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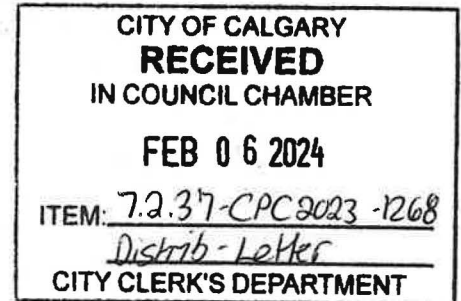
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February 2, 2024

VIA EMAIL

City of Calgary
Office of the Councillors (8001)
700 MacLeod Trail SE
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Attention: The Mayor of Calgary and City Councillors as per attached list



Dear Sirs/Madams:

**Re: LOC2022-0227
201 – 10th Street NW (the "Subject Site")**

We represent various community interests and local businesses who are disturbed with the above-noted proposed land use change from Direct Control District to Direct Control District. The requested Application is to allow for a mixed-use development with a maximum FAR of 9.0 and 50 metres in height at the corner of 10th Street NW and Kensington Road (the "Proposed Land Use Change") and a proposed amendment to the Hillhurst/Sunnyside Area Redevelopment Plan ("ARP") to permit the Proposed Land Use Change to proceed (the "Proposed ARP Amendment").

We are currently registered to speak before Council at the public hearing on February 6, 2024, and we provide this correspondence in advance to address some of the planning considerations we urge Council to consider when making a decision on the Proposed Land Use Change and ARP Amendment.

As detailed below, the planning considerations applicable to the Subject Site weigh significantly against the Proposed Land Use Change and ARP Amendment, and we encourage Council to **vote against** passing the associated proposed bylaws (the "Proposed Bylaws").

1. Executive Summary

The Application before you raises the fundamental question as to whether a landowner must comply with relevant planning policies as others have done in the surrounding area. The answer to this question must be "yes", such that the Council votes against the Proposed Bylaws.

While the Municipal Development Plan ("MDP"), the ARP and the Transit Oriented Development Guidelines ("TODG") each encourage higher density development on the Subject Site, the policies provide for a smaller scale of development - a maximum height of 26 meters and density of 2.8 FAR (with potential for bonusing to 5.0 FAR). The land use in place on the Subject Site already complies with the policies and no further land use change is required for there to be a sizeable development on the Subject Site.

Notwithstanding this, the Applicant is requesting more: an **80% increase** to the maximum FAR allowed (to 9.0) and a **nearly 100% increase** to the maximum allowable height (to 50 m). This is a difference of an eight (which is currently permitted) versus 16 storey development. This is significantly out of scale with respect to the current surrounding developments and policies applicable to the surrounding area. When a further examination of the MDP, ARP and the TODG is conducted, it is evident that the Proposed Land Use Change does not comply with these policies. For example, there is insufficient transition of intensity of development to the nearby low-density residential, there is no integration between the surrounding developments and the Subject Site, and while the Subject Site is within transit oriented development ("TOD"), it is not adjacent to the Sunnyside LRT station which may justify a larger scale building.

Community benefit of the proposed public plaza to justify a larger FAR bonus is overstated by the Applicant. Only one block away to the west of the Subject Site is the reopened "Kensington Plaza", which is a draw for community members and visitors alike. The Kensington Plaza has a larger footprint, with amenities such as firepits creating a gathering place for the community. The City has provided \$2 Million in funding to revitalize this plaza, the historic Plaza Theatre is revamped, and it is truly the foundation of the neighbourhood. The Subject Site is at the confluence of two Neighbourhood Main Streets, which as those who have been to the Subject Site will know, can be significantly congested with traffic. Accordingly, the public plaza may not provide the public 'draw' to the Subject Site as might be anticipated by the Applicant.

One question Council should consider is whether a development of the scale proposed belongs on the Subject Site, or whether a development of the scale currently permitted is more appropriate. In considering the Subject Site, the Application for the Proposed Bylaws is also premature. There are significant questions about appropriate access and egress and infrastructure capability of the Subject Site. We also see issues with constructability in this already constrained area. Council should also consider the proportionality of the scale and size of a potential development as compared to the relatively small footprint of the Subject Site (0.3 acres). While we acknowledge the Applicant has not sought a development permit at this stage, further information should be obtained regarding the issues with the Subject Site and the Proposed Land Use Change before the Proposed Bylaws are considered.

Finally, we ask: why now? In 2015, City Council rejected an Application for a land use change to permit a 10 storey development on the Subject Site. While we note the current housing crisis affecting residents of the City of Calgary, that does not justify the setting aside of valid planning rationale (which, again, already permits re-development of the Subject Site). The Proposed Land Use Change is a significant overstep in scale for the small site, an overstep in planning, is unprecedented for the area and not in accordance with planning rationale. We encourage Council to vote against the Proposed Bylaws.

2. The Current Land Use

Before discussing the planning challenges in respect of the Proposed Land Use Change, it is important to examine the current land use. Council previously designated the land use as "Direct Control", through bylaw 33D2013, and was based upon the Commercial – Corridor 1 (C-COR1) District (the "Current Land Use"). As stated in bylaw 33D2013, the purpose of the Current Land Use is to:

- (a) Accommodate a pedestrian oriented mixed-use **development** in compliance with the policies of the local area redevelopment plan;
- (b) Accommodate a range of **uses** with development guidelines to maintain the existing small scale retail commercial character along 10 Street NW; and

- (c) Implement the provisions of the density bonus system in the applicable local area redevelopment plan.

As for the scale of a potential development, the maximum FAR is 2.8 which can be increased to 5.0 through bonusing, with a maximum building height of 26.0 metres.

We refer to the Current Land Use for a few reasons. First, it demonstrates that the Subject Site already has a land use designation that will allow for a sizeable mixed-use development. Second, Council specifically considered the Subject Site on a prior occasion, through the imposition of a Direct Control District bylaw. Finally, the Current Land Use was considered in light of the ARP – the same planning policies which the Proposed Land Use Change is being reviewed against.

Notably, the purpose statement within the Proposed Bylaws does not acknowledge that it is in compliance with the local area plan, nor does it acknowledge that the land use will "maintain the existing small scale commercial character along 10 Street NW". As outlined below, the Proposed Land Use Change addresses neither.

3. The Proposed Land Use Change Does Not Comply With Governing Policies

The following will address example policy statements within the MDP, the ARP and the TODG in respect of the Subject Site, each of which demonstrate that while higher density development is suitable for the Subject Site, the Proposed Land Use Change does not comply with these documents.

As Council knows, these are larger scale strategic documents to guide development. Importantly, these documents should be applied *fairly* by the City to proposed developments. Notably, there are a number of pending developments in the immediately surrounding area which have all recently complied and worked within these guiding policy documents, and there is no reason why these documents should not be applied as written to the Subject Site and the Proposed Land Use Change.

(a) The MDP

Before addressing MDP policies in more detail, it is important to place the MDP in general context, which is to provide policies regarding land development within Calgary, and provide direction for strategic decisions of the City. Section 2.2 of the MDP, "Shaping a More Compact Urban Form", addresses future growth, noting that it is to be done in a way that "enhances vitality and **character** in local neighbourhoods" [**emphasis added**]. Character of the Kensington neighbourhood is particularly important to note, with the Subject Site being in close proximity to numerous heritage buildings (such as the building hosting Deville Coffee on Kensington Road at 10A Street NW, the building hosting Kensington Pub, and the Plaza Theatre).

Within Administration's Background and Planning Evaluation (the "Planning Report"), it refers to the MDP, finding that both 10th Street NW and Kensington Road are "Neighbourhood Main Streets". Looking at Section 2.4.2(e) of the MDP (as cited by Administration) "[t]aller buildings are appropriate in Greater Downtown, Major Activity Centres and Urban Main Streets **where deemed appropriate through a local area plan**" [**emphasis added**]. It is critical that there are two preconditions for a taller development: (1) the subject site must be in Greater Downtown, Major Activity Centre or and Urban Main Street *and* (2) the taller massing must be deemed appropriate through a local area plan (for example, the ARP). The Proposed Land Use Change meets neither of these requirements.

Other relevant portions of the MDP are not mentioned in the Planning Report, such as section 2.3.2, "Respecting and Enhancing Neighbourhood Character", where, for example, the MDP provides that there should be "an appropriate transition of development intensity, uses and built form between areas of higher and lower intensity, such as low-density residential areas and more intensive multi-residential or commercial areas". Noting that Main Streets provide the "greatest opportunity for positive change", the MDP directs that "[a]ttention must be paid to ensuring that appropriate local context is considered when planning for intensification and redevelopment".

Administration had concluded that because the Subject Site is not "directly adjacent to low density residential" the Proposed Land Use Change is appropriate. However, this is incorrect. The Subject Site is directly adjacent to low density residential on a diagonal basis, and is otherwise adjacent to the low density residential area:

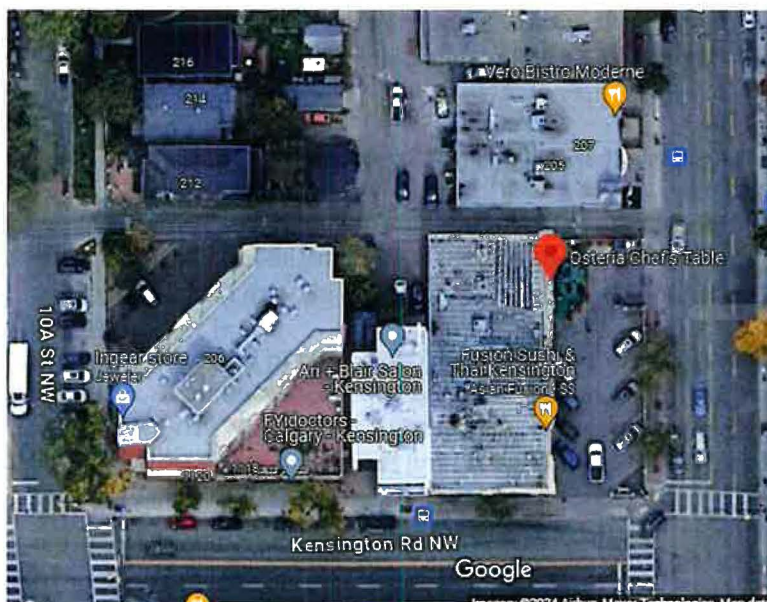


Figure 1: Aerial View Demonstrating Location of Subject Site Compared to Low-Density Residential

The Planning Report also indicates that the Subject Site can act as a "gateway". Section 2.4.1 of the MDP addresses gateways into communities, noting the "use of distinctive urban design features, lighting, enhanced vegetation and landscaping and public art features". While the ultimate proposed development may include some of these features, a taller built form is not one of the considerations regarding a gateway into a community, and should not be a basis to find that the Proposed Land Use Change is appropriate.

Further, the Proposed Land Use Change also runs contrary to other policies in section 2.4.2. For example, subsection (f) provides that design of taller buildings should be "(i) sited and architecturally designed to contribute positively to the skyline of the city", "(iii) integrated with adjacent areas by stepping down to lower-scale buildings and complement the neighbourhood", and "(iv) minimizing the shadow and wind impacts on adjacent residential areas and parks and open spaces". Development under the Proposed Land Use Change will allow a building which is significantly higher (20 m) than another surrounding proposed land use height, and approximately double the height policy within the ARP of the other

surrounding sites designated for higher density development (such sites include the east side of 10 Street NW, which currently includes one and two storey historical buildings with storefronts).



Figure 2: Applicant's Image Showing Surrounding Policy and Land Use Heights (not to scale)

While this is not an exhaustive list of the applicable policies within the MDP, it provides context on how the Proposed Land Use Change does not fit within the policy requirements of the MDP.

(b) The ARP

In addition to non-compliance with the MDP, the Proposed Land Use Change also does not comply with the ARP, which provides additional policy context applicable to the Hillhurst/Sunnyside neighbourhoods. This is noted in the Planning Report, and acknowledged by the fact that the Applicant is seeking an amendment to the ARP to have the ARP conform to the Proposed Land Use Change, and not the other way around.

With respect to densities, policies within section 3.1.5 indicate that "[d]evelopment should not exceed the maximum densities". Map 3.2 within the ARP provides for a minimum density of 2.0 FAR, with a maximum of 5.0. By requesting a maximum density of 9.0, the Applicant is requesting an **80% increase** to the maximum density permitted under the ARP.

Built Form and Site Design are addressed in section 3.2 of the ARP, which acknowledge the unique nature of the Hillhurst/Sunnyside neighbourhood, stating that the "area is characterized by low-rise buildings that establish a fine-grained rhythm of small-scale retail commercial and residential buildings", and higher density development has been "undertaken with care in order to ensure that new development enhances the qualities of the area that are valued". The ARP provides that placement of the tallest buildings is particularly important, and that **six to eight storey buildings are employed in areas slated for high density development**, as there is generally only a lane separating the retail commercial and low rise neighbourhood. The ARP specifically contemplates that taller buildings should be located in areas such as near the LRT station as a landmark feature.

Map 3.3 within the ARP provides for the maximum building height of the Subject Site of 26 metres, which matches the Current Land Use. Notably, a building height of 50 metres is unprecedented in the surrounding area, with only one site in the policy area providing for a building height of 50 metres – a site which is directly beside the Sunnyside LRT station.

To specifically address Administration's position that while the height and FAR significantly exceed the maximums within the ARP, the amendment to the ARP is supported as a result of the proposed rules within the DC District that reduce shadowing impact, this remains insufficient in light of the ARP, which does not contemplate a development even close to this scale on the Subject Site, and contemplates transition between high and low density development.

Finally, Council may consider whether the ARP may require site-specific updating to address the changing needs to Calgarians. In our view, it does not, as it already provides tremendous opportunity for mixed-use development through proper design and planning. We also encourage you to consider the currently underway Riley Local Area Plan. Though remains in early draft form and therefore does not apply to the Proposed Land Use Change, it is important to consider that the proposed 50 metre or 16 storey height does not comply with the draft Local Area Plan, which may otherwise propose a policy of a maximum of 12 storey development on the Subject Site. Even if Council considers it otherwise appropriate to give latitude to the MDP and ARP policies which the Proposed Land Use Change does not comply with, such latitude does not justify the request for the significant increases being requested by the Applicant.

(c) **TODG**

We acknowledge and note that the Subject Site is within 425 metres of the Sunnyside LRT station, which engages the TODG. While the TODG encourages higher-density, walkable, mixed-use developments within 600 m of an LRT station, this is not to the expense of other planning rationale and policies within the MDP and the ARP, both of which address transit oriented development ("TOD"). Notably, and consistent with the ARP, TODG provides that the impacts of density should be minimized, such that the "highest densities in a TOD station area should occur on sites **immediately** adjacent to the station" [**emphasis added**]. The TODG guidelines also address that there should be a "transition between higher and lower density development by stepping down building heights and densities from the LRT station building" and to "create proper edge treatments such as compatible building scale, parking location, and landscaping between new development and existing communities to minimize impacts and ensure integration".

While the Subject Site is within a TOD area, it is not directly adjacent to an LRT station, nor will there be an appropriate transition between the large scale allowable land use, and the lower scale commercial and residential areas surrounding the Subject Site. While the Proposed Land Use Change ostensibly addresses the goal of increased density in a TOD area (which can *already* be achieved through the Current Land Use) it runs contrary to other policies within the TODG. Permitting the Proposed Land Use Change completely ignores the valid planning rationale and policies within the TODG

(d) **Land Use Bylaw**

Finally, it is important to address the preconditions for use of a Direct Control District within the Land Use Bylaw. Direct Control Districts must only be used for "developments, that due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts". The Applicant has proceeded on the basis that anticipated development associated with the Proposed Land Use Change has "innovative ideas". The Planning Report states that

"[t]he objective of providing community amenity through density bonusing framework is considered an innovation that justifies the use of a DC District".

In our view, the precondition is not met. Density bonusing through the provision of an urban design improvement is already considered in the ARP, and accordingly, there is nothing innovative of the Applicant's proposal. In any event, the public benefit associated with the public plaza is overemphasized, as further outlined below.

4. The Proposed Land Use Change Does Not Fit The Fabric of the Neighbourhood

While partially addressed above when discussing applicable policies, it is important to reiterate that a building of the size which would be permitted under the Proposed Land Use Change is significantly out of character of the surrounding area. Kensington, along both Kensington Road and 10 Street NW, contain an eclectic mix of storefronts. Currently pending or other proposed developments in the area generally each comply with the applicable policies regarding density and massing, and consider the character and unique nature of the area.

Though the Applicant's October 4, 2023 submission to CPC indicates that there is "sensitive transition to the nearby low density residential", this appears to be incorrect. With the proposed maximum height, as compared to the size of the Subject Site, the maximum allowable development under the Proposed Land Use Change will result in a development akin to a pencil - entirely out of context in respect of the surrounding area. There is zero transition to the nearby residential area.

5. The Community Benefit is Overstated

In order to provide justification for the Proposed Land Use Change, as well as the requested bonusing potential, the Applicant relies heavily on a proposed plaza which may act as a "community gathering space", and may become a "focal point for casual and formal community gathering that is currently lacking in the immediate area". The Applicant surmises this may become a "venue for the residents of Hillhurst, Sunnyside and the surrounding communities to congregate".

While a public plaza may provide additional benefits to the surrounding community, such benefits appear to be overstated, particularly when used to justify a significant bonusing potential. One block west of the Subject Site is the recently re-opened Kensington Plaza, near the historically designated Plaza Theatre. This plaza reopened in December 2023, to significant community participation, which might be considered to be the heart of the neighbourhood. It has received significant funding from the City (\$2 Million). While there is a benefit of utilizing the Subject Site beyond a parking lot, it will likely not be the anticipated gathering place when it is considered to be at the confluence of two main streets that can be quite congested. Any potential benefit of the proposed plaza does not justify the scale of development requested under the Proposed Land Use Change.

6. The Proposed Land Use Change Is Premature

While we acknowledge that the Applicant is seeking the Proposed Land Use Change only and has not submitted a development permit for a proposed development, there appears to be a disconnect as to whether a development of this scale can even be accommodated on this site.

From the Planning Report, there are many additional items that need to be considered in the development permit process, such as *further* mitigation of shadowing, privacy and massing impacts, public realm

improvements, and resident amenity space. Most significantly however, is the acknowledgement that while there is an update to a 2012 Traffic Impact Assessment which was accepted for the purpose of the Proposed Land Use Change, "additional assessment and design will be required at development application".

It likely goes without saying that the Subject Site is significantly constrained from an access and egress perspective (which is noted by the Applicant in that there will be no vehicle access to the site from 10 Street NW or Kensington Road). Rather, access will be through the narrow back lane.

The narrow back lane (which is a one way lane, west to east) can only be accessed by 10A Street NW. This will result in a significant increase in traffic close to the residential area. In addition to concerns expressed by community members at this being the sole access point, it must be considered that local businesses regularly use this lane for deliveries. It is unclear whether the updated TIA addresses this issue, and the extent to which the TIA addresses the already constrained intersection of 10 Street NW and Kensington Road. Finally, it does not appear that the Applicant has addressed community questions regarding infrastructure issues. Further information and work should be done before Council considers the Proposed Bylaws.

While not addressed in the Planning Report, and which may apply to any development of the Subject Site, there may be constructability issues particularly in light of the rush-hour lane reversals on 10 Street NW, which can reduce the southbound traffic to one lane.

7. Conclusion

To reiterate, the Applicant already has an opportunity to develop the Subject Site with a mixed-use development which follows policy rules and guidelines established through bylaws just as other developers have done in this community. Following these guidelines will ensure integration with the community, which will not only comply with the MDP and the ARP, but will also address and comply with the TODG and will still permit the redevelopment of the Subject Site providing additional density. No further land use change is required to achieve many of the City's stated policies for densification in the inner-city.

Based upon the foregoing reasons, we encourage Council to vote against the Proposed Bylaws, and we look forward to answering any questions you may have at the public hearing on February 6, 2024.

Yours sincerely,



Samantha E. Stokes

Rose LLP

SS/ad

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