



AGENDA

BUSINESS ADVISORY COMMITTEE

July 28, 2021, 1:00 PM
ENGINEERING TRADITIONS

Members

Councillor W. Sutherland, Chair
Councillor J. Davison, Vice-Chair
City Manager Designate S. Sharp
Mayor N. Nenshi, Ex-Officio

SPECIAL NOTES:

Public are encouraged to follow Council and Committee meetings using the live stream [Calgary.ca/WatchLive](https://www.calgary.ca/WatchLive)

Members may be participating remotely.

1. CALL TO ORDER
2. OPENING REMARKS
3. CONFIRMATION OF AGENDA
4. CONFIRMATION OF MINUTES
 - 4.1. Minutes of the Regular Meeting of the Business Advisory Committee, 2021 June 25
5. CONSENT AGENDA
 - 5.1. DEFERRALS AND PROCEDURAL REQUESTS
None
 - 5.2. BRIEFINGS
 - 5.2.1. Update on External Stakeholders of City Land Transactions, BAC2021-1092

6. POSTPONED REPORTS
(including related/supplemental reports)

None

7. ITEMS FROM OFFICERS, ADMINISTRATION AND COMMITTEES

7.1. Change of Use What We Heard Report Update (Verbal), BAC2021-1170

8. ITEMS DIRECTLY TO COMMITTEE

8.1. REFERRED REPORTS
None

8.2. NOTICE(S) OF MOTION
None

9. URGENT BUSINESS

10. CONFIDENTIAL ITEMS

10.1. ITEMS FROM OFFICERS, ADMINISTRATION AND COMMITTEES
None

10.2. URGENT BUSINESS

11. ADJOURNMENT



MINUTES

BUSINESS ADVISORY COMMITTEE

**June 25, 2021, 9:30 AM
ENGINEERING TRADITIONS**

PRESENT: Councillor W. Sutherland, Chair
Councillor J. Davison, Vice-Chair (Remote Participation)
City Manager Designate S. Sharp (Remote Participation)

ALSO PRESENT: Legislative Advisor L. Kearnes
Legislative Advisor J. Palaschuk

1. CALL TO ORDER

Councillor Sutherland called the Meeting to order at 9:30 a.m.

ROLL CALL

Councillor Davison, City Manager Designate Sharp, and Councillor Sutherland.

2. OPENING REMARKS

Councillor Sutherland provided opening remarks.

3. CONFIRMATION OF AGENDA

Moved by City Manager Designate Sharp

That the Agenda for the 2021 June 25 Business Advisory Committee be confirmed.

MOTION CARRIED

4. CONFIRMATION OF MINUTES

4.1 Minutes of the Regular Meeting of the Business Advisory Committee, 2021 April 21

Moved by Councillor Davison

That the Minutes of the 2021 April 21 Regular Meeting of the Business Advisory Committee be confirmed.

MOTION CARRIED

5. CONSENT AGENDA

5.1 DEFERRALS AND PROCEDURAL REQUESTS

None

5.2 BRIEFINGS

None

6. POSTPONED REPORTS

None

7. ITEMS FROM OFFICERS, ADMINISTRATION AND COMMITTEES

7.1 Business Advisory Committee Update to Council, BAC2021-0956

The following speakers addressed Committee with respect to Report BAC2021-0956:

1. Bev Jarvis, BILD Calgary
2. Bonnie Anderson, Dentons

Moved by Councillor Davison

That with respect to Report BAC2021-0956, the following be approved:

That the Business Advisory Committee recommend that Council receive the report for the Corporate Record.

MOTION CARRIED

8. ITEMS DIRECTLY TO COMMITTEE

8.1 REFERRED REPORTS

None

8.2 NOTICE(S) OF MOTION

None

9. URGENT BUSINESS

None

10. CONFIDENTIAL ITEMS

10.1 ITEMS FROM OFFICERS, ADMINISTRATION AND COMMITTEES

None

10.2 URGENT BUSINESS

None

11. ADJOURNMENT

Moved by City Manager Designate Sharp

That this meeting adjourn at 10:19 a.m.

MOTION CARRIED

The following item have been forwarded on to the 2021 July 5 Combined Meeting of Council:

CONSENT

- Business Advisory Committee Update to Council, BAC2021-0956

The next Regular Meeting of the Business Advisory Committee is scheduled to be held on 2021 July 28 at 1:00 p.m.

CONFIRMED BY COMMITTEE ON

CHAIR

ACTING CITY CLERK



Memo

July 28, 2021

To: Business Advisory Committee (BAC)

From: Law

Re: **Follow-up on Stakeholder 'What We Heard' Report (2021-0434)**

Purpose

This memo provides a response from Law to the Business Advisory Committee (BAC) on the 2019 confidential whiteboarding session ("Whiteboarding Results") with certain external legal counsel (the "Stakeholders") to receive feedback on City Land Transactions.

Background

On September 11, 2019 the Stakeholders participated in a confidential whiteboarding session with the Business Advisory Committee to provide feedback on City Land Transactions. Law was unaware of the meeting, did not attend and excepting two individuals, participant identity was undisclosed and remains unknown to Law. The results of the session were provided to the City Solicitor & General Counsel informally in early 2020 and formally during the BAC meeting March 17, 2021.

Conclusions

- Many of the issues raised in the BAC report are not within the purview or control of Law and were forwarded to Real Estate & Development Services (RE&DS) for further handling.
- The Whiteboarding Results do not reflect uniform experience across the law firms with which The City conducts the most land transactions. Further, some of the concerns raised were situation specific that had been previously raised with Law and reviewed, and either addressed or concluded to have no merit. The remaining concerns suggest Stakeholder misunderstanding about The City's land transaction process, setting of corporate risk tolerance, the importance of legal advice in supporting the advancement and protection of corporate interests for collective citizen and local business benefit, and Council and Administration's entitlement to confidential legal advice. Details are below to clarify misunderstandings.
- City Council establishes the risk tolerance for the corporation. Law supports informed decision making within corporate risk tolerance through the provision of advice on legal issues, business practice and

risk. As is the case with any legal advice, the client (whether Council or members of Administration) is entitled to confidential legal advice that is protected through privilege. That advice forms one input into the decision-making process.

- Law has always been and continues to be amenable to discussing issues, opportunities and otherwise collaborating with members of the legal profession on file specific matters, legal service delivery generally, matters associated with the legal profession, and corporate governance and procedure. Individuals are strongly encouraged to discuss concerns with the Manager of the particular Section, Deputy City Solicitors or the City Solicitor & General Counsel.

Analysis

The Whiteboarding Results were condensed with limited detail, and further discussion was necessary to fully understand and respond to the results. Despite requests for Stakeholder names so that meetings could be held to explore concerns, the names of attendees were confidential and only two participants agreed to be identified. Two meetings were held in early 2020 with those individuals and resulted in some minor modernization improvement opportunities in the real estate practice.

Since the identity of all Stakeholders was unknown, it was impossible to have full engagement and explore the issues of concern. As such, Law connected with members of the most frequent law firms with which The City conducts real estate transactions (some of whom were not participants in the Whiteboarding session) to provide input and feedback on the Whiteboarding Results.

Law's Engagement revealed:

- Whiteboarding Results do not reflect uniform experience with Law;
- Law's participation in Real Estate transactions is considered beneficial by third parties in bringing land transactions to completion; and
- Confirmation that when concerns arise with any member of Law, external law firms contact the City Solicitor and General Counsel, Deputy City Solicitors or Manager of the relevant Section directly.

The engagement also enabled useful discussion about opportunities for technology improvements within Law. The lawyers we spoke with were extremely generous in sharing their thoughts and experiences, for which we are very appreciative. This information has proven particularly helpful, as Law is currently developing its technology strategy as recommended in the 2020 ZBR. As this strategy is developed, there may be a need for further technology investment, but it is too early in the process to make that determination.

Response to Whiteboarding Results

The organization of the Whiteboarding Results made it difficult to respond to the items raised, so the concerns were regrouped into three general categories: unclear roles and responsibilities; transparency of process; and business considerations. The concerns were then analyzed to determine:

- a. which business unit the concerns were most appropriately assigned for handling and response;
- b. quick wins that could be immediately implemented; and
- c. issues where further dialogue would be helpful.

A summary of the Whiteboard concerns and responses to the specific questions are contained in Attachment 1.

Many of the concerns raised reflect what appears to be a stakeholder misunderstanding of the corporate land transaction process, who sets corporate risk tolerance and the role of legal advice in the decision making process, the importance of and entitlement to legal advice to support informed decision making by Council and Administration, and government limitations and the important role the private sector has in helping to realize improvement opportunities. A brief explanation is provided under the following headings to help clarify any misunderstanding.

Corporate Land Transaction Process

Corporately, The City has a robust framework governing land transactions. The framework consists of applicable legislation and Council approved policies and bylaws. Much of the framework is based upon experience from historic transactions. Guided by the framework, purchase and sale transactions are negotiated by Land Agents in RE&DS and high-level terms and conditions are set out in a non-binding offer letter between the parties. Law is then engaged as the specifics of the deal are worked out. Once the business terms of a transaction have been settled by those having the authority to do so (either Administration or Council depending on the nature of the transaction), Law implements the instructions and completes the transaction including preparation of agreements and supporting documents and completing the transaction through the Alberta Land Titles Office. Both Law and RE&DS must ensure that that agreements and supporting documents align with approvals, and when they do not, additional approvals are required.

Corporate Risk Tolerance

City Council determines the corporate risk tolerance.

Law provides advice to both City Council and members of Administration on legal issues, business practice and risk to support informed decision making. This advice is necessary to support the decision maker's understanding of risk and decision to accept, mitigate or eliminate risk, resulting in decisions that are made within corporate risk tolerance. Council does not set a uniform risk tolerance for the corporation,

and risk tolerances of individual Council Members and different Councils (following each election) may differ, resulting in a somewhat unpredictable and evolving corporate risk tolerance.

Legal Advice to Support Informed Decision Making

The practice of law is a professional endeavour regulated by the Law Society of Alberta, and all lawyers practicing in Alberta are subject to the Law Society's Code of Conduct. Lawyers are required to provide confidential legal advice and act in the best interests of their clients. As an in-house law department, Law only has one client, The City of Calgary, and to discharge our professional obligation, members of Law provide confidential legal advice to decision makers (Administration and City Council). This enables decisions to be made in the best interests of The City (and by extension citizens and local businesses) above all else. Advice on legal issues, including identification of risk and opportunities to accept, mitigate or avoid such risk must not be confused with an absence of risk tolerance. Rather, that is the very advice required to support decision making that is intentional, informed and within the corporate risk tolerance.

Lawyers acting for third parties have the same duty to their clients and are almost certainly providing confidential legal advice to support their clients' decision-making.

While The City and a third party may appear aligned in interest when pursuing a mutual outcome (such as the purchase and sale of land), throughout the negotiation each party will make many individual decisions in accordance with their interests to arrive at a conclusion. What may seem to be a simple transaction on the surface can ultimately lead to complicated litigation if things go awry. It is therefore important to be aware that from a legal perspective, the parties must be considered potentially adverse in interest and each must understand their specific legal risks as part of informed decision making. This underscores the necessity and importance of confidential legal advice for decision makers, whether Council or Administration, whether in a closed or public Council discussion or a business meeting.

Based upon the Whiteboarding Results, it appears that external stakeholders may misunderstand Administration's and Council's entitlement to confidential legal advice and its important role in supporting intentional and informed decision making within corporate risk tolerance. This supports the advancement and protection of corporate interests for collective citizen and local business benefit. It also seems that in years past, Council and certain members of Administration may have foregone confidential legal advice in the context of land transactions. Although that may have been the case (on which we are only able to speculate), it does not negate the requirement of lawyers to abide by the Law Society's Code of Conduct, it is not a recommended practice as it does not further fully informed and intentional decision making within corporate risk tolerance, and it does not prevent Council and Administration from exercising that right in the present and future.

Government Limitations and Private Sector Role in Realizing Improvement Opportunities

Government entities, such as municipal corporations, must operate within the scope of their legislation (the Municipal Government Act), appropriately delegated authority (The Real Property Bylaw) and with as much fairness, openness and transparency as reasonably possible. These constraints can sometimes lead to cumbersome processes that are absent from business practices in the private sector.

Standardization of processes and agreements allows for predictability and efficiencies for external parties and citizens. While it is important to be flexible when circumstances warrant it, it should be noted that customizing processes and agreements results increases turnaround time and delay for not only the individuals involved in the immediate customization, but it also delays the completion of third party items in the workflow. Balancing standardization with innovation when appropriate can be challenging and Law is committed to a continuous improvement mindset, including understanding private sector challenges and providing advice to decision makers when asked to modify standardized agreements and processes. Law is interested in pursuing the resolution of issues expeditiously and welcome feedback from external lawyers who have concerns with how a file is progressing. However, it is important to remember that members of Law provide legal advice to support informed and intentional decision making within corporate risk tolerance and have a professional obligation to ensure its advice does not compromise the interests of its client.

Law is committed to maximizing the value of its service to the corporation and by extension to the citizens and businesses of Calgary, and actively support the corporate goals embodied in the Rethink to Thrive Strategy, which includes discussing and addressing corporate barriers that business stakeholders face in their everyday operations. To that end, we are currently implementing the Law Zero Based Review (ZBR) recommendations which identified strategies to deliver resilient legal services to Administration and Council in a continuously evolving environment with workloads that are continuing to increase in volume, velocity and complexity. We are interested in conversations with all members of the legal profession, including the representatives from the confidential Stakeholders group, to explore best practices, such as the enhanced use of technology, as part of our continuous improvement commitment.

Further questions can be directed to Denise Jakal, Deputy City Solicitor at denise.jakal@calgary.ca or David Mercer, Manager Planning & Real Estate at david.mercer@calgary.ca.

Sincerely,

Jill Floen
City Solicitor & General Counsel
Law, Legal Services

Denise Jakal
Deputy City Solicitor – Corporate
Law, Legal Services

David Mercer
Manager, Planning & Real Estate
Law, Legal Services

cc: David Duckworth, City Manager
Christine Arthurs, General Manager, People, Innovation & Collaboration Services



This section summarizes the Whiteboarding Results and served as the starting point for Law to analyze and clarify any misunderstanding, perceptions or challenges the Stakeholders have experienced. The Whiteboarding Results were reviewed, carefully considered and categorized according to the following broad themes:



Unclear Roles and Responsibilities



Process Transparency



Business Consideration

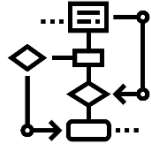


Unclear Roles and Responsibilities;

Concern Raised	Law Response	Business Unit(s) Involved
<i>Perception that Law revises deals negotiated by external party and The City</i>	Law is tied to the process outlined in the <i>Real Property Bylaw</i> ("Bylaw") and relies on client instructions to execute contracts.	RE&DS
<i>In-house lawyer 'vetoes' a deal which is not in line with private practice</i>	This is a misunderstanding of the role of Law. Formal processes and roles are set out within the Bylaw and City Policy and afford no 'veto' powers to Law.	RE&DS
<i>Concern with City lawyers not permitting external counsel to speak with The City without a City</i>	The Law Society of Alberta's Code of Conduct Section s. 7.2-11 ensures that represented clients are entitled to have	Law

lawyer present, and the difference between business advisory and litigious roles.

legal counsel present when legal counsel for the opposing side is present.



Process Transparency

Concern Raised	Law Response	Business Unit(s) Involved
<p><i>Perception that REDS and Law do not support decisions of Council and will actively try to undermine the direction set by Council.</i></p>	<p>Further examples would be beneficial to truly respond to this concern, as Law is not aware of this occurring.</p>	<p>RE&DS and Law</p>
<p><i>Frustration with the lack of information over what is discussed in-camera on real estate transactions and whether accurate information is being provided to Council</i></p>	<p>In-camera discussions are privileged communications and are an opportunity provide Council with the best advice of Administration.</p>	<p>Clerks, Law, REDS, Council, all Administration</p>
<p><i>Terms pop up later that are not acceptable</i></p>	<p>All offer letters are non-binding and are subject to change. Law only becomes involved once the deal is negotiated.</p>	<p>RE&DS</p>
<p><i>View Administration as delaying, stalling and misrepresenting transactions if Administration does not like the deal</i></p>	<p>Further information would be beneficial. Administration negotiates the deal and then presents to Council for approval.</p>	<p>All Administration</p>
<p><i>Proposals put forth to Council by Administration missing details.</i></p>	<p>Council receives the Proposal Letter and Report, not the entire deal. Law then receives instructions and prepares the agreements.</p>	<p>RE&DS</p>



Business Considerations

Concern Raised	Law Response	Business Unit(s) Involved
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Lack of appreciation for business timelines and the impact on transactions caused by these lengthy timelines.

All internal timelines are based upon the Bylaw process, which could be revisited. RE&DS, Law, Clerks

Imposing requirements that are not common amongst private industry, such as Affidavits and Corporate Seals. Would be nice to have policies updated to reflect modern business practices.

Some of these requirements are required by Bylaw, policies and Land Titles. Administration is currently reviewing and revising where possible. RE&DS, Clerks

City Law being viewed as being too risk adverse.

The City's Rethink to Thrive Strategy has begun to focus the Corporation towards the major risks exposures and is encouraging more flexibility when making decisions. As a part of the ZBR Legal Services is working to educate staff to better understand risk and to support our customers in taking appropriate risks. Law

Dating of documents and agreements creates legal issues.

Solved. City process changed. Law, Clerks, REDS

Issues of requiring live signatures, whereas outside world allows counterparts and e-signatures

May 31 2021 Council passed amendments to the Execution of Contract Bylaw to enable electronic signatures by City. Law, Clerks, REDS

Unreasonable requirement to impose easement

Would need more information. Some easements are required pursuant to formal regulatory approvals, such as development permits and subdivisions. Planning

Rigidity to standard forms and City requirements too rigid.

Some forms require are standardized for efficient handling by Administrative staff. A regular review of standardized forms may be required. Law, REDS, Clerks

Law needs better retention of lawyers.

The City is fully aware of this issue. There is a corporate review of management exempt compensation, and Law is focused on additional retention initiatives. HR, Law

REDS industrial lands stances do not match outside business transactions.

Need more details to formulate a response. REDS