

Deputy City Manager's Office Report to
SPC on Utilities and Corporate Services
2020 January 29

ISC: UNRESTRICTED
UCS2020-0126

Sales, Acquisitions and Leases Environmental (S.A.L.E.) Policy Update and Rescindment

EXECUTIVE SUMMARY

The purpose of this report is to notify Council on the updated Sales, Acquisitions and Leases Environmental (S.A.L.E.) Policy (the "Updated Policy") that was recently approved by the Administrative Leadership Team (ALT). The purpose of the Updated Policy is to address the recommendations set forth in Recommendation 4 of the Real Estate Acquisitions (Green Line LRT Stage 1) Audit Report (2018-AP04) and to improve how The City of Calgary exercises environmental due diligence when transacting on real property.

In addition to addressing the recommendations contained in 2018-AP04, a recommendation was also made as a result of a collaborative decision between members of City Clerks, Corporate Governance, the Deputy City Manager's Office and Real Estate & Development Services to have the Updated Policy in the form of an administration policy rather than a Council policy. This recommendation was also presented and endorsed at Administration's Corporate Governance Committee.

With the ALT's approval of the Updated Policy as an administration policy, a rescindment of the Council-approved CS004, Sales, Acquisitions and Leases Environmental (S.A.L.E.) Policy (the "Policy") is required.

ADMINISTRATION RECOMMENDATION:

That the Standing Policy Committee on Utilities and Corporate Services recommends that Council:

1. Receive for information the updated Sales, Acquisitions and Leases Environmental (S.A.L.E.) Policy, as provided in Attachment 1; and
2. Rescind the Council-approved CS004, Sales, Acquisitions and Leases Environmental (S.A.L.E.) Policy, as provided in Attachment 2.

PREVIOUS COUNCIL DIRECTION / POLICY

On 2002 April 29, Council approved CS004, the Sales, Acquisitions and Leases Environmental (S.A.L.E.) Policy.

On 2009 November 02, Council approved LAS2009-84, Real Property Bylaw 52M2009. The purpose of the Real Property Bylaw is limited to the authorization of transactions and the administration and management of The City's real property undertaken by Real Estate & Development Services.

On 2017 September 13, Council approved UCS2017-0606, Proposed Amendment to Real Property Bylaw 52M2009 – Stage 1.

On 2018 October 10, the City Auditor's Office issued 2018-AP04, Real Estate Acquisitions (Green Line LRT Stage 1) Audit Report. The report included Administration's response to five recommendations set forth by the City Auditor's Office. One of the recommendations was for Administration to update the Policy.

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BACKGROUND

On 2002 April 29, Council approved the Policy. The Policy was established for the following purposes:

- To ensure that Administration is knowledgeable and informed about any contamination of property that they deal with;
- Provide environmental assessment information to help manage and allocate liability for contamination; and
- To exercise environmental due diligence in property transactions.

Since its approval, the Policy has been subject to two minor revisions. The revisions were to reflect updates to the *Environmental Protection and Enhancement Act RSA 2000 c E-12* in 2002 and general organizational changes to The City of Calgary in 2005.

On 2018 October 10, the City Auditor's Office issued 2018-AP04, Real Estate Acquisitions (Green Line LRT Stage 1) Audit Report. The report includes Administration's response to five recommendations raised by the City Auditor's Office. The real estate team within the Green Line business unit and Real Estate & Development Services ("RE&DS") agreed to implement all five recommendations. Recommendation 4 directed RE&DS to review and update the Policy to include an up-to-date City organizational structure and identify process improvements for large scale projects such as the Green Line LRT.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

The Policy was originally approved in 2002 as a Council policy as the need for an environmental liability policy was directed from Council. A Council policy contains policy statements that: are approved by City Council; provide strategic direction on programs and services delivered by The City of Calgary; primarily impact and address residents of Calgary; provide an official position on plans to govern the people of Calgary; and are within Council's jurisdiction under the Municipal Government Act.

In response to Real Estate Acquisitions (Green Line LRT Stage 1) Audit Report (2018-AP04) recommendation, the review of the Policy began in early 2019. During the review process, Administration identified that the Updated Policy aligned more appropriately as an administration policy rather than a Council policy.

An administration policy differs from a Council policy as an administration policy is a policy statement that is approved by ALT focusing on the internal standards of The City of Calgary as a corporation, and primarily impacts and addresses Administration and contractors. As the Policy primarily impacts City employees and contractors rather than residents of Calgary, it was determined that the Updated Policy more suited in the form of an administration policy.

While the Real Property Bylaw provides direction in regards to real estate transactions, the Updated Policy, as an administration policy, will achieve the purposes of the Policy and govern Administration's practices in executing environmental due diligence in real estate transactions.

The Update Policy is comprised of:

- Purpose
- Policy Statements

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- Definitions
- Applicability
- Legislative Authority
- Roles and Responsibilities
- Consequences of Non-Compliance
- Associated Procedures and Standards
- Amendments
- Reviews

Other amendments were made to the Updated Policy to address Recommendation 4 in 2018-AP04. Process improvements for large scale projects are addressed through the addition of a policy statement and an item to the roles and responsibilities section where Administration will convene a working group to ensure that all transactions for large scale projects will be completed in accordance with the Updated Policy. The Updated Policy reflects the current organizational structures at The City, City business units were changed to One Calgary lines of service and the addition of bylaws and acts were added to the Applicability and Legislative Authority sections in the Updated Policy. Given the approval of the Updated Policy, a rescindment of the Policy is required.

In addition to the Updated Policy, Administration will also develop and implement a Sales, Acquisitions and Leases Environmental (S.A.L.E.) Procedures (the "Procedures") that will be supplementary to the Updated Policy. The Procedures will establish a detailed process and provide additional clarity of roles and responsibilities of RE&DS, ESM and working groups when implementing, exercising the Updated Policy in real property transactions. The Procedures are expected to be completed in early 2020.

Stakeholder Engagement, Research and Communication

Business units including RE&DS, ESM, City Clerk's Office, City Manager's Office (CMO), Law and the Green Line were consulted on the Updated Policy. The Updated Policy presented and endorsed at Administration's Corporate Governance Committee. Business units with projects where RE&DS regularly undertakes property transactions were also consulted on amendments to the Updated Policy. Through this consultation, it was determined that efficiencies can be achieved as certain projects could be undertaking environmental investigations within their project scope. The resulting information can be then reviewed by Administration to determine if any additional environmental work to ensure compliance to the Updated Policy.

Upon approval of the proposed rescindment of the Policy and completion of the Procedures, information sessions will be given to various sections within RE&DS and ESM. These sessions will detail the purpose, policy statements, process and roles and responsibilities associated with exercising environmental due diligence in real estate transactions. These information sessions will help to promote compliance to the Updated Policy and Procedures.

Strategic Alignment

The Updated Policy strategically aligns with and references:

- *Municipal Government Act RSA c M-26*

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- *Environmental Protection and Enhancement Act RSA 2000 c E-12*
- Real Property Bylaw 52M2009 as amended by 32M2017

Social, Environmental, Economic (External)

Social

No implications were identified.

Environmental

The Updated Policy may improve Administration's ability to be knowledgeable of environmental conditions of all properties identified in property transactions which will result in better management and allocation of environmental liability.

Economic

For certain transactions under the Updated Policy, additional environmental testing may be required. This testing may increase costs that are associated with the land transaction. Additional resourcing requirements may also be required by Administration to promptly review the environmental testing results and avoid any delays to the land transaction. However, these additional costs would be considered small compared to the potential environmental liabilities that could be encountered if Administration was not knowledgeable and informed of the environmental condition of the properties on which it transacts.

Financial Capacity

Current and Future Operating Budget:

Not applicable.

Current and Future Capital Budget:

The Updated Policy may increase due diligence costs for capital funded projects, therefore a reallocation of funds may be required to current budgets.

Risk Assessment

If the out of date Policy is not rescinded allowing the Updated Policy to be implemented, Administration is exposed to operational risks and may not be able to exercise proper environmental due diligence in various property transactions resulting in inadequate and/or inaccurate information on the environmental condition of real property. This could lead to financial and liability risks as Administration could be responsible for conducting and funding remediation of previously unknown contamination caused by another party. Improper management of contamination in property transactions could also result in reputational risks. The likelihood of the risks are all considered low but the impact is considered medium.

REASON(S) FOR RECOMMENDATION(S):

The Updated Policy addresses a recommendation set forth in 2018-AP04, Real Estate Acquisitions (Green Line LRT Stage 1) Audit Report. The Updated Policy contains amendments

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that will improve Administration's process in exercising environmental due diligence in real property transactions.

With the ALT approval of the Updated Policy as an administration policy, a rescindment of the Council approved CS004, Sales, Acquisitions and Leases Environmental (S.A.L.E.) Policy from 2002 (the "Policy") is required.

ATTACHMENT(S)

1. Attachment 1 – Updated Sales, Acquisitions and Leases Environmental (S.A.L.E.) Policy
2. Attachment 2 – Sales, Acquisitions and Leases Environment (S.A.L.E.) Policy (CS004)
3. Attachment 3 – ALT2020-0063, Sales, Acquisitions & Leases Environmental (S.A.L.E.) Policy Update Decision Memo