



FORM TITLE

Header text

In accordance with sections 43 through 45 of [Procedure Bylaw 35M2017](#), the information provided **may be included** in the written record for Council and Council Committee meetings which are publicly available through www.calgary.ca/ph. Comments that are disrespectful or do not contain required information may not be included.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Personal information provided in submissions relating to matters before Council or Council Committees is collected under the authority of Bylaw 35M2017 and Section 33(c) of the Freedom of Information and Protection of Privacy (FOIP) Act of Alberta, and/or the Municipal Government Act (MGA) Section 230 and 636, for the purpose of receiving public participation in municipal decision-making. Your name and comments will be made publicly available in the Council agenda. If you have questions regarding the collection and use of your personal information, please contact City Clerk's Legislative Coordinator at 403-268-5861, or City Clerk's Office, 700 Macleod Trail S.E., P.O. Box 2100, Postal Station 'M' 8007, Calgary, Alberta, T2P 2M5.

- I have read and understand that my name and comments will be made publicly available in the Council agenda. My email address will not be included in the public record.

First name (required) Joshua

Last name (required) Orzech

What do you want to do? (required) Submit a comment

Public hearing item (required - max 75 characters) Item 8 - LOC2021-0019, CPC2021-0758 Bylaw 106D2021

Date of meeting Jul 26, 2021

I oppose the proposed land use amendment for 2204 22 Street NW.

I understand that the property already has an approved development permit (DP2018-5114) which allow for the type of development that the Applicants wish to build. I also understand that this property is subject to the terms of a restrictive covenant (RC) that prohibit the construction of more than 2 dwelling houses on each lot. Finally, I understand that there is litigation currently pending before the Court of Queen's Bench of Alberta in which many area residents are attempting to enforce the terms of the RC and stop the current development of the property in question.

I object to the Redesignation Applications on the basis that pursuant to the City of Calgary's Land Use Bylaws (LUB), Direct Control Districts must only be used for developments that have unique characteristics that require specific regulation unavailable through other land use designations. The developments proposed by the Applicants are not unique. There are many examples of virtually identical developments within the City of Calgary that are not designated with the DC land use designation. In fact, the land use designation currently placed on these lands (RC-G & MU-1) is sufficient to complete the development as intended. For this reason alone, this application should fail.

I am aware that several area residents attended City Council hearings to object to the development and raised the existence of the RC as grounds to reject the plans for this

Comments - please refrain from providing personal information in this field (maximum 2500 characters)

DISCLAIMER

1/2

This document is strictly private, confidential and personal to its recipients and should not be copied, distributed or reproduced in whole or in part, nor passed to any third party.

Jul 16, 2021

9:42:48 PM



FORM TITLE

Header text

development. I am aware that City Council refused to hear these arguments on the basis that City Council is not bound by restrictive covenants and is precluded from considering them in development decisions.

As a result of the above, I also object to the Redesignation Applications on the basis that the Applicants are using this to subvert the legal proceedings that are currently before the Court. This is not an allowable purpose for determining the applicability of the DC designation to this land. If City Council is precluded from considering the RC in opposition to the development, they are similarly precluded from considering it in support of the change to DC - especially if the need for change to DC is only to get around the RC.

As a resident of Banff Trail, I recommend City Council vote against Item 8.



FORM TITLE

Header text

In accordance with sections 43 through 45 of [Procedure Bylaw 35M2017](#), the information provided **may be included** in the written record for Council and Council Committee meetings which are publicly available through www.calgary.ca/ph. Comments that are disrespectful or do not contain required information may not be included.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Personal information provided in submissions relating to matters before Council or Council Committees is collected under the authority of Bylaw 35M2017 and Section 33(c) of the Freedom of Information and Protection of Privacy (FOIP) Act of Alberta, and/or the Municipal Government Act (MGA) Section 230 and 636, for the purpose of receiving public participation in municipal decision-making. Your name and comments will be made publicly available in the Council agenda. If you have questions regarding the collection and use of your personal information, please contact City Clerk's Legislative Coordinator at 403-268-5861, or City Clerk's Office, 700 Macleod Trail S.E., P.O. Box 2100, Postal Station 'M' 8007, Calgary, Alberta, T2P 2M5.

- I have read and understand that my name and comments will be made publicly available in the Council agenda. My email address will not be included in the public record.

First name (required) Wayne

Last name (required) Howse

What do you want to do? (required) Submit a comment

Public hearing item (required - max 75 characters) BYLAW 106D2021 (LOC2021-0019 & LOC2021-0020)

Date of meeting Jul 26, 2021

Comments - please refrain from providing personal information in this field (maximum 2500 characters) Please find attached my comments applicable to both LOC2021-0019 & LOC2021-0020 to be heard before Council at Public Hearing on July 26, 2021. Thank you

July 18, 2021

Re: **LOC2021-0019** (2404 22 ST NW) & **LOC2021-0020** (2460, 2464, 2468 - 23 ST NW and 2103, 2107 - 24 AV NW)

To: Mayor and Council

Cc: Madeleine Krizan, File Manager;

Stuart Dalgleish, General Manager, Planning & Development

Further to my previous comments on these applications - provided to planning administration, 2021 February 24 and attached below - please accept these additional comments as a restatement of my opposition to these applications for land use redesignations in the community of Banff Trail, identified as **LOC2021-0019** and **LOC2021-0020** (the “**applications**”), made by Civicworks on behalf of the owners of the lands subject to such applications (the “**applicants**”).

My previous comments were necessarily grounded on the documentation provided by planning administration at the time and as such included the speculation that these applications for re-designation appear to serve no other intention but to attempt to create an artificial land use conflict for the applicants, for the direct benefit of such applicants in the ongoing litigation regarding a restrictive covenant on title at these locations and several hundreds of other in the area. Subsequently, comments made at the 2021 June 3 meeting of Calgary Planning Commission (CPC) by Members of Planning Administration, CPC Commissionaires, and the applicant verify this intention. Understood in this context then, that if approved, these land use re-designations serve a particularly self-serving purpose: to attempt to create an artificial land use conflict for the applicants, for the direct benefit of such applicants in the ongoing litigation regarding the restrictive covenant legally encumbering these lands. Such a conflict, if successfully constructed, will result in the applicants owning lands that cannot be developed both in compliance with the proposed City land use redesignation and with the requirements of the restrictive covenant.

Given the counseled direction provided by the City Solicitor on several occasions at Public Hearing before City Council that *the Development Authority and Members of City Council are precluded from considering restrictive covenants in planning and development matters*, many of the statements and actions of the Development Authority - both Community Planning Administration and the Planning Commission - as revealed at the 2021 June 3 CPC regarding these applications, the influence of the legally binding and private contractual restrictive covenants, and the ongoing litigation in the courts between private parties, are both curious and concerning. Of related concern are statements by the applicants themselves in answering questions from the CPC noting that they have been internally consulting with both Planning Administration and the City Law Department on this matter and that these applications are in line with those consultations.

To restate, these applications propose to prohibit the use of the applicant's lands for single detached homes, side-by-side homes, and duplex homes, with no apparent valid planning rationale for such a prohibition, and with no compliance with the Land Use Bylaw. However, the singular purpose of these applications is the creation of a fiction of impossibility for the applicants in their development efforts to be able to comply with both the applied for redesignation and the legally binding designations of the restrictive covenant. Undoubtedly, if successful in achieving these redesignations, the applicants will then attempt to point to this conflict, as transparently self-inflicted as it may be, as evidence that the restrictive covenant must be ordered discharged by the courts.

If supported by the City, through approval of these applications, such a situation can only be viewed as a misuse of the land redesignation process in the context of reasonable and appropriate planning policy, and one that would surely generate concern of bias in respect of the City's approval process considering the City's well documented preference and support for the applicants in the aforementioned litigation.

In summation, the City of Calgary must not allow the land use redesignation process to be abused. For the City to recommend an approval for these applications considering the foregoing would have the appearance of an arbitrary, unfair, inequitable, and biased exercise of the land use re-designation process as set out under the Land Use Bylaw, particularly given the City's previous written support and intervention on behalf of the applicants in the ongoing litigation regarding discharge of the restrictive covenant. To be clear, the expectation is that City Officials will act according to the rules as counselled by the City Solicitor many times previously and that these applications will be reviewed solely on their merits (or lack thereof, such as it is), absent consideration of any influence of the private contractual restrictive covenant on the proposed developments and based solely on the criteria for land use redesignation to direct control districts under the Land Use Bylaw. In that respect, it must be concluded that these applications wholly fail to satisfy the specific requirements for the redesignation of lands to direct control districts and should thus be rejected.¹

With that, **as a resident of Banff Trail I recommend against both LOC2021-0019 and LOC2021-0020** and recommend that Calgary City Council vote to **NOT** to approve these applications.

Thank you,
Wayne Howse
2406 22 ST NW

Notes:

1. Refer to the first 5 items under the CONTEXT AND CONSIDERATIONS section in the attached comments - dated February 24, 2021 – for why these applications are not supported by the City of Calgary Land Use Bylaw 1P2007

February 24, 2021

Re: **LOC2021-0019** (2404 22 ST NW) & **LOC2021-0020** (2460, 2464, 2468 - 23 ST NW and 2103, 2107 - 24 AV NW)

To: Madeleine Krizan, File Manager

Please accept these comments as my opposition to the applications for land use redesignations in the community of Banff Trail, identified as **LOC2021-0019** and **LOC2021-0020** (the “**applications**”), made by Civicworks on behalf of the owners of the lands subject to such applications (the “**applicants**”).

When reviewing these applications and developing its recommendations I expect that the City's Planning Administration will adhere to its legally defined position as specified by the City Solicitor on many occasions and again at the 2019 Sept 9 Combined Meeting of Council regarding the preclusion by law of the Development Authority from any consideration related to restrictive covenants. That the assessment of these applications will be based solely on the most prudent implementation of City of Calgary Land Use Bylaw 1P2007 (LUB), and considering community, resident, and stakeholder input.

Not as advertised is how one might characterize these applications.

CONTEXT AND CONSIDERATIONS:

1. With respect to these Applications, it appears that the singular published objective is to prohibit the use of these lands for single detached homes, side-by-side homes, and duplex homes.
2. Provisions of the City of Calgary Land Use Bylaw in respect of the redesignation to direct control are contained at Part 2, Division 2. Section 20 addresses the overall use of direct control districts, and provides that:

Direct Control Districts

20(1) *Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts.*

(2) *Direct Control Districts must **not** be used:*

- (a) *in substitution of any other land use district in this Bylaw that could be used to achieve the same result either with or without relaxations of this Bylaw; or*
- (b) *to regulate matters that are regulated by subdivision or development permit approval conditions.*

(3) *An applicant for a Direct Control District must provide a written statement indicating why, in the applicant's opinion, a Direct Control District is necessary and why the same results cannot be achieved through the use of a land use district in this Bylaw.*

(4) *The General Manager must review each application for a Direct Control District and advise Council as to whether or not the same result could be achieved through the use of a land use district in this Bylaw.*

3. There are current City of Calgary approvals for the proposed development at these locations.

4. The application is not supported by the City of Calgary Land Use Bylaw 1P2007 (LUB):
 - (i) With existing City land use approvals for the proposed developments in place, manifestly LUB Section 20(2) sub sections (a) and (b), cited above, apply. Therefore, these subsequent applications for the employment of a Direct Control (DC) land use here is without merit and not applicable. In fact, the applicants recently circulated postcard mailers to the community to reassure neighbors and other stakeholders that the proposed land use re-designations are unrelated to the proposed development plans for the lands which "remain unchanged", that such re-designations are only being sought to "provide an additional layer of certainty" and to "reinforce existing City Counsel approvals". Providing additional certainty and reinforcing existing approvals are not valid reasons under the City of Calgary LUB to approve such applications. More specifically, utilizing the land use redesignation process to designate these properties as direct control districts would directly contradict 20(2)(a) of same. Again, it follows that having made these applications with a purpose contrary to the requirements of s.20(2), these applications should be denied
 - (ii) Furthermore, the application has not satisfied LUB Section 20(3) for DC requirements which is to indicate why a DC is "*necessary, and why the same results cannot be achieved through the use of a land use district in this Bylaw*". Again, with existing and applicable City approvals for the proposed developments in place, this subsequent application for the employment of a Direct Control (DC) land use here is unnecessary, inappropriate, and should be denied
 - (iii) Neither do these applications satisfy LUB Section 20(1), which states "*Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts.*" - because none of these conditions apply here. The applicants have not identified anything unique or innovative with the development that would justify the DC or that require specific regulation unavailable in other land use districts, and certainly none that specifically require the prohibited use of the subject lands for single detached homes, side-by-side homes, and duplex homes. Many similar developments to the proposed have been constructed under RC-G and MU-1

designations respectively without any need to prohibit other uses. There is no bona fide rationale advanced by the applicants to explain how or why the advancement of the proposed developments requires that these prohibited uses be implemented through direct control districts. Nor, *importantly* are there any unusual site constraints to consider from *the legally proscribed perspective of City of Calgary Planning Administration, Development Authority, and City Council*. Thus, having failed in every regard to satisfy s.20(1), these Applications should be denied.

5. Given the seemingly meritless nature of these applications, it raises the question as to what purpose a redesignation of these lands to direct control districts achieves.
6. As you are no doubt aware the properties associated with this application are legally encumbered with a restrictive covenant registered on title.
7. A Restrictive Covenant is simply a legal contract between private parties, and an unassuming and straight-forward legal mechanism to publicize rules and restrictions governing land.
8. Land in Alberta has long been governed by such private property contracts. Real estate professionals, real estate lawyers, developers, and planners are well aware of restrictive covenants and their potential existence on a particular parcel of land. The cost to obtain a copy of a restrictive covenant is only \$10. As a result, such parties will request copies of titles and restrictive covenants at a very early stage of consideration. Moreover, the City has highlighted the existence of Restrictive Covenants in Banff Trail in their current statutory Area Redevelopment Plan with the statement: "*Many parcels in Banff Trail have a caveat registered against the certificate of title which may restrict development. These restrictions include, but are not limited to, restricting development to one or two-unit dwellings.*"
9. Municipalities including the City of Calgary frequently make use of these legal contracts as means to regulate land use in contemporary and recent planning and development scenarios by making them Conditions of Development Approval for example.
10. A quick survey of the public record provides several examples of the above. Documentation associated with 2019 December 19 meeting of the Calgary Planning Commission records the employment of Restrictive Covenants as Conditions of Approval for LOC2018-0213. Here there are 5 Conditions of Approval directly predicated on the employment of Restrictive Covenants. Additionally, the document package for the 2020 January 23 meeting of the Calgary Planning Commission notes similar direction given by planning administration regarding three separate applications (LOC2017-0368, LOC2019-0129 and LOC2017-0386) with a combined 13 Conditions of Approval tied directly to the employment of Restrictive Covenants. In this small sample alone, there is 18 Conditions of Approval from the City of Calgary Development Authority which are contingent on the

applicant registering various restrictive covenants on title to govern and restrict the land use associated with these developments.

11. Covenants remain a valid planning tool today for multiple uses in new community development. New communities including but not limited to Legacy, Livingston, Sage Hill, Carrington, Rangeview, Springbank Hill, Saddle Ridge etc. all employ these private contracts (restrictive covenants) variously and for effective land use and development controls - all at the direction of the City of Calgary Development Authority.
12. The open promulgation by City Officials and others of the idea that these legal contracts are arcane, secretive, objectionable, old and unworthy, clandestine, and somehow discriminatory does not square with the facts of the matter nor the City's ongoing use and reliance on these effective legal tools to govern land use etc.
13. At the Public Hearing held on 2019 September 9, by request of City Council, the City Solicitor provided legal counsel articulating the legal position of City Council and the Development Authority regarding the legally proscribed relationship between planning and development considerations and restrictive covenants. The City Solicitor stressed that in its deliberations and decisions the *"Development Authority is specifically precluded by law from considering restrictive covenants."*
14. However, the Public record provides examples of City Officials acting in direct contravention of this counsel of legal proscription.
15. For instance, 2019 December 19 - DP2019-3291 was before the Calgary Planning Commission as Item 7.1.1. At several points during deliberation on this item were the planning efforts taken by Administration to accommodate and preserve the stipulations of a restrictive covenant on title (for sightline protection of a sign in this case) acknowledged and criticized by various Commissioners.
 - (i) Notably, Commissioner Palmiere's criticisms pertain to the very establishment of the **Direct Control Land Use district (DC) and the essentials thereof** observing, *"Everything has been set – now it is clear why the DC was constructed the way it was. Everything is for sightline protection for a private sign. Trying to offset builds etc... It is an amazing amount of planning effort that has gone into protecting the view shed of a sign for a grocery store" "Everything has been designed to protect that signage tower and I find that unsettling."* *"The thought of the DC and everything being put into place to protect a retail sign view shed - It is inappropriate quite frankly and unfortunate"*
 - (ii) Commissioner Gedye echoes these statements when he comments *"It is just incredibly unfortunate that the tower separation was driven by something **that was written in zoning** for visibility of signage."*

- (iii) From the examples provided above it is clear, that the “*influencing externalities*” that commissioner Gedye goes on to euphemistically refer are the development restrictions set by the restrictive covenant on title.
 - (iv) Additional questions, comments, and statements from Commissioners Juan, Gedye, and Palmiere further clarify, acknowledge and chastise the level of planning effort the Development Authority had taken to accommodate and align with the restrictive covenant in this case including the very establishment of the **Direct Control Land Use district (DC) and the essentials thereof:**
 - (v) For example, in answer to a direct question from Commissioner Gedye regarding the inputs and drivers behind significant and debatable choices associated with the proposed design, the Development Authority representative acknowledged the primary influencing role of the development restrictions provided for in the restrictive covenant requiring 40m setback for view corridor protection for the adjacent sign.
 - (vi) Additionally, when Commissioner Juan asked for clarification regarding a certain relaxation Development Authority representative again acknowledged that the specific intent of this relaxation was to align with and accommodate the development restrictions articulated in the restrictive covenant for viewshed protection of the adjacent sign.
 - (vii) Comments from Urban Design Review Panel explicitly acknowledging this restrictive covenant as having not only a significant design influence but also a compromising influence include: “*While a stronger street presence on Na’a Drive and overall massing orientation presents greater potential for a positive impact, The Panel understands the restrictive covenant on the property prevents this from occurring*”
16. The actions of the Development Authority here are illustrative and curious given the legal position as articulated by the City Solicitor that it is precluded from considering restrictive covenants in planning and development matters.
17. While Commissioner Palmiere voted against Administrations recommendation on this file, it is interesting to note that both **Councilor Woolley** and **Councilor Chahal** were part of the CPC on this date. Neither offered comment nor questions on the concerns as raised by the other commissioners on this matter and both voted in favor of the recommendation and the approval of the DP. Notably, both were also in attendance a mere 2 months previous at the Public Hearing when again apprised and reacquainted by the City Solicitor of *their* legal obligations regarding planning considerations and restrictive covenants.
18. Further it invites the question, why such planning efforts and, *such policy accommodations in particular, to protect a private contract* between only two parties (big private development and business interests) in this case, and not in the case of the several hundreds of affected

individual land owners of Banff Trail who are directly and negatively prejudiced by city-initiated planning and development policy and actions via the Area Redevelopment Plan (ARP) and beyond with various other planning and policy actions, recommendations, and approvals taken by City Officials?

19. While examples of City Officials choosing not adhere to their legal requirements, and risking possible legal censure, by expending planning effort, to respect, honor, accommodate, and preserve the land use and development requirements as laid out in some private contractual instruments, is "*inappropriate*" (Commissioner Palmiere – item 15(i) above), more confounding for the land owners of Banff Trail are the very dissimilar planning and policy actions of City Bureaucracy towards them and the acknowledgement of their private contractual legal instruments.
20. Indeed, a very different sort of acknowledgment was demonstrated by Administration and Council when recommending and approving recent amendments to the Banff Trail ARP regarding restrictive covenants. Particularly when noting that the changes are intended to "*provide supportive language from The City for any court applications for the removal of the caveat on an individual basis, thus having the result of encouraging the ARP policies.*"
21. Neither does the practice of providing letters of support to those seeking to discharge themselves through the courts from the shared contractual obligations of restrictive covenants suggest preclusion on the part of the City either.
22. On the matter of planning and development the collective positions and actions of City officials regarding restrictive covenants is perplexing - variable for sure and seemingly, context dependent, self-serving, and irregular. Definitely - not as advertised.
23. Referring to Item 5 above - Given the seemingly meritless nature of these applications, what purpose does a redesignation of these lands to direct control districts achieve.
24. A clue is possibly revealed in the observation that while simultaneously seeking identical land use changes on 3 current proposed sites within Banff Trail with these applications, the applicant is not seeking the same for their similar proposed development site at 2022, 2026 24 AV NW. Interestingly this site is not encumbered by legal land use restriction registered on title. Lacking planning rationale and unsupported by the LUB, invites the question why these applications for the 3 sites which are legally encumbered?
25. As you are undoubtedly aware, there is ongoing active litigation between groups of landowners in the Banff Trail neighborhood, which includes the applicants, regarding the enforceability of the Banff Trail restrictive covenant, which is registered against, among others, the lands subject to the applications. The lawful constraints of the restrictive covenant on planning and development in certain parts of Banff Trail are well known to the City (see Item 8 above). Additionally, you should be aware that a City solicitor wrote a letter of support for the benefit of, among others, the applicants, in support of their court application seeking the discharge of such restrictive covenant, and further that the City has

filed a brief in this case reaffirming such support and advocating for the discharge of the restrictive covenant.

26. While, it has been shown above, that these applications should fail on their merits, they necessarily must also be understood in the context of such ongoing litigation, including the City's demonstrated preference in support of the applicants with respect to the active litigation in the Court regarding the application to discharge the restrictive covenant.
27. Understood in this context then, that if approved, these applications appear to serve a particularly self-serving purpose: to attempt to create an artificial land use conflict for the applicants, for the direct benefit of such applicants in the ongoing litigation regarding the restrictive covenant. Such conflict, if successfully constructed, will result in the applicants owning lands that cannot be developed both in compliance with the proposed City land use redesignation and with the requirements of the restrictive covenant.
28. As all interested parties should be aware, such a bona fide conflict does not exist today. That under the current land use designations for these subject lands there are permissive and compatible potential developments that would concurrently comply with such existing land use designations and the restrictive covenant. While such developments may not be the applicants' preferred choice, they are nonetheless permissive and compliant. Thus, a bona fide land use conflict does not currently exist.
29. To restate, these applications propose to prohibit the use of the applicant's lands for single detached homes, side-by-side homes, and duplex homes, with no apparent valid planning rationale for such a prohibition, and with no compliance with the LUB. However, the singular purpose of these applications appears to be the creation of a fiction of impossibility for the applicants in their development efforts to be able to comply with both the applied for redesignation and the designations of the restrictive covenant. Undoubtedly, if successful in achieving these redesignations, the applicants will then attempt to point to this conflict, as transparently self-inflicted as it may be, as evidence that the restrictive covenant must be ordered discharged by the courts.
30. If supported by the City, through approval of these applications, such a situation can only be viewed as a misuse of the land redesignation process in the context of reasonable and appropriate planning policy, and one that would surely generate concern of bias in respect of the City's approval process considering the City's documented preference and support for the applicants in the aforementioned litigation.
31. Previous irregular actions by City officials in planning matters form part of the public record as referred to above. Such similar actions by City officials in this matter may be perceived to be vexatious or as an attempt to extra-judiciously influence a matter currently before the courts and/or potentially open these parties to claims of tortious interference in a private legal contractual matter.

32. Importantly, it must also be noted that there is no certainty that the courts will rule in favor of the applicants and order the discharge of the restrictive covenant on their lands. That even if the applications are approved, the courts may determine the restrictive covenant to remain lawful and enforceable. In such a circumstance, the outcome for the subject lands from a planning perspective would be, unsatisfactory, with no uses permitted by the direct control district land use redesignations that would be permitted under the restrictive covenant, and vice-versa. Such lands and the existing structures thereon would effectively be undevelopable, pending another land use redesignation. That sort of flip-flopping cannot be supported as appropriate land use planning policy.
33. Further, given the uncertainty in the outcome of the litigation, it also cannot be the case that the mere existence of the restrictive covenant creates "*unusual site constraints*" for purposes of satisfying Section 20(1) of the LUB. Given the City's existing approvals for the Applicants' proposed developments, it will be the courts, and not the City, who ultimately determine whether such proposed developments may proceed, based on the outcome of the restrictive covenant litigation. If the Applications are approved by the City based on suggestion that the existence of the restrictive covenant represents an "*unusual site constraint*" that satisfies LUB Section 20(1), and the subsequently the restrictive covenant is determined by the court to remain lawful and enforceable, it cannot then follow that the applications were ever actually compliant with Section 20(1) of the LUB. A redesignation of these subject lands to direct control districts in such circumstances would have served no further benefit in advancing the proposed developments than the existing designations of RC-G and MU-1, ultimately failing to satisfy LUB Section 20(1) and directly contravening Section 20(2). Instead, approval of the applications in such circumstances would have been a purely speculative effort to sway the court to discharge the restrictive covenant and to thus eliminate the "*unusual site constraint*". Such a speculative intervention in litigation to the anticipated benefit of the applicants (and, arguably, the City), with no other compelling purpose for the redesignation, and no certainty of outcome, is clearly not a valid or appropriate use of direct control districts pursuant to Section 20 of the LUB. Accordingly, and in line with the legal position as specified by the City Solicitor at the 2019 Sept 9 Combined Meeting of Council regarding the preclusion by law of the Development Authority from any consideration related to restrictive covenants, Administration should firmly reject any suggestion that the existence of the restrictive covenant should be considered as part of the approval process for these applications.
34. In summation, the City of Calgary must not allow the land use redesignation process to be abused. For the City to recommend an approval for these applications considering the foregoing would have the appearance of an arbitrary, unfair, inequitable, and biased exercise of the land use redesignation process as set out under the Land Use Bylaw, particularly given the City's noted written support and intervention on behalf of the applicants in the ongoing litigation regarding discharge of the restrictive covenant. To reiterate, I expect that these Applications will be reviewed solely on their merits (or lack thereof), absent consideration of the impact of the restrictive covenant on the proposed developments and based solely on the criteria for land use redesignation to direct control

districts under the LUB. In that respect, it must be concluded that these applications wholly fail to satisfy the specific requirements for the redesignation of lands to direct control districts, and such applications should thus be soundly rejected.

With that, **as a resident of Banff Trail I recommend against both LOC2021-0019 and LOC2021-0020** and recommend that Calgary Planning Commission and Council vote to **NOT** to approve this application if endorsed by administration.

Thank you,
Wayne Howse
2406 22 ST NW



FORM TITLE

Header text

In accordance with sections 43 through 45 of [Procedure Bylaw 35M2017](#), the information provided **may be included** in the written record for Council and Council Committee meetings which are publicly available through www.calgary.ca/ph. Comments that are disrespectful or do not contain required information may not be included.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Personal information provided in submissions relating to matters before Council or Council Committees is collected under the authority of Bylaw 35M2017 and Section 33(c) of the Freedom of Information and Protection of Privacy (FOIP) Act of Alberta, and/or the Municipal Government Act (MGA) Section 230 and 636, for the purpose of receiving public participation in municipal decision-making. Your name and comments will be made publicly available in the Council agenda. If you have questions regarding the collection and use of your personal information, please contact City Clerk's Legislative Coordinator at 403-268-5861, or City Clerk's Office, 700 Macleod Trail S.E., P.O. Box 2100, Postal Station 'M' 8007, Calgary, Alberta, T2P 2M5.

- I have read and understand that my name and comments will be made publicly available in the Council agenda. My email address will not be included in the public record.

First name (required) Christopher

Last name (required) Brovald

What do you want to do? (required) Submit a comment

Public hearing item (required - max 75 characters) LOC2021-0019 and LOC2021-0020

Date of meeting Jul 26, 2021

Comments - please refrain from providing personal information in this field (maximum 2500 characters)

I find it concerning that community members are being asked to re-submit comments regarding planning issues. Please find attached a letter submitted in March for LOC2021-0019 and LOC2021-0020. I am strongly opposed to these proposed land use redesignations. They clearly fail to satisfy the stated requirements for the permissive use of direct control districts.

March 12, 2021

City of Calgary
P.O. Box 2100, Stn. M
Calgary, Alberta, Canada T2P 2M5

RE: LOC2021-0019 and LOC2021-0020, Attention: Ms. Madeline Krizan - File Manager

Dear Ms. Krizan,

Please accept these comments as our opposition to the applications for land use re-designations in the community of Banff Trail, identified as LOC2021-0019 and LOC2021-0020 (the “**Applications**”), made by Civicworks on behalf of the owners of the lands subject to such applications (the “**Applicants**”).

With respect to these Applications, it appears the singular published objective is to prohibit the use of these lands for single detached homes, side-by-side homes, and duplex homes.

For reference, as you are no doubt aware, provisions of the City of Calgary Land Use Bylaw in respect of the redesignation to direct control districts are contained at Part 2, Division 2. Section 20 addresses the overall use of direct control districts, and provides that:

“s20(1) “Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts” and

s.20(2) “Direct Control Districts must not be used:

- (a) in substitution of any other land use district in this Bylaw that could be used to achieve the same result either with or without relaxations of this Bylaw; or
- (b) to regulate matters that are regulated by subdivision or development permit approval conditions.”

In respect of subsection 20(1), these proposed land use redesignations fail to satisfy the stated requirements for the permissive use of direct control districts. The Applicants have not identified any “unique characteristics, innovative ideas or unusual site constraints” of the proposed developments that require specific regulation unavailable in other land use districts, and certainly none that specifically require the prohibited use of the subject lands for single detached homes, side-by-side homes, and duplex homes. Many developments similar to the proposed developments have been constructed under RC-G and MU-1 designations respectively without any need to prohibit other uses. There is no bona fide rationale advanced by the Applicants to explain how or why the advancement of the proposed developments requires that these prohibited uses be implemented through direct control districts. Thus, having failed in every regard to satisfy s.20(1), these Applications should be denied.

In respect of subsection 20(2), the existing land use designations for the subject lands (being those implemented by the City in accordance with the Banff Trail ARP after significant public consultation and review) can be used to achieve the same result for the proposed developments regardless of whether the Applications are approved. In fact, the Applicants recently circulated postcard mailers to the community to reassure neighbors and other stakeholders that the proposed land use re-designations are unrelated to the proposed development plans for the lands, which have been approved by the City of Calgary, and which proposed developments “remain unchanged”, and such re-designations are only being sought to “provide an additional layer of certainty” and to “reinforce existing City Counsel approvals”. Providing additional certainty and reinforcing existing approvals are not valid reasons under the City of Calgary Land Use Bylaw to approve the Applications, and specifically, utilizing the land use re-designation process to designate these properties as direct control districts would directly contradict s.20(2)(a) of same. Again, it then follows

that having made these Applications with a purpose contrary to the requirements of s.20(2), these Applications should be denied.

Given the seemingly meritless nature of the Applications, it begs the question as to what purpose a re-designation of these lands to direct control districts achieves, and how this benefits the Applicants.

As the City is aware, there is ongoing active litigation between groups of landowners in the Banff Trail neighborhood, which includes the Applicants, regarding the enforceability of the Banff Trail restrictive covenant ("RC"), which is registered against, among others, the lands subject to the Applications. Such RC prohibits the construction of more than two dwelling houses on each parcel of land subject to the RC. The lawful constraints of the RC on planning and development in certain parts of Banff Trail are undoubtedly well known to the City, being that a City solicitor wrote a letter of support for the benefit of, among others, the Applicants, in support of their court application seeking the discharge of such RC, and the City has filed a brief further affirming such support and advocating for the discharge of the RC.

Accordingly, while these Applications should fail on their merits, they must also necessarily be understood in context of such ongoing litigation, including the City's demonstrated preference in support of the Applicants with respect to the active litigation in the Court of Queen's Bench of Alberta regarding the application to discharge the RC.

Understood in that context, if approved, these Applications appear to serve a singular self-serving purpose: to attempt to create an artificial land use conflict for the Applicants, for the direct benefit of such Applicants in the ongoing litigation regarding the RC. Such conflict, if successfully constructed, will result in the Applicants owning lands that cannot be developed both in compliance with the proposed City land use re-designation and with the requirements of the RC. Bona fide conflicts of this nature have been identified in prior Alberta court cases as a factor to consider in whether to order a discharge of restrictive covenants in the nature of the Banff Trail RC.

As all interested parties should be aware, such a bona fide conflict does not exist today. Under the current land use designations for these subject lands (which, to reiterate, were recently re-designated at the initiation of the City in accordance with the Banff Trail ARP), there are permissive and compatible potential developments that would concurrently comply with such existing land use designations and the RC. While such compatible developments may not be the Applicants' preferred choice, they are nevertheless permissive and compliant. Consequently, a bona fide land use conflict does not currently exist. It would appear that the Applicants also recognize this lack of a bona fide conflict, otherwise these Applications would not be before the City for approval.

Thus, to put more bluntly, the Applications propose to arbitrarily and unreasonably prohibit use of the Applicant's lands for single detached homes, side-by-side homes, and duplex homes, with no apparent valid planning purpose for such prohibition, and with absolutely no identifiable rationale to demonstrate compliance with s.20 of the Land Use Bylaw. Instead, the sole purpose of the Applications appears to be the creation of a fiction of impossibility for the Applicants to comply with both the sought-after land use re-designation and with the RC in their own development efforts. Undoubtedly, if successful in achieving these re-designations, the Applicants will then attempt to point to this conflict, transparently self-inflicted as it may be, as evidence that the RC must be ordered discharged by the courts. Such a situation, if supported by the City through approval of the Applications, can only be viewed as an absurd abuse of the land re-designation process in the context of reasonable and appropriate planning policy, and one that would surely generate concern of bias in respect of the City's approval process in light of the City's documented preference and support for the Applicants in the aforementioned RC litigation.

It must also be noted that there is, of course, no certainty that the courts will rule in favour of the Applicants and order the discharge of the RC. Even if the Applications are approved, the RC may very well be determined to remain lawful and enforceable by the courts. In such circumstance, the outcome for such subject lands from a planning perspective would be, to put it lightly, sub-optimal – no uses permitted by the direct control district land use re-designations would be permitted under the RC, and vice-versa. Such lands and the existing structures thereon would effectively be undevelopable, pending a reversal of these

proposed land use re-designations to those currently in force under the Banff ARP, and under which there are permissive and compatible uses. That sort of flip-flopping on appropriate land use designation cannot and should not be supported as appropriate planning policy.

Further, given this uncertainty in the outcome of the RC litigation, it also cannot be the case that the mere existence of the RC creates “unique characteristics” or “unusual site constraints” for purposes of satisfying s.20(1) of the Land Use Bylaw, if that rationale is advanced by the Applicants. Given the City’s existing approvals for the Applicants’ proposed developments, it will be the courts, and not the City, who ultimately determine whether such proposed developments may proceed, based on the outcome of the RC litigation. If the Applications are approved by the City based on submissions that the existence of the RC forms a “unique characteristic” or “unusual site constraint” that satisfies s.20(1), yet the RC survives litigation and is determined to remain lawful and enforceable, it cannot then follow that the Applications were ever actually compliant with s.20. A re-designation of these subject lands to direct control districts in such circumstances would have served no further benefit in advancing the proposed developments than the existing designations of RC-G and MU-1, ultimately failing to satisfy s.20(1) and directly contravening s.20(2). Instead, approval of the Applications in such circumstances would have been a purely speculative effort to sway the court to discharge the RC and to thus eliminate the “unique characteristic” or “unusual site constraint”. Such a speculative intervention in litigation to the anticipated benefit of the Applicants (and, arguably, the City), with no other compelling purpose for the re-designation, and no certainty of outcome, is clearly not valid or appropriate use of direct control districts pursuant to s.20. Accordingly, the City should firmly reject any suggestion that the existence of the RC should be considered as part of the approval process for the Applications.

In summation, the City of Calgary must not allow the land use redesignation process to be abused for such frivolous purposes, solely in a transparent attempt to advance the private litigation interests of the Applicants by creating a self-inflicted land use conflict between the proposed land use re-designations and the existing RC, and for no other valid planning or development purpose. For the City to recommend an approval for these Applications in light of the foregoing would have the appearance of an arbitrary, unfair, inequitable, and biased exercise of the land use re-designation process set out under the Land Use Bylaw, especially in light of the City’s noted written support and intervention on behalf of the Applicants in the ongoing litigation regarding discharge of the RC. We would instead expect that these Applications will be reviewed solely on their merits (or lack thereof), absent consideration of the impact of the RC on the proposed developments, and based solely on the criteria for land use re-designation to direct control districts under the Land Use Bylaw. In that respect, it must be concluded that these Applications wholly fail to satisfy the specific requirements for the re-designation of lands to direct control districts, and such Applications should thus be soundly rejected.

Accordingly, as residents of Banff Trail, we strongly object to the proposed Applications to re-designate the subject lands as direct control districts pursuant to LOC2021-0019 and LOC2021-0020 and recommend that all applicable parties including Calgary Planning Commission and Council vote AGAINST approving these Applications if endorsed by administration.

Sincerely,

Jori and Christopher Brovald



FORM TITLE

Header text

In accordance with sections 43 through 45 of [Procedure Bylaw 35M2017](#), the information provided **may be included** in the written record for Council and Council Committee meetings which are publicly available through www.calgary.ca/ph. Comments that are disrespectful or do not contain required information may not be included.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Personal information provided in submissions relating to matters before Council or Council Committees is collected under the authority of Bylaw 35M2017 and Section 33(c) of the Freedom of Information and Protection of Privacy (FOIP) Act of Alberta, and/or the Municipal Government Act (MGA) Section 230 and 636, for the purpose of receiving public participation in municipal decision-making. Your name and comments will be made publicly available in the Council agenda. If you have questions regarding the collection and use of your personal information, please contact City Clerk's Legislative Coordinator at 403-268-5861, or City Clerk's Office, 700 Macleod Trail S.E., P.O. Box 2100, Postal Station 'M' 8007, Calgary, Alberta, T2P 2M5.

- I have read and understand that my name and comments will be made publicly available in the Council agenda. My email address will not be included in the public record.

First name (required) Kerstin

Last name (required) Plaxton

What do you want to do? (required) Submit a comment

Public hearing item (required - max 75 characters) LOC2021-0019 & LOC2021-0020

Date of meeting Jul 26, 2021

Comments - please refrain from providing personal information in this field (maximum 2500 characters) PLEASE FIND MY COMMNETS ATTACHED. THANK YOU

July 18, 2021

Re: **LOC2021-0019** (2404 22 ST NW) & **LOC2021-0020** (2460, 2464, 2468 - 23 ST NW and 2103, 2107 - 24 AV NW)

To: Mayor and Council

Cc: Madeleine Krizan, File Manager;

Stuart Dalgleish, General Manager, Planning & Development

Please accept these comments as my opposition to the applications for land use redesignations in the community of Banff Trail, identified as **LOC2021-0019** and **LOC2021-0020** (the “**applications**”), made by Civicworks on behalf of the owners of the lands subject to such applications (the “**applicants**”).

When reviewing these applications and developing its recommendations I expect that City Officials will act according to the rules as counselled by the City Solicitor many times previously and again at the 2019 Sept 9 Combined Meeting of Council regarding the preclusion of the Development Authority and Members of Council from any consideration related to restrictive covenants; that these applications will be reviewed solely on their merits absent consideration of any influence of the private contractual restrictive covenant on the proposed developments and based solely on the criteria for land use redesignation to direct control districts under the City of Calgary Land Use Bylaw 1P2007 (LUB), considering community, resident, and stakeholder input. In that respect, as is outlined below it must be concluded that these applications fail to satisfy the specific requirements for the redesignation of lands to direct control districts and should thus be rejected.

Considerations:

1. With respect to these Applications, it appears that the singular published objective is to prohibit the use of these lands for single detached homes, side-by-side homes, and duplex homes.
2. Provisions of the City of Calgary Land Use Bylaw in respect of the redesignation to direct control are contained at Part 2, Division 2. Section 20 addresses the overall use of direct control districts, and provides that:

Direct Control Districts

20(1) Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts.

- (2) *Direct Control Districts must **not** be used:*
- (a) *in substitution of any other land use district in this Bylaw that could be used to achieve the same result either with or without relaxations of this Bylaw; or*
 - (b) *to regulate matters that are regulated by subdivision or development permit approval conditions.*
- (3) *An applicant for a Direct Control District must provide a written statement indicating why, in the applicant's opinion, a Direct Control District is necessary and why the same results cannot be achieved through the use of a land use district in this Bylaw.*
- (4) *The General Manager must review each application for a Direct Control District and advise Council as to whether or not the same result could be achieved through the use of a land use district in this Bylaw.*
3. There are current City of Calgary approvals for the proposed development at these locations.
4. The application is not supported by the City of Calgary Land Use Bylaw 1P2007 (LUB):
- (i) With existing City land use approvals for the proposed developments in place, manifestly LUB Section 20(2) sub sections (a) and (b), cited above, apply. Therefore, these subsequent applications for the employment of a Direct Control (DC) land use here is without merit and not applicable. In fact, the applicants recently circulated postcard mailers to the community to reassure neighbors and other stakeholders that the proposed land use re-designations are unrelated to the proposed development plans for the lands which "remain unchanged", that such re-designations are only being sought to "provide an additional layer of certainty" and to "reinforce existing City Counsel approvals". Providing additional certainty and reinforcing existing approvals are not valid reasons under the City of Calgary LUB to approve such applications. More specifically, utilizing the land use redesignation process to designate these properties as direct control districts would directly contradict 20(2)(a) of same. Again, it follows that having made these applications with a purpose contrary to the requirements of s.20(2), these applications should be denied
 - (ii) Furthermore, the application has not satisfied LUB Section 20(3) for DC requirements which is to indicate why a DC is "*necessary, and why the same results cannot be achieved through the use of a land use district in this Bylaw*". Again, with existing and applicable City approvals for the proposed developments in place, this subsequent application for the employment of a Direct Control (DC) land use here is unnecessary, inappropriate, and should be denied
 - (iii) Neither do these applications satisfy LUB Section 20(1), which states "*Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts.*" -

because none of these conditions apply here. The applicants have not identified anything unique or innovative with the development that would justify the DC or that require specific regulation unavailable in other land use districts, and certainly none that specifically require the prohibited use of the subject lands for single detached homes, side-by-side homes, and duplex homes. Many similar developments to the proposed have been constructed under RC-G and MU-1 designations respectively without any need to prohibit other uses. There is no bona fide rationale advanced by the applicants to explain how or why the advancement of the proposed developments requires that these prohibited uses be implemented through direct control districts. Nor, *importantly* are there any unusual site constraints to consider from *the legally proscribed perspective of City of Calgary Planning Administration, Development Authority, and City Council*. Thus, having failed in every regard to satisfy s.20(1), these Applications should be denied.

With that, **as a resident of Banff Trail I recommend against both LOC2021-0019 and LOC2021-0020** and recommend that Council vote to **NOT** to approve these applications.

Thank you,
Kerstin Plaxton
2116 23 AVE NW



FORM TITLE

Header text

In accordance with sections 43 through 45 of [Procedure Bylaw 35M2017](#), the information provided **may be included** in the written record for Council and Council Committee meetings which are publicly available through www.calgary.ca/ph. Comments that are disrespectful or do not contain required information may not be included.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Personal information provided in submissions relating to matters before Council or Council Committees is collected under the authority of Bylaw 35M2017 and Section 33(c) of the Freedom of Information and Protection of Privacy (FOIP) Act of Alberta, and/or the Municipal Government Act (MGA) Section 230 and 636, for the purpose of receiving public participation in municipal decision-making. Your name and comments will be made publicly available in the Council agenda. If you have questions regarding the collection and use of your personal information, please contact City Clerk's Legislative Coordinator at 403-268-5861, or City Clerk's Office, 700 Macleod Trail S.E., P.O. Box 2100, Postal Station 'M' 8007, Calgary, Alberta, T2P 2M5.

- I have read and understand that my name and comments will be made publicly available in the Council agenda. My email address will not be included in the public record.

First name (required) Kristian

Last name (required) Quinn

What do you want to do? (required) Submit a comment

Public hearing item (required - max 75 characters) LOC2021-0019, CPC2021-0758, LOC2020-0205, CPC2021-0904

Date of meeting Jul 26, 2021

Please accept these comments as our opposition to the applications for land use re-designations in the community of Banff Trail, identified as LOC2021-0019 and LOC2021-0020 (the "Applications"), made by Civicworks on behalf of the owners of the lands subject to such applications (the "Applicants").

With respect to these Applications, it appears the singular published objective is to prohibit the use of these lands for single detached homes, side-by-side homes, and duplex homes.

For reference, as you are no doubt aware, provisions of the City of Calgary Land Use Bylaw in respect of the redesignation to direct control districts are contained at Part 2, Division 2. Section 20 addresses the overall use of direct control districts, and provides that:

"s20(1) "Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts" and

s.20(2) "Direct Control Districts must not be used:

Comments - please refrain from providing personal information in

(a) in substitution of any other land use district in this Bylaw that could be used to achieve the same result either with or without relaxations of this Bylaw; or

DISCLAIMER

1/2

This document is strictly private, confidential and personal to its recipients and should not be copied, distributed or reproduced in whole or in part, nor passed to any third party.

Jul 19, 2021

10:32:02 AM



FORM TITLE

Header text

this field (maximum 2500
characters)

(b) to regulate matters that are regulated by subdivision or development permit approval conditions."

As the City is aware, there is ongoing active litigation between groups of landowners in the Banff Trail neighborhood, which includes the Applicants, regarding the enforceability of the Banff Trail restrictive covenant ("RC"), which is registered against, among others, the lands subject to the Applications. Such RC prohibits the construction of more than two dwelling houses on each parcel of land subject to the RC. The lawful constraints of the RC on planning and development in certain parts of Banff Trail are undoubtedly well known to the City, being that a City solicitor wrote a letter of support for the benefit of, among others, the Applicants, in support of their court application seeking the discharge of such RC, and the City has filed a brief further affirming such support and advocating for the discharge of the RC.

Attachment 1 to the Planning & Development Report to the Calgary Planning Committee, dated June 3, 2021, contained the following comments in respect of these applications:

"The existence of the restrictive covenant creates unusual site constraints that prevent implementation of the goals contained in the

July 19, 2021

City of Calgary
P.O. Box 2100, Stn. M
Calgary, Alberta, Canada T2P 2M5

RE: LOC2021-0019 and LOC2021-0020

Please accept these comments as our opposition to the applications for land use re-designations in the community of Banff Trail, identified as LOC2021-0019 and LOC2021-0020 (the "**Applications**"), made by Civicworks on behalf of the owners of the lands subject to such applications (the "**Applicants**").

With respect to these Applications, it appears the singular published objective is to prohibit the use of these lands for single detached homes, side-by-side homes, and duplex homes.

For reference, as you are no doubt aware, provisions of the City of Calgary Land Use Bylaw in respect of the redesignation to direct control districts are contained at Part 2, Division 2. Section 20 addresses the overall use of direct control districts, and provides that:

s.20(1) "Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts" and

s.20(2) "Direct Control Districts must not be used:

- (a) in substitution of any other land use district in this Bylaw that could be used to achieve the same result either with or without relaxations of this Bylaw; or
- (b) to regulate matters that are regulated by subdivision or development permit approval conditions."

As the City is aware, there is ongoing active litigation between groups of landowners in the Banff Trail neighborhood, which includes the Applicants, regarding the enforceability of the Banff Trail restrictive covenant ("**RC**"), which is registered against, among others, the lands subject to the Applications. Such RC prohibits the construction of more than two dwelling houses on each parcel of land subject to the RC. The lawful constraints of the RC on planning and development in certain parts of Banff Trail are undoubtedly well known to the City, being that a City solicitor wrote a letter of support for the benefit of, among others, the Applicants, in support of their court application seeking the discharge of such RC, and the City has filed a brief further affirming such support and advocating for the discharge of the RC.

Attachment 1 to the Planning & Development Report to the Calgary Planning Committee, dated June 3, 2021, contained the following comments in respect of these applications:

"The existence of the restrictive covenant creates unusual site constraints that prevent implementation of the goals contained in the Municipal Development Plan (MDP) and Banff Trail ARP. The intent of the DC District is to address the unusual site constraints and allow for multi residential development on the site in furtherance of the MDP and Banff Trail ARP.

...

If the restrictive covenant is upheld, the vision in the Banff Trail ARP for the area cannot be achieved. The key issue is that The City's higher policy goals may not be realized unless the DC District is supported, which is also required for local area plans to be implementable, and ultimately buildable."

It must be recognized that designating the sites as DC Districts will not necessarily result in a favourable decision for the City of Calgary or the Applicants in respect of the RC litigation or the discharge of the RC

from title to the lands. Even if the Applications are approved, the RC may very well be determined to remain lawful and enforceable by the courts. **The Applicants do not require a DC District to implement the developments contemplated by the Applications. They require discharge of the RC from title to the lands. That determination is the jurisdiction of the Courts of the Province of Alberta, not the City of Calgary.**

If the Applicants fail to have the RC discharged, and the City of Calgary moves ahead with these land use redesignations, the outcome for such subject lands from a planning perspective would be, to put it lightly, absurd – no uses permitted by the direct control district land use re-designations would be permitted under the RC, and vice-versa. Such lands and the existing structures thereon would effectively be undevelopable, pending a reversal of these proposed land use re-designations to those currently in force under the Banff ARP, and under which there are currently permissive and compatible uses. That sort of flip-flopping on appropriate land use designation cannot and should not be supported as appropriate planning policy.

Accordingly, if the Applications are approved by the City based on submissions that the existence of the RC forms a “unique characteristic” or “unusual site constraint” that satisfies s.20(1), yet the RC survives litigation and is determined to remain lawful and enforceable, it cannot then follow that the Applications were ever actually compliant with s.20. A re-designation of these subject lands to direct control districts in such circumstances would have served no further benefit in advancing the proposed developments than the existing designations of RC-G and MU-1, ultimately failing to satisfy s.20(1) and directly contravening s.20(2). Instead, approval of the Applications in such circumstances would have been a purely speculative effort to assist a litigation effort to the anticipated benefit of the Applicants (and, arguably, the City), with no other compelling purpose for the re-designation, and no certainty of outcome.

Accordingly, the City should firmly reject any suggestion that the existence of the RC should be considered as part of the approval process for the Applications.

For the City to approve an approval for these Applications in light of the foregoing would have the appearance of an arbitrary, unfair, inequitable, and biased exercise of the land use re-designation process set out under the Land Use Bylaw, especially in light of the City’s noted written support and intervention on behalf of the Applicants in the ongoing litigation regarding discharge of the RC. We would instead expect that these Applications will be reviewed solely on their merits (or lack thereof), absent consideration of the impact of the RC on the proposed developments, and based solely on the criteria for land use re-designation to direct control districts under the Land Use Bylaw. In that respect, it must be concluded that these Applications wholly fail to satisfy the specific requirements for the re-designation of lands to direct control districts, and such Applications should thus be soundly rejected.

Accordingly, as residents of Banff Trail, we strongly object to the proposed Applications to re-designate the subject lands as direct control districts pursuant to LOC2021-0019 and LOC2021-0020 and recommend that all applicable parties vote AGAINST approving these Applications.

Sincerely,

Kristian & Morgan Quinn