

AIRPORT VICINITY PROTECTION AREA (AVPA) LAND USE AMENDMENT

EXECUTIVE SUMMARY

This report responds to Council's direction on 2016 June 13, directing Administration to review the way the Land Use Bylaw (LUB) incorporates the requirements of the Airport Vicinity Protection Area (AVPA) Regulation. Council also directed Administration to seek clarification from the Province, and from airport and aviation authorities on prohibited land uses. Council expressed concern that homeowners do not have complete information about the impact the Airport Vicinity Protection Area Regulation may have on their plans for development of their property, particularly for secondary suites in land use districts where they would otherwise be allowed. The AVPA Regulation does not differentiate between types of residential development and therefore makes no explicit exception for secondary suites. The way the Land Use Bylaw 1P2007 manages the application of the AVPA Regulation may not be fully understood.

Administration reviewed the structure and application of the LUB; reviewed the information provided to homeowners interested in developing secondary suites; investigated City processes for requesting amendments to the AVPA Regulation; researched the roles of various agencies responsible for managing aircraft noise; and worked with Municipal Affairs to seek clarification in the Regulation regarding the status of secondary suites and the allowance for low density forms of infill redevelopment.

Based on this approach, Administration has concluded that no changes to the Land Use Bylaw are required. Improved information will be provided to landowners about the impacts of the AVPA Regulation on parts of the city when applying for secondary suites and the City process for requesting AVPA Regulation amendments will be improved. Administration has also discussed concerns and options with the Province and with the Calgary Airport Authority, and submitted proposed changes to the AVPA Regulation to the Province as part of their current review. The suggestions for changes to the AVPA Regulation will provide greater clarity for landowners, increased opportunity for low-density redevelopment including secondary suites.

ADMINISTRATION RECOMMENDATION(S)

That the SPC on Planning and Urban Development recommend that Council direct Administration to advocate with Municipal Affairs for amendments to the Airport Vicinity Protection Area (AVPA) Regulation to allow for a range of low density residential redevelopment including secondary suites and small scale subdivision in all areas affected by the Noise Exposure Forecast (NEF) 30 contour area.

PREVIOUS COUNCIL DIRECTION / POLICY

On 2016 June 13 the following Notice of Motion (NM2016-19) was adopted by Council:

Moved by Councillor Chabot, Seconded by Councillor Jones, that Councillor Chabot's Motion, NM2016-19 be adopted, after amendment, as follows:

WHEREAS the provincial regulation Airport Vicinity Protection Area (AVPA) prohibits increased density within these areas;
AND WHEREAS residential communities that fall under the AVPA do not have zoning indicating that there are restrictions to development and or redevelopment;

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AND WHEREAS the properties that are zoned RC-2 are not permitted to have increased intensity of use under the AVPA regulations;

AND WHEREAS in the last three years the Ward 10 office has had several inquiries from residents that live in Mayland Heights and Belfast about developing secondary suites;

AND WHEREAS RC-2 properties are purchased with the intent to develop legal secondary suites and purchasers are given a false expectation that they can be developed;

NOW THEREFORE BE IT RESOLVED that Administration be directed to work with NAV CANADA and the Government of Alberta to assess the lands that fall within the Airport Vicinity Protection Area (AVPA) to determine what would be the most suitable land use designation and to provide direction and certainty to current and future land owners.

AND FURTHER BE IT RESOLVED that Administration report back to Council through Standing Policy Committee on Planning and Urban Development, no later than Q4 2016.

BACKGROUND

The intent of the Council direction is to provide greater clarity to residents living in affected areas and Administration regarding land uses that are allowed under the AVPA Regulation.

The land use designation Residential – One/Two Dwelling (R-C2) provides the opportunity for two units on a parcel or within a building. This can take the form of a duplex, semi-detached dwelling, or a single detached dwelling with a secondary suite or backyard suite. It is widely used in older existing communities.

The AVPA Regulation is a provincial regulation under the Municipal Government Act (MGA), and is the responsibility of Municipal Affairs. The intent of the AVPA Regulation is to protect the operations of the Calgary International Airport from development that could interfere with the airport's ability to fully function. It implements the Noise Exposure Forecast (NEF) system made available by Transport Canada, which established noise exposure forecast areas around the airport. The AVPA Regulation prohibits certain uses, including residences, in areas including and higher than the NEF 30 contour. This prohibition therefore restricts the development of additional residences in areas where residential development occurred before the AVPA was enacted in 1979. The status of secondary suites in the AVPA Regulation is unclear: they are not specifically mentioned, but do meet the definition of "residence" in the Regulation. Based on this, Administration considers them a prohibited use.

Administration cannot approve development or subdivision applications for prohibited uses in the areas affected by the AVPA Regulation. This means that secondary suites, additional single detached, semi-detached and duplex dwellings, and small-scale subdivisions, while allowed in R-C2 and in some other land use districts, would be prohibited by the AVPA Regulation. If the municipality determines that further residential development has merit, the AVPA Regulation provides a process for exemption from the development restriction. That process is intended for site-specific requests and requires consultation with affected stakeholders and the community. Following the consultation, a request for exemption from development restriction for a specific site may be made to the Minister of Municipal Affairs, who makes the decision. Exemptions are implemented by amending the AVPA Regulation to identify the site subject to the exemption.

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Only when the Regulation has been amended to exempt a specific site from further residential development would a municipality's approval of that further development be effective. This process may take several months due to the ministry's internal circulation and review processes that must be undertaken prior to the Minister making a final decision.

Homeowners in affected communities may be unaware that, although the land use district applied to their property allows secondary suites and low density redevelopment, they can be restricted by the provisions of the Calgary International AVPA Regulation.

The discussion at Council when this motion was adopted focused on clarification of the status of secondary suites under the provisions of the AVPA Regulation and the need to provide clearer information to homeowners who might be subject to the AVPA Regulation.

In addition to this direction from Council, on 2016 March 07 Council also approved a motion directing Administration to engage with the public and affected stakeholders regarding an exemption from the AVPA Regulation for lands within the community of Inglewood. The response to this direction is also on the 2016 December 07 agenda for the SPC on Planning and Urban Development, in PUD2016-0781, so that both issues can be discussed together since they have common elements related to the AVPA. The other report's recommendations also include ways to approach higher-density development in Inglewood.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

Administration investigated the following:

- the roles of the various levels of government and federal government bodies that are involved in the regulation of noise associated with airport operations
- the status of secondary suites in the AVPA Regulation and the perspective of the Calgary Airport Authority
- the information The City provides to homeowners interested in developing secondary suites and The City's process for requesting site-specific amendments to the AVPA Regulation.

Responsibilities for regulating noise associated with airport operations

Although Council directed Administration to work with NAV CANADA, that agency has no direct responsibility for land uses within the NEF contour areas. NAV CANADA's Director of Government and Public Affairs has confirmed that the agency's role is to provide air traffic control and related services to pilots. They provide their services in accordance with published noise abatement procedures and other Canadian aviation regulations. Administration has confirmed this directly with NAV CANADA (see Attachments 1 and 2).

Transport Canada manages noise through design standards for aircraft and enforcing airport-specific noise abatement procedures. In addition, it has created an airport noise exposure forecast model to help ensure that noise-sensitive uses are not built on lands affected by airport operations.

The Province of Alberta implements the noise exposure forecast model through the AVPA Regulation, by listing prohibited uses within the noise exposure contours, and providing a process for site-specific exemptions. This process requires consultation with the public, affected landowners, other municipalities and the airport authority. Municipal Affairs is not supportive of

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exemptions that are general rather than site-specific, or that otherwise delegate decision authority to the municipality.

Status of secondary suites in the AVPA Regulation

The AVPA Regulation does not mention secondary suites specifically. It does define “residence” as “a building that includes kitchen, sleeping and sanitary facilities and is used primarily as a home” and further says that uses similar to the defined and prohibited uses are also prohibited. Administration therefore treats secondary suites as a prohibited use under the AVPA Regulation and cannot issue a development permit within the Airport Vicinity Protection Area.

The municipality can seek an amendment to the AVPA Regulation to exempt the land from its provisions, following consultation with the public, affected landowners, other municipalities and the airport authority. Throughout the Province’s review of the AVPA Regulation and in consultation for this report, The Calgary Airport Authority has stated that it would not oppose the development of secondary suites within the noise exposure forecast contours.

Information for homeowners and City process

Currently, The City provides homeowners wishing to develop secondary suites with a comprehensive package of information about the process. However, this information does not make clear that properties within certain areas of the city may be affected by the provisions of the AVPA Regulation. It does not outline the additional processes that are required to proceed with the development of a secondary suite, even though the land use district would appear to allow such development.

Administration can amend the information to include advice that they may also be subject to the provisions of the AVPA Regulation, and how that will affect their plans for adding a secondary or backyard suite, or for developing other forms of low density development like duplexes and semi-detached dwellings. It can provide a clear map that will help homeowners determine if they are affected. It can also outline the process for requesting an amendment to the AVPA Regulation, conducted by The City on their behalf.

Administration can improve its own process for requesting an amendment to the AVPA Regulation. Administration has determined that it can represent the municipality in making application to the provincial government for the AVPA exemption. Previously, Administration has requested Council direction to proceed with an exemption request. The process improvements contained in this option therefore include:

- making early contact with the Calgary Airport Authority;
- undertaking the consultation required by the AVPA Regulation; and
- Administration submitting the request for an amendment to the AVPA Regulation.

These changes have the potential to reduce timelines for customers. Administration can implement the improvements to the information provided to homeowners and to the City process in early 2017.

Following this investigation, Administration considered the following two options:

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- Option 1: Reviewing the structure and application of the LUB in managing rules that apply to all land use districts;
- Option 2: Working with Municipal Affairs to seek clarification in the AVPA Regulation regarding the status of secondary suites, low density redevelopment and small-scale subdivision.

Option 1: Reviewing the structure and application of the LUB

Aligning land uses with the provisions of the AVPA Regulation could require the creation of new districts for specific application in areas the AVPA Regulation affects and the subsequent City-initiated redesignation of large portions of affected communities, or the repetition of AVPA references and rules in each district.

This option could provide more certainty to homeowners because their land use designation or the rules within the relevant land use district would clearly restrict secondary suites and other redevelopment options. Owners of properties already built to the maximum potential of the land use district would not be affected. However, those who currently have the potential for redevelopment through the possible amendment of the AVPA Regulation would have that potential removed.

The Land Use Bylaw treats Airport Vicinity Areas the same way it treats other rules that apply to all land use districts in the bylaw, including floodway, flood fringe and overland flow areas, road rights-of-way, lighting, signs, parking stalls, and infrastructure servicing. All of these rules are contained in Part 3 of the LUB and each land use district refers to Part 3, requiring all uses to comply with the rules it contains. In this way, all of these general rules apply as overlays to all of the other districts in the bylaw. This structure allows for the most efficient way of accommodating rules that apply regardless of the specific land use district. This efficiency is realized in two ways:

- in the structure of the LUB itself, so that rules that apply to all land use districts are not repeated in each district, and
- in the application of land use districts on the ground, so that the LUB does not need to contain multiple districts that specifically exclude the uses prohibited by the AVPA Regulation, in different combinations.

Restructuring or otherwise amending the LUB would be complex and would remove development potential from large numbers of properties.

Option 2: Working with Municipal Affairs

Recently, Municipal Affairs began a review of all regulations enabled under the Municipal Government Act (MGA), including the AVPA Regulation. The objective of the AVPA Regulation review is to obtain stakeholder opinions and perceptions regarding the Regulation's provisions, effectiveness for land use surrounding the Calgary International Airport and any need for changes that will continue to promote compatible land uses within the AVPA regulated area.

To date, Administration has met with Ministry representatives and other stakeholders such as The Calgary Airport Authority and has provided a written submission. In its submission, Administration requested that the AVPA Regulation clarify the status of secondary suites, the

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potential for low density development and small-scale subdivision in the NEF 30 contour areas and to develop, in collaboration with The City, a better process for requesting amendments to the AVPA Regulation for exemptions. An improved Provincial process would provide more clarity about what the Province requires and how it will make its decision, more certainty for landowners and reduced timelines.

Through this review, the Calgary Airport Authority has confirmed to the Province that it is not opposed to the addition of secondary suites in the NEF 30 contour areas. If the AVPA Regulation is amended to make clear that secondary suites are not prohibited, this would remove the barrier that exists where they are allowed in the LUB, but subject to the AVPA.

Administration's request for the AVPA Regulation to provide allowance for low density forms of redevelopment and small-scale subdivision addresses Council's concern about landowners not being able to take advantage of the opportunities for low density redevelopment, including secondary suites, on lands within low density land use districts such as R-C2 (Residential – Contextual One/Two Dwelling District) or R-CG (Residential – Grade-Oriented Infill District).

The Province has collected input from municipalities and other stakeholders and will draft proposed changes to the AVPA Regulation, which will be released to the public in early 2017. Administration has been in contact with staff from Municipal Affairs to discuss the options described above. Municipal Affairs administration has expressed general support for amendments to enable low density and small-scale subdivision. Administration will continue to consult with the Province as their review of the AVPA Regulation continues.

Conclusions

Administration does not recommend a change to the structure of the LUB, other amendments to the LUB or City-initiated land use redesignations of lands within the AVPA for the reasons given in the discussion of Option 1.

Administration is confident that the Province is open to considering changes to the AVPA Regulation as Administration has requested, and therefore recommends proceeding with Option 2. Administration is continuing to consult with the Province on the requested changes to clarify secondary suites, low density redevelopment and small-scale subdivision.

Advice about the impact of the AVPA Regulation will be provided to homeowners seeking to develop secondary suites or to redevelop their property as allowed by their land use district. Administration will also improve its processes for requesting amendments to the AVPA Regulation to help to reduce timelines. These steps will help to address the issues Council identified by ensuring that Administration can provide the best advice to homeowners.

Administration will adjust its approach as necessary following the Provincial amendments to the AVPA Regulation. Those changes may mean that additional information for homeowners and an improved City process for requesting amendments to the AVPA Regulation for secondary suites, low density redevelopment and small-scale subdivision are no longer required.

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The recommendation and the actions described in this report complement the actions Administration is taking in response to Council direction to engage with stakeholders regarding an exemption for the community of Inglewood, as contained in PUD2016-0781.

Stakeholder Engagement, Research and Communication

Administration participated in a workshop held by Municipal Affairs to initiate the review of the AVPA Regulation and has provided a submission regarding proposed changes. Administration also met with representatives of the Calgary Airport Authority to gain further clarification of their perspectives. As no Land Use Bylaw amendments or redesignations are contemplated, Administration did not undertake public consultation in response to the Council direction. The Province will consult with the public on the proposed changes to the AVPA Regulation.

Strategic Alignment

The Municipal Development Plan (MDP) supports intensification of inner city areas that provides a transition from high density areas and is consistent and compatible with the existing character of the neighbourhood. The MDP also contains goals for shaping a more compact urban form, creating great communities and achieving a prosperous economy. The MDP recognizes the Calgary International Airport as a global logistics centre, helping to diversify the city's economy, create jobs and support business and industry throughout Calgary. Administration's recommendations for changes to the AVPA Regulation balance these goals by continuing to support the Airport's operations and modest development of additional housing choice in inner city areas.

Social, Environmental, Economic (External)

A modest increase in residential use in established areas of the inner city by allowing interested property owners to develop secondary suites and other low density forms can help provide additional housing options in the community and assist with affordability. Maintaining or increasing population in inner city areas allows more people to live in closer proximity to inner city public transit facilities, services and employment opportunities, thereby reducing dependency on vehicular trips and/or the length of these trips and, as a result, green house gases and traffic congestion. Modest residential development can contribute to the economy and the community by increasing the number of local residents, who will support local businesses. Balancing residential development with protection of the Calgary International Airport's operations also supports the airport as a major employer and a hub for transport of people and goods.

Financial Capacity

Current and Future Operating Budget:

No operating budget implications are identified.

Current and Future Capital Budget:

No capital budget implications are identified.

Risk Assessment

There is a risk that Municipal Affairs will decide not to include the amendments Administration has requested in the new draft of the AVPA Regulation. Future opportunities for input will exist

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when the draft is released, providing Administration with the ability to reinforce the need for such clarification. The City can take actions to help provide improved clarity and streamline processes.

REASON(S) FOR RECOMMENDATION(S):

Working with the Province could result in changes to the AVPA Regulation with regard to secondary suites and other forms of low density residential development that could allow applications to proceed as allowed in the Land Use Bylaw. Administration is confident that the Province is open to considering the requested changes. LUB amendments are not recommended, as making such amendments would be a more complex approach, involving City-initiated redesignations that remove development potential from existing properties.

ATTACHMENT(S)

1. Aircraft Noise Management in Canada
2. Email Correspondence from NAV CANADA, 2016 November 9