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**SUBJECT:** Memorandum of Understanding with the Toronto and Region Conservation Authority regarding municipally requested programs and services

**PREPARED BY:** Patrick Wong, MCIP, RPP, Senior Planner II, Natural Heritage, ext. 6922

**REVIEWED BY:** Tony Iacobelli, MCIP, RPP, Manager, Natural Heritage, ext. 7925

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**RECOMMENDATION:**

- 1) That the report entitled “Memorandum of Understanding with the Toronto and Region Conservation Authority regarding municipally requested programs and services” dated May 16, 2023 be received;
- 2) That staff be authorized to negotiate the Memorandum of Understanding with the Toronto and Region Conservation Authority (TRCA), and that the Chief Administrative Officer be authorized to execute the Memorandum of Understanding on terms satisfactory to the City Solicitor in consultation with the Commissioner of Development Services;
- 3) That staff be authorized to negotiate an update to the existing plan review agreement with the TRCA as per the changes identified in Appendix ‘A’ and that the Chief Administrative Officer be authorized to execute the plan review agreement on terms satisfactory to the City Solicitor in consultation with the Commissioner of Development Services; and further,
- 4) That staff be authorized and directed to do all things necessary to give effect to this resolution.

**PURPOSE:**

The purpose of this report is to recommend the execution of municipal agreements with Toronto and Region Conservation Authority to address legislative changes to the *Conservation Authorities Act*.

Two agreements are recommended to be entered into with the TRCA. The first is a Memorandum of Understanding (MOU) for municipally-requested services. The second is a plan review agreement which is related to the TRCA’s commenting role on planning applications.

**BACKGROUND:**

Toronto and Region Conservation Authority (TRCA) is a watershed agency that was created and is governed by the provincial *Conservation Authorities Act* (“Act”). The purpose of the Act is to provide for the organization and delivery of programs and

services that further the conservation, restoration, development and management of natural resources. TRCA also has permitting jurisdiction under the Act related to the control of flooding, erosion, dynamic beaches or unstable soils and bedrock, and conditions or circumstances that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property. The entire geographic area of the City of Markham falls under the jurisdiction of the TRCA.

Changes to the *Conservation Authorities Act* through the *More Homes, More Choice Act*, 2019 (Bill 108) and the *Protect, Support and Recover from COVID-19 Act*, 2020 (Bill 229) require municipalities within the jurisdiction of a conservation authority to enter into an MOU to enable continued service delivery of municipally-requested services. City staff have provided updates to Council on these legislative changes in [May 2019](#), [November 2020](#) and [June 2021](#). The deadline for municipalities to enter into an MOU is January 2024.

Staff are also recommending that the existing plan review agreement with the TRCA be updated primarily to reflect changes to the role of Conservation Authorities through *More Homes Built Faster Act*, 2022, (Bill 23). The plan review agreement describes the roles and responsibilities of the City and TRCA in the development review process.

## **DISCUSSION: MEMORANDUM OF UNDERSTANDING WITH TRCA**

### **Recent amendments to the *Conservation Authorities Act* require municipalities to enter into publicly posted MOUs to govern the delivery of certain programs**

The province has amended the *Conservation Authorities Act* to identify core mandatory programs that shall be delivered by conservation authorities. These mandatory programs include management of natural flood or valley erosion hazards, drought/ice monitoring and response, development application review (natural hazards, wetlands and regulatory features), management of conservation authority lands, and source water protection. These mandatory programs are generally funded through the municipal levy (which in Markham is provided by York Region) and planning/permitting/user fees.

Non-mandatory or municipally-requested programs are generally those programs delivered by a conservation authority on behalf of a municipality and funded directly by the benefitting municipality. The recent legislative changes specify that municipally-requested programs may only be delivered by a conservation authority if there is an MOU or other agreement in place. City staff have identified a number of programs, as noted below, that are currently delivered by the TRCA which are impacted by these changes. The MOUs, once approved, are required to be posted publicly.

### **TRCA delivers many ‘municipally-requested’ environmental services and programs on behalf of the City of Markham**

In the past, the City has requested TRCA deliver specific environmental programs and services. These projects are reviewed and funded on a project-by-project basis, and in accordance with the City’s purchasing by-law. Examples of municipally-requested services may include: ecological restoration, tree planting, wetland restoration, invasive species management, stormwater management advice and maintenance, wildlife

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management, installation of trails/bridges/culverts on city lands, watercourse erosion mitigation, climate change research, and sustainable community programs. These programs and services are not impacted by Bill 23.

TRCA is well-positioned to deliver municipally-requested environmental programs as one of the largest environmental agencies in Ontario with subject matter expertise in environmental policy, science and operations. They maintain knowledgeable staff, equipment and infrastructure that are difficult and costly to replicate in each municipality on their own. In addition, TRCA has in-depth knowledge of environmental permitting and regulatory requirements that can support enhanced service delivery and timelines.

**The MOU will allow TRCA to continue delivering environmental services and programs**

The draft MOU is a high level legal framework agreement that will meet the new *Conservation Authorities Act* requirements as described above. It will allow the City the continued flexibility to request TRCA to deliver certain environmental programs and services. The Memorandum of Understanding does not have any financial commitments nor any preferential treatment over other contractors or consultants. City departments will continue to have the option of retaining TRCA and paying TRCA's costs, or alternatively, another third-party consultant to meet the department business plans and budgets.

This overarching MOU with TRCA for the delivery of municipally-requested services is distinct from the plan review agreement discussed below.

**DISCUSSION: CHANGES TO TRCA'S ROLE IN DEVELOPMENT APPLICATION REVIEW**

**Recent legislative changes have altered the role of the TRCA in development review**

The *Conservation Authorities Act* was amended by Bill 23 to revise the scope of development application review for conservation authorities. In January 2023, the Province enacted a supporting regulation (O. Reg. 596/22) that results in conservation authorities being restricted from providing a municipality with a program or service related to reviewing and commenting on a proposal or application made under the *Planning Act*, *Condominium Act* and *Environmental Assessment Act*, among other acts.

As a result, the City will no longer be able to request the TRCA to provide technical review of certain natural heritage matters (e.g., woodlands, wildlife habitat, fisheries) or certain engineering matters (e.g., stormwater quality control, and erosion sediment controls not associated with natural hazards) as part of development application review. Up until January 2023, the City had relied on TRCA expertise in ecology, water resources engineering and other environmental disciplines to provide comprehensive and integrated comments on development applications. A staffing request was approved through the 2023 budget to enable recruitment of a natural heritage planner to ensure the City meets legislated timelines for development application review. Staff continue to assess if any additional resources are needed to replicate the services that TRCA is no

longer able to provide. The engineering matters previously commented on by TRCA will be addressed through existing staff resources.

**An updated plan review agreement is required to reflect the revised role of the TRCA**

The City of Markham has an existing plan review agreement from 2007 with the TRCA to describe the roles and responsibilities of each party in the development review process. This includes technical review and commenting services to be provided by TRCA, sharing of environmental data and GIS layers, and circulation and fee collection procedures.

As a result of Bill 23, the plan review agreement will need to be updated to reflect the reduced scope of technical review by the TRCA. Staff have also identified new responsibilities related to source water protection and other opportunities for streamlining that support the City's ongoing initiatives to improve the development review process. Appendix 'A' provides a high-level summary of the necessary updates to the plan review agreement.

In addition, it is anticipated that the amendments to TRCA's permitting and development regulations will come into force later this year. This may include a proposal to exempt applications which have received Planning Act approvals from receiving a conservation authority permit. The updated plan review agreement will align with any future changes to the conservation authority regulations to clearly define roles and responsibilities in the development review process. It is recommended that staff be directed to work with the TRCA to update and execute the plan review agreement.

**FINANCIAL CONSIDERATIONS**Memorandum of Understanding for municipally-requested services:

There are no new financial implications resulting from the agreement between municipalities and conservation authorities for the delivery of non-mandatory programs and services. City departments will continue to have the option of retaining TRCA services and paying for TRCA's costs where it meets their department business plans and budgets.

Plan review agreement:

The plan review agreement does not require any financial payment from the City to the TRCA. To address the impacts of Bill 23 in scoping TRCA's commenting role in development review, one new natural heritage planner position was approved through the 2023 Budget and funded through development fees to support natural heritage review for development applications.

**HUMAN RESOURCES CONSIDERATIONS**Memorandum of Understanding for municipally-requested services:

The MOU formalizes the existing relationship between the City and TRCA and does not create new human resources considerations.

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**Plan review agreement:**

There are human resource implications as a result of Bill 23 which have transferred technical review responsibilities from TRCA to the City. One new natural heritage planner position was approved through the 2023 budget. Staff will continue to evaluate options with York Region and other municipal partners to provide science and technical expertise in support of the natural heritage system policies of the Official Plan.

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

Conservation authorities directly support the management of healthy watersheds and the protection of the natural environment which is aligned with the “Safe, Sustainable and Complete Community” goal of Markham’s Strategic Plan.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

Staff from Engineering, Environmental Services, Legal and Operations departments have been consulted in the preparation of this report.

**RECOMMENDED BY:**

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Darryl Lyons, MCIP, RPP  
Deputy Director, Planning & Urban Design

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Giulio Cescato, MCIP, RPP  
Director, Planning & Urban Design

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Arvin Prasad, MCIP, RPP  
Commissioner, Development Services

**ATTACHMENTS:**

Appendix ‘A’: High-level summary of major provisions and required updates to the 2007 Plan Review Agreement