

## RAILWAY CORRIDOR POLICY

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### EXECUTIVE SUMMARY

Rail safety, and development adjacent to rail, has been the subject of recent attention, both locally and globally. As a city with a major rail corridor, this is an important concern for Calgary.

As growth occurs across the city, it is important to have the most effective solutions for balancing safety requirements next to rail while also maximizing the efficient use of land, both within established and new areas.

This report outlines the current approach to processing development permit applications adjacent to rail, and also seeks direction for Administration to work toward an improved policy framework for addressing these issues, starting with a terms of reference which would be established, no later than 2016 Q2, and working in conjunction with industry. A new framework is intended to yield an improved approach for both The City and Industry by providing more clarity and certainty, while balancing safety and development potential. This framework would include establishing methodologies and approaches that would achieve the objectives of providing safety for building occupants protecting buildings, and providing emergency response to a railway incident.

### ADMINISTRATION RECOMMENDATION(S)

That Council:

1. Direct Administration to consult with industry stakeholders to review the draft deliverables for a Rail Policy Framework as identified in Attachment 1, report back to Council with a terms of reference that includes deliverables, scope of work and timelines no later than 2016 Q2;
2. Direct that Attachment 5 and the in-camera PowerPoint presentation remain confidential pursuant to Sections 23(1)(b), 24(1)(a)&(b) and 27 of the *Freedom of Information and Protection of Privacy Act* until the *Railway Corridor Policy* is approved by Council and published on Calgary.ca.

### PREVIOUS COUNCIL DIRECTION / POLICY

At an in-camera session of Council on 2015 December 18, Council adopted the following recommendations in respect to report C2015-0957:

1. Refer Recommendation 1 as contained in the PowerPoint presentation, to the Administration, for a Report back to the 2016 March 21 Strategic Meeting of Council, based on today's In-camera discussion;
2. Request that the Mayor write to the Minister of transport and the President of the FCM requesting that, in the interest of enhancing public safety, the federal government pass legislation to reduce risks posed by rail traffic traveling through urban areas be significantly reduced; and
3. Keep the verbal report, In-camera PowerPoint presentation distribution, and discussions confidential pursuant to Sections 24(1)(a), 24(1)(b), and 27 of the *Freedom of Information and Protection of Privacy Act* until such time as the *Railway Corridor Policy* is approved by Council and published on Calgary.ca.

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### BACKGROUND

When development is located near rail, there are risks to human safety and property due to possible derailments and other accidents, as well as nuisance issues, such as noise and vibration.

A 2014 Canada Transportation Agency (CTA) ruling indicated that municipalities take a risk when approving residential development near rail, and are responsible for assessing compatibility and ensuring risks are appropriately mitigated, as follows:

*[57] A Municipality takes a risk when deciding to allow housing development in close proximity to a railway right of way and the Agency is of the opinion that Municipalities have a responsibility to assess compatibility issues before approving a housing development along a railway right of way, and if they approve a development, to ensure that the necessary mitigation measures are implemented.*

The CTA has no official jurisdiction over The City of Calgary; however, this ruling indicates that rail regulators do not expect rail operators to eliminate rail proximity issues on their own and that municipalities are expected to play a key role. This is in line with the principles of planning law and the law of negligence as it applies to municipal decisions.

Currently, there is no Council approved policy specifically for development close to railways. However, Council Policy CSPA033 "Integration of Emergency Services into The City of Calgary Land Use, Infrastructure and Mobility Planning Policy provides direction to ensure that the needs of emergency services protection, response and public evacuation will be integrated with planning processes of other departments of The City to ensure long-term economic, social and environmental sustainability. Other guidance for development is a 1977 Calgary Planning Commission (CPC) Policy that applies a 27.5m setback for habitable buildings from the railway property line. For more recent development applications, the Calgary Fire Department and Calgary Emergency Management Agency typically recommend a 30m setback from the railway property line. This setback provides for emergency responder access, setup and room to work.

The CPC guideline has been applied along the railway corridor in a number of areas but the setback can only be required when a parcel is subdivided, such as for a new development, or large redevelopment. Municipalities have varying levels of authority to impose development constraints at different stages of development. Significant consideration is allowed for public purposes at the subdivision stage (as reflected in the 1977 CPC Policy), but much less so at the development permit stage, which applies to much of the city's redevelopment activity.

More tools are needed to effectively deal with the risks associated with development adjacent to rail, particularly in the established areas of the city.

### INVESTIGATION: ALTERNATIVES AND ANALYSIS

When considering a development application adjacent to rail, Administration has established three objectives:

- To provide safety for building occupants;

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- To protect buildings; and
- To provide for emergency response to a railway incident.

Achieving all objectives, through only prescribed setbacks, is not feasible for typical redevelopment applications. A different approach is needed, particularly since the Municipal Development Plan (MDP) aims to increase population and intensify development in the established areas.

Administration has developed an approach for reviewing development applications for lands within 30m of a railway property line in order to process current applications. This approach, described below, will continue to evolve as Administration creates the new policy framework, and better understands the risks in the Calgary context.

### Current Approach

The current approach is based on common practices implemented in other municipalities, and also on what has been learned about Calgary's development context (Attachment 1).

To provide guidance for landowners, applicants and Administration, where the CPC Policy is not feasible, Administration adopted the following approach:

1. All residential development applications within 30m of a railway main line property line require a risk assessment. A risk assessment may be required for commercial applications, at the discretion of the approving authority. Based on the results of the risk assessment, appropriate mitigations are required. Access and setup requirements for emergency response services must be considered; and
2. No sensitive uses will be allowed within 30m of the railway corridor (i.e. schools, hospitals, child care services, assisted living, and residential care).

This current approach effectively addresses the objectives of building occupant safety and building protection. However, to provide for emergency response for a potential railway incident, CEMA and CFD setback recommendations would need to be addressed to the extent reasonably achievable outside typical development permit applications.

The current approach largely does not apply to existing uses or tenancy changes.

### Developing a New Rail Policy Framework

While there is a current approach being used by Administration, it is recognized further work could be done toward determining whether there is the potential for an improved methodology and approach. Such an approach would include risk tolerance determinations, research into whether railway incident emergency response recommendations could be provided, area based risk assessments, and typical mitigations measures. This further work would also include the effectiveness of any provisions of the current approach.

Should improvement in these areas be possible, an important and intended benefit would be in providing for increased clarity and certainty within the development industry, and for development applicants. In addition, there would be enhanced Development Authority guidance in decision-making.

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The new approach would build on and supplement the current approach by providing a broader range of tools and more flexibility to address Calgary's unique development circumstances. The intent would be to allow for innovative solutions within certain areas and provide more certainty as to where and when mitigations are appropriate. Efforts would be focused on areas with higher risk factors.

The deliverables for this new approach would be refined based on input from internal departments and key industry stakeholders but could include the following:

- Risk tolerance
- Railway incident emergency response access.
- Area based risk assessments
- Typical mitigation solutions

Additional details on potential deliverables are provided in Attachment 2.

Timelines for developing the new framework could be up to one year but would be determined and further refined in a terms of reference that would be provided in a report back to Council by the end of Q2 2016. The time would allow Administration, in conjunction with industry stakeholders, to research and develop a comprehensive package of policies and supporting tools. Should industry be supportive of the deliverables in Attachment 2, including any Council amendments and feedback, the terms of reference could be brought to Council early in Q2.

Administration met recently with industry representatives to review the current approach and to review the proposed process that will be followed to develop a new framework. An industry letter dated 2016 March 01, and an email update to the letter dated 2016 March 17, were provided indicating their support for the need to develop a new approach and confirming their interest in collaborating with Administration, while also stressing the need to resolve these issues in a timely fashion (Attachment 3).

As a follow up to Council's direction from its 2015 December In-camera session, the Mayor wrote letters to the President of the Federation of Canadian Municipalities and the Minister of Transport, providing recommendations to improve rail safety (Attachment 4). Council also raised a number of questions and identified areas for further exploration; Attachment 5 (confidential and to provided in-camera) provides Administration's follow-up on these matters.

In summary, while The City currently has an approach to address the risk associated with development in close proximity to rail, it is recognised there is the potential for this approach to be improved. A longer term solution that balances development potential with safety is needed to provide a clear and consistent approach for handling development near railways. This report's recommendation, to develop a terms of reference, in consultation with industry stakeholders, is intended to guide this work. Administration is committed to returning to Council with this terms of reference, as promptly as possible, in order that, in turn, the work proceeds expeditiously.

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### **Stakeholder Engagement, Research and Communication**

A communication plan was developed at the outset of this process to ensure that stakeholders received information in a timely manner. A website on calgary.ca was established in 2015 August to provide general information about the railway corridor issue.

Internally a cross-corporate Railway Corridor Working Group was established to review development applications, and develop possible long term policy options. Information sessions with staff who process applications were held to ensure understanding of the issue and to outline how to process applications using the current approach.

Industry was identified as a primary stakeholder. A variety of methods were used to provide information to industry including Planning Dispatch articles, direct communication with industry representatives, and by providing background information for industry's newsletters and other communications to their membership.

In 2015 October, Administration held an industry workshop. Its purpose was to allow Administration to share the current approach with representatives. Industry had the opportunity to share their thoughts and ask questions about the changes to the process due to rail proximity. This workshop was limited in the level of engagement given the early state of the project.

Administration is committed to engaging industry through the next phase of the project and will work with industry representatives to identify a clear plan to engage developers, landowners and consultants. The plan will be developed to manage the expectations of the external stakeholders and ensure the policy outcomes are developed to identify and mitigate risk due to railway proximity.

Finally through the course of processing 165 development applications adjacent to rail corridors Administration has engaged in numerous meetings and communications with landowners.

### **Strategic Alignment**

MDP Growth and Change Map 2 identifies the rail corridor through the Centre City as a Special Study Area, indicative of the sensitivity and careful planning, required to develop this area.

Overall the MDP seeks to increase the population in developed areas of the city. Specifically Sections 2.2.3 and 3.2 of the MDP speak to the importance of the Centre City as the business and cultural heart of Calgary. Section 3.2.1 b. identifies a goal to accommodate 232,000 jobs and 70,000 people over the next 60 years. The framework outlined in this report is not intended to impede progress towards this goal. Rather its role is to ensure that any development adjacent to the rail is safer for occupants, and allows first responders to assist in the event of an emergency, while allowing The City to approve development that will help to meet its jobs and population targets.

Council Policy CSPS033 "Integration of Emergency Services into The City of Calgary Land Use, Infrastructure and Mobility Planning Policy" states the following:

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### 4. Manage Risk

- All emergency planning, preparedness, response and recovery will comply with federal and provincial legislation and align with proven industry-based standards/protocols and engineering principles
- Community safety is enhanced through community and building design that reduces opportunities for crime, controls fire spread, provides access for emergency vehicles, ensures adequate water supply for the fire load and locates emergency service stations and resources within the response guidelines approved by the municipality
- The needs of emergency services protection, response and public evacuation will be integrated with planning processes of other departments of The City to ensure long-term economic, social and environmental sustainability

Administration is working proactively to ensure that strategies, policies and decisions related to development near rail align with The City's Integrated Risk Management framework.

### **Social, Environmental, Economic (External)**

#### **Social**

The health and safety of people who occupy buildings near rail is a key consideration. The risk assessment and mitigation strategies required for residential uses will seek to protect public health and safety. The safety and operational needs of first responders who may need to respond to derailments or other incidents near rail will be a priority. As well the vitality of communities near rail and the continued success of Calgary's downtown will be factors as the new approach is developed.

#### **Environmental**

The environmental impacts of railways on nearby development include noise and vibration. Other environmental risks that may arise from derailments or other emergencies will be managed through the proximity rules and ensuring that first responder access is addressed when development occurs.

#### **Economic**

The lands adjacent to railways are largely privately owned and, particularly in the Centre City, have high development potential. The proposed policy framework will seek to balance the need to protect the public while ensuring that development that is both technically feasible and economic viability can continue.

### **Financial Capacity**

#### **Current and Future Operating Budget:**

The railway corridor work is identified in Planning & Development's work plan, and staff resources can be met within existing operating budgets. Any need for consultant services can also be absorbed within existing budgets.

#### **Current and Future Capital Budget:**

There are no capital expenditures associated with this work.

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### **Risk Assessment**

There are numerous risks if The City continues to approve new development near rail without clear policy direction. Without clear Council policy direction, property owners remain in a position of uncertainty regarding what can be developed on their land. This uncertainty could discourage developer investment and redevelopment.

Further, landowners with development applications already submitted expect their applications to be processed in a timely manner. Ongoing work in the absence of clear policy may not only extend their timelines, but significantly change their development proposals. This may also have a negative impact on The City's ability to meet its MDP targets.

In addition, there is a public safety risk. The development authority must satisfy itself that the risks have been sufficiently mitigated. Any development near rail with no clear requirement for emergency access, space for setup and room to work, decreases the ability for first responders to assess, respond to and manage emergency incidents along the rail line.

### **REASON(S) FOR RECOMMENDATION(S):**

This report provides updated information to Council on the issue of development adjacent to rail corridors. While Administration currently employs an approach to address development in close proximity to rail, there is the potential for this approach to be improved. In addition to the information provided in this report, Administration is therefore recommending that a terms of reference be established, and that would guide the work towards improvements to the approach used in managing the risk associated with development in close proximity to rail.

### **ATTACHMENT(S)**

1. Current Approach
2. Proposed Deliverables of a New Rail Policy Framework
3. Letters from Industry
4. Letters to Federation of Canadian Municipalities and Transport Canada
5. Responses to Council from 2015 December 18 Strategic Session (In-camera)