

LAND USE AMENDMENT
WALDEN (WARD 14)
SOUTHWEST OF 194 AVENUE AND WALDEN BOULEVARD SE
BYLAW 184D2015

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EXECUTIVE SUMMARY

This is a proposed Land Use Amendment for a 1.01 hectare \pm (2.50 acre \pm) site southwest of 194 Avenue and Walden Boulevard SE. The intent is to accommodate a liquor store on the subject site. The application is not supported by applicable Provincial legislation, City policy and Administrative standards because a liquor store is a prohibited use within the setback of a non-operating landfill.

PREVIOUS COUNCIL DIRECTION

None

ADMINISTRATION RECOMMENDATION(S)	2015 September 24
That Calgary Planning Commission recommends REFUSAL of the proposed Land Use Amendment.	
RECOMMENDATION(S) OF THE CALGARY PLANNING COMMISSION	
That Council hold a Public Hearing on Bylaw 184D2015; and	
<ol style="list-style-type: none">1. ADOPT the proposed redesignation of 1.01 hectare \pm (2.50 acre \pm) located at 19605 Walden Boulevard SE (Plan 1411662, Block 1, Lot 12) from Industrial – Business f0.5 (I-B f0.5) District to DC Direct Control District to accommodate a liquor store; and2. Give three readings to the proposed Bylaw 184D2015.	

REASON(S) FOR RECOMMENDATION:

This proposal does not comply with the minimum separation requirements of the Subdivision and Development Regulation and the “Landfill Restricted Area” policy of the East Macleod Trail Area Structure Plan. The sole purpose of the proposed direct control district is to accommodate the additional use of a liquor store on the subject property. A liquor store is a “food establishment”. The Province’s Subdivision and Development Regulation states that “a development authority shall not issue a development permit for a...food establishment...if the building site” is within the setback area of a landfill site (see Section 13(3) of the Regulation). In this case, the building site is within the setback area of the BFI landfill site.

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Administration may grant a variance from the setback requirements (with Provincial consent). However, in the opinion of Administration, there is insufficient evidence to support such a request and the minimum separation standards of the Regulation should be respected. The Provincial standards are in place to protect public health and safety in the vicinity of landfill sites. It is inappropriate to set aside these standards without conclusive evidence that the proposed use will not present a hazard to public health and safety.

The East Macleod Trail Area Structure Plan states that a proposed variance of the setback from this landfill site shall undergo a comprehensive review and shall not be supported unless it can be demonstrated that..."adverse public health or safety impacts on the proposed use due to its proximity to the landfill will not result". Administration is not able to conclusively determine that there will not be adverse public health or safety impacts. In view of the foregoing, Administration does not support the proposed redesignation and recommends refusal.

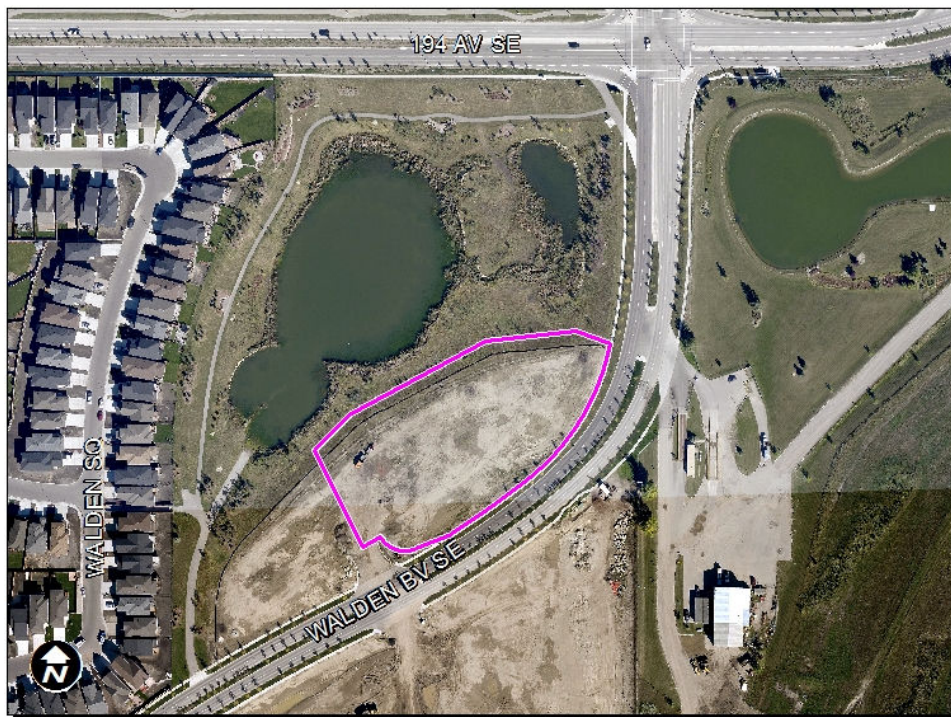
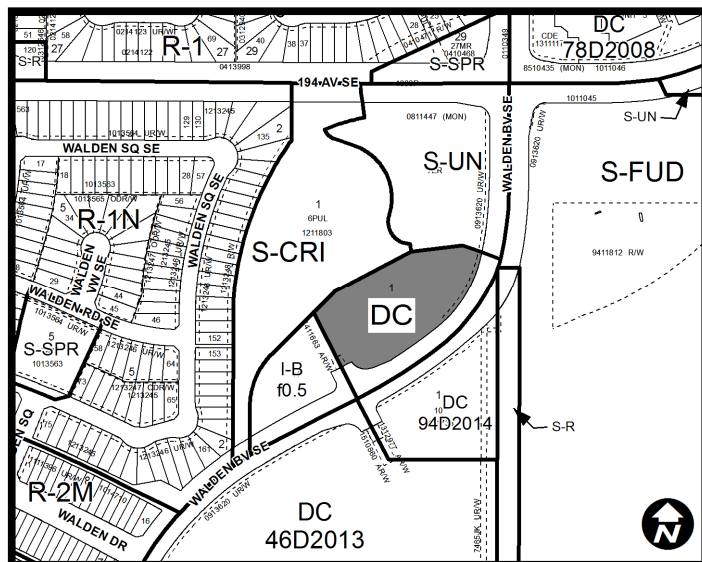
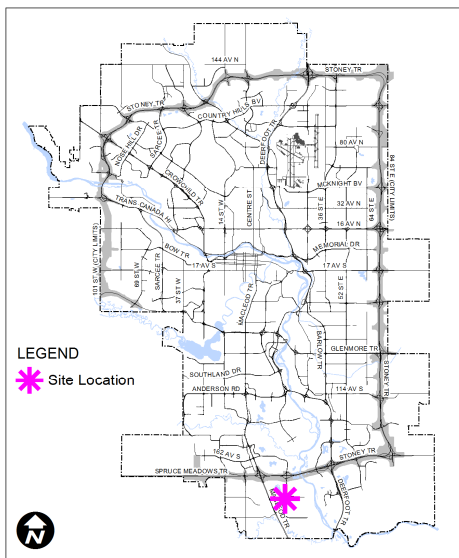
ATTACHMENT

1. Proposed Bylaw 184D2015

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LOCATION MAPS



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ADMINISTRATIONS RECOMMENDATION TO CALGARY PLANNING COMMISSION

Recommend that Council **REFUSE** the proposed redesignation of 1.01 hectare ± (2.50 acre ±) located at 19605 Walden Boulevard SE (Plan 1411662, Block 1, Lot 12) from Industrial – Business f0.5 (I-B f0.5) District **to** DC Direct Control District to accommodate a liquor store with guidelines (APPENDIX II).

2015 September 24

MOTION:

The Calgary Planning Commission **FILED** Administration's recommendation of **REFUSAL** and recommends that Council:

1. **ADOPT**, by bylaw, the proposed redesignation of 1.01 hectare ± (2.50 acre ±) located at 19605 Walden Boulevard SE (Plan 1411662, Block 1, Lot 12) from Industrial – Business f0.5 (I-B f0.5) District **to** DC Direct Control District to accommodate a liquor store; and
2. Give three readings to the proposed Bylaw.

Moved by: J. Gondek

Carried: 6 – 1

Opposed: M. Tita

Reasons for support of Adoption recommendation from Ms. Gondek:

- This application highlights the very subjective nature of terminology like "Food Establishment" and "non-operating". In the case of Liquor Store as a use, and the operations of the landfill, staff and the legal team are providing their interpretations of the regulations and definitions. Members of Commission have different perspectives based on other interpretations. Therefore, the decision-making is necessarily opinion based rather than prescribed.

Comments from Ms. Gondek:

- In order to mitigate concerns of food handling, at the development permit stage include a condition that prohibits in-store tastings or samplings, as well as prohibiting any outdoor hospitality events where food is served (e.g. barbecues). Clearly state that only packaged and sealed items can be sold.

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Reasons for support of Adoption recommendation from Ms. Wade:

- Gaming and Liquor Act will issue a licence with conditions which can limit or omit "Food Handling" in the Liquor Store.
- Subdivision Development Regulation – If Liquor Store is not deemed as a Food Establishment then the setback is null and void as it is a sales/retail use.
- Landfill is being capped and as part of the DP process Administration and Applicant work together to receive the required reports and letters that assure environmental remediation is addressing all risk concerns to the satisfaction of the Province and the City.

Reasons for support of Adoption recommendation from Cllr. Keating:

- The City really needs to begin a discussion on what is risk. A broad interpretation of what is or is not a definition does not help Administration or Council with their decisions.

Reasons for support of Adoption recommendation from Mr. Wright:

- The key to resolving the land use is to determine that Liquor Stores are not a Food Establishment. While the Provincial Food Regulation exempts Liquor sales from the definition, the City has taken a very cautious approach and I would hope common sense would prevail with what I see as very minimal risk if any at all.

Reasons for support of Adoption recommendation from Mr. Friesen:

- I supported the motion to set aside the refusal and approve this Land Use because the likelihood of the use leading to food contamination seemed low. I did still have reservations because many of the questions raised should have been addressed by scientists/specialists in contamination issues. There should be further clarification of the regulations around this issue to remove uncertainty. In this case only sealed food items should be allowed until the science is clarified.

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Applicant:

Mermac Construction Ltd

Landowner:

Genco (Walden) Ltd

Planning Evaluation Content	*Issue	Page
Density <i>Is a density increase being proposed.</i>	No	6
Land Use Districts <i>Are the changes being proposed housekeeping or simple bylaw amendment.</i>	Yes	6
Legislation and Policy <i>Does the application comply with policy direction and legislation.</i>	No	7
Transportation Networks <i>Do different or specific mobility considerations impact this site</i>	No	8
Utilities & Servicing <i>Is the site in an area under current servicing review and/or has major infrastructure (water, sewer, storm and emergency response) concerns.</i>	No	8
Environmental Issues <i>Other considerations eg. sour gas or contaminated sites</i>	Yes	8
Growth Management <i>Is there growth management direction for this site. Does the recommendation create capital budget impacts or concerns.</i>	No	8
Public Engagement <i>Were major comments received from the circulation</i>	No	8

*Issue - Yes, No or Resolved

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PLANNING EVALUATION

SITE CONTEXT

The subject property is within the 300 metre setback (for non-operating landfills) of the defined disposal area of the landfill to the east. The landfill is no longer accepting waste but is currently accepting non-contaminated soils to bring the landfill mound up to final grade. Officially, it is neither active nor closed. It is non-operating and the 300 metre setback applies.

The landfill is expected to be officially closed sometime in 2017, however, this is at the discretion of the operator and Province. The Development Permit for the landfill expired 2015 January and the operator has applied for a Land Use Amendment and a Development Permit to accommodate a terminal use (landscaping). The BFI (Progressive Waste Solutions) landfill in Walden is a Class II non-hazardous waste landfill. The following materials are not accepted:

- (a) hazardous waste (as defined in the Waste Control Regulations);
- (b) bulk liquid waste;
- (c) domestic wastewater;
- (d) explosives;
- (e) radioactive waste;
- (f) biomedical waste; and
- (g) ozone depleting substances.

The subject lands were created through a subdivision in 2014 following a redesignation. The rationale for applying the Industrial-Business (I-B) District at the time was that (1) it allows for commercial uses compatible with adjacent residential uses and (2) it enables fewer landfill-incompatible uses relative to other districts. As described below, the Subdivision and Development Regulation prohibits certain uses near landfills

LAND USE DISTRICTS

The proposed land use is a DC Direct Control District based on the Industrial Business (I-B) District, with the additional use of a liquor store. This change in land use is to add another retail use to the district without altering floor-area ratio restrictions and therefore does not represent an increase in density.

Administration recognizes that direct control districts must only be used for development proposals that require specific regulation unavailable in other land use districts due to factors like unique design or site constraints. This site is constrained by the nearby landfill. Administration believes that industrial districts are appropriate within landfill setbacks because fewer permitted and discretionary uses are prohibited under Provincial legislation.

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LEGISLATION & POLICY

Subdivision and Development Regulation (SDR)

The SDR states that a development authority shall not issue a development permit for a school, hospital, food establishment or residence, nor may a school, hospital, food establishment or residence be constructed if the building site is within 300 metres of the disposal area of a non-operating landfill (SDR 13). Administration has determined that a liquor store is classified as a type of food establishment under Provincial regulations. The regulation may be varied by a development authority with the written consent of the Deputy Minister of Environment and Sustainable Resource Development (SDR 13(5)). However, internal Administrative direction is not to seek a variance (see Administrative Direction below).

Municipal Development Plan (MDP)

The MDP defers to the policies of the local area plan. The subject site is within the Planned Greenfield with Area Structure Plan (ASP) typology of the MDP. The MDP recognizes that ASPs in existence prior to approval of the MDP provide specific direction relative to the local context (MDP 1.4.4).

East Macleod Trail Area Structure Plan (ASP)

The application is not supported by the ASP. The subject lands are within the Landfill Restricted Area of the ASP. The ASP requires that appropriate land use restrictions be applied to affected lands in order to achieve compliance with the provisions of the SDR. A variance to the SDR to allow for a restricted use within the setback will not be supported unless it can be demonstrated that:

- (a) the operation and viability of the landfill area will not be constrained by the proposed use, and
- (b) adverse public health or safety impacts on the proposed use due to its proximity to the landfill will not result.

While operation of the landfill will not be affected (the operator wrote a letter in support), the Applicant has not proved that adverse health and safety effects will not result.

Liquor Store Separation Distance Guidelines (Land Use Bylaw)

The proposed liquor store location meets the Liquor Store Separation Distance Guidelines. The guidelines specify a minimum 300 metre separation distance between liquor stores, and 150 metres between a liquor store and a school. There are no other liquor stores within 300 metres and no schools (existing or planned) within 150 metres of the subject site.

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Administrative Direction on Landfill Setback Variances

In 2015 May, the Administrative Leadership Team established internal guidance in a report titled Landfill Setback Variance: Direction on Methodology (ALT2015-0405). The approved report states that for non-operating landfill sites that are not in post-closure care, no variance will be considered at either the Land Use Amendment or Development Permit stages. If Council were to approve the land use, Administration still has the direction to refuse a Development Permit application for a liquor store.

TRANSPORTATION NETWORKS

There are no transportation concerns related to this Land Use Amendment because this simply adds an additional retail use to a site that already allows for other similar retail uses.

UTILITIES & SERVICING

Adequate servicing is available to the site.

ENVIRONMENTAL ISSUES

The only known environmental issue with the proposed Land Use Amendment is the presence of the nearby landfill (described above).

GROWTH MANAGEMENT

The proposed Land Use Amendment does not trigger capital infrastructure investment and therefore there are no growth management concerns at this time.

PUBLIC ENGAGEMENT

Community Association Comments

Not required as there is no Community Association in this area.
The adjacent community of Chaparral was circulated but did not reply.

Citizen Comments

Seven letters of opposition were received from nearby residents. They expressed the following concerns:

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- devaluation of nearby properties;
- consumption of alcohol in the nearby open space;
- reduction of the nearby open space's amenity and natural value;
- proximity a new bottle depot across the street; and
- increased retail traffic and hours of operation.

Nearby residents also questioned the need for a new liquor store given that there is already a liquor store in Walden (~650 metres to the west and also ~1.15 kilometres to the north).

The landfill operator has written a letter expressing that they have no concerns with the proposed liquor store on the subject site.

Public Meetings

No public meetings were held for this application.

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APPENDIX I

APPLICANT'S SUBMISSION

This application by Mermac Construction on behalf of Genco Ltd., is to amend the site from Industrial Business (I-B) to a Direct Control (D-C) District based on the I-B District with a Liquor Store. The proposed uses for the site are:

- Office
- Medical
- Retail and
- Liquor Store

With the exception of the Liquor Store, all uses are permitted within the I-B land use district. The re-designation request is specifically to address accommodating the Liquor Store use within the I-B land use district.

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APPENDIX II

PROPOSED DIRECT CONTROL GUIDELINES

Purpose

- 1 This Direct Control District is intended to:
 - (a) allow for the additional **use** of **Liquor Store**.

Compliance with Bylaw 1P2007

- 2 Unless otherwise specified, the rules and provisions of Parts 1, 2, 3 and 4 of Bylaw 1P2007 apply to this Direct Control District.

Reference to Bylaw 1P2007

- 3 Within this Direct Control District, a reference to a section of Bylaw 1P2007 is deemed to be a reference to the section as amended from time to time.

Permitted Uses

- 4 The **permitted uses** of the Industrial-Business (I-B) District of Bylaw 1P2007 are the **permitted uses** in this Direct Control District.

Discretionary Uses

- 5 The **discretionary uses** of the Industrial-Business (I-B) District of Bylaw 1P2007 are the **discretionary uses** in this Direct Control District with the addition of:
 - (a) **Liquor Store**.

Bylaw 1P2007 District Rules

- 6 Unless otherwise specified, the rules of the Industrial-Business (I-B) District of Bylaw 1P2007 apply in this Direct Control District.

Floor Area Ratio

- 7 The maximum **floor area ratio** is 0.5.