.14 – Records Available to the Public – The *Act* has a requirement to make records available to the public, subject to the *Municipal Freedom of Information and Protection of Personal Privacy Act (MFIPPA)*. TRCA is in compliance with the *Act* in this regard, and now such requirements are more clearly documented in the draft By-law.
8. Section B.15 – By-law Review – The *Act* requires regular review of the By-law to ensure it remains current and relevant. TRCA staff recommends this review be conducted at a minimum of every five years.
9. Section B.16 – Enforcement of By-law and Policies – Currently the Rules of Conduct are silent on how to handle situations when a Board Member does not adhere to their duties as outlined. This section provides a mechanism for enforcing the By-law, and the procedures to be undertaken to investigate any reported breach. This new section provides greater clarity to staff and Board Members on duty of care and responsibilities.

Item 8.1

10. Section B.17 – Indemnification of Board Members, Officers and Employees – TRCA currently maintains an Indemnification policy to cover these individuals. TRCA staff recommends this section of the By-law reference TRCA's policy which shall be reviewed by risk management staff in late 2018 based on the Conservation Ontario recommendation and that of TRCA's insurer and solicitor.
 11. Section C.4 – Meetings with Closed "In Camera" Sessions - The criteria to hold a meeting or part of a meeting in closed session have been expanded to incorporate the reasons outlined in the *Municipal Freedom of Information and Protection of Privacy Act*, from those strictly outlined in the *Municipal Act*, as is the case with the current Rules of Conduct. This allows for greater flexibility in reporting and provides consistency for staff on how they treat confidential matters, whether in reporting to the Board of Directors, Executive Committee or advisory board, or handling Freedom of Information requests. Further, the procedures adopted by the Board of Directors for handling confidential material have been included in this section.
 12. Section C.7 – Order of Business – It is recommended to alter the order of business from the Rules of Conduct to add the Acknowledgement of Indigenous Territory at the beginning of every meeting, to be read by the Chair. This is in keeping with Leadership Strategy #6 – Tell the story of the Toronto region, of TRCA's strategic plan: Building The Living City, and is currently in practice at TRCA Authority and Executive Committee meetings.
 13. Section C.9 - Debate – It is recommended to reduce the allotted speaking time for Board Members from five minutes to three minutes. In recent years more Board Members have been engaged in conversations which, while providing for greater cross-jurisdictional input on matters, extends the length of meetings. The extended length of meetings can create a challenge in maintaining quorum. The proposed reduction in speaking time is proposed to facilitate more timely deliberations.
- * It should be noted that rules of procedure at meetings are not as clearly defined as they may be at a municipality as TRCA has membership from 18 municipalities with differing procedures. The less defined rules allow the Chair to conduct meetings in a manner they are more accustomed to in areas where they By-law and Act are silent.
14. Section C.12 – Electronic Participation – The Board Members participation in meetings by teleconference remains unchanged from current practice. However, it has been added to the By-law that staff shall not participate in meetings electronically, which has been the unofficial staff position but now it is stated in the draft By-laws. A further section has been added to capture webcasting of meetings which began at Authority Meeting #5/18, held on June 22, 2018.
 15. Section C.13 - Delegations - Delegations are recommended to be limited to one meeting of the Board of Directors, Executive Committee or advisory board when the matter is to be considered, except by approval of the Chair to be heard at an additional meeting(s). Currently there is not a rule limiting the ability of deputants to speak at Board of Directors, Executive Committee and advisory board meetings, therefore duplication may occur. This procedure of limiting deputants to one speaking opportunity on the item at one Board of Directors, Executive Committee or advisory board meeting will place onus on deputants to determine which meeting they will speak at in instances when the item is being considered at both meetings. The Chair may determine how strictly this rule will be applied, particularly if there is a material change in the direction of recommendations

Item 8.1

related to the item. In these cases additional information from delegates may be pertinent. Staff including the Clerk will need to provide guidance to delegates to advise them of this updated By-law in such circumstances, to ensure they have all of the information before making a decision on when to appear to delegate. It is not proposed to change the five-minute time period that delegates will be afforded to speak. In addition, the opportunity to submit written submissions as correspondence items up to the start of any meeting will remain unchanged.

16. Appendix 1 - Code of Conduct for Board Members – This document is required as part of the By-law under Section 19.1 of the *Act*. Currently the expectation is that Authority Members adhere to the code of conduct of their appointing agency. The adoption of the Code of Conduct for Board Members as part of this By-law satisfies the requirements of Section 19.1 of the *Act*. Further, such guidelines are intended to enhance public confidence that Board Members operate from a base of integrity, justice and courtesy. The proposed code of conduct is also intended to assist Board Members in dealing with situations not adequately addressed or that may be ambiguous in existing TRCA resolutions, regulations, or policies and procedures. The Code of Conduct for Board Members outlines the expectations for Board Members when at TRCA meetings or acting on behalf of TRCA.
17. Appendix 2 – Conflict of Interest for Board Members – This document is required as part of the By-law under Section 19.1 of the *Act*. As TRCA is bound by the *Municipal Conflict of Interest Act*, currently the expectation is that Authority Members adhere to that *Act* and any such rules of their appointing agency. The guideline included within the draft By-law is intended to assist Board Members in understanding their obligations. Board Members are required to review the *Municipal Conflict of Interest Act* on a regular basis.
18. Appendix 4 –Board of Directors Terms of Reference –The Authority has always operated under the direction of the *Act*, the Administration Regulation and Rules of Conduct, however staff developed of a Terms of Reference (ToR) to help both Board Members and TRCA staff to better understand what the requirements are to bring a matter to the Board of Directors, including policies. The ToR does not limit staff from reporting in other circumstances as required by the Board of Directors, Secretary-Treasurer or other legislation should the need arise. The ToR clearly lays out the responsibilities of the Board of Directors as a governance body rather than an operational board.
19. Appendix 5 –Executive Committee Terms of Reference - Staff is recommending the amalgamation of BAAB with the Executive Committee to improve the financial reporting process. Timely reporting can occur with the amalgamation as the Executive Committee meets approximately monthly, and a more comprehensive discussion can be had due to larger number of Board Members present at the Executive Committee. It is anticipated that there will be a concerted focus on the budget and other critical financial matters at select Executive Committee meetings. As such, the Terms of Reference for the Executive Committee (Appendix 5) has been updated to include the previous responsibilities of the BAAB, as well as other responsibilities of the Executive Committee not captured previously in the existing ToR.

Item 8.1

20. Appendix 6 and 7 – Advisory Board Terms of Reference - The ToR of Partners in Project Green (PPG) and Regional Watershed Alliance (RWA) were previously adopted by the Authority, as advisory boards of the Authority. The ToR are included with the By-laws as an official companion document; such ToR were not previously included with the Rules of Conduct, and the requirement to follow the rules and procedures of the Authority was not formally laid out. Staff will make the required administrative changes to the ToR for these advisory boards to reflect the approved By-law.
21. Appendix 8 – Toronto and Region Outdoor Education Task Force Terms of Reference – As previously outlined, in order to meet future student needs and respond to a rapidly changing urban environment, TRCA's 2013-2022 strategic plan, *Building The Living City* identified the need to establish strong partnerships to ensure improved student access to out-of-class learning experiences while recognizing and engaging the diverse population of the Toronto region. To this end, staff is recommending the establishment of the Toronto and Region Outdoor Education Task Force for greater collaboration between TRCA and school board trustees as outlined in Appendix 8 of the draft By-laws, with an initial term of office for 2019-2020. If adopted by the Authority as an advisory board, the ToR will be a companion document to the By-laws.
22. The requirements to appoint TRCA's banker and auditor have been removed as these contract awards are approved in accordance with the specific monetary limits set by the Board of Directors and in accordance with the policies and procedures established by the Board of Directors.
23. The draft By-law is updated in that it recognizes requirements under the *Accessibility for Ontarians with Disabilities Act*.
24. For ease of use for Board Members and staff, the By-law is a more comprehensive and consolidated document than the Rules of Conduct, including more detailed by-laws, and copies of policies, procedures and guidelines applicable to Board Members, such as the Use of Resources During an Election and Hearing Guidelines.

Further to the South Nation Conservation legal review of the Administrative By-law Model, TRCA staff obtained legal review of the draft Board of Directors Administrative By-law, and comments from the TRCA solicitor are incorporated into the draft By-law as proposed.

In preparing the draft By-law and reviewing companion documents, TRCA staff completed a review of the Use of Resources During an Election policy and procedures which were approved by the Authority in 2013. Staff has confirmed that the policy and procedures still meet TRCA's needs in the current environment and are therefore seeking Authority approval of these policies as part of this proposed By-law.

DETAILS OF WORK TO BE DONE

The *Act* requires that a conservation authority approve by-laws meeting the requirements of Section 19.1 upon the earlier of a) December 12, 2018 (one year after Section 19.1 came into force), or b) the day the regulation is revoked by the Authority. Upon approval of the Authority, the Board of Directors Administrative By-law will come into effect and the Administration Regulation and Rules of Conduct which were created under the repealed Section 30 of the *Act* will cease to be in force. The approved By-laws will then be posted on the TRCA website.

Item 8.1

Staff will report to the Board of Directors for approval of changes to the Board of Directors Administrative By-law as required, as it will be reviewed by staff at the earlier of every five years or as circumstances arise requiring changes. This regular review will ensure the By-laws are in compliance with relevant law, and that best management practices in governance are being followed.

Staff will report to the Board of Directors in January 2019 on the proposed membership for the Toronto and Region Outdoor Education Task Force.

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Date: September 17, 2018

Attachments: 1- [Link to Proposed Board of Directors Administrative By-Law](#)