

BOARD ORDER: MGB 020/17

FILE: 16/IMD/002

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (the Act).

AND IN THE MATTER OF AN INTERMUNICIPAL DISPUTE lodged by City of Calgary against Rocky View County Bylaw C- 7468-2015, Conrich Area Structure Plan

CITATION: City of Calgary v Rocky View County, 2017 ABMGB 20

BEFORE:

Members:

D. Thomas, Presiding Officer

T. Golden, Member

B. Horrocks, Member

Case Manager:

C. Miller Reade

R. Duncan

Assistant Case Manager:

R. Lee

This is a dispute filed on January 6, 2016 under section 690 of the *Act* with the Municipal Government Board (MGB) by the City of Calgary (Calgary) after the adoption of Bylaw C-7468-2015 (Conrich ASP) by Rocky View County (Rocky View). The hearing was held in the City of Calgary on September 12, 2016.

OVERVIEW

[1] Calgary appealed the Conrich ASP, which Rocky View passed in December of 2015 following relocation of the CN Intermodal Terminal north of the hamlet of Conrich. The basis for Calgary's appeal was that the Conrich ASP would undermine the 2011 Calgary-Rocky View Intermunicipal Development Plan (2011 IDP).

[2] Calgary perceived the policies in the Conrich ASP would impact transportation in Calgary as staging of development in the Conrich ASP could accelerate roadway upgrades and develop lands adjacent to the Highway 1 Focus Area. Such development would be inconsistent with Calgary's plans for residual lands east of Stoney Trail. Stormwater was also of concern to Calgary because of agreements about water quantity and quality with Alberta Environment and Parks, and Western Irrigation District.

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[3] Calgary and Rocky View entered into mediation after the appeal was filed, as required both by section 690 of the *Act* and by the 2011 IDP. Mediation resulted in a Memorandum of Agreement (MOA), and the parties prepared a joint submission asking the MGB to find detriment and to order amendments described in the MOA. These amendments allow for changes to policies in the Conrich ASP that align it with the 2011 IDP and establish a framework for the parties to continue to work together.

[4] The MGB added the City of Chestermere (Chestermere) as an “affected party” in this case, because it has also filed an appeal of the Conrich ASP, which it claims is detrimental in areas related to transportation, stormwater, and the Highway 1 Key focus area. All parties requested that the two appeals be heard separately; however, Chestermere submitted in the context of this hearing that any finding of detriment with respect to Calgary would necessarily imply detriment to Chestermere as well.

[5] The MGB accepted the suggestion from Calgary and Rocky View that the inconsistencies between the Conrich ASP and the 2011 IDP are detrimental and that the requested amendments create planning clarity. Therefore, it ordered the amendments to the Conrich ASP as set out in the Memorandum of Agreement. Chestermere’s claim of detriment is left for consideration in the context of its own appeal.

PART A – SECTION 690 APPEALS AND THE MEANING OF DETRIMENT

[6] Section 690 requires the MGB to address whether the plan, bylaw or amendment appealed is detrimental to the municipality which filed the appeal. “Detrimental” is not a defined term, but the MGB has issued several decisions that consider its meaning, beginning with *The City of Edmonton, the City of St. Albert, and the Town of Morinville v. Sturgeon County*, MGB 77/98 [*Sturgeon*]. Although not bound by its previous decisions, the established meanings and thresholds provide useful guidance. *Sturgeon* includes a thorough discussion as follows:

The dictionary definition is straightforward enough. According to Webster’s New World Dictionary, “detriment” means “damage, injury or harm” (or) “anything that causes damage or injury.” This basic definition or something very similar to it seems to have been generally accepted by the parties involved in this dispute. Clearly, detriment portends serious results. In the context of land use, detriment may be caused by activities that produce noxious odours, excessive noise, air pollution or groundwater contamination that affects other lands far from the site of the offending use. For example, the smoke plume from a refinery stack may drift many miles on the prevailing winds, producing noxious effects over a wide area. Intensive development near the shore of a lake might affect the waters in a way that results in detriment to a summer village

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miles away on the far shore. These are examples of detriment caused by physical influences that are both causally direct and tangible, some of which are referred to as “nuisance” factors (page 44/84).

But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact “could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another”. Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth. In the present dispute before the Board, Edmonton and St. Albert have claimed that mere uncertainty arising from deficiencies in the County’s MDP will result in detriment to them (page 44/84).

[7] The *Sturgeon* decision also noted the invasive nature of the remedy under section 690, which is not to be imposed lightly or in circumstances where detriment cannot be clearly identified or will not have a significant impact. As noted in *Sturgeon* and subsequent decisions, the onus is on the appellant municipality to show that the plan or bylaw has a detrimental effect upon it, rather than having the respondent municipality refute the claim of detriment.

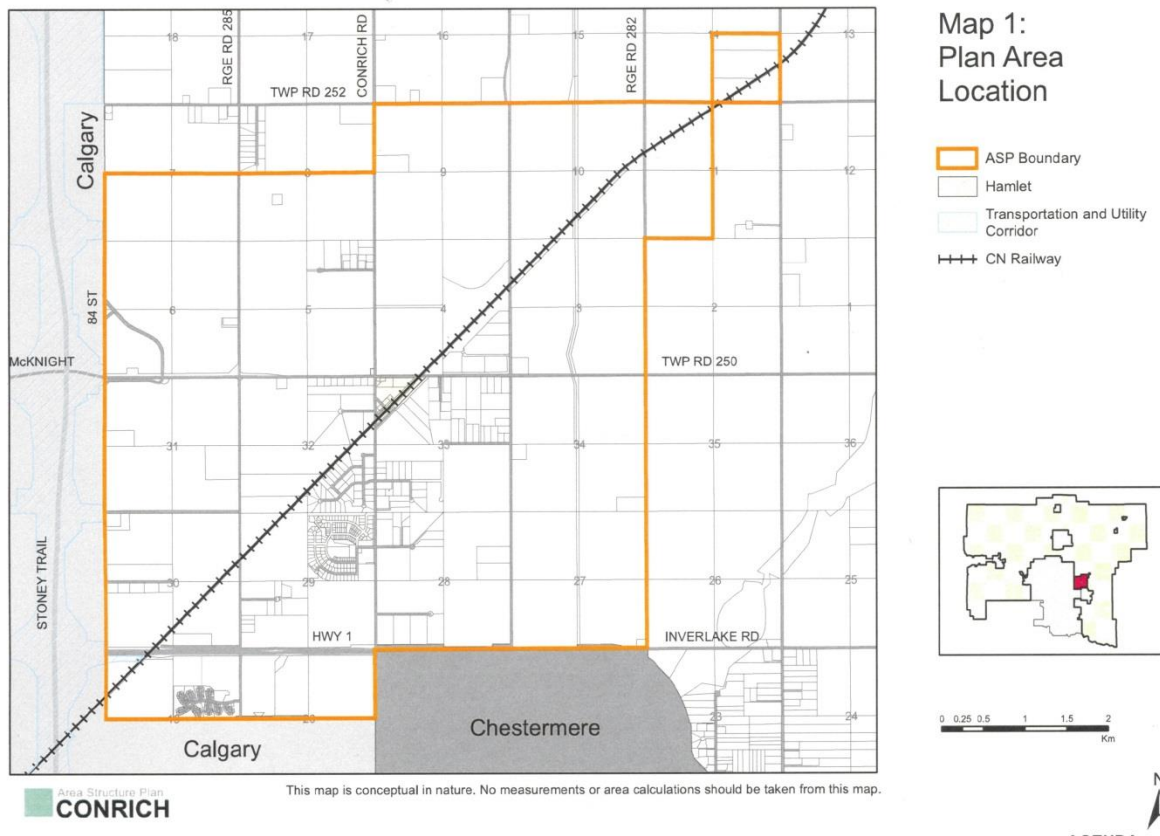
[8] In order to assess claims of detriment and determine if harm is reasonably likely to occur and have a significant impact, the MGB established the following test:

- a) To determine a reasonable likelihood of detriment, the MGB requires:
 - (i) Enough information of sufficient quality provided to the MGB to establish detriment.
 - (ii) Evidence of sufficient quality and quantity that detriment is likely and will have a significant impact.
 - (iii) Evidence linking harm from the plan or bylaw to the appellant municipality

- b) Detriment is too remote if:
 - (i) The condition is a mere possibility rather than a probability
 - (ii) Harm is impossible to identify with a reasonable degree of certainty
 - (iii) Harm is too far in the future.

PART B: BACKGROUND TO THIS INTERMUNICIPAL DISPUTE

[9] The Conrich ASP encompasses 68 quarter sections surrounding the hamlet of Conrich. Briefly, the ASP includes the CN Intermodal terminal, the hamlet, and conceptual schemes for South Conrich, Buffalo Hills and Prince of Peace community. The Conrich ASP also includes policies for transition, coordination and compatibility of land uses bordering Calgary and Chestermere and regional transportation infrastructure.



[10] As detailed in DL 018/16, Calgary sees the Conrich ASP as detrimental since its policies were inconsistent with the 2011 IDP policies for transportation projects, long term growth areas, and the Key Focus Area of the Highway 1 East Corridor Area. Finally, the Conrich ASP appeared to effectively make a decision about the regional stormwater system. Calgary is one of a number of parties engaged in ongoing discussions about the regional storm water system. Furthermore,

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Calgary has agreements about water quality and quantity with the Western Irrigation District (WID), Alberta Environment and Parks, and the Province.

[11] Chestermere also filed an appeal of the Conrich ASP, the details of which are also located within DL 018/16. The two disputes, at the request of the parties, are being dealt with in separate proceedings, although both municipalities made application as affected parties on the hearings where they were not the initiating municipality.

[12] Rocky View and Calgary worked together between 2013 and 2015 to identify wording for the Conrich ASP that would be consistent with the IDP, but these discussions were suspended before the Conrich ASP received third reading. Following the appeal, Calgary and Rocky View entered into mediation and reached a MOA. The MOA includes a list of joint planning initiatives and studies, and amendments to the Conrich ASP which are intended to bring it into compliance with the 2011 IDP. A copy of the agreement is attached as Appendix A.

PART C: JOINT SUBMISSION ON MEMORANDUM OF AGREEMENT AND AMENDMENTS

[13] On June 17, 2016, the MOA was submitted to the MGB, and made available to Chestermere and the public for comment in context of this appeal.

Mutual Cooperation and Joint Planning Initiatives

[14] Approved by both councils, the MOA and the Amendments are intended to fully resolve all matters related to Calgary's appeal. The MOA also includes four joint planning and development initiatives, where further co-operation is required.

Amendments

[15] The mediation resulted in a list of Amendments which will, in the opinion of the Calgary and Rocky View, align the Conrich ASP with the 2011 IDP. Accordingly, they requested the MGB to order the following Amendments to the Conrich ASP as set out in Section 3.01 of the MOA:

- Key Focus Area (East Highway 1 Corridor Area)
 - Revisions to title, introduction and objectives of Policy 15.
 - Replace Policies 15.1 through 15.6 and Map 6 (Schedule "A")
- Transportation
 - Add a new Map 8a (Schedule "B")
 - Replace the introduction to Policy 22 and Policy 22.3

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- Addition of a new preamble and policies after Policy 22.12 to include Policies 22.13, 22.14 and 22.15
- Add new Policy 28.8
- Add Action Item 9 in Section 27
- Residual Lands
 - Replace Map 12 (Schedule “D”)
 - Replace Policies 22.25 and 27.6
 - Add new Policies 28.6 and 28.10
 - Add new Action Items 2 and 9 in Section 27
- Stormwater
 - Amend Policies 24.1, 24.2 and 27.17.

[16] In support of their joint request, Calgary and Rocky View reminded the MGB of its statements in *Sturgeon* that “a proposed settlement of an intermunicipal dispute is not a case of one municipality abdicating its authority in favor of another, but rather an example of intermunicipal cooperation. It is a tacit recognition that the actions of one municipality can affect its neighbour.” They also noted that in *Sundance Beach*, the MGB held that the resolution of the question of detriment through mediation is proof that parts of the original bylaw were detrimental to the appealing municipality.

[17] In this case, Calgary and Rocky View stated that their mediated MOA is “middle ground” to maintaining a positive intermunicipal relationship. The MOA recognizes and accepts that the Conrich ASP could negatively impact Calgary, and that the MGB can make a finding of detriment on that basis and issue an order to implement the Amendments.

[18] Calgary and Rocky View confirm that the Amendments fully resolve the issues of detriment raised in Calgary’s statutory declaration. The Amendments have minimal impact on the Conrich ASP, but strengthen the language in the plan to be consistent with policies in the 2011 IDP.

[19] Rocky View stated that since public hearings have already been conducted prior to third reading and adoption of the Conrich ASP, no further public hearings are required. The MOA and Amendments were filed with the MGB and made available to Landowners and Chestermere in June 2016, when they were published on both municipal websites. Prior to this hearing, the MGB also published hearing notices in the Rocky View Weekly. These notices explained how to obtain information and make submissions to the MGB and, if desired, to speak to the MGB about the appeal. There have been multiple opportunities for submissions and the MGB hearing is also a public process.

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Affected Party Submission – City of Chestermere

[20] Chestermere argued the MGB cannot order the Amendments unless it determines that they are detrimental and that they remedy the detriment. This position is supported by the MGB’s previous decisions in *Sturgeon* and *Sundance Beach*. In this case, Calgary and Rocky View have acknowledged that their agreement establishes a consensus or middle ground for the issues raised in the appeal, and that “the provisions of the ASP could negatively impact” Calgary. However, Rocky View has not made any admission of detriment. Without such an admission, the MGB cannot amend or repeal provisions of the Conrich ASP.

[21] Chestermere observed that Rocky View does not need the MGB to order an amendment to the Conrich ASP to reflect the terms of the MOA, since it could simply withdraw the appeal and amend the bylaw itself. This process involves consultation and a public hearing that would allow the public to review the bylaw and provide input to Council before adoption.

[22] Finally, Chestermere argued that if the MGB does make a finding of detriment with respect to Calgary, any such finding would necessarily imply detriment to Chestermere as well. The Conrich ASP contains policies for transportation, the Key Focus Area of the Highway 1 East Corridor, and stormwater that affect Chestermere as well as Calgary. If the MGB determines to there is detriment in these areas based on the MOA, changes must also be made to the Conrich ASP to provide a remedy for Chestermere. In particular, Chestermere requested the Conrich ASP be amended to require Rocky View to a) conduct a joint transportation infrastructure analysis and b) negotiate and develop an IDP with Chestermere.

Landowner Presentation – C. Ellis Drury

[23] Ms. Ellis Drury is a landowner who farms over a section of land adjacent to Highway 1 northwest of Chestermere. With respect to this appeal, Ms. Ellis Drury was concerned about the impact of regional stormwater management plans on her lands, and on the ability to continue farming operations. Depending on the chosen regional stormwater solution, a great deal of land – including hers – might be required. If underground piping were used for water, waste water and stormwater there would be fewer impacts on the lands. Underground piping is preferred.

Findings

1. The mediation resulted in a Memorandum of Agreement (MOA) which includes Amendments to the Conrich ASP which are specific, probable and certain.
2. The Amendments correct policies in the Conrich ASP which are detrimental to Calgary owing to inconsistency with policies the 2011 Calgary-Rocky View IDP.
3. The Amendments to the Conrich ASP resolve the claim of detriment to Calgary.

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4. The MOA and the Amendments have no effect upon Chestermere's areas of detriment.
5. Landowners and the public have had the opportunity to review the MOA, and make submissions to Calgary, Rocky View and the MGB.

Reasons

[24] In this case, the parties have reached an agreement following mediation, which is required both under section 690 and by the 2011 IDP – a process adopted by both municipal councils. Based on this agreement, the MGB accepts the policies in the Conrich ASP are inconsistent with policies in the 2011 IDP; further, this inconsistency represents detriment to Calgary. The agreed-to additions and changes will eliminate this inconsistency.

[25] The MGB does not accept that its finding of detriment to Calgary in the context of this appeal automatically implies detriment to Chestermere. The 2011 IDP was developed between Calgary and Rocky View to address concerns between those two municipalities. The MGB observes that agreed-to amendments to provisions in the Conrich ASP and 2011 IDP give Chestermere fair opportunities to participate in future planning initiatives. Accordingly, the MGB is satisfied that the amendments ordered will not have a negative impact on Chestermere. Of course, Chestermere has also filed an appeal of the Conrich ASP in its own right, which all parties have requested to be heard separately. Whether there are aspects of the Conrich ASP that are detrimental to Chestermere must be determined in the context of that appeal.

DECISION

The appeal is allowed, and the MGB orders the changes to the Conrich ASP as outlined in the MOA. These changes are included in this order as Appendix A.

DATED at the City of Edmonton, in the Province of Alberta, this 9th day of May, 2017.

MUNICIPAL GOVERNMENT BOARD

(SGD) D. Thomas, Presiding Officer

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APPENDIX A: MEMORANDUM OF AGREEMENT

APPENDIX B: PERSONS WHO MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

NAME	CAPACITY
D. Mercer	Legal Counsel for Appellant, City of Calgary
M. Senek	Legal Counsel for Appellant, City of Calgary
N. Younger	Senior Planner for Appellant, City of Calgary
J. Klauer	Legal Counsel for Respondent, Rocky View County
A. Zaluski	Senior Planner for Respondent, Rocky View County
C Ellis Drury	Landowner
R. Jones	Legal Counsel for Affected Party, City of Chestermere
M-E Scott	Legal Counsel for Affected Party, City of Chestermere

APPENDIX C: DOCUMENTS RECEIVED PRIOR TO THE HEARING:

NO.	ITEM
1A	Appeal submission and statutory declaration of the City of Calgary
2R	Landowner Listing generated from Assessment Roll from Rocky View County
3R	Statutory Declaration from K Greig, Rocky View County
4A	Mediation Report from Calgary
5	Memorandum of Agreement (MOA) Joint Submission by Calgary and Rocky View
6	Joint Submission of MOA and Request for Finding of Detriment
13L	Landowner Letter, Buffalo Hills Developments/Spearpoint Holdings
14L	Landowner Letter, Tobler and Land
15L	Landowner Letter, McKerverey
16L	Landowner Letter, Amar Developments
17L	Landowner Letter, B&A Planning Group for Stoney Gateway Business Park
18L	Landowner Letter, Urban Systems for Harriman and Harriman Trust
19L	Landowner Letter, ReMax for Landowners
20AP	Affected Party Submission, City of Chestermere
21	Joint Rebuttal Submission, City of Calgary and Rocky View County

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APPENDIX D: DOCUMENTS RECEIVED AT THE HEARING.

NO.	ITEM
22A	Powerpoint Presentation, City of Calgary, regarding the Memorandum of Agreement and resolution of detriment
23R	Powerpoint Presentation, Rocky View County regarding Contents of Agreement

APPENDIX E: DOCUMENTS RECEIVED AFTER THE HEARING.

NO.	ITEM
24	Transcript of Hearing

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APPENDIX F: LEGISLATION

While intermunicipal disputes are filed under section 690, there are other sections of the *Act* which apply. While the following list may not be exhaustive, some key provisions are reproduced below.

Municipal Government Act

Section 488 is the section of the *Act* that sets out the jurisdiction of the MGB.

488(1) The Board has jurisdiction

- (a) to hear complaints about assessments for linear property,*
- (b) to hear any complaint relating to the amount set by the Minister under Part 9 as the equalized assessment for a municipality,*
- (c) repealed 2009 c29 s 34,*
- (d) to decide disputes between a management body and a municipality or between 2 or more management bodies, referred to it by the Minister under the Alberta Housing Act,*
- (e) to inquire into and make recommendations about any matter referred to it by the Lieutenant Governor in Council to the Minister,*
- (f) to deal with annexations in accordance with Part 4,*
- (g) to decide disputes involving regional services commissions under section 602.15,*
- (h) to hear appeals pursuant to section 619,*
- (i) to hear appeals from subdivision decisions pursuant to section 678(2)(a), and*
- (j) to decide intermunicipal disputes pursuant to section 690.*

(2) The Board must hold a hearing under Division 2 of this Part in respect of the matters set out in subsection (1)(a) and (b).

(3) Sections 495 to 498, 501 to 504 and 507 apply when the Board holds a hearing to decide a dispute or hear an appeal referred to in subsection (1)(g) to (j).

Section 617 is the purpose section of the planning part of the *Act*, and is the main guideline from which all other provincial and municipal planning documents are derived. In making a determination on an intermunicipal dispute, each decision must comply with that section.

Purpose of this Part

617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

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- (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and*
- (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta*

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

Section 690 and 691 govern the process and procedure for intermunicipal disputes. In addition to these sections, the MGB utilizes the Intermunicipal Dispute Procedure Rules adopted by the MGB in 2013.

Intermunicipal disputes

690(1) If a municipality is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it and if it has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, it may, if it is attempting or has attempted to use mediation to resolve the matter, appeal the matter to the Municipal Government Board by

- (a) filing a notice of appeal and statutory declaration described in subsection (2) with the Board, and*
- (b) giving a copy of the notice of appeal and statutory declaration described in subsection (2) to the adjacent municipality*

within 30 days after the passing of the bylaw to adopt or amend a statutory plan or land use bylaw.

(2) When appealing a matter to the Municipal Government Board, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and provide a statutory declaration stating

- (a) the reasons why mediation was not possible,*
- (b) that mediation was undertaken and the reasons why it was not successful, or*
- (c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal.*

(3) A municipality, on receipt of a notice of appeal and statutory declaration under subsection (1)(b), must, within 30 days, submit to the Municipal Government Board and the municipality that filed the notice of appeal a statutory declaration stating

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- (a) the reasons why mediation was not possible, or*
- (b) that mediation was undertaken and the reasons why it was not successful.*

(4) When the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the Board receives the notice of appeal and statutory declaration under subsection (1)(a) until the date it makes a decision under subsection (5).

(5) If the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), it must, subject to any applicable ALSA regional plan, decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

- (a) dismiss the appeal if it decides that the provision is not detrimental, or*
- (b) order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.*

(6) A provision with respect to which the Municipal Government Board has made a decision under subsection (5) is,

- (a) if the Board has decided that the provision is to be amended, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date of the decision until the date on which the plan or bylaw is amended in accordance with the decision, and*
- (b) if the Board has decided that the provision is to be repealed, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from and after the date of the decision.*

(6.1) Any decision made by the Municipal Government Board under this section in respect of a statutory plan or amendment or a land use bylaw or amendment adopted by a municipality must be consistent with any growth plan approved under Part 17.1 pertaining to that municipality.

(7) Section 692 does not apply when a statutory plan or a land use bylaw is amended or repealed according to a decision of the Board under this section.

(8) The Municipal Government Board's decision under this section is binding, subject to the rights of either municipality to appeal under section 688.

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Board hearing

691(1) The Municipal Government Board, on receiving a notice of appeal and statutory declaration under section 690(1)(a), must

- (a) commence a hearing within 60 days after receiving the notice of appeal or a later time to which all parties agree, and*
- (b) give a written decision within 30 days after concluding the hearing.*

(2) The Municipal Government Board is not required to give notice to or hear from any person other than the municipality making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal.

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Appendix A

THIS AGREEMENT first written as of the 17th day of June, 2016.

BETWEEN:

ROCKY VIEW COUNTY

Being a municipal corporation pursuant to the *Municipal Government Act*, R.S.A. 2000 Chapter M-26

(the "County")

- and -

THE CITY OF CALGARY

Being a municipal corporation pursuant to the *Municipal Government Act*, R.S.A. 2000 Chapter M-26

(the "City")

MEMORANDUM OF AGREEMENT

WHEREAS the County Council gave third reading to County Bylaw No. C-7468-2015, being the Conrich Area Structure Plan (the "ASP") on December 8, 2015;

AND WHEREAS the City filed an appeal with the Municipal Government Board pursuant to Section 690 of the *Municipal Government Act*, R.S.A. 2000 Chapter M-26 with respect to the ASP on January 6, 2016, having Municipal Government Board File Number 16-IMD-02 (the "Appeal");

AND WHEREAS the Appeal is scheduled to be heard by the Municipal Government Board commencing on September 21, 2016;

AND WHEREAS, as a result of interest-based mediation carried out between the parties from April 19 to April 22, 2016, the County and the City have reached an agreement with respect to amendments to the ASP that, if ordered by the Municipal Government Board, will resolve the issues raised in the Appeal;

AND WHEREAS the County and the City have also reached agreement on certain inter-municipal matters that are related to the ASP but which do not require direction from the Municipal Government Board;

AND WHEREAS the terms of this Agreement have been ratified by both County Council and City Council on June 14, 2016;

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NOW THEREFORE in consideration of the mutual obligations and covenants contained herein, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the County and the City hereby agree as follows:

1. DEFINITIONS

- 1.01 "84th Street Study" means the study to be conducted jointly by the County and the City to determine the ultimate configuration of 84th Street, including future alignment, access management, and right of way requirements;
- 1.02 "Agreement" means the within Memorandum of Agreement, including the above Recitals and all Schedules attached hereto;
- 1.03 "Alberta Transportation" means the Government of Alberta's Ministry of Transportation;
- 1.04 "Appeal" means the City's appeal of the ASP, filed pursuant to Section 690 of the **Municipal Government Act**, R.S.A. 2000 Chapter M-26 on January 6, 2016 and identified by MGB File Number 16/IMD-02;
- 1.05 "ASP" means the County Bylaw C-7468-2015, Conrich Area Structure Plan, passed by County Council on December 8, 2015;
- 1.06 "ASP Amendments" means those mutually agreed upon amendments to the ASP set out in Article 3 herein;
- 1.07 "City" means The City of Calgary, a municipal corporation in the Province of Alberta, or the area within the corporate limits of The City of Calgary, as the context requires;
- 1.08 "County" means Rocky View County, a municipal corporation in the Province of Alberta, or the area within the corporate limits of Rocky View County, as the context requires;
- 1.09 "East Stoney Trail" means that portion of the provincial transportation and utility corridor known as Stoney Trail located in the City between Memorial Drive NE and Country Hills Boulevard NE, as described in Schedule "B" attached hereto;
- 1.10 "East Stoney Trail Transportation Infrastructure" means infrastructure located in the City associated with or related to East Stoney Trail, as generally shown in Schedule "B" attached hereto;
- 1.11 "East Stoney Trail Infrastructure Analysis" means that analysis to be conducted jointly by the City and the County to identify transportation infrastructure needs, develop recommendations for transportation priorities and County cost contribution based upon impact and/or benefit related to the

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development of the ASP area, all as related to the East Stoney Trail Transportation Infrastructure, the terms of reference for which are attached hereto as Schedule "C" attached hereto;

- 1.12 "IDP" means City bylaw 14P2011 and County bylaw C-7078-2011, the Rocky View/Calgary Intermunicipal Development Plan, as amended or replaced;
- 1.13 "MGB" means the Municipal Government Board of the Province of Alberta established under the ***Municipal Government Act***, and includes any panel of the Board; and
- 1.14 "***Municipal Government Act***" means the ***Municipal Government Act***, R.S.A. 2000, Chapter M-26, as amended from time to time, and all regulations thereunder.

2. MUTUAL COOPERATION

- 2.01 In reaching this Agreement, the County and the City worked through an interest-based mediation to create a mutually beneficial arrangement whereby the ASP Amendments were agreed to and joint planning initiatives and studies were identified, and mutual cooperation will form the basis of the ongoing relationship to address planning and development issues in the ASP area and adjacent lands within the City which have inter-municipal significance.
- 2.02 The City and the County agree to use all reasonable efforts and to fully cooperate with one another to ensure that the terms and conditions of this Agreement are fulfilled including, without limitation, the ASP Amendments.
- 2.03 "Reasonable efforts" and "cooperation" referenced in Paragraph 2.02 shall include, but shall not be limited to:
 - (1) the parties' provision of all information reasonably required by the other party with respect to the ASP Amendments for submission to the MGB;
 - (2) the preparation and presentation of joint submissions to the MGB regarding the ASP Amendments in accordance with this Agreement;
 - (3) any further assistance that the parties may reasonably request; and
 - (4) the proper and timely performance of all things required to give effect to this Agreement.
- 2.04 The parties specifically acknowledge and agree that:
 - (1) the ASP Amendments are jointly agreed to by both the County and the City;
 - (2) the contents of this Agreement reflect the results of the mediation between the parties and the approval of the respective Councils; and

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- (3) the ASP Amendments and other terms set out in this Agreement shall fully resolve all matters related to the Appeal.
- 2.05 The parties specifically acknowledge and agree that in the event the MGB affects, alters, amends or in any way impacts the terms of this Agreement, this Agreement will continue to govern; however, the parties shall, in good faith, enter into renewed negotiations with respect to the implementation of the Agreement to the extent that it is impacted by order of the MGB.
- 2.06 The County and the City agree that they shall each fully support and recommend to the MGB the matters set forth in this Agreement, and the County and the City shall use reasonable efforts to convince the MGB to order the ASP Amendments without amendment or alteration.
- 2.07 The parties agree that, in their joint submissions to the MGB, they will request that the MGB:
- (a) give the parties prior notice if the MGB intends to alter, amend, or in any way impact the terms of this Agreement in its order, and
 - (b) allow the parties to make submissions to the MGB on any such proposed alterations, amendments, or impacts to this Agreement including, but not limited to, the submission of evidence and oral argument.
- 2.08 The County and the City agree that they shall continue to negotiate in good faith to expeditiously finalize the following agreements or arrangements:
- (1) the development and execution by both parties of a memorandum of agreement on or before December 31, 2016 to facilitate the East Stoney Trail Infrastructure Analysis;
 - (2) execution of a joint letter to Alberta Transportation regarding funding for the East Stoney Trail Transportation Infrastructure within three (3) months of completion of the East Stoney Trail Infrastructure Analysis;
 - (3) the development and execution by both parties of a terms of reference for the 84th Street Study on or before December 31, 2016; and
 - (4) the development and execution by both municipalities of a terms of reference for a review of the IDP, in particular to determine appropriate land use, interface policies, and servicing strategies for the residual lands within the City that border the ASP area, on or before December 31, 2016 or such other date as the parties may agree to.
- 2.09 The parties agree that the matters set out in Paragraph 2.08 shall not form a part of the MGB order.

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3. JOINT SUBMISSIONS TO THE MGB

3.01 In furtherance of attaining the objectives contained within this Agreement, the County and the City agree to jointly request that the MGB order the following ASP Amendments as a full and final resolution and determination of the Appeal. For further clarity, the proposed ASP Amendments are organized by issue in the Appeal, and all Policy numbers herein refer to the Policy in the ASP, as passed, unless the context requires otherwise. The balance of the amended ASP Policy Sections shall be re-numbered as required to accommodate the following amendments:

Key Focus Areas

- (1) replace Map 6 with the new Map 6 attached hereto as Schedule "A";
- (2) in Policy 15:
 - (a) delete the title "Gateways: Intermunicipal and County", and replace with "Gateways and Highway 1 East Corridor Focus Area";
 - (b) delete the introduction and replace with the following:

"Gateways are important entrances, along major roads, entering and exiting a municipality and a community. They represent a 'community's welcome' and it is important that they are visually attractive and well maintained. Highway 1 forms a gateway between Rocky View County, the City of Calgary, and the City of Chestermere. The Rocky View/Calgary Intermunicipal Development Plan (IDP) identifies the Highway 1 East Corridor, as shown on Map 6, as a Key Focus Area. The objective of the IDP Key Focus Area is to achieve a greater degree of intermunicipal collaboration and involvement in the identified area, particularly with respect to gateways, planning, and transportation.";
 - (c) add a third bullet to the "Objectives" section, as follows: "Ensure Highway 1 East Corridor Key Focus Area development is consistent with the IDP Key Focus Area Policies.";
- (3) delete Policies 15.1 through 15.6 and replace with the following:
 - "15.1 Highway Business and industrial lands adjacent to Highway 1 and Township Road 250 (McKnight Boulevard), as shown on Map 6: Non-residential / Residential Interface, shall be subject to the gateway policies of this Plan.
 - 15.2 Consideration shall be given to a high quality visual appearance when determining appropriate land use, siting,

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building design, and landscaping.

- 15.3 *Local plan* design guidelines for gateways should consider such factors as; sight lines, noise attenuation, setbacks, natural land features, innovative building design, and high quality landscaping and signage.
- 15.4 Gateways and lands within the Highway 1 East Corridor Key Focus Area should be developed in accordance with the County's Commercial, Office, and Industrial Design Guidelines.
- 15.5 Planning and development within the Highway 1 East Key Focus Area shall be subject to the policies of the IDP as well as the policies of this Plan.
- 15.6 Rocky View County will collaborate with Alberta Transportation, the City of Calgary, and the City of Chestermere to identify opportunities to create an attractive gateway along Highway 1."

Transportation

- (4) add a new Map 8a as attached in Schedule "B" hereto;
- (5) delete the introduction to Policy 22 and replace with the following:

"The transportation network must develop in a manner that is safe, functional, and efficient. The network should minimize impacts on major wetlands and natural features, integrate development within the Conrich area, and provide regional opportunities for walking, cycling, and public transportation. Map 8: Transportation Network and Map 8a: East Stoney Trail Transportation Infrastructure show the provincial, regional, and some local transportation networks in the Conrich area, provides information on road classifications, special study areas, railway crossings, and highway interchanges and fly-overs.";
- (6) delete the text of Policy 22.3 and replace with the following text:

"The regional transportation system should be developed in general accordance with Map 8: Transportation Network and Map 8a: East Stoney Trail Transportation Infrastructure. The classifications of the grid road network may be refined through further transportation analysis and / or at the *local plan* stage.";
- (7) add a new preamble and policies after Policy 22.12 as follows:

"East Stoney Trail Transportation Infrastructure
The County and the City of Calgary recognize that further

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transportation planning analysis is required with respect to East Stoney Trail and its related transportation infrastructure and the impact and/or benefit related to the development of the Conrich Area Structure Plan area.

22.13 The County shall collaborate with the City of Calgary and the Province regarding regional road connections and interchange designs with respect to Stoney Trail and related transportation infrastructure as shown on Map 8a.

22.14 The County shall work collaboratively with the City of Calgary to identify transportation infrastructure needs along East Stoney Trail as identified in Map 8a and develop recommendations for transportation priorities and County cost contribution based upon impact and/or benefit related to the development of the Conrich Area Structure Plan area.

22.15 Impacts on East Stoney Trail transportation infrastructure resulting from development within the Conrich Area Structure Plan area shall be evaluated in accordance with the policies of this Plan and Policy 13 of the Rocky View County/City of Calgary Intermunicipal Development Plan."

(8) add new Policy 28.8 after existing Policy 28.6 as follows:

"Planning and Development applications within the entire Conrich Area Structure Plan area shall be circulated to the City of Calgary for transportation review and comment in accordance with the circulation and response timelines as per the Rocky View County/Calgary Intermunicipal Development Plan.";

(9) add an Action Item after Action Item 8 in Section 27 that states "Work with the City of Calgary to prepare the East Stoney Trail and Related Infrastructure Analysis as per Policy 22.14.";

Residual Lands

(10) Replace Map 12 with the map attached hereto as Schedule "D";

(11) delete the text of Policy 22.25 and replace with the following text:

"Access management and road design requirements for 84th Street shall be in accordance with the City of Calgary requirements. Rocky View County shall collaborate with the City of Calgary to develop a joint study for 84th Street in accordance with Action Item 2 [See: Section 27 Implementation].";

(12) delete the text of Policy 27.6 and replace with the following text:

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"Map 12: *Local Plans* identifies five local plan boundaries that are required based on (i) the existence of major transportation network components, including Highway 1 and the CN rail line (Highway 1), (ii) unique planning conditions associated with the proximity to the CN Rail yards (Township Road 250), and (iii) unique planning conditions associated with location along 84th street, adjacent to residual lands within the City of Calgary, as identified in the Rocky View/Calgary Intermunicipal Development Plan. All other local plan boundaries shall be determined in consultation with the County at the time of application. The preferred minimum planning area is one quarter section (160 acres) in size.";

(13) add a new Policy 28.6 as follows:

"The County shall implement the policies of this Plan that apply to the interface areas adjacent to the Residual Long-Term Growth Areas along 84th Street, as identified in the Rocky View / Calgary Intermunicipal Development Plan (Actions 2 and 9) [See: Section 27 Implementation]."; and

(14) add new Action Item 2 in Section 27 as follows:

"Develop a Terms of Reference, with the City of Calgary, to direct a joint study to determine the ultimate configuration of 84th Street, including future alignment, access management and right of way requirements (84th Street Study).";

(15) add new Action Item 9 in Section 27 as follows:

"The County shall work with the City of Calgary to amend the Rocky View/Calgary Intermunicipal Development Plan to determine appropriate land use, interface policies, and servicing strategies for the residual lands within Calgary that border the Conrich Area Structure Plan.";

(16) add a new Policy 28.10 as follows:

"Rocky View County, in collaboration with the City of Calgary, shall ensure that *local plans* and applications for redesignation and subdivision of lands along 84th Street, as shown on Map 12, address:

- a) Access management and right of way requirements along 84th Street (Action Item 2 in Section 27);
- b) Consideration of adjacent lands within the City of Calgary as identified in the IDP;
- c) If the Terms of Reference for the 84th Street Study has been completed (Action Item 2 in Section 27) but the 84th Street

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Study has not yet been completed by the City and the County prior to the preparation of the *local plan*, then the 84th Street Study must be prepared by the development proponent in conjunction with the local plan in accordance with the Terms of Reference; and

- d) Other appropriate policies of this Plan.";

Storm Water

- (17) amend Policy 24.1 by adding the words "and reaching agreements where municipal infrastructure in another municipality is intended to be used for stormwater resulting from new development within the County" after the word "management";
- (18) amend Policy 24.2 by adding the words "and the Western Headworks Stormwater Management Agreement (2013)" after the words "Conrich Master Drainage Plan";
- (19) amend Policy 27.17 by adding the sentence "If Phase 1 lands proceed to development, an irrigation or evaporation system under zero discharge conditions shall be constructed as referenced in Policies 24.11 – 24.14, until such time as a regional solution has been chosen and mechanisms to implement the construction of the system have been identified" after the existing sentence; and

Housekeeping

- (20) renumber all Policies of the ASP accordingly.

4. GENERAL PROVISIONS

- 4.01 All references to legislation contained herein, including without any limitation any references to statutes, regulations or bylaws, shall include amendments thereto, and any legislation in *pari materia* therewith, and any successor legislation enacted in replacement thereof.
- 4.02 Each of the parties hereto shall at all times undertake all such further acts and execute and deliver all such further documents as shall be reasonably required to fully perform the terms and conditions of this Agreement.
- 4.03 The headings and paragraph numbers contained in the Agreement are for convenience and reference only and in no way define or limit the scope or intent of this Agreement or any provision hereof.
- 4.04 This Agreement constitutes the entire Agreement of the parties hereto with respect to the subject matter hereof, and this Agreement shall not be amended, modified or discharged except by an instrument in writing executed under the authority of each of the parties hereto.


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- 4.05 No waiver by or on behalf of either party hereto of any breach of the covenants or conditions herein contained shall take effect or be binding upon that party unless the same be expressed in writing under the authority of that party and any waiver so give shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other breach.
- 4.06 The Recitals and Schedules attached hereto form part of this Agreement.
- 4.07 Nothing in this Agreement shall be construed as fettering or restricting the lawful authority of any board, tribunal, other quasi-judicial entity, or elected municipal Council (or member thereof), in the exercise of jurisdiction vested in it by law.
- 4.08 This Agreement is binding upon both the County and the City and their successors and assigns.
- 4.09 If any provision of this Agreement is found to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have hereunder affixed their respective corporate seals and signatures by duly authorized representatives, as of the date above first written.

APPROVED	
As To Content	
As To Form	
LAW (Solicitors)	
Melissa Senechal	rb

THE CITY OF CALGARY


JEFF FIELDING, CITY MANAGER


CITY CLERK

ROCKY VIEW COUNTY


REEVE


LEGISLATIVE SERVICES MANAGER

SCHEDULE "A"
MAP 6



CONRICH

Map 6:
Non-Residential/
Residential
Interface

- ASP Boundary
- Future Policy Area
- Residential
- Institutional
- Business
- Transition
- Non-Residential/Residential Interface
- Gateways
- Transportation and Utility Corridor
- Key Focus Area
- JVCC Calgary Inter-municipal Development Plan
- CH Railway



SCHEDULE "B"
MAP 8a



**Map 8A:
East Stoney Trail Transportation
Infrastructure**

- ASP Area
- Future Policy Area
- Transportation and Utility Corridor
- At Grade Railroad Crossing
- Termination
- Expressway-6 Lanes
- Major-4 Lanes
- Collector-2 Lanes
- Classification to be determined
- H+++ CN Railway
- Stoney Trail Interchange Upgrades
 - 1) Country Hills Blvd
 - 2) Airport Trail
 - 3) McKnight Blvd
- Stoney Trail Flyovers
 - 4) 64th Avenue
 - 5) 32nd Avenue
 - 6) Memorial Drive
- Construct link and interchange
 - 7) Airport Trail between Stoney Trail and Metis Trail

National Roads Network used for the Non-Rocky View segments

Location of servicing infrastructures and improvements subject to changes and reviews based on final land use scenario for the Future Policy Area

0 1 2 3 4 5 6 7 8 9 10 km



This map is conceptual in nature. No measurements or area calculations should be taken from this map.



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SCHEDULE "C"

**EAST STONEY TRAIL AND RELATED TRANSPORTATION INFRASTRUCTURE
ANALYSIS TERMS OF REFERENCE**

1. **The purpose of the Infrastructure Analysis is to address the following issues related to the East Stoney Trail and Related Infrastructure:**
 - Risks
 - Clarity
 - Fairness
2. **The Infrastructure Analysis will include the following rationale and action items:**
 - a) ***Evaluate East Stoney Trail Infrastructure needs and priorities***
 - Conduct the Infrastructure Analysis using both City of Calgary and County transportation models.
 - Evaluate multiple horizons (5 year intervals with an ultimate 30 yr horizon).
 - Predict what infrastructure will be needed at the corresponding 5 year intervals.
 - Inventory and define infrastructure projects required and identify areas which must be coordinated between the two municipalities (ie. Lane sizing, alignment, etc).
 - Prioritize infrastructure projects in context of supporting development in both the Conrich Area Structure Plan area and the City of Calgary.
 - b) ***Deliverables***
 - Develop joint recommendations on infrastructure needs for 5 year intervals throughout the anticipated cumulative 30 year development period in the Conrich Area Structure Plan and identify fair contribution based upon needs/benefits for each jurisdiction for each of the 5 year intervals.
 - Update the Infrastructure Analysis every 5 years, or such other time frame as may be mutually agreed to in writing by the parties, to account for development within the County and the City of Calgary.
 - The County and the City of Calgary agree to allocate sufficient staffing resources to have the Infrastructure Analysis and future updates completed in a timely fashion.
 - The County and the City of Calgary agree to allocate sufficient staff resources to develop an appropriate funding structure that aligns with anticipated development within both the County and the City of Calgary to support prioritized infrastructure projects as identified in the Infrastructure Analysis corresponding to the Infrastructure Analysis 5 year intervals.

SCHEDULE "D"
MAP 12

