

## **DEVELOPMENT IN PROXIMITY TO THE RAILWAY CORRIDOR**

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### **EXECUTIVE SUMMARY**

In 2016 March, Council directed Administration to prepare a Terms of Reference in consultation with key stakeholders that would guide the process for developing a new Rail Policy. Administration was also asked to review and revise the sensitive uses list.

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 issue 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 optimizing the efficient use of land.

Administration has reviewed the sensitive uses list and prepared a summary of the current approach for processing development applications adjacent to rail corridors in the short term (Attachment 1), which includes a modified approach to dealing with proposals that include sensitive uses within 30 metres (m) of the railway. Sensitive uses will be evaluated and approved at the discretion of the Approving Authority.

A Terms of Reference (Attachment 2) has been prepared in consultation with a group of internal and external stakeholders which will guide the development of the Rail Policy, and ensures that stakeholders continue to have a meaningful role in the process.

The goal of a new Rail Policy will be to create an improved approach for both The City and industry by providing more clarity and certainty, while balancing safety and development potential. This work will include establishing methodologies and approaches to achieve the objectives of providing safety for building occupants, providing emergency response to a railway incident, and protecting buildings.

### **ADMINISTRATION RECOMMENDATION**

That the Standing Policy Committee on Planning and Urban Development recommend that Council direct Administration to prepare a Rail Policy, in accordance with the Terms of Reference in Attachment 2, and provide an update to Council no later than 2017 Q1.

### **RECOMMENDATION OF THE SPC ON PLANNING AND URBAN DEVELOPMENT, DATED 2016 JUNE 08:**

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That the Administration Recommendation contained in Report PUD2016-0347 be approved.

### **PREVIOUS COUNCIL DIRECTION / POLICY**

At an in-camera session of Council on 2016 March 21, Council adopted the following recommendations with respect to report C2016-0197:

1. Direct Administration to consult with key stakeholders to review the draft deliverables for a Rail Policy Framework as identified in Attachment 2, including a more particular review and revision of the sensitive use list, and report back to Council with a terms of reference that includes deliverables, scope of work and timelines no later than 2016 Q2; and,

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2. Direct that the In Camera discussion and PowerPoint presentation remain confidential pursuant to Sections 23(1)(b), 24(1)(a) and (b), and 27 of the *Freedom of Information and Protection of Privacy Act*.

On 2015 December 18, Council directed Administration to report back on 2016 March 21 based on the in-camera discussion that resulted from report C2015-0957. The Mayor was requested to write to the Minister of Transport and the President of the Federation of Canadian Municipalities (FCM) requesting that the federal government, in the interest of public safety, pass legislation to reduce risks posed by rail traffic. These letters were attached to report C2016-0197.

### **BACKGROUND**

When development is located near freight rail there are risks to human safety and property due to possible freight rail incidents or derailments. As well, there can be nuisance issues, such as noise and vibration caused by freight rail operations. Currently, there is no Council policy specifically for guiding development close to freight railways.

The work to date to has included a review of international and national best practices for development in proximity to railway corridors, and communication with Canadian municipalities that have already implemented policy or are considering policy. In October 2015 a development industry stakeholder workshop was held to gather their perspectives for consideration of the current approach.

As per Council's request The Mayor sent letters to the Minister of Transport and the President of the FCM, outlining recommendations to begin the conversation to increase rail safety in Calgary. A response from the FCM was received by the Mayor's office (Attachment 3) that outlines the work the FCM has recently undertaken to improve the safety of moving dangerous goods by rail. This work has resulted in the following two federal actions:

- 1) The adoption of Bill C-52 is in response to the FCM's concerns related to the railways insurance requirements and liabilities as well as railway operating requirements. The bill also establishes a fund for railway accidents involving designated goods, which will provide additional compensation in the event of a rail incident; and,
- 2) Protective Direction 36 (PD-36) that enhances information sharing with municipalities by rail operators.

### **INVESTIGATION: ALTERNATIVES AND ANALYSIS**

Following the Council direction provided in 2016 March, Administration formed an internal and external stakeholder group to develop the Terms of Reference, which included Administration from the following departments: Planning and Development (PD), Calgary Fire Department (CFD), Calgary Emergency Management Agency (CEMA), Law, and Real Estate and Development Services (RE&DS). External stakeholders included representatives from, the Calgary Home Builders' Association Urban Development Institute Calgary Region (CHBA – UDI), the Building Owners and Managers Association (BOMA), the Commercial Real Estate Development Association (NAIOP), development consulting firms, and developers.

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Over the past three months this group worked together to create the Terms of Reference and review the current approach to processing applications.

Guided by this Terms of Reference, Administration will lead a process that will address the issues identified by creating a policy that will provide clarity and certainty, while balancing safety and development potential. The work will build on information gathered to date, stakeholder input and best practices, and will focus on achieving the objectives listed below.

### Objectives

Calgary's Municipal Development Plan (MDP) has established goals for increasing population and intensifying development in established areas. The intent of the Rail Policy is to contribute to the MDP goals by ensuring that development and redevelopment near rail continues while incorporating a risk management approach.

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

- Safety protection for building occupants and citizens in close proximity to the building;
- Facilitating emergency response to a railway incident; and,
- Protecting buildings.

These objectives reflect the issues raised by key stakeholders, but with a need to also consider the full development potential of land and buildings. The key stakeholders reviewed and understood these objectives.

Based on the goal of achieving these objectives the group determined that the key problem that needs to be resolved in this process is, "How will The City of Calgary support the continued development and economic value of lands in proximity to rail, while protecting public safety and buildings?"

### Achieving the Objectives

There are a number of ways to achieve these objectives when a development application is submitted for review. When considering the objective of providing safety for building occupants, it is imperative to consider the regulations that are already in place, such as the Alberta Building Code (ABC). These provisions are aimed at limiting the probability of harm to building occupants. As a result, buildings are designed so that the occupants can evacuate safely in the event of an emergency. Mitigating noise and vibration impacts can also contribute to protecting building occupants.

An area based emergency response access strategy will be developed to respond to rail incidents.

Achieving the objectives will require some policy and bylaw amendments. One approach is to require a setback between the development and the rail corridor. While this can work well in a "greenfield" (new development) scenario, it is often not feasible in a redevelopment situation for a number of legal and practical reasons. In these cases, a different approach is needed. This can include requiring risk assessments and identifying appropriate mitigation measures to

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protect the building given the level of risk at that location. The mitigation measures are required to be incorporated into the development at the time of construction.

Administration has been working with stakeholders as well as experts, railways and other jurisdictions to understand the options available to mitigate risk associated with redevelopment near rail. As a result, Administration has developed a current approach to be used in the short term for reviewing applications for redevelopment within 30 m of a railway property line. This approach, described below, will be in use until the Rail Policy is developed and approved by Council.

### The Current Approach

The current approach was presented to internal and external stakeholders, who have agreed to this approach in the short term as it is allowed to evolve, until a full policy is developed and adopted. The City will continue to review the current approach and process for development applications in proximity to the railway corridor. If, during the development of the Rail Policy, alternative solutions or approaches to deal with risk are identified, the current approach may be amended.

A modified approach to sensitive uses has been developed. Previously, sensitive uses were not recommended within 30 m of rail. The modified approach allows for applications for these uses to be considered within 30 m of rail, with discretion to be applied by the Approving Authority.

The key elements of the current approach are as follows:

1. Residential development applications in new communities require a 30 m setback between the building face and railway property line and a noise and vibration study.
2. Residential redevelopment applications within 30 m of a railway property line require a risk assessment and a noise and vibration study.
3. Commercial applications within 30 m of a railway property line may require a risk assessment at the discretion of the Approving Authority.
4. Based on the results of the risk assessment, appropriate mitigations may be required. Access and setup requirements for emergency response services must be considered.
5. Industrial applications in proximity to rail will be reviewed using the existing circulation process.
6. Development applications for sensitive uses within 30 m of rail will be considered and discretion applied by the Approving Authority.

### Developing the Rail Policy

Council directed that the Terms of Reference for preparing a Rail Policy include identifying the scope, deliverables and timelines. The Terms of Reference guides how Administration and stakeholders will work together to develop the Rail Policy. The following issues were identified by the key stakeholders, and are included in the Terms of Reference:

### Issues

1. Clarity and certainty in the development application process;

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2. Protecting life safety and buildings;
3. Land value and tax base impacts;
4. Emergency services access to the rail corridor;
5. Working with the railway companies and regulators on issues related to their responsibilities for operational safety and the impacts of rail on nearby property; and,
6. Outlining risk assessment requirements and exploring developer / City partnerships when possible.

### Deliverables

In response to the above issues, the Terms of Reference sets out the following proposed deliverables for the Rail Policy:

1. Background report - best practices and comparables; review of Calgary's context and specific characteristics; economic analysis to understand the impacts on land value and the tax base for sample areas;
2. Risk and mitigation process – risks to be mitigated; localized risk analysis including understanding probabilities and impacts for more vulnerable areas; identify optional and scalable mitigation measures and allow for flexible and innovative solutions;
3. Proximity rules and sensitive uses – thresholds for setbacks, risk assessments and mitigation strategies (i.e. suitable for small to large sites); approach for addressing sensitive uses; explore options for incentives to offset mitigation requirements and optimize development potential;
4. Area based emergency response access strategy;
5. Intergovernmental and railway company engagement strategy – short term and long term strategy for working with other orders of government, industry, railway companies and regulators on issues of rail safety and operations; and,
6. Implementation plan – including Municipal Development Plan and Land Use Bylaw amendments, as needed.

These deliverables will enable The City to address risk and provide greater clarity for landowners and applicants about the rules for development near rail. As well, it has been identified that other orders of government and railway industry players need to be engaged. CP and CN railways have been approached and have expressed interest in being involved in the process.

### Timeline

Administration has been utilizing the current approach and will continue to do so until the Rail Policy is adopted, in order to ensure that development applications can continue to be processed. Several components of the Rail Policy can be prepared in 2016 with the intention of reporting to the Standing Policy Committee on Planning & Urban Development in 2017 Q1. Once the policy direction is confirmed, implementation of the policy through amendments to the Municipal Development Plan and Land Use Bylaw can proceed; these are proposed for 2017 Q2.

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

A meaningful and collaborative stakeholder engagement plan will be prepared to guide the development of the Rail Policy. The Terms of Reference outlines the foundation for a communications plan that will be developed to ensure applicants and citizens are well informed of the work underway and the current approach. Principles for the engagement process are included in the Terms of Reference, which include transparency, collaboration, and working towards innovative and flexible solutions to name a few.

The development industry is a key stakeholder. Administration has been in discussions with industry representatives including, the Calgary Home Builders' Association Urban Development Institute Calgary Region (CHBA – UDI), Building Owners and Managers Association (BOMA), and the Commercial Real Estate Development Association (NAIOP).

Following the 2016 March 21 Council direction, Administration convened three meetings with development industry representatives to consult on the development of the Terms of Reference. Staff has also communicated with risk assessment consultants, and CP and CN railways.

An extensive review of railway corridor policy and best practices implemented nationally and internationally has been undertaken. The project team also had discussions with Canadian municipalities that have implemented policy or are considering policy.

Development applications are reviewed using the current approach which is managed internally by a cross-corporate team. Information sessions have been held for Administration and support is available for staff who process applications to ensure understanding of the issue and to outline how to process applications using the current approach.

### **Strategic Alignment**

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 in the Centre City over the next 60 years. The Rail Policy will ensure 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.

The Rail Policy will align with Council Policy CSPS033 "Integration of Emergency Services into The City of Calgary Land Use, Infrastructure and Mobility Planning Policy", which states that, "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.

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### **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 will seek to protect public health and safety, and buildings. The safety and operational needs of first responders who may need to respond to derailments or other incidents near rail will be a priority addressed through the emergency response access strategy. The vitality of communities near rail and the continued success of Calgary's downtown will be factors as the Rail Policy is developed.

#### Environmental

The environmental impacts of railways on nearby development include noise and vibration. The deliverable for a risk and mitigation process will provide a framework for responding to noise and vibration impacts.

#### Economic

The lands adjacent to railways are largely privately owned and, particularly in the Centre City, have high development potential and provide significant revenues to The City. The Rail Policy will seek to balance the need to protect public safety and buildings while optimizing development potential.

### **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.

### **Risk Assessment**

The Rail Policy will provide a risk-based approach to approving development near rail. Managing The City's risks regarding public safety and protecting buildings are key themes of the Rail Policy. The City, as an approving authority, must manage its exposure to liability for negligent approvals and the Rail Policy is intended to mitigate this risk, while recognizing potential adverse impacts on some stakeholders. The Rail Policy will also provide better clarity for landowners in the application process, which will improve certainty for their investments and reduce impacts on timelines for approvals.

As development intensifies near rail the need to ensure access for emergency responders to the rail corridor becomes critical; the emergency response access strategy will provide a long-term solution for emergency response in the event of a rail incident.

The success of the entire project is dependent on support from the key stakeholders, who have indicated that establishing and maintaining a viable working relationship with the railway companies focusing on safe railway operations in the urban area is essential. A strategy for this important objective is one of the deliverables of the project.

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The risks of not proceeding with a Rail Policy include the inability to sufficiently protect public safety and buildings near rail, uncertainty for landowners regarding their investments for future development and the corresponding negative impact on The City's tax base, and the potential for inconsistent decision-making in the absence of clear rules.

### **REASONS FOR RECOMMENDATION:**

This report provides updated information to Council on the issue of development in proximity to the railway corridor. Administration will employ the current approach when reviewing development applications in proximity to rail until the Rail Policy is adopted. The Terms of Reference for the Rail Policy has been developed through consultation with stakeholders. The Terms of Reference will guide the process that will result in rules for development in proximity to rail for developers, address risk, and ensure ongoing engagement with the railway companies and regulators regarding rail safety and operations.

### **ATTACHMENTS**

1. Planning Approach Regarding Development in Proximity to the Railway Corridor  
Current Approach – June 2016
2. Terms of Reference – Development of the Rail Policy
3. Letter from the Federation of Canadian Municipalities