

**BOARD ORDER: MGB 098/08**

**FILE: 07/IMD-02**

**IN THE MATTER OF THE** *Municipal Government Act* being Chapter M-26.1 of the Revised Statutes of Alberta 2000 (Act).

**AND IN THE MATTER OF AN APPEAL** pursuant to Section 690 of the Act by the City of Edmonton (City) respecting provisions of a municipal development plan (Bylaw 1-2007) (MDP) adopted by Strathcona County on May 29, 2007.

**BETWEEN:**

City of Edmonton (City) - Appellant

- a n d -

Strathcona County (County) - Respondent

**BEFORE:**

Members:

D. Thomas, Presiding Officer  
T. Golden, Member  
W. Morgan, Member  
J. Noonan, Member  
R. Strauss, Member

Upon notice being given to the parties and affected landowners, a hearing was held in Council Chambers, in Sherwood Park, in the Strathcona County, in the Province of Alberta on March 17, 2008.

On May 29, 2007 Strathcona County adopted Municipal Development Plan Bylaw 1-2007 (SCMDP), which passed second and third reading by County council on May 22, 2007.

Section 690 of the Act permits a neighbouring municipality to file an appeal to the MGB if it is of the opinion that a statutory plan (e.g., an MDP) is detrimental to it.

The Appellant, City of Edmonton (City) served notice of its intention to appeal some provisions of Strathcona Municipal Development Plan Bylaw 1-2007. As required by the Act, the parties proceeded to mediation, without general success. The City then filed an appeal with respect to provisions of the SCMDP as they relate to six specific areas within the County.

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### ***Prehearing Activities***

At the conclusion of mediation efforts the Municipal Government Board (MGB) proceeded as required under section 690(2) of the Act and established a hearing date to comply with the Act and a notification procedure for affected landowners.

Several preliminary applications were made by the parties, involving a challenge to MGB jurisdiction to hear the appeal, the sufficiency of grounds of appeal, the inclusion of grounds alleged not to have been included in the City's notification to the Respondent Strathcona County (County) of its concerns, and an application to adjourn pending issuance of the Province's proposed Capital Region Growth Management Study (Radke Report). These preliminary matters were resolved as set out in MGB decisions DL 136/07, MGB 130/07 and MGB 012/08 prior to the commencement of the hearing. Notification was given and the hearing was then scheduled for on March 17, 18, 19, and 20, 2008.

Prior to the commencement of the appeal, the County applied to have one panel member removed from the hearing because of a perceived potential for bias. The member withdrew from the appeal, but the remaining members elected not to proceed as a panel of four. A reconstituted five member panel was appointed and after notification to the parties and affected landowners, the hearing commenced.

After the hearing, the MGB instructed the parties to provide written summaries and to provide submissions on the impact of the Radke Report and *Capital Region Board Regulation* (AR 049/2008). The final submissions were received on May 12, 2008.

### **OVERVIEW OF THE CITY'S CLAIM OF DETRIMENT**

The City alleged that it is or may be detrimentally affected by certain provisions contained in the SCMDP relating to six areas bordering on, or in close proximity to Edmonton. (see map on page 14) Additionally, the City alleged that it is or may be detrimentally affected by the SCMDP's failure to provide for some matters relating to these six areas.

Specifically, the City alleged:

- Contrary to s. 632(3)(i) of the Act, the SCMDP does not identify, even in general terms, the proposed future land uses for a number of policy areas identified as holding districts; does not address "*the co-ordination of land use, future growth patterns and other infrastructure with adjacent municipalities*"; and does not address "*transportation systems ... in relation to adjacent municipalities*".
- The SCMDP does not particularize with sufficient certainty the participation of Edmonton in the further planning contemplated by the SCMDP.

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- The SCMDP does not incorporate the entirety of the vision statement for the Joint Planning Study (JPS) it refers to, specifically the requirement to consider matters in a regional context, and does not commit to implement the results of the JPS.
- The SCMDP does not recognize a separation distance from Edmonton's planned and existing heavy industrial lands in the Clover Bar area.
- The SCMDP does not protect lands bordering Edmonton from fragmentation and potentially incompatible uses that will adversely affect urbanization.

Moreover, the City submitted that in commissioning the Radke Report and committing to introduce legislation establishing a Capital Region Board (CRB), the Province is moving in the direction of regional planning for the Edmonton area. However, the SCMDP proposes areas for significant urbanization adjacent to Edmonton. As the SCMDP may be 'grandfathered' and outside the regional planning process, it is detrimental in that it potentially deprives Edmonton of the benefits of the regional planning contemplated in the Radke Report.

## **WITNESSES**

Ms. Marlene Exner was the City's sole witness. Ms. Exner is a professionally accredited land use planner in Alberta as a member of the Canadian Institute of Planners and its Alberta affiliate. She has had approximately 20 years of experience as a municipal planning advisor with the Edmonton Regional Planning Commission, later known as the Metropolitan Regional Planning Commission. She was employed by the City of Edmonton for approximately 12 years as an inter-municipal planner and later as the senior inter-municipal planner. Since her retirement from that position, Ms. Exner has been doing contract work in planning. The MGB accepted Ms. Exner as an expert in the areas of municipal and inter-municipal planning.

Mr. Peter Vana was the County's principal witness. Mr. Vana is the manager of planning and development services for Strathcona County. He is a registered professional planner in the province of Alberta and has been a registered professional planner in British Columbia, Yukon and Saskatchewan. He has had regional planning experience working with the Yellowhead Planning Commission and also working with the planning commissions through his previous employment with the Town of Spruce Grove. He has been very involved with Strathcona's heavy industrial risk management frameworks.

The County also brought forward two other expert witnesses, Mr. Terry McDougall and Prof. Doug McCutcheon, to testify with respect to heavy industrial separation and industrial risk management. The credentials of those witnesses are listed in a later section of this Order.

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## **ORGANIZATION OF THIS ORDER**

In order to clearly identify the positions of the parties, including the affected landowners who made submissions, and to address the City's claim of detriment, this Order will be organized as follows.

### Executive Summary

Part A Impact of the Capital Regional Board Regulation and Transitional Framework on the MGB's Jurisdiction

Part B The General Test for Detriment

Part C Geographic Area Analysis

1. Transition Urban Reserve Policy Area
2. Rural/Urban Transition Policy Area
3. Agriculture Small Holdings Policy Area
4. Joint Planning Study Area
5. 1.5 Kilometre Industrial Separation Area
6. Urban Reserve Area

Part D Landowners' Submissions

Part E Lack of Consultation as Detriment

Part F Lack of Detail as Detriment

Part G Impact of the Capital Region Board Regulation, Transitional Framework and Radke Report on the Determination of Detriment

Part H Overall Summary and Conclusion

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## **EXECUTIVE SUMMARY**

The Municipal Government Board, in this decision, rejects the claim of detriment and dismisses the appeal by the City of Edmonton with respect to the passing of a Municipal Development Plan Bylaw 1-2007 by Strathcona County.

Section 690 of the Act permits an adjacent municipality to file an appeal with the MGB if, in their opinion, a municipal development plan adopted by an adjacent municipality has or may have a detrimental impact on it. Strathcona County (County) adopted a municipal development plan (SCMDP) on May 29, 2007. The City of Edmonton (City) filed an inter-municipal dispute with the Municipal Government Board within the time requirements required by the section 690 of the Act.

The MGB rejects the argument of the City that the new Capital Region Board Regulation (Alta Reg. 49/2008) and the recently released the “Radke Report” expanded the determination of detriment and permitted the MGB to refer the issue of detriment of the SCMDP to the Capital Regional Board (CRB). The Regulation applies prospectively. There is no provision in section 690 of the Act that directs the MGB to refer the inter-municipal dispute to another board.

The Radke Report and the Regulation address broader considerations of regional planning, governance and implementation. The City’s claims of detriment focused on specific policies or lack of policies in the SCMDP.

One of the primary claims of detriment by the City is that the SCMDP lacked detail on land uses, density and phasing of development. The MGB concludes that the proposed land uses in the geographic areas challenged by the City are sufficiently clear and provided for the appropriate level of detail for a planning document of this nature. The policies in the SCMDP direct land use, development and infrastructure coordination. In addition, the SCMDP contains policies which direct further planning processes, growth management strategies and subsequent plans that will provide increasing levels of detail and certainty over time.

The policies in the SCMDP, which address consultation with the City, include involvement of the City in a Joint Planning Study (JPS), participation in the growth management strategies for urban growth areas in the County, referrals of plans to the adjacent municipalities and a host of other consultative processes related to land use, provision of infrastructure and other inter-municipal initiatives. The MGB does not find these processes sufficiently deficient to cause detriment nor does it find the request to specifically include reference to the City of Edmonton substantive enough to order a change to the SCMDP.

The SCMDP designates an Urban Reserve policy overlay onto the Agriculture Large Holdings Area north of Highway 16 and West of Highway 21 approximately two miles east of the City boundaries. The MGB finds the argument and evidence of the City insufficient and very

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generalized with respect to detriment arising from the designation of an Urban Reserve Area, the expansion area for the Sherwood Park Urban Service Area. The County confirmed that before an Urban Reserve Area can be changed to an Urban Service Area an amendment would be required to the SCMDP. Prior to amendment, this area would be subject to a growth management strategy which would involve a broad based community consultative process which would include the City as a stakeholder.

The SCMDP establishes a Transition Urban Reserve Policy Area as an overlay on the Agriculture Large Holdings Policy Area adjacent to the City and immediately north of the Sherwood Park Urban Service Area. The MGB observes that a change from the Agriculture – Large Holdings Policy Area to the Transition Urban Reserve Policy Area would require a plan amendment as is the case with Urban Reserve Policy Area. The MGB does not find this policy designation unclear as claimed by the City. The policies related to the Transition Urban Reserve Policy area in the SCMDP direct future uses of a predominantly non-residential nature as a transition from industrial uses to the south west to anticipated long term residential uses to the east. The MGB concludes that the claim of lack of detail was unfounded. As well, the claim of deficient consultation policies was unfounded as the City would be involved in responding to any plan amendments to this area as well as the development of future plans adjacent to the boundaries. It would also be directly involved in the joint planning study, which encompasses part of this area.

The SCMDP establishes a Rural/Urban Transition Policy area south of the acreage development on the south side of Sherwood Park, on the eastern boundary of the City. Again, the City's claim of uncertainty and lack of detail with respect to the Rural/Urban Transition Policy Area is rejected. A review of the policies describes the nature of the proposed residential uses that will be interspersed among environmentally sensitive areas. This area is also subject to a growth management strategy and part of the area is subject to the joint planning study between the County and the City which will provide various opportunities for input by the City.

The City also claimed detriment regarding the Agriculture Small Holdings Area located southeast of the City boundaries. The City claims detriment due to the premature fragmentation of lands because of the SCMDP policy to allow agriculture small holdings in the area. The City could not identify any contemplated plans or direction of long term growth in an easterly or south easterly direction to justify the claim of detriment. The MGB finds the detriment referred to by the City to be too remote.

A further claim of detriment arose regarding the adequacy of the SCMDP policies dealing with separation distances between heavy industries and other incompatible uses. The area of primary controversy was the area in the County adjacent to the heavy industrial area adjacent to Clover Bar in the City. The City acknowledged in closing submissions that it would be unlikely that major heavy industries would locate on the balance of the Clover Bar lands. In fact, evidence

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showed that lands being planned for development in the near future were not of the nature that off-site risk impacts would occur.

County experts illustrated that non-industrial developments in Edmonton located adjacent to Clover Bar have constrained development in the Clover Bar area. The City's claim that the SCMDP incorporated inadequate setback policies from the Clover Bar area was countered by the County's experts who provided credible evidence on the future development of the Clover Bar area. The City provided no heavy industrial and risk management experts to contradict the County experts; thus, the MGB gives considerable weight to the evidence of the County's experts. The SCMDP contains a number of policies to address heavy industrial separation through the use of the Major Industrial Accident Council of Canada (MIACC) separation and risk guidelines and other measures. As a result, the MGB finds no detriment.

The SCMDP recognizes a 1.5 kilometre area strip on either side of the Edmonton/Strathcona boundary as a Joint Planning Study Area. The MGB finds the Joint Planning Study provides the City with direct involvement in planning the area immediately adjacent to the fringe of the City. There was no evidence to support a conclusion that the development approvals in the area were to be frozen and insufficient evidence to suggest that the JPS recommendations would not be given due consideration. More importantly, the joint planning study area provides the City with very direct input. The MGB views the JPS as a positive initiative which meets the inter-municipal co-operation directives in the Provincial Land Use Policies.

Overall, the evidence of the City was not sufficiently convincing that detriment was created to the degree sufficient to cause the MGB to intervene in the adoption of the SCMDP. As stated in previous MGB decisions "the meaning of detriment must be determined, then weighed in the balance of municipal autonomy and individual rights." "If the Board is to exercise its power to reach into municipal bylaws and perform what amounts to legislative surgery by amending or repealing parts of them, it must be satisfied that the harm to be forestalled by so invasive a remedy is both reasonable likely to occur, and to have a significant impact on the appellant municipality should it occur."

The MGB does not find that the City established, with the evidence it led, that the SCMDP failed to meet the requirements of the Act to address the coordination of land use, future development and infrastructure and, more importantly, that an intervention into a local bylaw should be directed.

**PART A. IMPACT OF CAPITAL REGIONAL BOARD REGULATION AND TRANSITIONAL FRAMEWORK ON MGB'S JURISDICTION**

The City's inter-municipal dispute was filed with the MGB on June 28, 2007. During the hearing process the City referred the MGB to a provincial study being prepared to address regional planning concerns in the Capital Region. This study, entitled "Working Together" (also known as the Radke Report) was completed on December 11, 2007 and was filed with the MGB on December 12, 2007.

On April 15, 2008, the Alberta government passed the *Capital Region Board Regulation AR 49/2008* (Regulation) and Schedule 'A' to Ministerial Order No. L:005/08, the *Transitional Regional Evaluation Framework* (Framework). The City and the County made reference to these in their final submissions to the MGB. In addition, on April 22, 2008, the MGB requested the parties to make written submissions regarding the effect of the Regulation and Framework on the proceedings before the MGB. As a result of these submissions the MGB determined that it needed to address the following issues.

**Issues**

1. Does the *Capital Region Board Regulation, AR 49/08* (the Regulation) or the Transitional Regional Evaluation Framework (the Framework) affect the MGB's jurisdiction?
2. Does the effective date of the SCMDP impact the jurisdiction of the MGB?
3. Can the MGB refer the appealed provisions of the SCMDP to the Capital Region Board?

**Summary of the City's Position**

The City argued that the appealed provisions will have to be referred to the CRB in any case, whatever the decision of the MGB. Section 19 of Part 5 of the Regulation states that Part 5 applies to statutory plans only after the Framework is established by the Minister. As the Framework has been established, Part 5 applies to the SCMDP. Section 22 of Part 5 states that "all statutory plans of a participating municipality that are in effect on the coming into force of the Regulation remain in full force and effect." Under section 690(4) of the Act, when the MGB receives a notice of appeal and statutory declaration, the provision that is the subject of the appeal is "deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the Board receives the notice of appeal and statutory declaration under subsection (1)(a) until the date it makes a decision under subsection (5)". This result flows from the act of filing the appeal and is not contingent on the MGB's decision. The appealed provisions do not meet the test in section 22 of Part 5 so they cannot "remain in full force and effect".

Section 21 of the Regulation sets out criteria for establishing which plans must be evaluated by the Capital Region Board. All of the appealed provisions meet the criteria for evaluation. Because subsection (6) states that section 21 applies only to statutory plans to be adopted by a



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participating municipality after the establishment of the Framework, the SCMDP as a whole is not subject to section 21. The appealed provisions are subject to section 21, however, because section 22 cannot apply to permit them to remain “in full force and effect”. For this reason, the appealed sections must be referred to the CRB even if the MGB finds no detriment. If the MGB finds detriment and orders the provisions repealed, any provisions that replace them must be referred to the Capital Region Board under section 21. If the MGB finds detriment and orders the appealed provisions amended, the amendments must be referred to the CRB under section 21.

As demonstrated above, the appealed provisions must be referred to the Capital Region Board in every possible case. Under the circumstances, the MGB has the option of simply referring the provisions to the Capital Region Board. This would not be a re-hearing of the MGB’s decision but a review by the CRB as mandated by the Framework.

Referring the appealed provisions to the CRB, or requiring them to be referred to the CRB, would be the most appropriate approach for the MGB to take. It would be consistent with the wording of both the Regulation and Framework, and with the express and implied intentions of the Province. The Framework uses strong language to show that there is a pressing need for review and approval of statutory plans or amendments that have a regional impact. If given the “fair, large and liberal construction and interpretation” required under section 10 of the Interpretation Act, RSA 2000, ch. I-8, the legislation shows the intention of the Province that statutory plans not now in effect should be reviewed by the CRB. The current situation is an opportunity to allow the CRB to fulfill its mandate and implement the Province’s intentions.

The MGB’s jurisdiction under section 690 of the Act is quite broad. The MGB can order the offending provisions repealed, or it can order them amended, with or without instructions to the County. Additionally, under the circumstances it would be within the MGB’s jurisdiction to refer the provisions to the CRB for review.

### **Summary of the County’s Position**

The County did not dispute that if the MGB finds detriment and orders the provisions repealed, that any new provisions that meet the criteria for evaluation must be referred to the CRB by Strathcona County under section 21. That is because they would be amendments to the SCMDP “to be adopted by a participating municipality after the establishment of the Framework”. Neither did the County dispute that if the MGB finds detriment and orders that the provisions be amended, the amendments must be referred to the CRB by Strathcona County under section 21, again because they would be amendments to the SCMDP “to be adopted ... after the establishment of the Framework”. However, the County disagreed that the provisions must be referred to the CRB even if the MGB finds no detriment.

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Section 22 does not provide authority to the CRB to review statutory plans. It says that all statutory plans that are in effect will remain in effect. It does not say that statutory plans not in effect must be referred to the CRB. Only section 21 gives the CRB authority to review statutory plans and amendments. Section 21 establishes two tests for determining when statutory plans must be referred to the CRB. Firstly, they must be “statutory plans to be adopted by a participating municipality”. Secondly, they must “meet the criteria set out in the Framework”. In the case of Strathcona’s MDP, if no detriment is found the first test will not be met. The only action the MGB may take if no detriment is found is to dismiss the appeal under s. 690(5)(a) of the Act. At that point, the temporary suspension of the appealed provisions will end and the MDP will be as it was prior to the appeal being launched. Strathcona’s MDP was adopted on May 29, 2007. There will be no need for Strathcona County Council to pass and adopt the appealed provisions a second time.

As it stands, the CRB has no jurisdiction over Strathcona’s MDP, which has already been adopted. The CRB will only obtain jurisdiction over the SCMDP if Strathcona amends it and not otherwise. More importantly, the MGB’s jurisdiction is narrow. The MGB must “decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal”. Having done so, the MGB may: “(a) dismiss the appeal if it finds the provision is not detrimental or (b) order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental”. The MGB has no jurisdiction to determine broader regional concerns or to refer a matter to a regional board, either before or after a finding of detriment. What the City has asked the MGB to do is to exceed its jurisdiction and contravene the transitional provisions.

The transitional provisions clearly indicate that the Regulation and Framework are to have a prospective effect, not a retroactive effect. They will apply to future statutory plans and amendments adopted after April 15, 2008.

### **Findings**

1. The Regulation and the Framework do not affect the MGB’s jurisdiction.
2. In order for the MGB to carry out its mandate under section 690 of the Act, it is not necessary for the MGB to determine the effective date of the disputed Strathcona Bylaw.
3. The MGB lacks authority to refer the appealed provisions to the CRB, with or without a finding of detriment.

### **Reasons**

Neither party directly argued that the Capital Region Board Regulation or the Framework operated to deprive the MGB of its jurisdiction under section 690 of the Act. However, the City did argue that any decision of the MGB is empowered to make would result in a review of the decision and the appealed provisions by the CRB, which raises questions surrounding the MGB’s

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jurisdiction. For that reason, the MGB found it appropriate to re-examine the question of jurisdiction in light of the Regulation and the Framework.

The MGB's authority to hear this appeal originates in section 690(5) of the Act which states that if the MGB "receives a notice of appeal and statutory declaration" under subsection 1(a), it "must decide whether the provision of the statutory plan or amendment ... is detrimental to the municipality that made the appeal". Having done so, the MGB may "dismiss the appeal if it decides that the provision is not detrimental" or "order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental".

Having received the notice of appeal and statutory declaration within the timeframe set out in section 690(1) of the Act, it is incumbent upon the MGB to decide whether the appealed provisions are detrimental to Edmonton.

The MGB thoroughly considered the parties' submissions, the Regulation and the Framework, and determined that nothing in either the Regulation or Framework detracts from the MGB's jurisdiction. The MGB is mentioned in section 25 of Part 5 of the Regulation, which states that the Minister may make an order directing the MGB to defer its consideration of a matter.

However, as stipulated by subsection 25(3), section 25 only applies to appeals or applications commenced after the coming into force of the Regulation, which is not the case here. Clearly, the intention of the Legislature was that matters currently before the MGB should continue to their conclusions as contemplated by the Act. There is no mention of matters before the MGB in the Framework. Hence, the Regulation and Framework do not detract from the MGB's jurisdiction in this matter.

Upon close examination of the legislation, the MGB has determined that its jurisdiction is not augmented, either explicitly or implicitly, by either the Regulation or the Framework. Nothing in the Act authorizes the MGB to refer a matter to another board. Section 690(5) of the Act only authorizes the MGB to:

- (a) *dismiss the appeal if it decides that the provision is not detrimental, or*
- (b) *order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.*

On coming to the conclusion that there is no detriment, the only option before the MGB is to dismiss the appeal. On finding detriment, the only options are to order the detrimental provisions repealed or amended. Thus the request of the City that the MGB refer the matter to the CRB must fail. The Act does not permit the MGB to defer its discretion under section 690(5) to another body. Further, there is no suggestion in the legislation that the MGB will be able to refer even those appeals or applications commenced after the coming into force of the Regulation.

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Rather, it will be for the Minister to direct the MGB to defer its consideration of matters. Even if the MGB is wrong on its interpretation of the Regulation and section 25 of the Regulation does apply in these circumstances, the Minister has not exercised his authority under section 25 to direct the MGB to defer its consideration.

The City made extensive argument about the effective date of the disputed Bylaw in support of its position that referral to the CRB is the proper way for the MGB to deal with this matter. The County disagreed, arguing that the legislation allows no referral to the CRB in the absence of a finding of detriment, regardless of the effective date. Again, the MGB finds the effective date of the Bylaw irrelevant to its jurisdiction. Section 690(1), that is, the filing of a notice of appeal and statutory declaration with the provision of a copy to the adjacent municipality within 30 days of the passing of the bylaw, sets the parameters for the MGB's acceptance of jurisdiction. The facts related to these specific criteria in this case have already been determined to give the MGB jurisdiction.

It may be that the appealed provisions must be referred to the CRB after the MGB completes its process. The parties disagree on the circumstances under which this would be required. However, it is neither necessary nor appropriate for that decision to be made by the MGB.

## **PART B THE GENERAL TEST FOR DETRIMENT**

In order for the MGB to decide the disputed matters before it between the City and the County, the MGB must revisit the meaning of detriment and the tests that determine whether detriment exists.

The MGB's authority arises out of section 690 of the Act. This authority is limited to determining if detriment arises to one municipality from the action of an adjacent municipality in adopting a statutory planning bylaw. Unlike its predecessor board, the Alberta Planning Board, the MGB's authority is limited to the determination of detriment. The previous board had a much larger planning mandate. Thus, the MGB examines the meaning of detriment within this limited, adjudicative context.

The meaning of detriment in this context was extensively examined in MGB 77/98 (*Morinville v. Sturgeon*). In that order, detriment was found to mean "damage, injury or harm" of a kind that portends serious, substantive results. This could be directly physical, such as an authorized land use, which could lead to nuisance or danger to other municipalities by its operation. However, it could also be less tangible and more remote, such as haphazard development or fragmentation of land on the borders of a municipality making future redevelopment at urban densities more costly and difficult.

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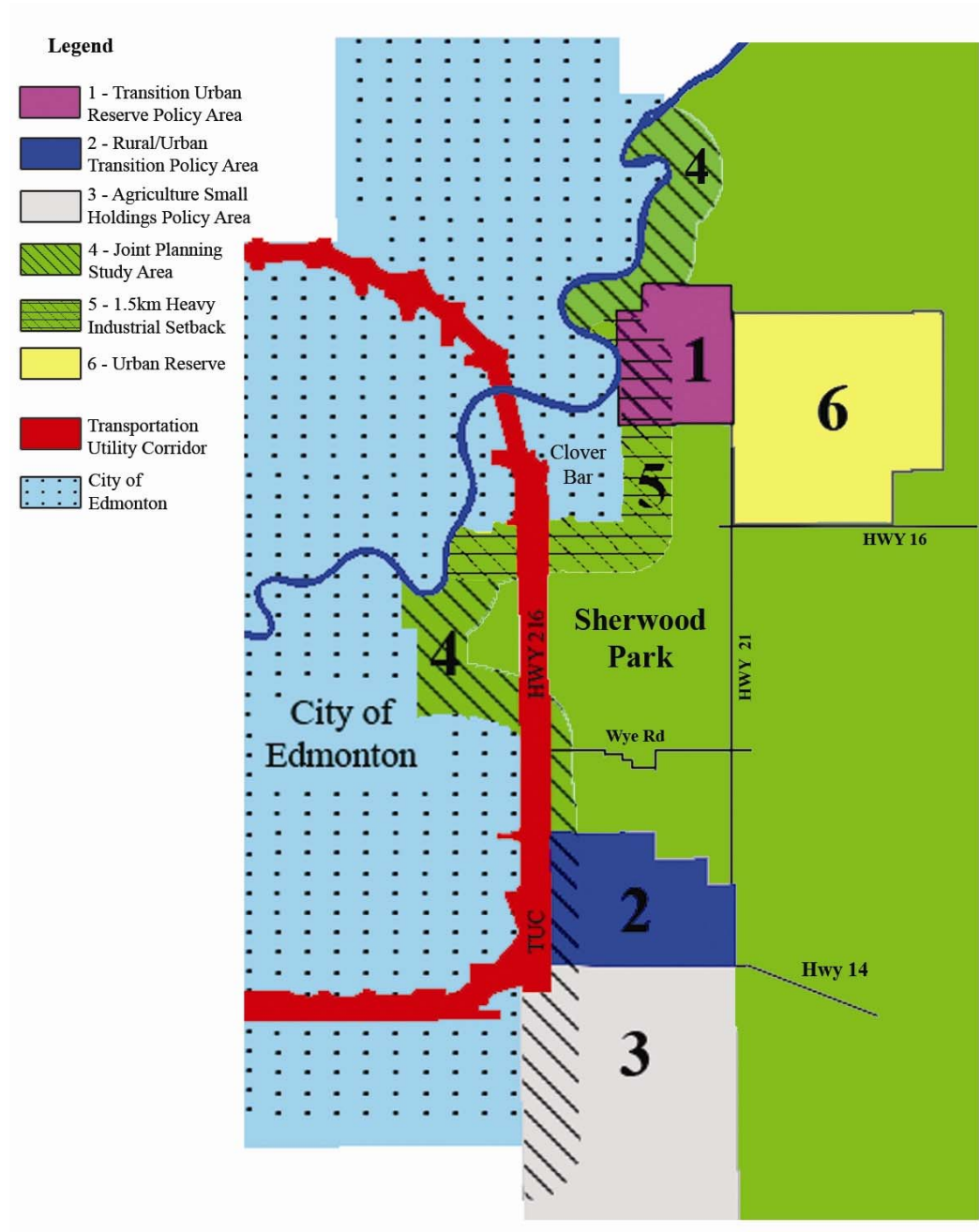
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MGB 77/98 also suggested that detriment may arise where planning actions in one municipality may affect a neighbouring municipality if there is uncertainty as to the impact upon the neighbour. This uncertainty may hamper the neighbouring municipality's ability to plan for its own future growth. However, MGB 77/98 cautioned that detriment "must be determined in the context of probability, causality and effect, then weighed in the balance of municipal autonomy and individual rights".

Both parties in this case have cited MGB 77/98 as the landmark decision of the MGB in determining the general elements of detriment as intended under section 690 of the Act. Recognizing that the MGB is not bound by its previous decisions, this panel of the MGB also acknowledges that MGB 77/98 identified several parameters to be considered in evaluating a claim of detriment that have proven useful in subsequent appeals. Those parameters are of assistance to the MGB in the present situation, within the context of the evidentiary findings and the issues raised by the City.

**PART C GEOGRAPHIC AREA ANALYSIS**

The City's appeal of the County MDP relates to six specific areas in the County as illustrated on the map below.



**Area 1 - Transition Urban Reserve Policy Area**

This is an area west of Highway 21 to the County Boundary and north from Township Road #536 to Township Road #542, comprising approximately four and three quarter (4 ¾) square miles. It is shown on the map above as Area #1. Approximately one third (1/3) of this area is also in the JPS Area (dealt with separately, below). Present use of the area is primarily large agricultural holdings.

The area is defined in the SCMDP:

Transitional Urban Reserve Policy Area: an area that is intended to provide a transition between both heavy industrial activities and residential uses in the City of Edmonton and residential use on those lands identified as Urban Reserve in Strathcona County. Development in this area must take into account site constraints identified in Section 17.17

The key policies that impact this area are:

**Chapter 4 – Sustainability and Growth Management**

- 4.17 Direct residential and commercial growth away from heavy industrial areas using the County’s adopted risk based management approach and modeling;
- 4.19 Continue to work with landowners within the Transition Urban Reserve Policy Area, to complete an area concept plan prior to permitting any development in the area. Until the area concept plan is adopted, apply the policies for Agriculture-Large Holdings within the policy area boundaries;
- 4.20 Ensure that any potential growth area, whether urban or rural, incorporates the following components into their plan:
  - a) Consideration of future interchange requirements;
  - b) Appropriate setbacks and transitions from industry and pipeline corridors within the plan area as well as adjacent lands;
  - c) Transportation networks and efficiencies including the impacts on existing communities such as Sherwood Park;
  - d) Efficient water, sewer, stormwater and shallow utility infrastructure;
  - e) Environmental and farmland conservation;
  - f) Transit orientated compact development;
  - g) Timing and sequence of development;
  - h) Diversity of uses where possible, including employment, housing, community services, social needs and open spaces;
  - i) Resource and energy efficiencies of buildings, infrastructure, waste management; and
  - j) Community and urban design.

- 4.21 Initiate a community consultative process to develop a Growth Management Strategy for both the Urban Reserve Area and the Rural/Urban Transition Policy areas, as identified in the Plan, and incorporate analysis on:
- a) Opportunities and constraints;
  - b) Water, sewer, stormwater and other infrastructure costs;
  - c) Transportation networks, including the impacts on existing communities such as Sherwood Park;
  - d) Environmental and farmland conservation;
  - e) Transit, municipal service efficiencies and financial impact;
  - f) Timing and sequence of build out as it relates to servicing, financial and infrastructure impacts;
  - g) Regional context with respect to infrastructure, land use, employment, transportation efficiencies and impacts;
  - h) Scenarios on various options to accommodate a diversity of uses - employment, housing, community services, social needs and open spaces within each area; and
  - i) Access to existing commercial development in Strathcona County in the short term.

#### Chapter 17 – Implementation

- 17.17 The City of Edmonton and Strathcona County share a 40 km (25 mile) boundary along their respective east/west edges. The two communities will complete a Joint Planning Study to address the immediate and long terms land use patterns along this edge, from the perspectives of safety and compatibility of uses which will benefit the region. The Study will include a vision for future land use which includes reference to:
- a) new development, redevelopment and intensification relative to industrial risk management and mitigation;
  - b) the accommodation of existing long range plans;
  - c) the creation of a complimentary industrial cluster which will benefit both communities; and
  - d) the acknowledgement of the sustainability principles and themes in all land use planning decisions on the mutual boundary.

The first portion of the Study to be undertaken will be the Yellowhead Corridor... .

- 17.18 Those lands situated north of the existing boundary of Sherwood Park and west of Highway 21 will be the subject of an area concept plan, to be prepared with the participation of the City of Edmonton. The Plan area will accommodate predominantly non-residential land uses and therefore, will acknowledge development constraints relative to: the existing pipeline corridor; heavy industrial separation of uses; future transportation upgrades to the highway network and the construction of a new bridge crossing; environmental integrity; proximity to urban reserve uses east of Highway 21;



and residential uses existing in the City of Edmonton, across the North Saskatchewan River. (MGB Emphasis)

Page 17.5 of the SCMDP contains a referral chart, reproduced in part below:

Notification and Referrals

Type of Notification	Referral Directed to:
1. Statutory Plans & Bylaws	
Municipal Development Plan and all amendments	All adjacent municipalities and federal/provincial government and appropriate resource agencies within 1.5 km of the plan area.
Area concept plans/area structure plans	All adjacent municipalities and federal/provincial government and appropriate resource agencies within 1.5 km of the plan area

The western portion of this area is also subject to the JPS Area Policies.

**City’s Position and Requested Remedies - Area 1**

Claimed Detriment

In claiming detriment with respect to the Transitional Urban Reserve Area, the City alleged three major deficiencies.

1. The policies for this area are vague and uncertain. For example, Policy 4.19 directs continued work with landowners in the area to complete an area concept plan prior to permitting any development. It is uncertain whether the County intends to take up where it left off, or entertain an entirely new planning concept for the area. Stating that future land uses will be predominantly non-residential does not adequately identify the intended future uses. Non-residential uses could include commercial and institutional uses where large numbers of people assemble. These are of great concern to Edmonton due to their incompatibility with Edmonton’s heavy industrial area in Clover Bar.
2. The SCMDP does not address relevant planning concerns with respect to this area relating to the coordination of land use or infrastructure with adjacent municipalities as required by section 632(3)(iii) of the Act. In particular, Policy 4.20 identifies 10 components that are required in plans for “potential growth areas, whether urban or rural”, but none of the 10 components reference inter-municipal impacts or the coordination of land use or infrastructure with adjacent municipalities.

3. The plan contains no detail as to what degree of involvement Edmonton will have in the preparation of the area concept plan referred to in Policy 4.19.

### Remedies

Edmonton requested that Strathcona County be compelled to:

- Include the Transition Urban Reserve in one overall growth management strategy for the County as recommended in other major areas under appeal;
- Identify the intended future land uses, and state general policies or principles according to which those land uses within the Transition Reserve Policy will be managed;
- Amend Policy 4.20 (c) to read as follows: Transportation networks and efficiencies including the impacts on existing communities such as Sherwood Park and Edmonton;
- Amend Policy 4.20 by adding the following: k) assessment of the inter-municipal impacts of the plan proposals;
- Amend Policy 4.22 to read as follows: Ensure that the Area Concept Plan for the Transition Urban Reserve Policy Area addresses the need to provide safe and efficient transitions between the City of Edmonton's heavy industry and the Urban Reserve;
- Provide in policy that the participation of Edmonton in the area concept plan will include representation on a steering committee that directs the plan preparation; and
- Amend Policy 17.17 to restate exactly the Vision for Land Use negotiated in the Terms of Reference for the Joint Planning Study.

### **Summary of the County's Position – Area 1**

The County disagreed that the policies for this area are vague and uncertain. Policy 17.18 expressly states that an area concept plan will be prepared with Edmonton's participation, will accommodate predominantly non-residential land uses, and will acknowledge transportation upgrades; environmental integrity; development constraints including heavy industrial separation of uses, and Edmonton's residential uses across the North Saskatchewan River.

With respect to section 632 of the Act, the County argued that an MDP is a "broad brush" planning document and must be read in light of the planning framework in place and contemplated in the future. Strathcona's planning framework contemplates four layers of planning documents in urban areas: the SCMDP, an Area Concept Plan (ACP), an Area Structure Plan (ASP), and the Land Use Bylaw (LUB). The SCMDP, by its very nature, will only contain policy guidelines in relation to specific policy areas; further delineation is provided in both the ACP and the ASP. In future development areas, (such as the Transition Urban Reserve Policy Area), the underlying use assigned is agricultural; this affords an interim use that is consistent with the historical use. Further, the framework contemplates that redistrictings (that is, amendments to the Land Use Bylaw to allow uses other than agricultural) and resulting development and subdivision applications must be preceded by both an ACP and an ASP.

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Establishing a holding area, with requirements for further planning components to be addressed through a secondary plan is an accepted planning practice and in keeping with section 632(3)(iii) of the Act.

The County drew the MGB's attention to the decision in the *Morinville v. Sturgeon* inter-municipal dispute (MGB 077/98) in which Edmonton and St. Albert alleged that detriment was caused by the lack of certainty in relation to country residential development in the fringe area, as Sturgeon's practice was to approve country residential subdivisions on agricultural lands without redistrictings. The MGB ordered Sturgeon to pass ASPs prior to approving country residential subdivisions. Accordingly, the MGB recognized that secondary planning documents are an appropriate tool to provide further details respecting future use, density and infrastructure. Strathcona's 2007 MDP has followed that approach.

With respect to the City's argument regarding lack of participation by Edmonton in future planning for this area, the County reiterated that Edmonton will continue to be involved in the more detailed planning processes through participation in the secondary plans (the Area Concept Plan and the Area Structure Plans) as well as the JPS. The 2007 SCMDP contains a more comprehensive process respecting future planning for this area than did the 1998 MDP, as well as a more comprehensive framework for Edmonton's participation.

### **Issues – Area 1**

The positions of the parties with respect to Area 1 require the MGB to resolve the following issues.

1. Does detriment to Edmonton arise as a result of a lack of detail in the policies and description of future land uses applicable to Area 1?
2. Do the policies for Area 1 sufficiently address the matters contemplated in section 632(3)(iii) of the Act; coordination of land use, future growth and infrastructure?
3. Does detriment to Edmonton arise as a result of insufficient consultation provisions in the SCMDP?

Any of the detailed issues related to heavy industrial separation are dealt with in detail in Area 5.

### **Findings – Area 1**

1. The level of detail describing the future land uses for Area 1 is sufficient. No detriment arises.
2. The coordination of land use, future growth and infrastructure is sufficiently addressed for Area 1. No detriment arises.
3. There are several provisions for the involvement of the City in the evolution of the various planning documents for Area 1. No detriment arises.

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### **Reasons – Area 1**

Due to the fact that the issue of heavy industrial separation overlaps geographically with Area 5, these reasons leave the discussion of issues related to the heavy industrial area to the analysis of Area 5.

In examining the claim of detriment, the MGB analyzed not only the claim of detriment but also the remedies requested by the City in order to better understand the claims made.

In order to understand the level of detail proposed in the plan, the MGB was cognizant of the need to read the plan policies within the context of the overlay zones and policies that apply in the SCMDP.

The MGB was not convinced by the argument and evidence of the City that the land use policies for Area 1 are vague, ambiguous or lacking in sufficient detail. Policy 4.19 states that until the area concept plan is adopted, the policies for the Agriculture – Large holdings will be applied within the policy area boundaries. The uses in this policy area are focused on large agricultural holdings. The detail is clear.

Policy 4.19 confirms that additional planning is required in the form of an area concept plan (ACP) before any development in the area is contemplated. The MGB accepts the argument of the County on this point. The Transition Urban Policy Reserve Area under the plan is established as a “holding area”. Further current uses are restricted to agricultural with no other development allowed prior to the adoption of the West of 21 ACP (Area 1). The ACP is a mandatory condition precedent to the determination of future land uses. There was no argument by the City that the Agriculture – Large Holdings policy area was detrimental to the City.

The MGB is also convinced by the County that the parameters for a municipal development plan outlined in section 632(3)(iii) of the Act are adequately covered by Policy 4.20 of the SCMDP. Policy 4.20 is very comprehensive, and embodies anything that could be envisioned by the reference to the coordination of future land uses, future growth patterns and infrastructure in the Act. Policy 4.20 applies to all growth areas and the MGB accepts the argument of the County that it would apply to Area 1.

The MGB appreciates the City’s anxiety in understanding the end vision for the area. However, in reading the overall scheme of the SCMDP and the policies that apply to Area 1, it is apparent that the current plan does not yet describe that end use vision. The policies for Area 1 are orientated to an area that is “in transition”; the plans for the area are still to be completed. The MGB accepts that Policy 17.18 directs this area to eventual non-residential uses and that these uses are subject to the policy directives further defined in Policy 17.18, which include a variety

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of constraint considerations including heavy industrial separation of uses, transportation upgrades and new bridge crossings. All of these address the concerns of the City.

It is the MGB's understanding that none of these actions can take place without statutory plan preparations and in fact an amendment to the SCMDP. In coming to this conclusion, the MGB draws on the testimony of Mr. Vana related to Area 6 (Transcript, pp. 403-405) where he stated that in order to change an area from the Agriculture - Large Holdings designation in the SCMDP to a different designation, an MDP amendment would be required. The testimony of Mr. McDougall (Transcript, p. 636, lines 11-16) also supports this interpretation. Area 1 is similarly designated Agriculture - Large Holdings policy area, so a similar amendment would be expected for Area 1.

With respect to the argument of the City that the consultation process for Area 1 is inadequate and therefore detrimental, the MGB cannot agree in light of the mandatory notification policies contained in the "Notification and Referral" chart contained on page 17.5 of the SCMDP. These policies require mandatory referral of any proposed MDP amendment, ACP or ASP to adjacent municipalities. The City of Edmonton is adjacent to this area. Also, any recommendations from the Joint Planning Study will in the view of the MGB be provided as input into the plans for this area. Further, Policy 17.17 in the MDP makes it clear that the City will be involved in the Joint Planning Study for at least part of Area 1. More specifically, the MGB notes that Policy 17.18 directs the participation of the City in preparation of an area concept plan. In any case, the MGB is satisfied that Policy 4.20 will apply to the subject area and all the similar relevant planning considerations will be examined.

Having analyzed both the claims of detriment and the proposed remedies, the MGB cannot find any detriment to the City regarding any of the policies that apply to Area 1. The City offered insufficient evidence to establish detriment and, as evidenced by the nature of some of the remedies pursued, the claims lacked sufficient substance for the MGB to direct an amendment to the SCMDP.

### **Area 2 - Rural/Urban Transition Policy Area**

This is an area abutting the County boundary with Edmonton and extending approximately three and one-half (3 ½) miles east. The area is bounded by County country residential development to the north at approximately Township Road 628 (Whitemud Drive) and extends approximately three miles south to the boundary of another disputed area (the Agriculture Small Holdings Policy Area) at Township Road 520 (Highway 14). It is bounded on the west by the Transportation and Utility Corridor (Highway 216/Anthony Henday Drive). The westernmost half-mile strip is also included in the JPS Area. The Rural/Urban Transition Policy Area contains 31 quarter sections of land and is noted on the map above as area #2. Most of Area 2 is in the Beaver Hills Moraine, which is considered an environmentally sensitive area.

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Present usage of these lands is a mix of country residential and agricultural. The SCMDP describes this area as a “holding” area for urban growth under this designation until a growth management strategy for the area is complete.

The Rural/Urban Transitional Policy Area is defined in the SCMDP:

**Rural/Urban Transition Policy Area:** an area that is intended to provide a transition from urban development within the City of Edmonton on Strathcona County’s west boundary, through to agricultural, rural residential and environmentally significant and sensitive land uses to the east in the Beaver Hills Moraine.

The area is subject to the following specific policies in the SCMDP. For brevity purposes, policy areas applicable to Area 1 which are also applicable to Area 2 are not repeated.

#### Chapter 4 – Sustainability and Growth Management

4.20 (see page 15 above)

4.21 (see page 16 above)

4.23 Ensure that the Growth Management Strategy for the Rural/Urban Transition Policy Area addresses the need to provide appropriate transitioning between urban development in the City of Edmonton and the less densely developed lands and/or environmentally sensitive lands within this policy area.

#### Chapter 5 - Residential

##### **Rural/Urban Transitional Policy Area**

Strathcona County will:

5.55 Encourage the development of community centres which will serve the needs of the residents in the terms of:

- a) Affordable and special needs housing; and
- b) The provision of a diversity of housing forms.

5.56 Ensure new residential developments within the Rural/Urban Transition Policy Area adhere to the following design-based principles:

- a) The ecology of the site must be considered. Lands identified as High and Medium Priority Environmental Management Areas must be left undisturbed wherever possible, but incorporated into the overall development. Wildlife corridors or

- connections between all Priority Environment Management Areas must be maintained wherever possible, through the use of conservation mechanisms;
- b) Development will be directed to lands that are determined to be of lesser environmental significance, such as those identified as Low Priority Environment Management Areas; and
  - c) The natural landscape and topography must be considered and incorporated into the overall design of the site.
- 5.57 Ensure the Growth Management Strategy will take into account appropriate transitioning of the built form, from rural to urban with regard to residential development; and
- 5.58 Once the Growth Management Strategy and servicing studies are completed and endorsed by Municipal Council, Strathcona County will accept new applications for area concept plans, area structure plans, rezoning or subdivisions within the boundaries of the policy area.

#### Chapter 6 – Commercial

Strathcona County will:

- 6.48 Ensure that the appropriate levels of commercial services are available to the residents within the Rural/Urban Transition Policy Area to meet, at minimum, their daily needs.

#### Chapter 14 – Agriculture

Strathcona County will:

- 14.20 Allow existing agricultural operations to continue within the Rural/Urban Transition Policy Area; and
- 14.21 Ensure that the Growth Management Strategy addresses potential conflicts with existing agricultural operations within the Rural/Urban Transition Policy Area.
- 14.25 Support the following criteria as required areas for consideration when evaluating the appropriateness of a specific parcel for a confined feeding operation. The proposed confined feeding operation should be:
- a) Located 3.2 kilometres (2.0 miles) from the boundary of any:
    - i) City or Urban Service Area;
    - ii) Hamlet, town or village;
    - iii) Area already developed or that is designated for institutional uses such as schools, hospitals, commercial or multi-lot residential uses with more than 3

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- (three) residential lots per quarter section. Measurements are to be taken from property line to property line; and
- iv) Federal, provincial or municipal park or recreation area, and any other areas used or intended to be developed for recreational facilities.
- b) Located 1.0 kilometre (.62 miles) from High and Medium Priority Environment Management Areas;
- c) Located on soils that are not medium to fine textured and do not overlie either groundwater recharge or discharge areas; and
- d) Sited in accordance with Provincial Regulations. If the Province requires larger setback distances, that distance will apply.

### Chapter 17 – Implementation

17.17 (see page 16 above)

Area 2 is also significantly impacted by all the policies related to Environmental Management in Chapter 8 of the SCMDP.

### **Summary of City’s Position and Requested Remedies – Area 2**

The City argued that the policies in the SCMDP pertaining to this area are contradictory. One of Strathcona County’s sustainability and growth management objectives as set out in the SCMDP is to “initiate a Growth Management Strategy for both the Urban Reserve and the Rural/Urban Transition Policy Areas” that will, in the case of Area 2, “ensure that the strategy will acknowledge the inclusion of higher density, cluster development that will include mixed use residential components” and “direct new residential and commercial growth away from heavy industry”. “Higher density” is not defined, but logically would be greater than medium density which is defined as “multiple unit residential developments that range in density from 26 to 75 units per net hectare, including townhouse and fourplex developments at approximately 38 units per net hectare, and four storey “low rise” apartment complexes at approximately 75 units per hectare”.

Chapter 5 of the SCMDP is entitled “Residential Development”. Area 2 is specifically referenced in Policies 5.55 to 5.57. These policies provide for the encouragement of affordable and special needs housing, as well as a diversity of housing forms. In addition, lands in this area identified as High and Medium Priority Environment Management Areas must be left undisturbed wherever possible, with growth directed to lands of lesser environmental significance. However, Map 3 in the SCMDP shows that virtually all the land in Area 2 is classed as High or Medium PEMA. Policy 5.57 refers to “appropriate transitioning of the built form, from rural to urban...” but does not define “appropriate transition”. Finally, Commercial Policy 6.48 of the SCMDP ensures that appropriate levels of commercial services are available to residents within Area 2 to meet, at minimum, the daily needs of residents.



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As it currently stands, the SCMDP does not define future land use for this area, just as the term “Transition Area” is undefined. The task of a Municipal Development Plan is to set out the land use and servicing framework for the municipality, co-ordinated with adjacent municipalities. Here, the City of Edmonton has not been consulted nor given any notice of the pattern, timing, or density of development to expect on its immediate border, contrary to section 632(3)(iii) of the Act. Although the City of Edmonton will have influence in that part of Area 2 covered by the JPS, and will have input in the development of an area concept plan, there is no reference in the SCMDP to resolution of conflicts that might arise from these initiatives or the precedence of one above others.

This policy area may become either a sparsely developed protected environment, or a new urban area that is called a transition area, or something in between.

#### Detriment

The lack of certainty in the SCMDP as to the type, density and timing of development in Area 2 creates detriment to the City in that the City is left to guess the pattern, density and timing of development on its boundary until such time as a growth management study is complete and Area Structure Plans approved.

#### Remedies

The City requested that the MGB order Strathcona County to:

- Develop one overall growth management strategy for the County in close collaboration with the City of Edmonton that will clarify the growth patterns, land uses, anticipated impacts and requirements of the agreed strategy. The role of Area 2 in the context of other County growth areas is inconsistent and ambiguous, requiring clarification through a collaborative process and in the broader context of County and regional growth.
- Add a new policy to Chapter 4 that includes participation of the City on a steering committee tasked with directing the development of the Growth Management Strategy.”
- Clearly identify the intended urban form, the general allocation of land uses and general policies which will manage land uses within Area 2.
- Amend Policy 4.20(c) by adding the words “and Edmonton” after the words “Sherwood Park”.
- Amend Policy 4.20 by adding: (k) assessment of inter-municipal impacts of the plan proposals.
- Amend Policy 4.21(g) to read: inter-municipal and regional impacts with respect to infrastructure, land use, employment, and transportation efficiencies.

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- Add a new policy to Chapter 17 (Implementation) stating “The implementation of the Edmonton-Strathcona County Joint Planning Study may require amendments to this Municipal Development Plan and to other statutory plans or the land use bylaw.”

### **Summary of the County’s Position – Area 2**

The County explained that Area 2 is currently a mix of existing country residential and rural properties. The western edge is buffered from Edmonton by the half mile wide Transportation and Utility Corridor, and the Edmonton side has either been developed to a suburban standard or is under plan for suburban development. Immediately north of Area 2 is a country residential area with parcels ranging from one-third to five (1/3 to 5) acres. With the exception of the westernmost one mile strip, Area 2 is part of the Beaver Hills Moraine, an ecologically sensitive area.

Area 2 is described as a holding area and a transition area. It is truly a holding area in that the land uses specified in the previous MDP will continue, namely; agriculture and country residential, until a growth management strategy is developed. It is a transition area because it bridges the intense urban development to the west in Edmonton, and the sparsely developed rural and ecologically sensitive areas to the east and south.

The SCMDP sets out in detail the process to be followed before future development occurs in Area 2. Specifically, Strathcona County will initiate a community consultative process to develop a Growth Management Strategy for this area and Area 6, incorporating analysis of opportunities and constraints; water, sewer, stormwater and other infrastructure costs; transportation networks and their impacts on existing communities such as Sherwood Park; environmental and farmland conservation; transit, municipal service efficiencies and financial impact; timing and sequence of build-out; the regional context with respect to infrastructure, land use, employment, transportation efficiencies and impacts; options to accommodate a diversity of uses – employment, housing, community services, social needs and open spaces; and access to existing commercial development in Sherwood Park in the short term as set out in Policy 4.21.

Policies 5.55 to 5.58 outline the encouragement of affordable and special needs housing, and a diversity of housing forms taking into consideration site ecology, with development directed to lands determined to be of lesser environmental consideration. Wildlife corridors connecting Priority Environment Management Areas must be maintained wherever possible. Policy 5.58 states that “once the Growth Management Strategy and servicing studies are completed and endorsed by Municipal Council, Strathcona County will accept new applications for area concept plans, area structure plans, rezoning or subdivisions within the boundaries of this policy area.” Consequently, in the County’s view, Edmonton’s concerns about timing are answered. Development will only take place after further substantial analysis and planning. Until then, the existing current land uses of agriculture and country residential will remain.

With regard to Edmonton's concerns about participation in the planning process, the County pointed out that the westernmost half mile strip abutting the Transportation Utility Corridor in this area is included in the JPS Area. Policy 17.17 states the two communities will complete a Joint Planning Study to address the immediate and long term land use patterns along this edge, from the perspectives of safety and compatibility of uses which will benefit the region. In addition, Edmonton will have the opportunity for input as Area Concept Plans and Area Structure Plans are developed.

### **Issues – Area 2**

The issues raised by the City regarding this area primarily relate to the clarity of future land uses and the ability of the City to be effectively involved in future planning.

1. Does detriment to Edmonton arise as a result of ambiguous, undefined and unclear land uses and policies in the SCMDP for Area 2?
2. Does detriment arise to Edmonton from policies inadequately addressing the matters contemplated in section 632(3)(iii) of the Act; coordination of land use, future growth and infrastructure for Area 2?
3. Does detriment to Edmonton arise as a result of insufficient opportunities being provided by the SCMDP for consultation with Edmonton regarding future planning in Area 2?

### **Findings – Area 2**

1. The level of detail describing the future land uses for Area 2 is sufficient. No detriment arises.
2. The coordination of land use, future growth and infrastructure is sufficiently addressed. No detriment arises.
3. There are several provisions for the involvement of the City in the evolution of the various planning documents for Area 2. No detriment arises.

### **Reasons – Area 2**

The MGB finds clarity in the SCMDP definition for this policy area, as well as the specific policies that apply (4.20, 4.21, 4.23, 5.55 through 5.58, 6.48, 14.20, 14.21, and 17.17.) The pattern of development is residential, including affordable and special needs housing in a diversity of housing forms, with supporting commercial development to satisfy the day to day needs of the area, interspersed with protected environmental management areas. Oral evidence from Mr. Vana indicated the ultimate density should be in the range of 50-120 residential units per quarter (1/4) section. As the Beaver Hills Moraine covers a significant portion of this Area, and the environmental policies in the Plan will limit the overall density that will be achieved, the MGB finds these densities credible.

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Timing of development is subject to completion of the Growth Management Strategy and the development of subsequent, subservient Area Concept Plans and Area Structure Plans.

The City's claim for detriment was founded in the lack of clarity and details, having found that there is sufficient clarity and detail, the MGB cannot find any detriment. The City did not argue that the future uses or pattern of development anticipated for the area is detrimental; therefore, the MGB does not address that matter.

As well, the MGB was not convinced by the City that the consultation policies in the SCMDP for Area 2 were inadequate, resulting in detriment. The County clarified that the City, pursuant to policy 17.17, as well as a JPS agreement, is directly involved in the Joint Planning Study for the western part of Area 2.

The Notification and Referral chart on page 17.5 also confirms Edmonton's involvement in further plans for Area 2, and even prior to the development of these plans, Policy 4.23 directs that the Growth Management Study for the area will address "the need to provide appropriate transitioning between urban development in the City of Edmonton and the less densely developed lands and/or environmentally sensitive lands within this policy area." In the view of the MGB, this policy directive implies that consultation with the City regarding the Growth Management Plan will take place.

The MGB was convinced by the County that the consultative process referred to in Policy 4.21 would involve the City. Mr. Vana testified on behalf of the County (Transcript, pp. 403-404) and confirmed this point with respect to the growth management areas. He testified that "we work with the City of Edmonton in a collaborative manner." In direct questioning regarding whether or not Edmonton would be involved, Mr. Vana replied, "Yes, they will be there." He further testified that after the Growth Management Studies are complete, there will be preparation of Area Concept Plans which will involve the City as well as other stakeholders, as well as MDP amendments (Transcript, p. 458, line 26 – p. 459, line 5).

Thus, the MGB cannot conclude that there is a lack of consultation provisions in the SCMDP with respect to Area 2 causing detriment to the City. The request to order the inclusion of a specific reference to the City of Edmonton in Policy 4.20(c) is not substantive and cannot justify a requirement for the County to amend their MDP.

### **Area 3 - Agriculture Small Holdings Policy Area**

Marked as area #3 on the map above, this area is south of the Rural/Urban Transition Policy Area. It is bounded on the north by Highway 14, on the east by Highway 21 and on the west by the City of Edmonton. The westernmost one mile strip along Edmonton's boundary is part of the JPS Area (Area 4).

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The Agriculture Small Holdings Policy Area is defined as:

An area intended to serve as a transition from higher density development in the west to a lesser density of rural and agricultural uses in the east/southeast, towards Elk Island National Park and the Beaver Hills Moraine. This policy area also provides for conservation of priority environmental management areas, rural small holdings and intensive agricultural operations and associated residential uses.

The Policies that specifically apply to Area 3 are as follows:

Chapter 14 – Agriculture

**Agriculture – Small Holdings Policy Area**

Strathcona County will:

- 14.8 Promote agriculture, conserve High and Medium Priority Environment Management Areas and allow large rural residential land uses to be developed within the Agriculture – Small Holdings Policy Area where such uses are compatible with adjacent uses;
- 14.9 Acknowledge existing non-agricultural developments and consider new developments on a case by case basis on lands within the area south of Highway 16, East of Highway 21, North of the Canadian National rail line and West of Secondary Highway 824 subject to the parameters outlined within the Transition Area Master Plan 1995, as amended from time to time. However, the predominant use within the above mentioned area will continue to be agriculture, until such time as urban level services are expanded into this area, if at all possible;
- 14.10 Allow the subdivision of agricultural land for the development of small agricultural operations where such uses are compatible with adjacent uses; and
- 14.11 Refer to Chapter 5 - Residential Development for residential related policies applicable to the Agriculture – Small Holdings Policy Area.

Chapter 5 of the SCMDP contains specific policies related to residential development in Area 3. These are Policies 5.25, 5.26 and 5.27. In general, these policies define the conservation principles, the density standards and the environmental constraints that must be applied to any residential development in the area. Because of the length of these policies and for the sake of brevity of this decision, the exact wording of the policies is not reproduced.

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Area 3 is also subject to the environmental policies in Chapter 8 of the SCMDP, the Beaver Hills Moraine Policy Area (14.7 to 14.9) and the Confined Feeding Operations policies (14.24 to 14.28).

### **Summary of City's Position and Requested Remedies – Area 3**

The City explained that the 1998 County MDP designated much of this area as an Urban Growth Study Area underlain by an Agricultural Policy Area that allowed only limited subdivision of land for non-agricultural purposes. The City understood that it was to be consulted in the development of a study of feasibility of urban growth in this area. That consultation did not occur.

In the development of the 2007 MDP, this area was variously referred to as Colchester Growth Area, then Urban Growth Strategy Area #3, Potential Urban Growth Strategy Area – Colchester South of 14, Long Term Urban Growth Area and finally Agriculture Small Holdings.

The SCMDP defines this area as a transition from higher densities in the west to lower densities in the east and provides for environmental conservation, rural small holdings (which are not defined) and intensive agriculture, which may include dairy farms, poultry farms and feedlots and associated residential uses. The policy area allows fragmentation of eight to ten parcels per quarter section, depending on the status of environmental conservation areas.

#### Detriment

The City pointed out that, as the history of the nomenclature suggests, there has been significant uncertainty as to the concept of urban development in this area, either in the short term, the long term, or ever. Throughout the preparation of the SCMDP, the County neither identified nor addressed potential impacts on Edmonton of urban development in this area.

The City argued that, as this area was clearly considered suitable for urban development by the County previously, it should be retained in a state as unfragmented as possible should it be required for future urban expansion either under the jurisdiction of the County or the City. Under the SCMDP, subdivision of a quarter section into parcels not larger than 20 acres is allowed, and will preclude the possibility of future urbanization.

Further, the City argued that this Policy Area allows land uses that are inappropriate in proximity to the existing urban boundary of Edmonton. These incompatible land uses include dairy farms, poultry farms and feedlots, which would also preclude new urban development in the area if they were allowed in advance of urban development.

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## Remedies

The City requested that the County be required to:

- Develop in close collaboration with the City of Edmonton one overall growth management strategy for the County that will clarify the growth patterns, land uses and anticipated impacts and requirements of the agreed strategy. The MDP identifies an urban growth area for the next 100 years. Adopting that time scale, a more visionary approach to this area is warranted, best explored in a collaborative process in a broader context of the County and regional growth.
- Until a County Growth Management Study is complete, eliminate all possibility of new land uses which would be incompatible with urban development in the area west of Highway 21.
- Amend Policy 17.17 to restate exactly the Vision for Land Use negotiated in the Terms of Reference for the Joint Planning Study.
- Add a new policy to Chapter 17 Implementation which states: “The implementation of the Edmonton – Strathcona Joint Planning Study may require amendments to this Municipal Development Plan and to other statutory plans and the land use bylaw.”

## **Summary of the County’s Position – Area 3**

The County explained that Area 3 has been agricultural for the last 100 years, and that after consultation with County landowners, Strathcona County Council has decided that it will remain so. In making this decision, Council gave consideration to Edmonton’s concerns about having a growth area on the immediate boundary, which were raised during the Plan preparation process.

From an environmental perspective, it is the County’s intent to preserve the Beaver Hills Moraine, which covers a large portion of this area, wherever possible.

The County has conducted a study on the future of agriculture and concluded that the ideology of productive agriculture only occurring on at least a quarter section basis is not necessarily relevant in this particular area. As Strathcona is a specialized county, both urban and rural, the County must give consideration to its agricultural community and this area being retained as agricultural is part of that consideration. Strathcona County is home to one of the largest equestrian populations in the country, and this area is ideal for facilities accommodating stables. In the result, Strathcona has determined the highest and best use of this land is small agriculture holdings.

With regard to fragmentation of lands, the County contends that Edmonton’s MDP adopted in 1998 made allowance for sufficient residential, commercial, and industrial land in each sector of the City for a period of 30 years. As 10 years have passed, Edmonton should still be supplied with 20 years’ worth of available lands. Further, during questioning it was made clear that the

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City did not intend to pursue annexation of Area 3 and had not developed any growth studies to indicate city urban growth in this direction. It was also clarified that Plan Edmonton currently designates the areas west of Area 3 in the City as “agriculture large holdings”. Therefore, the concern that lands in the Agriculture, Small Holdings Policy Area might be required for future urbanization is remote.

The County pointed out that Policy 14.25 commits their support to preventing confined feeding operations within two miles of the City boundary.

### **Issues – Area 3**

The arguments of the parties with respect to Area 3 raised several different types of issues compared to Areas 1 and 2.

1. Are the lands in Area 3 needed for long term urban growth?
2. If the area is needed for long term urban growth, will the policies in this area result in the fragmentation of lands incompatible with long term urban growth?
3. Is the possibility of intensive agriculture operations in the area detrimental to existing or future urban growth?
4. Does detriment to the City arise due to lack of sufficient consultation provisions for the City in the planning of Area 3?

### **Findings – Area 3**

1. There is insufficient evidence to demonstrate that this area is needed for long term urban growth.
2. The Joint Planning Study, the SCMDP referral mechanisms and Provincial approval mechanisms are sufficient consultative mechanisms to evaluate the impacts of intensive agricultural operations on any existing or future urban development. No detriment arises.
3. The consultation processes are sufficient and do not result in substantive detriment that would justify an MGB order directing amendment of the SCMDP.

### **Reasons – Area 3**

Although, the MGB appreciates the planning concerns regarding the impact of a fragmentation of lands on urban growth, the City provided no evidence that its pattern of urban growth would occur in the direction of Area 3. The City’s witness, Marlene Exner, testified that the City had no intention to annex any of the lands in Area 3. As well, the City did not provide any long term growth studies to illustrate that Area 3 was being considered as an option for its long term growth needs. Ms. Exner stated that even though Plan Edmonton is currently under review, no growth studies as part of that review were brought forward to convince the MGB that the City’s urban growth would occur in the direction of Area 3. Ms. Exner further testified that the City had



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not evaluated the amount of land currently available to it for the purposes of this appeal and that the City's major concern with respect to Area 3 was whether the County had employed good planning practice in permitting fragmentation of these lands. (See cross-examination of Ms. Exner in Transcript, Vol. 1, p. 125, line 9 to p. 129, line 10.)

The MGB does not accept the argument of the City that the County having considered the area as an option for urban growth is sufficient evidence to substantiate a detriment to the City.

Considering that the lands west of Area 3 in the City are designated as agriculture there would appear not to be any great concern with the issue of compatibility with agricultural uses. The MGB noticed that in its final submissions the City did not refer to the possibility of agricultural uses in Area 3 as a major issue related to detriment. Nonetheless, the MGB sees the compatibility of agricultural uses as a site specific planning issue requiring the individual evaluation of any proposal based on its individual facts and circumstances. For this reason, the MGB is confident that the various consultation processes available to the City will resolve concerns with any individual intensive agricultural proposals that may exist in the future. The City has access to the JPS, the area for which overlaps the western part of Area 3, to address any concerns regarding intensive agricultural operations. The City also has access to the mandatory circulation and referral sections on page 17.5 of the SCMDP to address any individual concerns. As well, the City has access to development approval processes required by the Natural Resources Conservation Board and all the regulations dealing with confined feedlot operations.

The MGB notes that the approval of any confined feedlot operation rests with the Natural Resource Conservation Board (NRCB). The County is only a commenting body. The MGB also observes that Policy 14.25 directly addresses the concern of the City by proposing a two mile buffer between the City and any confined feedlot operation. As well, the JPS will give the City an opportunity to provide direct input in the area immediate to its boundary.

Although Area 3 is not a growth management area subject to the Growth Management Strategy, the MGB was not convinced that the consultation provisions with respect to Area 3 are so deficient as to be detrimental to the City. The specific reasons for this conclusion have previously been discussed regarding Area 1 and will not be repeated here.

#### **Area 4 - Joint Planning Study Area**

Identified as Area 4 on the above map for the purposes of this appeal, the Joint Planning Study Area (also called the Inter-municipal Referral Area) covers that area in Strathcona County within one mile of the eastern boundary of the City of Edmonton.

This area overlays the westernmost one mile of Area 3 (Agricultural Small Holdings Area), the westernmost half mile of Area 2 (Rural/Urban Transition Policy Area) and the westernmost one mile of Area 1 (Transition Urban Reserve Policy Area). Most notably, it also covers the one mile

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strips south of the Highway 16 (Yellowhead) and east of Range Road 232 that make up Area 5. Area 5 shares the same issues as this area, complicated by the question of heavy industrial setback.

The evidence related to the issue of heavy industrial setback is dealt with separately under Area 5, below.

The following general policies in the SCMDP speak to the relationship between Strathcona and its neighbors:

Chapter 17 - Implementation

17.8 Cooperate with other municipalities, provincial and federal agencies on matters of mutual planning importance; and

17.17 see page 16 above

The JPS was initiated as a result of a mediated settlement of a previous inter-municipal dispute between the same parties in 2005. (See MGB Board Order 015/06 at Ex.4A Tab H for a complete history.) The parties executed a memorandum of understanding and terms of reference in 2006 to establish a plan to address joint planning issues along the boundary. Immediate emphasis was placed on the Yellowhead Corridor Area.

Work on the JPS came to a halt when Edmonton filed this appeal and Strathcona withdrew from further participation pending the MGB's decision.

**Summary of the City's Position and Requested Remedies – Area 4**

Edmonton's primary concerns are that the provisions of the SCMDP in the growth policy areas and the heavy industrial separation area permit developments which may be incompatible with joint planning, and secondly, illustrate a lack of commitment to joint planning.

The City pointed out that there is no commitment in the SCMDP to implement the results of the JPS or to make amendments to the SCMDP as a result of the Study's conclusions. In the City's view, the County has a history of only partly recognizing agreements as well as failing to supply pertinent information in a timely matter, as was the case in the adoption of the new Urban Reserve Area (Area 6). Given this history, the City finds "cold comfort" in the County's assurances that the City will have input via the JPS into those areas bordering Edmonton slated for major development, Areas 1 and 2, or precluded from future urbanization due to fragmentation, as in Area 3. Edmonton also remarked that the JPS Area does not include the new Urban Reserve Area, and thus the County has completely eliminated Edmonton from any consideration or consultation in that major new urban development.

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Edmonton negotiated the creation of this Joint Planning Study by agreeing to drop its appeal in a previous inter-municipal dispute. There was no mention of the Study in early drafts of the SCMDP. The City alleged that it was only referenced in the final version at the City's specific request.

Policy 17.17 of the SCMDP deals with the JPS and lists the visions for future land use in points a) through d). Missing is the last point agreed upon in the Terms of Reference for the Joint Planning Study: "a well integrated and compatible land use pattern that is a good fit within the regional context."

### Detriment

The City did not claim detriment relative to the JPS Area as a whole. Rather, the claims of detriment relating to the JPS area were made specifically regarding the areas it intersects. Hence, the claims of detriment with respect to this area are discussed elsewhere in this decision, in the sections devoted to the Transition Urban Reserve Policy Area, the Rural/Urban Transition Policy Area, the Agriculture Small Holdings Policy Area and the Heavy Industrial Area. (Areas 1, 2, 3 and 5.) However, the City did argue that, in light of Strathcona's strongly expressed commitment to joint planning with Edmonton and the circumstances giving rise to the JPS, the MGB should recognize the importance of the JPS by granting the following remedies.

### Remedies

- The City requested that the MGB require the County to amend the SCMDP in accordance with the following proposals:
  - ⇒ No area concept plans, growth management strategy plans, or conceptual schemes for any policy area within the fringe study area should be approved prior to the completion and implementation of the Joint Planning Study
  - ⇒ The Joint Planning Study should:
    - Develop a framework for an overall growth management strategy for Strathcona
    - Contain specific and detailed means as to how it will be implemented
    - Develop detailed provisions for consultation, referral and notification of planning proposals in the County within the Study Area
- The City requested that the MGB require the County to amend Policy 17.17 to restate exactly the Vision for Land Use negotiated in the Terms of Reference for the Joint Planning Study, including Vision Statement point number 5, "A well integrated and compatible land use pattern that is a good fit within the regional context."

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#### **Summary of the County's Position – Area 4**

The County noted that, as the SCMDP is deemed to be of no force and effect in the appealed areas, and the entire JPS Area has been appealed, Edmonton has placed the entire JPS process in the hands of a third party, the MGB. In the County's view, the evidence demonstrates that it is committed to continuing with and completing the Joint Planning Study. This is demonstrated by:

- Strathcona has set aside significant budget funds to do so.
- Strathcona met with Edmonton numerous times prior to Edmonton filing this appeal, in order to advance the Joint Planning Study.
- Strathcona expressly referenced the Joint Planning Study in its 2007 MDP.

Edmonton alleges detriment on the grounds that the SCMDP fails to include a verbatim reference to the Vision Statement. The fifth bullet point of the Vision Statement is not contained in Policy 17.17 of the SCMDP. A careful comparison of Policy 17.17 and the vision for land use policy in the JPS demonstrates that the essential elements of the Study's Vision Statement have been incorporated in the policy. The Study is a planning and development study of the sort referenced in the Act section 632(3)(c). Verbatim replication of the terms of reference is neither required nor efficacious.

The County submitted that Edmonton and Strathcona County agreed that the JPS would proceed concurrently with other planning. The County produced a letter from Strathcona's Chief Commissioner to Edmonton's City Manager dated April 12, 2007 (Ex. 9R Tab 60). It was agreed that development activity would not be frozen in the area:

...Both administrations have agreed from the beginning of the process that development activity could not be frozen in the study area. This has been evidenced by both parties through the continued residential, commercial and industrial development occurring in both municipalities. If City administration is now suggesting that all development in both municipalities needs to be frozen until this study is concluded, then please advise the undersigned.

With respect to the City's assertion that there is lack of commitment on the part of Strathcona to implement the eventual results of the JPS in the SCMDP or make amendments to the SCMDP if required, the County submits that a MDP is a policy, not a regulatory document. It is not necessary for a MDP to articulate one specific result that may arise on completion of an inter-municipal planning study. As was stated by Ms. Exner, Edmonton's witness, a MDP can refer to an array of inter-municipal planning approaches with specific options to be chosen on a case by case basis.

#### **Issues – Area 4**

Note: The issues listed below exclude the discussion on Heavy Industrial Separation, which is dealt with in a different section, below.

The submissions of the parties require the MGB to address the following issues:

1. Does detriment to Edmonton arise due to ongoing planning and/or new development in the Joint Planning Study Area prior to the Joint Planning Study completion?
2. Does detriment to Edmonton arise due to the omission in the SCMDP of a reference to the possible necessity of amending the SCMDP as a result of the conclusions and recommendations of the Joint Planning Study?
3. As a result of the County's failure to incorporate in the SCMDP the final clause of the vision statement in the Joint Planning Memorandum of Agreement, "A well integrated and compatible land use pattern that is a good fit within the regional context", does detriment to Edmonton arise?

#### **Findings – Area 4**

1. The evidence suggested that neither party contemplated a development or planning freeze while the Joint Planning Study conducted its work. No detriment arises.
2. The SCMDP has an exhaustive circulation and referral process (see Policy 17.17 and page 17.5) for any proposed developments and plans in the Joint Planning Study area. Edmonton suffers no detriment.
3. The Joint Planning Study Memorandum terms of reference did not bind the County Council to proceed with any amendments, nor did it suggest that valid recommendations would not be accepted.
4. Policy 17.8 and 17.17 of the SCMDP provide the sound basis upon which logical and rational amendments can be put forward and accepted. The intent is clear and therefore Edmonton suffers no detriment.
5. If a recommendation from the Joint Planning Study is not adopted and a bylaw amendment goes forward, Edmonton has the opportunity to address the matter pursuant to section 690 of the Act.
6. The present wording of Policy 17.17 references joint planning in a regional context. The MGB finds no detriment to Edmonton in the wording of Policy 17.17.

#### **Reasons – Area 4**

##### Ongoing Development in the Joint Planning Study Area

The Terms of Reference for the JPS is a 15 page document plus map. The Memorandum of Understanding establishing the study area is much shorter, comprising just five clauses. The

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MGB analyzed the content of these documents and found no mention in either document of a planning or development freeze. The MGB relies on the letter of April 12, 2007 from the County Commissioner submitted by the Respondent, which confirms that freezing development in the joint planning area was not contemplated by the parties in coming to their agreement. As well, the MGB observes that the City's request for the remedy freezing development occurred late in the hearing process.

Moreover, the Act sets out specific timelines for the consideration of various development and subdivision applications and the impacted municipality must act within those timelines. Any consideration of concerns from an adjacent municipality, in this case Edmonton, must be examined within the context set by the Act.

The MGB observes that the SCMDP sets up an exhaustive mechanism for referral to adjacent municipalities of various planning actions. This provides the City with extensive opportunities for input on planning and development proposals which may impact the JPS Area and the City of Edmonton. In fact, the City itself refers to this area as the "Inter-municipal Referral Area" (see exhibit 44A). Thus, the MGB concludes that there is no detriment to the City of Edmonton. In fact, a significant benefit exists to the City in the mandatory referral processes.

The remedy suggested by the Appellant contemplates the freezing of all development or planning proposals, regardless of whether the development and planning proposals are or could be detrimental to the City. It has the potential impact of penalizing sound development and planning, which was not contemplated in the original agreement and is not desirable. The MGB finds the remedy suggested is too speculative and intrusive.

The MGB noted that the provisions of the JPS agreement do not bind either council to the recommendations made, nor do they bar the acceptance of any recommendation.

#### Amendment of Policy 17.17

After a thorough examination of the Memorandum of Agreement and the other documents, the MGB cannot conclude that amendments to the SCMDP would automatically flow from the completion of the Joint Planning Study. As well, the MGB finds the remedy suggested by the Appellant, to include in a policy statement in the SCMDP that suggests amendments may be required, lacks substance and, in fact, makes no significant variation on the present wording justifying intervention in the SCMDP.

The Act sets out the process for consideration of any planning bylaw amendment. This process recognizes the right for public input and the ability of any municipal council to accept or reject recommendations to amend or not amend any planning bylaw. Any recommendation coming from the JPS would be subject to this process.

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The MGB is satisfied that policies 17.8 and 17.17 demonstrate the County's intent that input from the City will be given serious consideration. Policy 17.8 embodies the principle of inter-municipal co-operation in general and Policy 17.17 makes specific reference to the City of Edmonton and the Joint Planning Study initiative. Once this matter before the MGB is concluded, it is expected that this intent will be carried out through the resumption of the JPS.

In the case of a planning bylaw proceeding where the City is of the view that the bylaw is substantively insufficient, then the remedy of filing a section 690 dispute is still available. Further, the JPS is not an Inter-municipal Development Plan and is not subject to the requirements of section 631 of the Act. The MGB notes that if the City wished a greater level of authority and input into bylaw amendments, it might have pursued an Inter-municipal Development Plan pursuant to section 631 instead of the Joint Planning Study. However, that is not the fact scenario before the MGB.

The MGB sees very similar wording demonstrating similar intent in all three versions of the Joint Planning Study description including the original documents, Policy 17.17, and the City's remedy request. Section 17.17 in part states:

The two communities will complete a Joint Planning Study to address the immediate and long term land use patterns along this edge, from the perspectives of safety and compatibility of uses which will benefit **the region** (emphasis added).

Although the exact wording of the Joint Planning Study Vision Statement is not duplicated in Policy 17.17, the MGB was not convinced by the City that any detriment arises. Policy 17.17 embodies inter-municipal co-operation, a regional context, immediate and long term needs, industrial risk management and mitigation, long range plans, beneficial and complimentary industrial clusters, and sustainability principles. These principles are all encompassing. Again, the requested remedy appears to be lacking in the substance necessary for the MGB to order amendments to the referenced plan policies.

### **Area 5 - 1.5 Kilometre Heavy Industrial Setback Area**

This area, which is part of the JPS Area, includes an approximately one mile (1.5 km) strip of land in Strathcona County south of the Yellowhead and east of Range Road 232. It overlays the westerly one mile strip of Area 1, the Transition Urban Reserve Policy Area. This part of the JPS Area is the first priority of the JPS and has a mix of uses depending upon proximity to neighbouring development.

The 1.5 km Heavy Industrial Setback Area is identified as #5 on the map on page 14.

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## **Background**

The Clover Bar area was annexed by Edmonton from Strathcona County in 1982. It is bordered on the north and west by the North Saskatchewan River, on the east by Range Road 232, and to the south by the Yellowhead (Highway 16). This area contains the former Celanese petrochemical plant, the former Canada Cement plant, CN's Clover Bar Yard, the Clover Bar landfill and in the southeast corner, the Clover Bar Industrial Park, a light industrial area fronting Highway 16 that also houses two small motels and a mobile home park.

The City of Edmonton has two area structure plans in place covering approximately two-thirds of Clover Bar: the Yellowhead Corridor ASP, which covers some two and three-quarter sections along the Yellowhead, and the Aurum ASP, which encompasses some one and three quarter sections fronting Range Road 232. Both ASPs identify heavy industrial land use.

With the growth of Sherwood Park toward the Yellowhead, and in the absence of an inter-municipal development plan, the two jurisdictions have had fractious relations regarding land use along the Yellowhead corridor, south and southeast of Edmonton's Clover Bar area.

### **Alberta Planning Board Decision, 1991**

In 1991, the Alberta Planning Board (APB) heard an inter-municipal dispute filed by the City of Edmonton regard two planning bylaws in Strathcona County. These bylaws dealt with the policies regarding separation distances between heavy industrial uses and incompatible uses. The planning bylaws proposed at that time also contained a variety of provisions with respect to separation distances, processes and required impact studies. The APB dismissed the City's claim of detriment.

The SCMDP provisions analyzed by the MGB in order to decide this matter are identified below:

The SCMDP defines the Heavy Industrial Transition Overlay (IH-O) as follows:

*... an overlay in the Land Use Bylaw utilized to avoid conflicts between heavy industrial developments and the development of significant residential or assembly uses. Reducing the risks for the public and minimizing nuisances associated with heavy industry, as well as facilitating emergency management in the event of an industrial accident, are the primary purposes of the IH-O.*

In the SCMDP, this overlay is applied to the County's industrial areas south of Highway 16 and adjacent to the Clover Bar industrial area.



The SCMDP defines MIACC as follows:

***MIACC (Major Industrial Accident Council of Canada):** means a widely represented group of academics and practitioners that was formed in 1987, which established a set of risk based, land use planning criteria to determine what the appropriate and generally acceptable level of risk is for an individual to be exposed to, relative to industrial development.*

The policies in the SCMDP which instruct separation distances consist of the following

Chapter 5 - Residential Development

- 5.9 Maintain a reciprocal setback distance as defined in the Heavy Industrial Transition Overlay (IH-O) in the Land Use Bylaw between future residential uses north of Baseline Road and existing heavy industries which have, or could have, a significant detrimental effect on the safety, use, amenity, or enjoyment of adjacent or nearby sites due to appearance, noise, odour, emission of contaminants, fire or explosive hazards;

Chapter 7 - Industry and Energy

- 7.15 Maintain and/or enhance the quality of life of citizens by providing a buffer between industrial development and other land uses to minimize the risks to public safety and nuisance associated with heavy industrial development and to facilitate emergency management in the event of an industrial incident;
- 7.17 Continue to maintain a setback for new heavy industries which have, or could have, a significant detrimental effect on the safety, use, amenity or enjoyment of adjacent or nearby sites due to appearance, noise, odour, emission of contaminants, fire, explosive hazards or dangerous goods;
- 7.22 Ensure that heavy industry meets minimum industrial risk standards (see Chapter 10 - Safety);

Chapter 10 - Safety

Objectives

- 3) Avoid and/or minimize potential land use conflicts with heavy industrial development; ... .

**Industry**

Strathcona County will:

- 10.24 Maintain and enhance the quality of life of citizens by providing for a buffer between heavy industrial development and other land uses. The purpose of Industrial Risk Management is to reduce the risks to public safety and minimize nuisance associated with heavy industrial development and to facilitate emergency management in the event of an industrial incident;
- 10.27 Ensure heavy industry must not only meet minimum Industrial Risk standards, but continue to strive towards reducing the current risk standards which are:
- a) A one in 100,000 chance of an incident affecting an individual at a distance of 1.5 kilometres from the boundary of a Heavy Industrial site; and
  - b) A one in 1,000,000 chance of an incident affecting an individual at a distance of 3.0 kilometres from the boundary of a Heavy Industrial site.
- 10.32 Encourage agri-business, business service, agricultural development, light and medium industrial, commercial, recreation or conservation uses to locate between lands designated for heavy industrial use and lands designated for residential and institutional uses, subject to the following considerations:
- a) Determination and management of the safety, risk and nuisance effects from heavy industrial uses;
  - b) Number of people to be assembled under the proposed use as large assemblies of people may present difficulties in the event of a requirement for in-place sheltering or evacuation;
  - c) Conformity with provincial guidelines respecting Transportation Utility Corridors and County requirements for pipeline/utility corridors;
  - d) Density of the adjacent residential and institutional development; and
  - e) The findings of an Industrial Risk Assessment.
- 10.33 In the Sherwood Park Urban Service Area, require permitted and discretionary land uses, as identified in the Land Use Bylaw, which are situated in the Heavy Industrial Transition Overlay (IH-O) to be restricted given health, safety and nuisance considerations through provisions of the Land Use Bylaw;
- 10.34 In the Urban Service Area, discourage large assemblies of people from locating within the first 1.5 kilometres of heavy industrial development;

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10.35 Ensure redistricting in the Urban Service Area, which could result in an increased density or intensification of the following uses, is not permitted within the (IH-O) Heavy Industrial Transition Overlay as identified in the County's Land Use Bylaw, unless a risk assessment and review is completed and demonstrates to the County's satisfaction, that the likelihood of an incident affecting individuals within the proposed site is less than 1 in 1,000,000.

- a) Residential uses;
- b) Large indoor/outdoor assembly uses (e.g. stadiums, arenas or theatres) which cater to small children or the elderly;
- c) Uses which cater to temporarily or permanently confined, disabled or incapacitated people (e.g. hospitals, extended care or emergency response organizations);
- d) Buildings which present difficulties in the event of evacuations (e.g. hotels or high rise office buildings); or
- e) Uses which create the potential for large numbers of people to remain on site for long periods of time (e.g. schools, recreation facilities and shopping centres).

10.48 Acknowledge that both the City of Edmonton and Strathcona County view risk reciprocally, irrespective of boundaries and that there is a need to ensure adequate separation and transition between incompatible uses utilizing the principles of Industrial Risk Management relative to the MIACC (Major Industrial Accidents Council of Canada) guidelines.

In this part of the hearing, the County introduced evidence through three witnesses. The first witness was its general planning expert, Peter Vana, Manager of Strathcona County Planning and Development Services. The County also introduced two more experts in addition to Mr. Vana as follows.

Terry MacDougall is a civil engineer who holds a Master's degree in urban and regional planning. He has 35 years experience as a consultant to municipalities and heavy industry regarding site selection and separation distance between high risk industries and incompatible development. He was the lead witness for Strathcona County at the APB proceedings in 1991. The MGB accepted Mr. MacDougall as an expert witness in planning and heavy industrial separation.

Doug McCutcheon is a professor and director of the Engineering Safety and Risk Management Program in the Faculty of Engineering, at the University of Alberta. He wrote the report titled "Heavy Industrial Land Use Risk Approach Review" (Exhibit 6R Tab 6). The MGB recognized Prof. McCutcheon as an expert in the areas of heavy industry risk management and the MIACC risk management principles.

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The City relied on their general planning expert, Marlene Exner.

### **Summary of the City's Position and Requested Remedy**

In 2006, Edmonton negotiated with the County in creating the JPS, which was tasked with addressing on a priority basis the issue of heavy industrial separation in the Yellowhead corridor. Strathcona halted the Study when this appeal was launched.

#### Detriment Claimed

The City claimed that detriment arises from the failure of the SCMDP to restrict incompatible development in proximity to lands in Edmonton's Clover Bar area that are designated Heavy Industrial. Strathcona mandates two transition zones in its heavy industrial overlay, separating its own heavy industry from incompatible uses and the City maintained it should also apply the first 1.5 km overlay to County lands bordering lands zoned for heavy industry in Edmonton. In the absence of this overlay, Edmonton is constrained in attracting future heavy industrial development to one of the few areas where the City can accommodate this land use, and so suffers detriment.

The City stated that it recognizes the substantial effort and initiative Strathcona County has exercised in the field of risk management, but observes the County has had the benefit of dealing with greenfield sites, at least north of Baseline Road. Edmonton on the other hand, has been constrained in the use of separation distances by existing residential developments approved in the 50's or 60's when thinking on the subject of heavy industrial separation was much different.

Edmonton conceded, in its closing submissions, it is unlikely to attract major-scale heavy industry to the Clover Bar area (see para. 60, p. 9. Ex. 54A). However, there remains a substantial range of small and intermediate scale heavy industry requiring smaller land areas that, in the City's view, could be accommodated in Clover Bar if land use conflicts are not an issue (see Ms. Exner's evidence, Transcript, p. 90; Ex. 54A, para.71). For example, the CEDA Reactor and Hazco sites, each less than 20 acres, house hazardous waste handling facilities and similar, smaller scale operations could be attracted in the future. A small site does not necessarily mean lower risk: the Union Carbide plant in Bhopal, India occupied 30 ha (about 80 acres).

Edmonton questioned the utility of Prof. McCutcheon's evidence. In cross-examination regarding the Hazco and Ceda facilities, he was unaware what chemicals in what volumes are present at those facilities and conceded that some of them are likely identified in the MIACC guidelines of hazardous substances. Moreover, there is no analysis in his report (Ex.6R Tab 6) of the probability of a worst case scenario, which is part of a risk assessment. Essentially, there is no risk assessment because he concludes there is no risk.

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The CN Marshalling Yards were described by Professor McCutcheon as being used mainly for automobile offloading, with no statistical evidence to support this claim. The City took issue with the methodology and statistics used in his risk analysis regarding the Yards, and further notes Professor McCutcheon is unsure whether the Yards is classified main-track or non-main-track, these categories showing markedly different accident rates involving dangerous goods.

The intrusion of assembly uses into the Strathcona industrial area impairs potential development of heavy industry in Clover Bar. This was the basis for the City appeals in 2005. Those appeals were withdrawn in exchange for the creation of the Joint Planning Study that, among other objectives, will give consideration to appropriate setbacks from the Clover Bar area. If the MGB does not require the completion of the JPS prior to further development, or add a setback requirement of 1.5 km into the SCMDP, the City will be impaired in its ability to pursue the 1.5 km setback under the JPS, which would ultimately cause detriment by reducing its potential for industry in Clover Bar.

### Remedy

The City originally asked the MGB to order the County to make a long list of amendments to several SCMDP policies. However, in its written summary provided to the MGB after the evidence and oral argument was completed, the City indicated that, based upon the evidence at the hearing, it was no longer asking for those remedies. It now is asking the MGB to order that the 1.5 km industrial separation be established and protected until the JPS is completed and implemented. Residential, institutional and assembly uses would be prohibited within 1.5 km of the heavy industrial areas designated in Plan Edmonton.

### **Summary of the County's Position**

The County argued that Edmonton's existing and potential heavy industrial lands in the Clover Bar area are not detrimentally affected by development on Strathcona's side of the boundary. On the contrary, Strathcona has protected Edmonton's interests through the use of two setbacks: the one and one-half km residential setback from heavy industrial lands in Edmonton as mandated by the 1991 Alberta Planning Board decision, and the heavy industrial overlay in Strathcona's Land Use Bylaw which prohibits residential development within three km of high-impact heavy industrial uses in both Edmonton and Strathcona County. The heavy industrial overlay considers the cumulative effect of major chemical plants, refineries and other sites with an offsite risk impact. The Land Use Bylaw identifies prohibited, permitted and discretionary uses for lands within one and one-half km of the fence line of heavy industry, and more relaxed criteria for development in the one and one-half to three km transition or 'buffer' zone.

Strathcona County employs a science-based approach to risk management, the MIACC standard. The one and one-half km setback is designed to achieve an annual fatality risk of 1 in 100,000. The three km setback has an annual fatality risk expectation of one in one million.

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Mr. Vana provided the panel with a history of the development of the heavy industrial setback from its first appearance as a policy in the General Municipal Plan of 1980 to the present. The development of the setback has a long history and rigorous evolution based on new scientific knowledge and the changing characteristics of the uses in the area over time.

The current Heavy Industrial Overlay is based on the original 1989 Transition Zone Overlay, and is incorporated in Strathcona's Land Use Bylaw via Bylaw 30-2004. "The overlay prepared as part of Bylaw 30-2004 reviewed a number of known heavy industrial sources in both Strathcona and Edmonton...it was determined that there were no heavy industrial sources present in the Aurum Industrial or Yellowhead Corridor area that met the risk profiles of 1 in 100,000 or 1 in 1,000,000 chance of an incident". (Ex. 6R Tab 3 Vana report p.32 and at p.33 Map of Overlay)

The County submitted that the City is seeking to impose development restrictions on County lands in Area 5 while the City freely develops residential and sensitive uses in close proximity to Clover Bar, north and west of the river. In particular, Strathcona points to condominium developments, seniors' housing and sports facilities west of Clover Bar, and to the newly approved camp for handicapped and disadvantaged children, Our Lady Queen of Peace Ranch north of Clover Bar.

Strathcona further submits through the evidence of its experts, that what little land remains to be developed in the Yellowhead and Aurum ASP areas is so limited or fragmented that a heavy industrial user with offsite risks would not consider locating there for fear of liability. Current uses in these areas do not carry offsite risk impacts, or if they do, those impacts would not extend beyond Edmonton's boundary – for example, the Gibson Tank Farm. Here, the risk contour extends 220 metres beyond the dike perimeter to reach approximately the northern extremity of the Clover Bar Industrial Park. Strathcona County is some 800 metres further distant.

Although more attention has been paid historically and in this hearing to lands north and south of the Yellowhead, counsel for the County examined Edmonton's witness, Ms. Exner, about current and proposed land uses in the five quarter sections in Edmonton adjacent to Range Road 232. Ms. Exner admitted that the current or proposed uses in all five quarter sections excluded heavy industrial. That is, from the Clover Bar Industrial Park in the south to a pipeline corridor and reserve area in the north, there is no heavy industry, existing or proposed, within one-half mile (800 metres) of Range Road 232. (Transcript, p. 160 line 9 – p. 170, line 2).

### **Evidence of Mr. T. MacDougall**

Mr. MacDougall was retained by the County to review historical development and land use in the Clover Bar area of eastern Edmonton and the western portion of Strathcona County, to compare statutory plans and land use bylaws of Edmonton and Strathcona in regard to separation distances and transitional uses, to assess the potential for heavy industrial development in Clover

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Bar and to assess the potential for sterilization of Clover Bar lands for heavy industrial development as a result of Strathcona's 2007 MDP. Mr. MacDougall's report deals with two of the five areas involved in the City's complaint of detriment: the Transition Urban Reserve Policy Area (Area 1) and the 1.5 km strip adjacent to Edmonton's Clover Bar area (Area 5).

Mr. MacDougall first defined the different categories of industrial development. Light industry is industrial activity that takes place inside a building, for example, light manufacturing or warehousing. Medium industry is generally defined as industrial activity taking place on an industrial lot both inside a building and outside where environmental and risk impacts do not extend beyond the property boundaries. Examples of medium industry would include the Kiewit and Aecon fabrication and module assembly yards on either side of Range Road 232.

Heavy industry is itself subdivided into three sub-categories: major scale, intermediate scale and minor scale. Major scale heavy industries tend to occupy sites greater than 200 acres, frequently have their own water and sewage systems, gravitate to major rivers, and have high environmental and risk impacts extending beyond their property boundaries, including nuisance and health effects. Examples of major scale heavy industry would include oil refineries and world class petrochemical plants: locally, the Petro Canada refinery and the former Celanese plant, operations where toxic and explosive materials are manufactured, handled and stored on site.

Intermediate scale heavy industries locate on smaller parcels and frequently require municipal water and sewage service and rail access. These industries have moderate environmental impacts and risk profiles, and would include smaller chemical plants, gas plants, intermediate tank farms, alfalfa plants and lumber mills. The Owens-Corning fiberglass plant is a good local example, as well as the Gibson Tank Farm. These have less risk than a refinery in terms of off-site health and safety concerns, but still have nuisance impacts such as noise, smoke or odour.

Minor scale heavy industries typically occupy sites less than 10 acres, usually require municipal water and sewage, and have minor environmental and risk impacts. Examples would include small bulk oil storage, waste recycling, small incinerators, small chemical plants and hazardous waste transfer facilities. Locally, one sees a small asphalt plant and the Hazco property.

Normally, irrespective of scale, heavy industry development requires a license from Alberta Environment.

With regard to the potential for heavy industrial development in Clover Bar, Mr. MacDougall noted that the original Aurum Area Structure Plan called for a mix of industrial business, medium industry and heavy industry. Heavy industry was anticipated to cluster along the rail lines, likely occupying lots in the range of four to eight hectares (10-20 acres). Mr. McDougall stated that "the potential heavy industry within the Aurum Park can generally be described as secondary and tertiary manufacturing and processing which requires large outdoor storage, and a large building site for plant operations....Although intended for clean heavy industry, when

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compared to Refinery Row for example, these activities may create noxious effects in the form of visual appearances, noise and emissions.” (Ex. 7R Tab 23 p.6.9)

Recently, Strathcona County received a letter from the developer of Aurum Energy Park advising that a recent sale of a 151 acre parcel, to a buyer who intended to develop for medium industry, would remove some 43.7 acres of undeveloped heavy industrial land. By Mr. MacDougall’s calculations, this transaction would leave Aurum with 36.6 ha (90.4 acres) of undeveloped heavy industrial land which, combined with 27 ha (66 acres) in the Yellowhead ASP, would yield 156 acres, somewhat less than a quarter section, of undeveloped heavy industrial land in Clover Bar. The Yellowhead land is owned by Gibson Energy, which firm has developed three oil storage tanks in the northeast corner of the property. It is reasonable to assume their intent is to add more tanks and/or blending facilities in the future.

If the City wants to capture new major scale heavy industry, the Celanese property is probably the best site to do so. However, Edmonton is promoting infill residential across the river in the Hermitage area with condominiums, townhouses and single family dwellings within 0.6 to 0.8 km. Although located over 1.5 km from undeveloped heavy industrial lands in Aurum, Edmonton rezoned 200 acres on the north side of the North Saskatchewan to permit a private camp for mentally, physically, and financially challenged children. Our Lady Queen of Peace Ranch proposes to accommodate some 500 people from April through October in cabins and teepees 2.7 km downstream from the Celanese site. If Strathcona’s Heavy Industrial Overlay were applied here, such a development would not occur, given the nature of the at-risk population.

With regard to the heavy industrial zoned land in Aurum and the Transition Urban Reserve (Area 1), Mr. McDougall stated that a 1.5 km arc drawn from the Aurum lands does cover the southeastern corner of Area 1 (see Ex.6R Tab 9 Appendix A Figure 6) but there is no reason to assume that cooperation between the two municipalities could not resolve any issues there.

### **Evidence of Professor D. McCutcheon**

Prof. McCutcheon presented a report entitled “Heavy Industrial Land Use Risk Approach Review”. Consequences examined in the report include radiant heat exposure from a major industrial fire, the impact of a large volume of smoke from such a fire, and the release of toxic vapour clouds from hazardous industries. Risk calculation must err on the cautious side and be based on the realistic worst-case scenario.

Prof. McCutcheon discussed the Risk Acceptability Criteria of the Major Industrial Accidents Council of Canada (MIACC). The MIACC criteria are not mandated by federal or provincial law, but have become the *de facto* standard accepted in Canada and are mandatory in Strathcona County. Under the MIACC standard, the annual level of risk for a member of the public who is inadvertently exposed to an industrial accident must be no greater than a in 1,000,000 chance of



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fatality. MIACC recommends no land use where the annual risk is 1 in 10,000, usually accomplished by the industry having its fenceline at that risk contour. MIACC allows manufacturing uses, warehouses and open spaces such as parkland and golf courses in the zone from 1 in 10,000 to 1 in 100,000 annual risk; commercial uses, offices and low density residential in the 1 in 100,000 to 1 in 1,000,000 zone, and all other land uses including institutional and high density residential where the risk is one in one million. The MIACC criteria do not specify minimum separation distances between heavy industry and other land uses; they simply set the standard for level of risk. Distance from a risk source is one of many factors to be considered to determine whether the standard has been met.

Strathcona County has incorporated minimum separation distances of 1.5 and 3 km into its planning documents. These separation distances were based on a number of factors, including the nature of hazardous substances present in the area, availability of land for the transition and the ability of industry to comply with these requirements. In the County, the 0 - 1.5 km separation addresses the MIACC criteria, that is, the necessary measures from a risk assessment perspective. The additional 1.5 - 3 km separation addresses nuisance issues such as noise, odor, etc. Nuisance issues may impact compatibility are not tied to risk assessment.

Prof. McCutcheon is familiar with the Clover Bar area, having previously conducted risk assessments for the Our Lady Queen of Peace Ranch project and the Knightsbridge Tank Farm. In his assessment of the proposed location of the Our Lady Queen of Peace Ranch, he concluded the use would constrain the possibility of heavy industry moving further north than the already designated heavy industry zoning.

In addition, he and Mr. Armin Preiksaitis prepared a report for Strathcona County titled "Review of Land Use Regulations Affecting Heavy Industrial and Residential Separation and Transition Uses (January 2003)" (the Strathcona Report). In preparation for the inter-municipal dispute regarding Strathcona Bylaw 1-2005 he had occasion to review the facilities and processes at CEDA, Hazco, Gibsons Tank Farm and the CN Marshalling Yard, all in Edmonton's Clover Bar area. The review confirmed that CEDA, Hazco and CN have no inappropriate risk beyond their properties, that is, even on conservative calculations, no risk greater than the one in a million threshold. The Gibson property does have a risk profile that exceeds its boundaries, but the risk of fatality beyond 200 metres from the dike surrounding the tanks falls below the one in 1,000,000 criterion.

In the Strathcona Report, Prof. McCutcheon focused on existing land uses within the Clover Bar Industrial Park and surrounding area. In comparison to a previous inspection in 2005, the Clover Bar Industrial Park in 2007 had become more active. By a conservative estimate, well over 100 people work in the industrial park and there are motels and a trailer park within its boundaries. Those uses identified as heavy industry are not in fact, or at the least it would be a stretch to so describe them. Rather, the existing uses are commercial and light to medium industry.

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Businesses similar to those in Clover Bar Industrial Park are also locating in the Aurum Industrial Park.

Some two and one-half to three km west of the Clover Bar Industrial Park are three heavy industries: the Celanese property (the Celanese plant has closed) and to the south, the Gilead and Owens-Corning properties. Although Gilead and Owens-Corning are designated medium industrial, one utilizes phosgene and the other formaldehyde and thus they could have potential risk impacts beyond their property lines. These operations would not pose an undue risk to Strathcona County as they are beyond the 1.5 km separation distance for high risk impacts and beyond the 3 km nuisance separation from residential uses in Strathcona County. Such separation is not the case when measured to residential uses in Edmonton.

### **Summary of Landowner Positions – Area 5**

#### Genstar Development Company

Genstar has been developing lands east of Sherwood Drive and south of the Yellowhead in accordance with the APB Decision of 1991. Genstar faces uncertainty with respect to its unzoned and unsubdivided commercial property south of the Yellowhead and west of the new hospital due to this appeal. The same issue with regard to the same lands was decided in 1991. The lands in question are covered by the North of Lakeland Drive Area Concept Plan and the Emerald Hills Area Structure Plan, neither of which were appealed by the City. In questioning by the City it was established that the Emerald Hills Area Structure Plan had been approved and that Genstar was not seeking an amendment to the ASP.

#### Trans America

Trans America lands south of the Yellowhead and west of Sherwood Drive were the subject of the 2005 inter-municipal dispute that led to the creation of the JPS. Trans America has applied for redistricting of lands adjacent to the 2005 parcels and received notice that Edmonton objects to certain land uses that they did not object to in 2005. Those uses are: Business support service; Financial service; Food service, drive in; Government service; Office; Personal service establishment; Retail, convenience; and Warehouse sales.

For the 2005 appeal, Professor McCutcheon prepared a heavy industrial land use risk review which concluded that if appropriate risk-based planning were used, there would be zero probability of heavy industrial development in Edmonton's Clover Bar with a risk profile extending as far as Strathcona's boundaries. Consequently, commercial development of Trans America's land should not be restricted.

Trans America has suffered lost sales and the inconvenience and expense of postponed construction and financing arrangements. Development in Clover Bar is not heavy industrial but light and medium industrial. Trans America's proposed land uses are minimal modifications of what was agreed in 2005

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and the company requests the MGB to instruct Edmonton and Strathcona to proceed with the redistricting request.

### **Issue – Area 5**

Considering the positions of the Parties, the detriment claim and the remedy suggested by the City the MGB must address the following issue.

1. Do the industrial separation policies in the SCMDP cause detriment to Edmonton?

### **Finding – Area 5**

1. The industrial separation policies in the SCMDP cause no detriment to Edmonton.

### **Reasons – Area 5**

The MGB observed that the City conceded it was unlikely to attract major scale heavy industry to the Clover Bar area. The MGB also observed that the City's witness agreed that the existing and future uses along Range Road 232 were committed to light and medium industrial uses and not to small and intermediate heavy industrial uses or uses with off-site risk impacts. As well, the MGB accepts the expert evidence of the County's witnesses which illustrated that uses approved by the City in proximity to Clover Bar placed constraints on the development of heavy industrial uses with offsite risk in the area.

The MGB placed considerable weight on the expert testimony of Prof. McCutcheon and Mr. MacDougall in the absence of similar experts provided by the City. Although the City raised some doubt as to the County's witness's knowledge of the nature of some of the existing uses in the area, this doubt was insufficient to conclude on the basis of the totality of the evidence before the MGB that the policies in the SCMDP were detrimental.

With respect to the positions of the landowners who made submissions on this matter, the MGB considers their submissions as being somewhat supportive of the County's position. One of the landowners requested the MGB to direct a change to the land use bylaw; however, no land use bylaw amendment is in dispute before the MGB.

Considering the current character of the uses in the area and the nature of the future uses expected in the area, the MGB finds no detriment in the industrial separation policies in the SCMDP. On the contrary, the policies contained in the 2007 MDP are an improvement over the policies on separation in the 1998 Plan. The requested remedy, to impose an additional policy which requires a 1.5 km setback until the JPS is complete is not required, considering the evidence of potential land uses in Clover Bar and the comprehensive nature of the policies in the SCMDP.

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Policy 5.9 imposes the Heavy Industrial Overlay in the land use bylaw between residential uses and existing heavy industrial uses. Policy 7.15 and Policy 7.19 provide for buffers between existing and new heavy industrial and other land uses. Policies 10.24 and 10.27 reinforce this buffering and the use of minimum industrial risk standards.

Policy 10.32 directly addresses the concern of the City with respect to large assembly uses in commercial or light industrial areas. This policy appears to the MGB to apply to any area in the County and sets a performance standard for various uses. The key criteria contained in this policy address the issues raised by the City relating to the number of people to be assembled on a site and the findings of an industrial risk assessment.

Policies 10.33 to 10.35 apply the Heavy Industrial Overlay to the urban service area, with policy 10.34 specifically applying a 1.5 km separation distance for residential development in the Sherwood Park Urban Service Area. This policy is consistent with the APB decision of 1991.

Policy 10.48 provides for reciprocal risk management between incompatible uses using the MIACC guidelines.

Policy 17.17 and 17.18 direct as a priority the completion of the Joint Planning Study, which involves all of the geographic area in which the industrial separation policies come into play. The MGB accepts that this study was placed on hold during this appeal, but expects that the work on the JPS will proceed in earnest as directed by the SCMDP.

After hearing all the argument and expert testimony, the MGB was not convinced by the City that it should direct the remedy to require a 1.5 km setback until the Joint Planning Study is completed. The City failed to convince the MGB that the existing policies in the SCMDP were detrimental. The MGB does not accept the arguments of the City that the results of this appeal and the policies in the plan will prejudice the JPS. Based on the facts and research examined, JPS may or may not make suggestions for changes to the SCMDP. It will then be up to the Strathcona County Council to decide what amendments will proceed.

### **Area 6 - Urban Reserve Area**

The Urban Reserve Area is a large tract of land located immediately adjacent to the northeast boundary of Sherwood Park, 2 miles to the east of the City's boundary and approximately 3 miles to the south of the City of Fort Saskatchewan's boundary. The area contains approximately 9,600 acres (15 square miles).

The Urban Reserve Area is identified in the Strathcona County Municipal Development Plan as a "holding area" for future expansion of the Urban Services Area. The lands that comprise the identified Urban Reserve Area are contained within the existing Agriculture Large Holdings

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Policy Area and will remain subject to this policy area until such time as additional planning for the area is conducted.

The MGB analyzed the following policies in the SCMDP in evaluating the detriment claimed by the City.

### Definitions

*Urban Service Area: an area that provides a predominantly residential function; a diversified commercial and industrial base; as well as local and regional services and facilities.*

The Community Profile in the SCMDP identifies the population and general time horizon context the plan is accommodating:

### Chapter 2 – Community Profile

*The Sherwood Park Urban Service Area, as identified at the time of writing this document, is projected to be fully built out by 2014. This will increase pressure on not only the rural environment, but also for the community to provide further opportunities for urban development over the next several generations.*

A population projection identifying the total projected County population and that portion expected to be accommodated in the Urban Service Area is contained on page 2.2 of the SCMDP. The total projected population for the County is 136,478 in 2026 with 99,189 people expected to be in the Urban Service Area. In 2014 the Urban Service Area population is projected to be 75,608. For the sake of brevity, the detailed projections are not duplicated in detail in this order.

Note 5 in the footnote section on page 2.2 of Chapter 2 in the SCMDP states:

*5. Projection numbers for the Urban Service Area are based on the assumption that a new Urban Service Area will be built once Sherwood Park is full. It is estimated that Sherwood Park has a capacity of 75,000 people, which means that it will reach capacity by 2014.*

### Chapter 4 - Sustainability and Growth Management

4.5 Require the proponents for any new urban area to select and prioritize strategies, using a systems approach that considers the following:

- a) New Urban Form Strategies incorporating ecologically sensitive land use; compact land use and site design; greenway and public spaces; pedestrian and

bicycle orientation; sense of neighbourhood or community; versatile built form; and enhanced livability built form;

- b) Aggressive Demand Reduction Strategies incorporating transportation; fuel and power; solid waste and material use; and water and stormwater;
  - c) Efficient Resource Use Strategies incorporating green infrastructure planning; distribution energy systems; water and wastewater; reuse and recycling; greenscaping; and green material management and procurement;
  - d) Renewable Resource Strategies incorporating energy, water and materials; and
  - e) Sustainable Lifestyle Strategies incorporating community engagement; communication networks; municipally led initiatives; and developer led initiatives.
- 4.7 Continue to review and assess the long term growth needs of the community in order to provide an adequate and suitable supply of urban land;
- 4.20 (See page 15 above)
- 4.21 (See page 16 above)

#### Chapter 9 - Parks and Recreation

- 9.2 Provide public open space, to accommodate present and future leisure needs of County residents;

#### Chapter 10 - Safety

##### **Protective and Emergency Services**

Strathcona County will:

- 10.7 Ensure emergency and protective services will provide new and existing development with appropriate levels of fire protection, ambulance services, and police protection;

#### Chapter 11 - Institutional & Community Facilities

##### **General**

Strathcona County will:

- 11.2 Encourage the expansion of a range of community support services, in an effective and efficient manner through alliances with private, non-government and public sectors. Advocate the provision of services with voluntary organizations;

**Health Care**

Strathcona County will:

- 11.6 Consider the following guidelines with respect to the development of future health care related facilities:
- a) Locate in close proximity to transit services;
  - b) Compatible in scale and form relative to adjacent residential land uses;
  - c) Locate close to commercial facilities; and
  - d) Locate close to passive and active open space.

**Recreation**

Strathcona County will:

- 11.18 Continue to assess, maintain, and where appropriate, enhance the facility infrastructure that supports the delivery of recreation services and where delivery can be accomplished in an economical manner; and
- 11.19 Encourage the expansion of the range of community recreation services, in an effective and efficient manner through alliances with private, non-government and public sectors and by sharing the provision of services with voluntary organizations.

Chapter 12 - Social Development

**Equitable Distribution and Accessibility of Community Facilities/Services**

Strathcona County will:

- 12.12 Promote healthy, self-reliant, sustainable communities by seeking to provide accessible, social services;
- 12.13 Encourage the development of public parkland, recreational and cultural facilities that are distributed in a suitable manner throughout the community; and

**Culture**

Strathcona County will:

- 12.35 Continue to provide the opportunity for a variety of cultural programs such as visual and performing arts, history, music and literature;

Chapter 15 - Transportation

**General**

Strathcona County will:

...

- 15.2 Support the coordination and integration of local, regional, intra-provincial and inter-provincial transportation networks and facilities;
- 15.3 Work cooperatively with municipal, provincial and federal governments to enhance economic growth by encouraging the development of an integrated, multi-use transportation network (trail, road, transit, rail and air), that will meet the needs of individuals, business and industry;

**Public Transit**

Strathcona County will:

...

- 15.23 Provide a transit system which strives to meet the needs of each citizen in the Sherwood Park Urban Service Area, including youth, the elderly and persons with disabilities;
- 15.32 Continue to work with surrounding municipalities to determine the feasibility of extended service of regional transit systems, such as hours of service and possible expansion of the City of Edmonton's High Speed Transit (HST), or an express bus system into the Sherwood Park Urban Service Area.

Chapter 16 - Utility Systems

**General**

Strathcona County will:

...

- 16.2 Work with surrounding municipalities and utility companies to ensure integrated utility corridors are created and maintained;

**Water Service**

Strathcona County will:

...

- 16.14 Continue to support a regional approach for water demand management and the purchase of water at reasonable rates for County customers;

**Wastewater Service**

Strathcona County will:

...

- 16.20 Continue to cooperate in joint wastewater system planning, with the Capital Region Sewage Commission and the City of Edmonton;



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16.21 Cooperate with the Alberta Capital Region Wastewater Commission in establishing a cost effective system, for controlling plant bypasses or overflows at the Regional Plant;

### **City's Position and Requested Remedies – Area 6**

The City argued that detriment is not confined to a specific geographic area adjacent to its boundaries and that it is possible to find detriment to the City beyond a two mile distance from its municipal boundaries.

#### Detriment

The City claimed that, in this instance, the likelihood of detriment arises due to the potential size, density and location of the Urban Reserve in relation to its impact on the City's services and transportation infrastructure. The City admitted that it did not provide a detailed analysis of the adverse impacts and the detrimental affect on Edmonton (see Exhibit 52A, page 15, paragraph 61), but argued that it is impossible to assess what the impacts on it might be because of uncertainty with respect to the type of land uses allowed and the timing of development in this area. The uncertainty arises from a lack of details in the SCMDP regarding the County's future growth in the Urban Reserve Area and results in detriment to the City because it prevents City from planning proactively to accommodate the increased demands on the City due to the presence of an expanded population base in Strathcona County.

In the City's view, the consultation process leading up to the designation of the Urban Reserve Area in the SCMDP was inadequate and the future consultation provisions are also inadequate, resulting in detriment.

Much of the City's evidence of detriment comes from its perception that the Urban Reserve Area will be a new major city that will have to be serviced from ground zero. In the City's view, investment in other existing communities, including Edmonton, should perhaps be promoted rather than investing completely new dollars in a new area that may not really be required when looked at from a regional perspective. (See Transcript, Vol. 1, p. 78, line 14 to p. 79, line 14.)

#### Remedies

Although the City initially proposed remedies for the Urban Reserve area that focused on involvement by the City in an overall growth management strategy for Strathcona County, greater detail with regard to land uses, and amendments to Policy 4.20 and Policy 4.21, in its final submissions the City altered its proposed remedies pertaining to the Urban Reserve Area.

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The City now requests that the MGB require the County to:

Delete all references to the Urban Reserve from the SCMDP, given:

- the lack of any definition of future uses for that area;
- the failure to deal with any inter-municipal coordination issues arising from that area;
- its size and proximity to Edmonton;
- the timing of the inclusion of that area into the MDP (in comparison to the timing of the announcement of the Capital Region Integrated Growth Management Plan Task Force which produced the Report);
- its designation as an urban growth area was not recommended by the Strathcona administration and its deletion from the Plan was recommended by administration; and
- the lack of need for immediate development of this area having regard to the MDP's recognition that the Urban Reserve will address growth needs up to 100 years.

Prior to any re-inclusion in the SCMDP of the Urban reserve Policy area, the City requested that the MGB direct the County to:

- formulate a reasoned proposal which establishes the need for a new urban centre in the Capital Region;
- identify locational criteria for evaluation of the selection of the urban growth center;
- identify the impacts on Edmonton; and
- refer any such proposal to the Capital Region Regional Board for review.

### **County's Position – Area 6**

In response to Edmonton's allegation that potential size, density and location of the future urban centre will create detriment arising from the impact on Edmonton's services and transportation infrastructure, the County argued that the expansion of the Sherwood Park Urban Service Area and the creation of the Urban Reserve Area are based on historical population and growth trends. The 2007 population projections for Sherwood Park are 2-3% for the next 15 years. The Urban Service Area will reach its capacity of about 75,000 persons in 2014. Thus, an expansion area will be needed.

The matter of urban expansion has been a concern since the 1998 MDP. At that time, four study areas were examined and with the input from residents desiring a clearer and more conclusive statement as to the direction of future urban growth, the County has decided on two growth areas: the Urban Reserve Area and the Rural/Urban Transition Area. These areas will be subject to major growth management strategies.

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The County argued that the Urban Reserve Area is not a new major city. Rather, it is a logical extension of the existing urban services area and provides for the most effective extension of services to meet the demands of future urban growth. The land uses surrounding Sherwood Park prevent expansion in other directions. In addition, the Urban Reserve area is located in close proximity to Alberta's "Industrial Heartland" and due to that proximity it will provide a large number of people with the option of living close to their employment.

The Urban Reserve Area is 3.2 km from the City's boundary; therefore there is no detriment to the City. The County stated that the MGB in the past has not found detriment beyond two miles from the boundary of an urban centre.

Notwithstanding that observation, the County is of the view that the detriment claimed by Edmonton regarding the Urban Reserve Area is not substantiated. Strathcona is a self-sufficient municipality providing its own hard and soft services to its residents. All services are available within Strathcona and therefore there is likely to be very little impact on the City. The County cited examples of this in the provision of the following municipal service areas: Police, Transportation and Transit, Emergency Services, Water and Sewer, Recreation and Culture Services. Major recreation facilities are provided within Strathcona, as is a public transportation system for its residents to employment centres in the City. The County has its own RCMP and fire department.

The Stantec and Urban Systems reports which formed a major part of the urban reserve location analysis in the preparation of previous MDPs addressed pipelines, transportation networks, storm drainage and air quality. The County maintained that the City did not provide any transportation analysis or costing analysis evidence that growth in this area will have a burdensome effect on City servicing.

Moreover, the County took the position that the City knew as far back as 1998 that the location of urban growth was a matter that needed to be addressed and that growth involved the type, scale and density of growth that was experienced in Sherwood Park, the current Urban Service Area. The County contended that there was no surprise to the City.

According to the County, provisions identifying the Urban Reserve area were in Bylaw 1- 2007 at the time of first reading on March 6, 2007. As well, the Urban Reserve area was identified 2.5 months prior to adoption of the SCMDP. The County also remarked that as far back as 1980, its General Municipal Plan made reference to future urban expansion in this general vicinity. Further, Strathcona's 1998 MDP identified lands in this area as a future growth study area.

With regard to the City's contention that the Urban Reserve area and the Growth Management Strategies preclude Edmonton from participating in the process to determine whether future urban areas are required, appropriate or affordable to service, the County reiterated that there will be substantial opportunity for the City to provide input and be consulted.

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The SCMDP states that during the time horizon of the Plan (20 years) the County will create a Growth Management Strategy for the Urban Reserve area. The Growth Management Strategy will contain a community consultative process that includes surrounding municipalities. Elements that will be included for consideration in the Growth Management Strategy will include: timing and sequence of build out and the regional context with respect to infrastructure, land use, employment, transportation efficiencies and impacts. Edmonton will be part of the community consultative process.

With respect to the City's allegation that the lack of participation in defining future land uses, future growth patterns or servicing infrastructure and transportation is contrary to section 632(3)(a) of the Act, the County argues that the SCMDP clearly indicates that the Urban Reserve area is a holding area for the future expansion of the urban services area. In addition, the County is of the view that all the elements anticipated to be addressed in section 632(3)(a) have been addressed and will be addressed in further detail as the Growth Management Strategy is developed.

The SCMDP makes clear that the existing designation for the area is 'Agriculture Large Holdings' and will remain so until the completion of the Growth Management Strategy. Edmonton will be a full participant in the Growth Management Strategy. Further, change from Agriculture Large Holdings to an Urban Service area designation will require amendments to the SCMDP (Transcript, p. 313, lines 13-21).

### **Issues – Area 6**

1. Does the inclusion of the Urban Reserve Area in the SCMDP cause detriment to the City of Edmonton? Determination of this issue requires the examination of the following sub-issues:
  - (a) Can the MGB consider detriment beyond two miles?
  - (b) If so, is there detriment caused to the City by the inclusion of a designated Urban Reserve area in the SCMDP?
  - (c) Does detriment to Edmonton arise as a result of a lack of detail regarding the proposed land uses and the timing, scale and sequence of development in the Urban Reserve area?
  - (d) Does detriment to Edmonton arise as a result of the consultation processes prior to the adoption of the SCMDP and the inclusion of the Urban Reserve area or as a result of insufficiencies in the consultation process contemplated in the SCMDP?

### **Finding Related to Issue 1(a) – Can the MGB consider detriment beyond two miles?**

1. Detriment may be considered beyond two miles from the border of an urban centre.

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**Reasons Related to Issue 1(a)**

The MGB agrees with the City that it may consider detriment beyond 2 miles of an urban boundary, and may find detriment beyond 2 miles if the evidence supports such a finding. Section 690 of the Act does not confine the consideration of detriment to any specific geographic distance. Any referenced distance in another appeal or MGB decision is specific to the facts of that case. Previous decisions of the Board do not limit distance in a metropolitan case such as this one.

**Findings Related to Issue 1(b) – does the inclusion of a designated urban reserve area in the SCMDP result in detriment to Edmonton?**

1. The Urban Reserve Area is not an Urban Service Area until an amendment to the SCMDP is adopted.
2. The designation of an Urban Reserve area causes no detriment to Edmonton.

**Reasons Related to Issue 1(b)**

In order to undertake this analysis, the MGB understands that there are two types of land use policies in the SCMDP: fixed policy areas and transitional overlays. In this particular case, the applicable fixed policy area is the Agriculture Large Holdings area and the overlay area is the Urban Reserve area. The MGB finds that it is the Agriculture Large Holdings Area that sets the day to day decision making for this area. The City claims no detriment with respect to this Agriculture Large Holding area. The MGB accepts the County's explanation that the Urban Reserve Area is a holding area for future urban development. The City was unable to convince the MGB that designation of this holding area was detrimental to it.

The County's witness, Mr. Peter Vana, testified that before the Urban Reserve Area could be designated as an Urban Service Area, plan amendments would be required (Transcript, Vol. 3, p. 313, lines 13-21). This is further evidenced in the testimony given at the hearing, where it was clarified that until additional stages of planning are completed, those lands contained within the Urban Reserve overlay area shall be treated the same as those lands within the Agriculture Large Holdings Policy Area. In addition, during testimony Strathcona County indicated that the Urban Reserve area would be subject to a Growth Management Study and that for the expansion in the Urban Reserve Area to be initiated, amendments to the Municipal Development Plan would be required prior to development. The MGB sees no detriment resulting from this planning process.

**Findings Related to Issue 1(c) - Does detriment to Edmonton arise as a result of a lack of detail regarding the proposed land uses and the timing, scale and sequence of development in the Urban Reserve area?**

1. The Urban Reserve Area will eventually provide the land base for the expanded Sherwood Park Urban Service Area.
2. The Urban Reserve Area will eventually become an Urban Service Area with characteristics similar to the current Sherwood Park Urban Service Area.
3. The level of planning detail in the SCMDP is sufficient for the Urban Reserve Area as a holding area.
4. The Sherwood Park Urban Service Area and the expansion to it is planned as a self-sufficient community that provides a full range of municipal and community services to its residents.

**Reasons Related to Issue 1(c)**

The City expressed concerns that the presence of a large population expansion near its borders would cause increased demands on Edmonton due to the services that the City would have to provide for the new residents. However, the City provided the MGB with no studies to show what the actual impacts would be, and in fact admitted it had provided no evidence that there would be any impact on the City at all, stating “[w]e have speculated what might occur but since we don't know what is going to be there ultimately, we can't provide the evidence.” (See Transcript, Vol. 3, p. 426, lines 12 – 16). The MGB does not accept that argument. In so claiming, the City focused narrowly on specific policies without reference to the rest of the Plan. When read in context with the Plan as a whole, it is clear that this area will eventually become an extension of the Sherwood Park Urban Services Area and will very probably resemble it. Moreover, the MGB notes that the City oscillated between claiming it could not know what the area would become and claiming it would in fact be “a brand new major city”, depending on the focus of its arguments.

The County convinced the MGB that the direct impact on City services would appear to be largely overstated, as the eventual Urban Service Areas are planned according to self-sufficiency principles and policies. The expansion of Sherwood Park Urban Service Area into the Urban Reserve Area is not envisioned as merely a “bedroom” community where people would spend little of their time and in fact conduct the majority of their lives in Edmonton. The MGB was convinced by the testimony and evidence from the County that the expansion into the Urban Reserve area is envisioned as part of the self contained community of Sherwood Park, building on the services and employment areas within the present Urban Service Area and other employment generators in the region. In addition, there are large centers of employment outside the City of Edmonton that will continue to attract increasing numbers of employees from the region. The County cited the Heartland Industrial area as one such. As can be seen from the listing of all the policies that apply to Urban Service area, the policies direct a self sufficient urban service centre with provision of the following:

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- A complete array of parks and recreation facilities (Policies 9.2, 11.2, 11.18, and 11.19);
- Emergency services (Policy 10.7);
- Community services (Policies 11.2 and 11.6);
- Social services (Policies 1.2.12, 12.13 and 12.35);
- Transportation and public transit (Policies 15.2, 15.3, 15.23 and 15.32); and
- Utility systems in a regional context (Policies 16.2 and 16.21).

The Urban Reserve Area is comprised of approximately 15 sections and is a large area when viewed in relation to the size of the existing Urban Services Area. It will add perhaps another two thirds to the geographic area of the Sherwood Park Urban Service Area in the long term. The direction of eventual growth of Area 6 will be in a north-easterly direction, away from the boundaries of the City. At present, however, it is a holding area and will remain so until a Growth Management Strategy is completed.

The MGB viewed this area in the context of the population projections identified in Chapter 2 of the SCMDP and concluded that this order of magnitude is not surprising when one considers the length of time for which this area is planned to accommodate future growth of Sherwood Park. The testimony of Mr. Vana convinced the MGB that the Urban Reserve Area is intended to provide Sherwood Park a land base and, perhaps more importantly, a growth direction that will address its growth needs for up to 100 years (see Transcript, Vol. 3, p. 330, lines 7-9). Considering that the Urban Service Area is characterized as an expansion to the existing community of Sherwood Park, the expected type, nature and density of development appears reasonably clear. The Urban Reserve Area is reserving lands that will eventually be used to expand the existing Urban Service Area. The MGB finds nothing unclear or lacking in sufficient detail to conclude a detriment to Edmonton exists. The City was unable to convince the MGB that this growth direction was detrimental to Edmonton in light of the consultation process, which requires a Growth Management Strategy and consultative input from the City.

**Findings Related to Issue 1(d) - Does detriment to Edmonton arise as a result of the consultation process prior to the adoption of the SCMDP and the inclusion of the Urban Reserve area or as a result of insufficiencies in the consultation process contemplated in the SCMDP?**

1. The consultative process prior to the adoption of the SCMDP was adequate.
2. The City will have opportunity to be consulted before a plan amendment is adopted.
3. Future consultation processes on the expanded Urban Service Area are extensive and allow for the involvement of Edmonton through the development of the Growth Management Strategy and referral of future plan amendments. No detriment arises.

The MGB accepts the evidence of Mr. Vana that the consultative process leading up to the passage of the SCMDP was more than adequate. In so doing, the MGB refers to the requirements

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set out in section 636(1)(d) of the Act, “*notify adjacent municipalities of the plan preparation and provide opportunities to those authorities to make suggestions and representations*”. The MGB rejects the argument of the City that County Council not having accepted fully the recommendations of its administration regarding the Urban Reserve Area is evidence of detriment in itself. The Act, in accordance with the fundamental principles of our democratic system of government, provides for the authority of an elected Council to accept, reject or modify any recommendations of their administration. No administrative recommendation can be binding.

Policy 4.21 provides for a community consultative process in the form of a Growth Management Strategy and Mr. Vana testified that the City of Edmonton would be extensively involved in that process. The MGB finds opportunity, not detriment in this consultation process. Through this process, the municipal neighbours may be able to sort out relevant planning issues.

Policy 4.21 requires a Growth Management Strategy for the Urban Reserve Area which is an exhaustive exercise examining all the relevant planning matters for this area including the “[r]egional context with respect to infrastructure, land use, employment, transportation efficiencies and impacts.” It also references a consultative process. Mr. Vana testified that the City will be involved in the preparation of the Growth Management Strategy for the Urban Service Area (Transcript, Vol. 3, p. 313, lines 5-21). Thus, the MGB finds no detriment in the designation of a holding area in the form titled “Urban Reserve Area” to the City.

#### **PART D LANDOWNERS’ SUBMISSIONS**

The following provides a brief overview of the submissions of the affected landowners.

##### Landowners Supportive of the Appeal

Landowner L. Delainey questioned the inclusion of the Urban Reserve Area in the SCMDP. He contended that the Strathcona County council had approved the designation of the Urban Reserve Area against their own planning department’s original research findings and recommendations, and against the stated wishes of their citizens. Landowners B. Fitz, R. & C. Taylor and K. Rowan were in general agreement.

Landowner D. Pentelchuk expressed concerns that the Urban Reserve was a last minute choice and that there appeared to be conflicting viewpoints about how soon development would begin taking place. He felt that Edmonton’s request for more time in which to complete the Joint Planning Study was reasonable, but also stated that if the reason for the appeal was to stop a perceived Strathcona advantage, he hoped the appeal would fail.

Mr. Rowan pointed out that the location of the Urban Reserve so distant from Edmonton would present a significant barrier to the effective integration of transit, thus contributing to



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environmental problems and wasted energy. Moreover, that it would result in an increase of traffic on Highway 16, which would be dumped into the Yellowhead area causing Edmonton to spend scarce infrastructure dollars to address the problem.

W. & L. Gordon expressed concerns regarding environmental impacts of future development in Area 6. They explained to the MGB that the chernozemic soil in Area 6 is irreplaceable, being found in only two areas on the planet, the Canadian prairies and the Ukraine. This soil is recognized as the most fertile in the world. Mr. Delainey agreed, remarking that the designation of this area for urban expansion would needlessly destroy 9,600 acres of this type of farmland, but that County council had made the decision to expand there regardless, contrary to the MDP's primary policy of protecting agriculture large holdings of class 1 and 2 soils. Landowners R. and C. Taylor expressed similar concerns.

Mr. Fitz was of the opinion that the SCMDP unnecessarily fragmented Area 3 such that there would in future be patchwork development in a corridor adjacent to Edmonton, which is clearly detrimental to the City. Mr. Rowan generally agreed, pointing out that as the County population ages, people will want to be integrated with the larger metropolitan area so that they will have easier access to services.

Landowners D. & D. Jarvin argued that it made little sense to allow urban expansion into Area 1, given Edmonton's concerns with regard to heavy industrial separation. They felt that the Colchester area (Area 3) would have been the best choice in which to locate the Urban Reserve. Most other landowners supportive of Edmonton's appeal agreed that urban expansion into Colchester made the best sense.

#### Landowners Against the Appeal

Several landowners, most of whom resided in Area 6, were supportive of the location of the Urban Reserve and other growth nodes, taking the position that these areas were the most logical, cost effective choices for urban expansion. C. Allam and M. Macyk testified that Area 6 was no longer commercially or economically viable as farmland, due to the proximity to urban development. M. Van Hecke expressed a similar opinion with respect to Area 1.

Landowner D. Pentelechuk expressed support for the concept of regional planning and stated that, in his opinion, neither of the main parties appeared to have the best interests of the region at heart. However, he believed that the County was the more progressive of the two, and thought it should not be penalized for having taken a leading position with its MDP proposal.

Qualico Developments argued that it was inappropriate to include the level of detail the City was suggesting in an MDP. To do so merely results in the need for later amendments.

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Several landowners drew the MGB's attention to the exhaustive public consultation process that preceded the passage of the SCMDP. Mr. Van Hecke stated that the process was very democratic and that every opinion was taken seriously. He felt that County officials had kept Edmonton's concerns in the forefront throughout and had been as accommodating as possible.

Mr. Van Hecke expressed frustration with the City for having launched the appeal. In his view, the City had done so in order to dominate the region, a goal he felt would be counterproductive in the long run. Several other landowners agreed with this point of view. It was generally accepted that the appeal had caused detriment to them.

### **Summary of the City's Position**

The City acknowledges the right of affected landowners to bring legitimate concerns to the MGB regarding this appeal, however, the City is of the view that most of landowner's concerns related to very particular and personal interests. The interest of the landowners must be viewed in the context of the purpose of the planning part of the Act with emphasis on the consideration of the "greater public interest".

The City is of the view that the complaints of the landowners regarding the City delaying planning approvals did not recognize the efforts of the City to negotiate and mediate and recommend a solution which if adopted would not have resulted in this appeal. Those landowners who are more sophisticated developers were very aware of heavy industrial separation issues and the various planning processes that are required to sufficiently resolve these issues.

More importantly, the City cites the views of the landowners who are anticipating development in the Urban Reserve Area as supporting the City's view that the Urban Reserve Area is detrimental in the short term.

### **Summary of the County's Position**

The County agrees that the focus of the MGB's consideration must be on the consideration of detriment on the municipalities, however, the concerns raised by the landowners underscore the lack of evidence of impact cited by the City.

With respect to the Genstar lands, the County pointed out that these lands have either been developed or are covered by existing area structure plans. The City is just attempting to re-argue the case heard before the Alberta Planning Board in 1991 but has advanced no new evidence to support its case. The Trans America lands have been the subject of a risk analysis that concluded there is "zero probability" that heavy industry with a risk profile extending as far as the Strathcona boundary would occur. This is further support of the lack of evidence put forward by the City.

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The County cited the support of the Qualico representatives for the level of detail that existed in the SCMDP and cautioned about having too much detail at this stage of the planning process in the Urban Reserve Area.

### **MGB Response**

The MGB appreciates all the views of all parties who made representation to it and thanks each and everyone for their constructive input. The MGB has considered all the views for and against the appeal. The specific analysis of the related issues of detriment and the various landowner views have been included in the analysis for each of the geographic areas and in the general claims of detriment.

## **PART E LACK OF CONSULTATION AS DETRIMENT**

### **Background**

Edmonton contended that the SCMDP does not adequately define the role of the City in future planning processes such as the preparation of growth management plans, concept plans, structure plans or other statutory plans required under various sections of the SCMDP. As well, the City claimed that the process leading up to and during the adoption of the plan was inadequate.

To determine whether detriment arises as a result of the consultation process, either past or future, the MGB examined the following:

- The process leading to the adoption of Bylaw 1-2007,
- The Act Requirements for Participation (Section 636),
- Policies in the SCMDP regarding consultation and participation,
- The testimony and written submissions of the parties, and
- The remedies requested by the City.

### The Process Leading to Adoption

#### General Public Process

The SCMDP process began in December 2004 with the creation of a steering committee by the County and the gathering and review of a number of planning studies, concept plans and transport and services studies. Thereafter a series of twelve open houses were held between March and May of 2005. Other open houses and studies by outside agencies were also held focusing on the west of 21 Area Concept Plan (largely Area #1) and the County Residential Area concept plan (largely Areas #2 and #3). With the receipt of this input, discussion papers on specific studies and areas were prepared.

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A further series of open houses and a workshop to which interested parties were invited to hear from two experts regarding the preparation of growth studies were held on November of 2005.

Following this, a draft of the SCMDP was completed in February 2006. The draft was posted on the County website and was available at three County locations. Five more open houses were held in March and April 2006 to elicit input on the draft SCMDP. In addition to the draft SCMDP, an overview of the relevant studies prepared for the County was presented. After the input from these consultations, a second draft was completed in August 2006. Five more open houses were held in locations throughout the County.

#### Consultation with Edmonton

The uncontradicted County evidence was that the City attended open houses at each stage. As well, the City confirmed that it had attended three meetings regarding the MDP and received five drafts of the SCMDP. These included the February 2006, August 2006, November 2006 and January 2007 drafts, followed by the March 20, 2007 version that incorporated the amendments made at first reading. In addition, there were a number of joint planning and mediation meetings.

#### Act Requirements for Notifying Adjacent Municipalities

Section 636 of the Act establishes the mandatory provisions for public participation:

- 636 (1) While preparing a statutory plan a municipality must*  
*(d) in the case of a municipal development plan, notify adjacent municipalities of the plan preparation and provide opportunities to those authorities to make suggestions and representations, ...*

Section 692 sets the procedures for adopting a planning bylaw:

- 692(1) Before giving second reading to*  
*(b) a proposed bylaw to adopt a municipal development plan,*  
*a council must hold a public hearing with respect to the proposed bylaw in accordance with section 230 after giving notice of it in accordance with section 606.*

#### SCMDP Consultation Policies

The following policies specifically outline the mandatory consultation processes in the SCMDP:

Chapter 3 - Community Goals

**Strategic Plan Direction**

3.7 Intermunicipal Relations

- a) Build and maintain effective channels of communication on intermunicipal issues;
- b) Cooperate and collaborate on resolving common planning issues; and
- c) Co-ordinate land use goals with other adjacent municipalities.

Chapter 4 - Sustainability and Growth Management

The Municipal Development Plan identifies one major urban area outside of existing Sherwood Park. The Urban Reserve will address the growth needs in the County for up to 100 years. During the time horizon of this Municipal Development Plan, (twenty years), the County will create Growth Management Strategies for both the Urban Reserve and the Rural/Urban Transition Policy Area. The purpose of these strategies will be to evaluate the lands from the perspective of sustainability principles, as illustrated in Figure 13. The Growth Management Strategies will incorporate public processes that will **engage the existing communities as well as surrounding municipalities**, in order to achieve the overall goal of a higher level of sustainability for Strathcona County's future.

(MGB Emphasis)

SCMDP Policy 4.21 establishes a community consultative process for the Growth Management Strategy applicable to the Urban Reserve Area and the Rural/Urban Transition Policy Area. This policy is referred to in other sections of this decision and is not repeated here.

4.20 See page 15 above

Chapter 10 - Safety

**Partnerships**

Strathcona County will:

10.42 Work with industry, federal, provincial and municipal governments in determining acceptable levels of risk and revise, where appropriate, land use standards for industrial and pipeline development;

10.48 See page 43 above

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Chapter 15 - Transportation

15.3 See page 56 above

15.32 See page 56 above

Chapter 16 - Utilities

16.2 See page 57 above

Chapter 17 - Implementation

**Intermunicipal Requirements**

Strathcona County will:

17.14 Circulate applications for development to adjacent municipalities, federal, provincial and resource agencies in accordance with the table identified in Figure 32 – Notification and Referrals;

17.17 See page 16 above

17.18 See page 16 above

**Summary of the City’s Position and Requested Remedies – Lack of Consultation**

The City claimed that lack of consultation provisions in the SCMDP are detrimental because the City is “not given any adequate role of consultation with respect to matters that have significant impact on them and that concern is not eliminated by the County's proposed process for involving the City of Edmonton. There is no detail or commitment in the plan to involve the City in the planning required to both identify and deal with intermunicipal impacts arising from the urban growth proposals.” (Transcript, p. 11, lines 1-16.)

Even though County testimony and portions of the SCMDP indicate the City will be included in future planning processes, the City argued that past history suggests otherwise. In the City’s view, the adoption of the SCMDP was unnecessarily quick and the City’s input was at times not sought. Examples of this are the late inclusion of the Urban Reserve Policy Area and the fact that the Joint Planning Study policy does not exactly reproduce the JPS Vision Statement. As well, the City claimed it was not provided with copies of some key background studies (the Stantec and Urban Systems studies) that assisted with the formulation of the SCMDP until long after their preparation. These past failures, the City contends, demonstrate to the MGB the necessity for ordering the County to amend the Plan to spell out the City’s involvement in several

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consultation policies. Without specifically mandated involvement, Edmonton is subject to detriment.

The City is of the view that, to be meaningful, City participation must allow for substantive contribution to be made throughout the plan preparation process and must allow for full discussion of the issues.

### Remedies

The City requested that the MGB order the County to make amendments related to consultation in the SCMDP. It is unclear if some of the requested remedies have been abandoned or are still operative, as changes were made to the requested remedies in each submission. Specific changes requested included the following:

- Amend policy 4.20 (c) to add a specific reference to Edmonton;
- Amend policy 4.20 to include “inter-municipal impacts”;
- Provide in policy that the participation of Edmonton in the Area 1 area concept plan will include representation on a steering committee that directs the plan preparation;
- Adopt the vision statement of the Joint Planning Study verbatim;
- Amend the Joint Planning Study policy to require that the Study:
  - Develop a framework for an overall growth management strategy for Strathcona
  - Contain specific and detailed means as to how it will be implemented
  - Develop detailed provisions for consultation, referral and notification of planning proposals in the County within the Study Area;
- Develop one overall growth management strategy for the County in close collaboration with the City of Edmonton that will clarify the growth patterns, land uses, anticipated impacts and requirements of the agreed strategy; and
- Allow no area concept plans, growth management strategy plans, or conceptual schemes for any policy area contained within the fringe study area to be approved prior to the completion of the Joint Planning Study.

In its final submission, the City clarified that it is not seeking control but is seeking effective consultation through the Joint Planning Study.

### **Summary of the County’s Position – Lack of Consultation**

The County disputed the City’s characterization of the consultation process prior to adoption of the SCMDP. In particular, the County remarked that consultation with Edmonton had resulted in several amendments to the Plan, pointing out that the City’s own Submission (Exhibit 3A) referenced five such. The County observed that to qualify as meaningful, consultation should not have to result in the adoption of all the provisions the City would like to see in Strathcona’s MDP.

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In his testimony, Mr. Vana stated:

... we had at least ten meetings with the City of Edmonton, they were provided with five versions of the draft Municipal Development Plan, they were invited to the open houses and certainly at every open house that I went to the City of Edmonton was represented at those open houses. Edmonton was given every opportunity to make their concerns known and they did and we responded in terms of making amendments to the plan. (Transcript, p.338, lines 16-24)

With respect to the Stantec and Urban Systems studies, the County noted that Edmonton had received those nine months before the passage of the SCMDP. Moreover, Ms. Exner conceded under cross-examination that the City provided no input or analysis with respect to the findings of the reports, and did not advise of any concerns related to them (see Transcript, p. 120, lines 1-14).

The County also disputed the City's contention that it was blindsided by the inclusion of the Urban Reserve area in the final draft of the Plan, pointing to correspondence received from Edmonton's General Manager of Planning and Development that acknowledged the County was considering all three urban growth areas. The County also referenced four maps on which the area was represented as a potential urban growth area. These maps had been provided to Edmonton during the consultation process prior to adoption.

With respect to the policies in the SCMDP, the County submitted that the Plan speaks for itself. Consultation with Edmonton and other neighbouring municipalities, facilitating meaningful participation, is referenced throughout. As an example, the County pointed to the preamble on page 4.4 of the SCMDP Chapter titled "Sustainability and Growth Management Strategy", which states that surrounding municipalities will participate in developing the Growth Management Strategy. Mr. Vana, in oral testimony, reiterated that Edmonton would be a participant in the development of the Strategy (Transcript, p. 403, line 20 – p. 404, line 13) and that MDP amendments, area concept plans, area structure plans and other statutory planning documents would be circulated to Edmonton (Transcript, p. 405 lines 1-11). As well, Mr. Vana testified that the County is committed to participation with Edmonton in the Joint Planning Study (Transcript, p. 224, lines 16-21).

The County also indicated that throughout the SCMDP there are a variety of other policy directives which require the participation of the City in future planning processes directed by the SCMDP.

### **Issue – Lack of Consultation**

Is there detriment to the City resulting from inadequate consultation policies in the SCMDP?



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### **Findings – Lack of Consultation**

The various policies of the SCMPD provide for adequate consultation. No detriment arises.

### **Reasons – Lack of Consultation**

The MGB accepts the evidence of the County with respect to the past consultative opportunities available to the City during the preparation of the SCMDP and concludes that meaningful consultation did in fact occur. The fact that several amendments to the plan were incorporated as a result of the City’s input confirms that consultation was meaningful.

Final changes to the plan at the adoption stage referred to by the City are part of the decision making process of the elected council pursuant to the Act. The MGB does not find that these events justify intervention in the SCMDP policies regarding consultation.

Although the City states in requesting these remedies that it is not asking for control, it appears to the MGB that the City is asking for something more than consultation. The Board notes the caution in MGB 77/98, “...the Board wishes to stress that consultation means a full, fair and formal opportunity for input, but does not mean a “veto”.

In a review of the legislation in this appeal, the MGB affirms its belief that the consultation expected under the Act is something less than a veto power. If the City seeks more than the consultation contemplated in the Act for an MDP, the avenue to securing that involvement in Strathcona’s planning is to negotiate an Intermunicipal Development Plan, for which the JPS could possibly be a good first step.

Nonetheless, the MGB examined fully the City’s claim of detriment on the basis that “full, fair and formal” opportunities for representations will not be made available to the City through the policies in the SCMPD, based on their past experiences. Unlike the Sturgeon Plan in the dispute of 1998, the MGB finds that the SCMDP contains a robust set of consultation policies that do not invite the MGB to find detriment or instruct amendments.

The City on several occasions mentioned a reference to directing the use of a steering committee to deal with a variety of issues in the SCMDP. The MGB concludes that policies 17.17 and 17.18 do in fact confirm the City on a steering committee for the Joint Planning Study Area. Although the words “steering committee” are not used, they are clearly implied. The Terms of Reference and the Memorandum of Agreement support this interpretation of those Policies. The Study area also involves a large geographic area immediately adjacent to the City. These policies provide for significant consultation. No detriment arises due to a lack of consultation or a lack of clarity related to consultation in the policies.

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Policy 4.21 directs a community consultative process regarding a Growth Management Strategy involving a variety of relevant planning matters, both specific and in a regional context. One of the major concerns raised by the City regarding consultation was with respect to the Growth Management Strategy. The County convinced the MGB that the reference to “community consultative process” includes surrounding municipalities by reference to the preamble on page 4.4 of the SCMDP. As well, the testimony of Mr. Vana further confirmed that the consultative process would involve the City.

In light of this explanation, the MGB understands policy 4.20 to apply to all growth areas, including the Transition Urban Reserve Policy Area. Read in conjunction with Policy 4.21, the context of policy 4.20 will by necessity require consultation with neighboring municipalities. In addition, the City will be directly involved in the Joint Planning Study.

The SCMDP requires the preparation and adoption of additional statutory and non-statutory plans, amendments to the SCMDP and other planning processes to be completed prior to development. Policy 17.14 sets up the chart identified as “Notification and Referrals Figure 32” on page 17.5 of the SCMDP. This chart provides for an exhaustive referral and consultation process for a variety of types of plans and amendments. The objectives of the required plans and processes are to further define the level of detail for the development of the lands in question. The MGB regards the reference to ‘adjacent municipality’ in the chart as sufficient to include Edmonton. No detriment arises due to the fact that Edmonton is not explicitly mentioned.

Other policies in the SCMDP direct consultation with municipal neighbors. Policy 3.7 directs “effective communication channels”, “cooperation”, “collaboration”, and “coordination” of land use goals with adjacent municipalities. Policies 10.42 and 10.48, the latter mentioning Edmonton specifically, address consultation on matters of industrial separation. Consultation with adjacent municipalities on transportation matters is directed in policies 15.3 and 15.32. Consultation with adjacent municipalities regarding utility corridors is provided for in policy 16.2. Other policies indirectly suggest consultation with municipal neighbors. None of the argument and evidence before the MGB convinced the MGB that Edmonton would be denied a “full, fair and formal” opportunity for consultation.

The MGB expects that the parties will return to pursuing the worthy objectives of their agreed to Joint Planning Study and will embrace the principles of consultation contained in the SCMDP and directed by the Provincial Land Use Policies.

## **PART F LACK OF DETAIL AS DETRIMENT**

Notwithstanding the fact the MGB has already addressed the alleged detriment caused by uncertainty in each of the geographic areas; the MGB further examines the issue because it is such a major and fundamental part of the City’s appeal. The arguments regarding lack of detail

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were presented with respect to many specific areas, as well as in a general critique of the SCMDP. As introduced by the City, uncertainty amounting to detriment is the result of:

1. General uncertainty and lack of clarity regarding proposed land uses.
2. Non-conformity with the legislation.
3. Lack of an overall growth management strategy and regional context for SCMDP policies.

The City's position regarding these topics is that there is difficulty in pointing directly to the detriment because there is so little known regarding the policies of the SCMDP:

Probably the biggest of the issues is what we have described as the lack of certainty. It is obvious from Bylaw 1-2007 that Strathcona County anticipates a very substantial amount of land use change essentially on Edmonton's boundary and near Edmonton's boundary and yet the major policy areas that are specified in the plan do not contain any statements or any specifics with respect to what the future land uses will be, what the magnitude of development density generally might be. There is really precious little information in the plan that allows Edmonton, in its own planning, to anticipate what the potential impacts of all of these growth areas might be. (Transcript, p. 35, lines 11-23)

In the City's view, many policies of the SCMDP are so vague that actual detriment cannot be determined and this in itself is reason enough for the MGB to implement the requested remedies.

To determine if detriment does arise from lack of detail in the SCMDP, the MGB has examined the three causes of detrimental uncertainty alleged by the City.

### **General Uncertainty and Lack of Clarity Regarding Proposed Land Uses**

#### **Summary of the City's Position – General Uncertainty & Lack of Clarity**

In the view of the City, Edmonton is unable to plan within its own boundaries due to the lack of detail in some SCMDP policies. Without a detailed discussion of types of land uses, phasing and densities, the City is unable to conduct its analysis to determine the impacts on the City of the SCMDP's policies. This amounts to detriment. In the words of Ms. Exner:

... with respect to the major areas under review as part of this appeal ... without a statement of land use and some indications as to density, order of magnitude and so on, Edmonton has no basis for conducting an analysis of what the impact may be. Before Edmonton can claim specific detriment as opposed to potential detriment, sufficient information needs to be available for that analysis to take place. There is not that level of information. (Transcript, p. 181, lines 14-24)

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And:

It is obvious from Bylaw 1-2007 that Strathcona County anticipates a very substantial amount of land use change essentially on Edmonton's boundary and near Edmonton's boundary and yet the major policy areas that are specified in the plan do not contain any statements or any specifics with respect to what the future land uses will be, what the magnitude of development density generally might be. There is really precious little information in the plan that allows Edmonton, in its own planning, to anticipate what the potential impacts of all of these growth areas might be. (Transcript, p. 35, lines 12-23)

The theme of uncertainty arose in a number of references in both the written and verbal submissions. The City argued that it cannot provide specifics of the detriment it suffers because it lacks the detailed information required to assess impacts.

### **Summary of the County's Position– General Uncertainty & Lack of Clarity**

The County contended that the SCMDP not only provides an understanding of the growth patterns, but also provides a process to further define the planning issues in the future. The staff report authored by Mr. Vana in the County's evidence focuses largely on the approach taken by the County to accommodate the growth of the municipality.

With respect to specifics regarding land uses, the County argued that the SCMDP is a high level planning document that broadly defines directions of growth and general policies for decision making in the future. Therefore, policies in the plan related to land use will be general in nature. The County contended that the level of detail is sufficient for the City to assess the impacts of the policies at this general level.

The County pointed to sections of the plan that contain policies regarding how planning will progress and further detail will be developed. A hierarchy of plans will be prepared and the level of detail will increase as the level of plans descends. With the general descriptions provided and the additional provision of a hierarchy of plans, the City is capable of assessing the impact of the plan currently and will be made aware of more detailed specifics as the planning progresses.

### **Issues– General Uncertainty & Lack of Clarity**

1. Does detriment arise from an insufficient level of certainty for the City to be able to conduct its own municipal planning?
2. Does detriment arise from the described land uses in the SCMDP?

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### **Findings– General Uncertainty & Lack of Clarity**

1. When the plan is read as a whole, the description of the proposed land uses, timing and density of development is sufficiently clear for this level of plan in order to determine the impacts of development. No detriment arises.
2. When the plan is read as a whole without isolating individual policies, the City has sufficient information to continue internal planning. No detriment arises.
3. Processes are contemplated in the SCMDP to prepare further, more detailed plans. These lower level plans will be prepared with input from the City. No detriment arises.

### **Reasons– General Uncertainty & Lack of Clarity**

The MGB cannot agree with the City that the descriptions of the land uses in the SCMDP are ambiguous or lack sufficient detail. When reading the plan as a whole, the specific policies, together with each other and the future land use map, provide sufficient clarity. Read as a whole, the plan designates areas, some to which development will be directed in the future and some that will remain agriculture. Primarily, the City took issue with the areas containing large tracts of land where only brief descriptions of the proposed land uses are provided. Even though the language of the plan provides only brief descriptions of land uses in specific areas, the MGB finds firstly that the descriptions, though brief, are reasonable descriptions of land use given the level of the SCMDP in the hierarchy of plans.

In the MGB's view, descriptors such as "predominantly non residential" indicate the direction intended for an area. The use of such a descriptor establishes the framework for a further level of planning, which is the purpose for policies in this level of plan; that is, to provide broad policy direction for the next level of plans. Read in isolation, the proposed land uses offer general direction. However, they are surrounded by the context of the rest of the MDP, including other planning processes and documents. In considering the allegation of detriment, it is appropriate to examine the document in its entirety and in context.

By way of example, a definition of "Urban Service Area" is provided in the SCMDP. It describes a full-fledged urban center with a mixture of land uses which, when applied to the existing community of Sherwood Park, indicates to the reader the overall densities contemplated in the definition. At present, the Urban Reserve is a holding area with current land uses and future land uses in the short term limited to the Agriculture Large Holding designation. In the future, it will be an extension of the existing Urban Service Area.

The Urban Reserve Area is subject to further study in the form of a Growth Management Strategy and further amendments to the SCMDP. Consultation with the City is mandated. At this point in time, the size of the area and the densities achieved in the current Urban Service Area provide guidance with respect to the extent and magnitude of urban development projected in the area. The historical population analysis and the projected population (which is broken down into

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rural and urban service area population) provide an indication of the timing of the expansion of the Urban Service Area.

The Transition Urban Reserve area is clearly described as a transition area from industrial uses to the south west to the eventual residential area to the east. The transitional urban reserve area will contain predominantly non-residential land uses. Part of this area is immediately adjacent to the City boundary and is the subject of a Joint Planning Study between the City and the County. That study will provide further detail and clarity.

The Rural/Urban Transition Policy Area is defined in the SCMDP and involves protection of the unique natural landscapes of the Beaver Hills moraine, with a transition from urban residential land uses in the west to rural uses in the east. This area will be characterized by clustered urban residential development interspersed within the environmental sensitive areas of the Beaver Hills Moraine. The Joint Planning Study area also overlays part of this area along the eastern boundaries of the City. This area is subject to a Growth Management Strategy that includes consultation with the City.

The Agriculture Small Holdings Policy Area accommodates small agricultural holdings and rural residential uses within the constraints of the unique environmental landscape of the Beaver Hills Moraine. Policy 5.26 describes the density of residential development as being in the range of 8 to 10 parcels per quarter. Part of this area is also subject to the Joint Planning Study.

The City provided the MGB with insufficient evidence and testimony to convince the MGB that the detail contained in the specific policies, the overall framework of the policies and the land use map was lacking, and offered proof of detriment only by inference, without sufficient explanation to give it weight. This is particularly so when considering the nature of the claim of detriment that was being alleged. As well, the MGB found that the some of the amendments to the SCMDP proposed as remedies did not provide any more clarity or detail than existed, while others recommended detail more in line with that prescribed by the Act regarding the mandatory contents of an Area Structure Plan rather than an MDP.

The SCMDP provides for the preparation of a hierarchy of statutory plans and non-statutory plans, as well as the possibility of MDP amendments and the necessity for land use bylaw amendments. These steps are subject to referrals and further consultation with the City. If necessary, they may also be the subjects of further inter-municipal disputes. Uses and associated relevant planning parameters will be defined in more detail in those levels of planning documents. If further inter-municipal disputes are contemplated at those stages in the planning framework, arguments respecting detriment can be directed to the details of the statutory plan or amendment.

The Act envisions the use of a hierarchy of planning documents and envisions an MDP to be a broad based policy document providing direction to the other levels of plans, which increase in

detail. The SCMDP meets this objective. The level of detail desired by the City will become more and more apparent as further planning documents are developed under the direction of the SCMDP. The MGB is satisfied by the analysis provided above that the policy certainty expected from a MDP in the Act has been achieved in the SCMDP. Again, the MGB found the evidence of the City to be too sparse to convince the MGB that detriment arises to a degree where intervention in the local bylaw processes of a municipality is justified.

### **Non-Conformity with the Legislation**

#### **Summary of the City's Position – Compliance with the Act**

The City argued that it is or may be detrimentally affected by certain provisions lacking in the MDP, namely;

1. The failure of the MDP, contrary to section 632(3)(i) of the Act to identify even in general terms, the proposed future land uses for a number of policy areas identified as holding districts;
2. The failure of the MDP, contrary to section 632(3) (iii) of the Act to address “the coordination of land use, future growth patterns and other infrastructure with adjacent municipalities”; and
3. The failure of the MDP, contrary to section 632(3)(iv) of the Act to address “transportation systems...in relation to adjacent municipalities”

In the City's view, the large areas of land designated as growth areas and the lack of definition about future uses in those areas and the lack of information respecting inter-municipal coordination and issues is relatively unprecedented and distinguishes this from other inter-municipal dispute appeals.

Moreover, there is serious detriment arising from Strathcona's designation of large areas for urban growth without addressing the issues set out in s. 632 (3) (iii). It is inappropriate and detrimental to Edmonton for the location and size of such urban growth areas to be considered without regard to inter-municipal impacts.

In that regard the City remarked that, contrary to earlier versions of the MDP recommended by Strathcona's administration which identified urban strategy areas for further study, the plan adopted by Strathcona's council on May 29, 2007, designates the identified areas for urban growth. This decision was made in the absence of and with no requirement, even in the future, of an overall growth management strategy for the County, nor any consideration of the requirements of a regional growth strategy management plan.

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Without identification of the uses proposed for these growth areas, and the matters set out in section 632(3)(iii) of the Act Edmonton is unable to assess and determine whether the impacts are such that such areas ought to be reduced in size or number.

These issues are not solved by the MDP's proposal to prohibit development without the further planning as prescribed by the MDP. The urban growth areas have been chosen. The lack of certainty creates a current problem for the City. The need for and selection of growth areas in the County has been set by this MDP without consideration for the impact upon the City. The result, uncertainty, is what creates the present detriment.

### **Summary of the County's Position– Compliance with the Act**

The County argued that the SCMDP provides extensive details in relation to the matters referenced in Section 632 of the Act. Moreover, the Act framework contemplates that there are two mandatory documents for a municipality with the County's population, namely an MDP and a Land Use Bylaw. Other statutory plans, including an inter-municipal development plan and an area structure plan are discretionary. The Act distinguishes between the level of detail required in a MDP and other statutory plans.

Firstly, the requirements are different for a MDP and an ASP. In speaking of the contents of a MDP, the Legislature chose to use the words "must address". For an ASP, the words chosen are "must describe". This supports the argument that the Act recognizes a MDP as a high level planning document intended to have broader references and less detail.

Secondly, specific matters such as "sequence of development" and "density of population" are required features under the Act for ASPs but are not referenced with respect to MDPs. It would be unreasonable to infer that the same requirements apply to both. Clearly, if the Legislature had intended that, it would have said so.

Finally, some matters, such as planning and development studies are discretionary features under the Act. It would not be proper for the MGB to make those features mandatory.

In Calgary (City) v. Hartel Holdings Ltd., (1984) CarswellAlta 47, the Supreme Court of Canada recognized (at para. 16) that planning documents have discrete roles to play in the overall planning process. A MDP is a high level planning document that should be interpreted in a broad and purposive manner and read in light of the other statutory planning documents that form a municipality's planning framework. Reviewed in this light, it is clear that the SCMDP fulfills the requirements of section 632.

### **Issue – Compliance with Section 632(3) of the Act**

1. Is there non-compliance with the Act causing detriment?



**Finding– Compliance with Section 632(3) of the Act**

1. The SCMDP complies with the terms of the Act.

**Reasons– Compliance with Section 632(3) of the Act**

In the MGB’s opinion, the term “address” in the Act is not a fixed standard of analysis. Rather, it allows the flexibility for municipalities to prepare an MDP with the level of specificity they determine is required, given the identified unique needs and situation. For example, a smaller Town or Village with one rural municipal neighbour experiencing limited growth would address issues at a different level than a larger municipality facing a more complex series of considerations.

The SCMDP adopted is part of a hierarchy of plans that stem from strategic planning sessions, and is one step of many in the development process. It is an upper level plan that is intended to establish a framework for the future development of the County.

In his report, Mr. Vana explained that the County’s planning framework creates a minimum of four layers of planning documents:

- The MDP,
- The Area Concept Plan (ACP), which is a broad brush area structure plan, generally covering more than a section of land,
- An ASP, which generally covers an area less than a section of land, and
- The Land Use Bylaw, which defines the specific land use districts that apply to the lands.

In urban areas within the County all four layers of planning documents will be in place before subdivision or development occurs.

When reviewing the level of detail that issues are “addressed”, the MGB accepts that the SCMDP is an early guide in the process. The following review is for the purpose of establishing compliance with the Act.

632(3)(a)(i)

With respect to “future land uses” a reading of the entire SCMDP gives an understanding of what council expects in terms of land use in the future. For example maps 12 and 13 of the SCMDP demonstrate that the County did divide its land mass into areas and overlays that relate to policies in various parts of the plan. Within the context of the hierarchy of plans, future land use is addressed in compliance with the intent of the Act. The City did not convince the MGB that the Act was not complied with in this respect.

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632(3)(a)(ii)

Subsection (ii) requires future development to be addressed. In large measure, portions of the SCMDP addressing land use also address future development as the two issues are closely related. A question arises with respect to Part 4, Objective 9, “Initiate a Growth Management Strategy for both the Urban Reserve and the Rural/Urban Transition Policy Areas”, and whether the manner in which the SCMDP defers details to future development to another stage and time of the planning process meets the requirement to “address” future development.

Policies 4.15, 4.19, 4.22 and 4.23 are related to Objective 9. In the opinion of the MGB, it is reasonable for Council to designate in the SCMDP where future growth will occur, and to suggest that further plans will be required prior to development. The MGB notes that general uses are provided for the major growth areas along with a commitment for follow up plans. These sections are read with Policy 17.1:

17.1 Implement the policies contained within the Municipal Development Plan through the Land Use Bylaw, and other statutory and non-statutory documents such as area structure plans, area redevelopment plans, conceptual schemes, subdivision approvals and development agreements;

This Policy ensures Council will proceed with the lower level plans. In the context of the general nature of the plan, future development is addressed within the intent of the Act.

632(3)(a)(iii)

This section only applies in the absence of an inter-municipal plan, as presumably if an IMDP was prepared these issues would have been addressed in the IMDP. An IMDP does not exist in this case, however, the municipalities have a history of inter-municipal planning including a current and on-going Joint Planning Study, which is mandated by the SCMDP. The City has presented arguments suggesting that the interaction between the two municipalities has not always been successful. However, the MGB only considers that the interaction actually occurs. Although an IMDP is not in place, a non statutory system is.

In this case, subsection 632(3)(a)(iii) applies and must be addressed. Coordination of land use, future growth patterns and other infrastructure mentioned in the subsection should relate to those areas of mutual impacts.

The MGB was convinced by the County that the SCMDP imbeds many policies that direct coordination of land use/infrastructure and future growth. These include Policies 4.17 and 4.21, which co-ordinate separation distances between incompatible uses; Policy 4.20, which co-ordinates a variety of relevant planning matters; Policy 4.21, which co-ordinates a major Growth

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Management Strategy; and Policies 4.23 and 5.57, which co-ordinate the transition of uses in the Rural/Urban Transition Policy Area. Chapter 7, “Industry and Energy” co-ordinates further the separation of uses as does Chapter 10, “Safety”. Chapters 15, “Transportation” and 16, “Utility Systems” address the coordination of utilities and transportation with specific reference to a regional context and neighboring municipalities.

Chapter 17, “Implementation” establishes major initiatives for the coordination of planning efforts in relation to neighboring municipalities and the City specifically. A very comprehensive referral process is established through policy 17.14 and a joint planning process is directed in policy 17.17 with an established priority area being the Yellowhead Corridor.

The evidence and arguments brought forward by the City do not convince the MGB that the policies did not meet the requirements of the Act. Therefore, no detriment arises. More importantly, the MGB finds that the remedies proposed by the City to address these matters were either lacking in substance, overreaching or ineffective and do not justify an intervention into the local bylaw process.

Section 622(3) of the Act requires that every action of the MGB must be consistent with the land use policies (LUP). Neither party provided any substantive analysis as to how a decision of the MGB supporting their position or the position of the other party would be consistent or inconsistent with the LUP. Notwithstanding the lack of substantive analysis by the parties, the MGB is satisfied that its decision supports the spirit and intent of promoting planning co-operation, the land use pattern principles, the maintenance and enhancement of the natural environment, the principles of resource conservation, the transportation principles and the provision of a diversity of residential environments as outlined in the LUP.

### **Lack of Overall Growth Management Strategy and Regional Context for SCMDP Policies**

#### **Summary of the City’s Position – Lack of Growth Strategy & Regional Context**

The City argued that in the absence of an overall growth management strategy for the County into which the more detailed growth studies for individual areas can fit, the City will suffer detriment. The detriment is caused by lack of good planning in a regional context. The City argued that the tools for good planning process were not in place, which presumably would lead to poor results for Edmonton. The lack of an overall strategy does not allow Edmonton to know what effects they will suffer. The preparation of an overall growth strategy for the county, prepared in close collaboration with the City, is critical and was mentioned as a potential remedy to several alleged detriments.

In the City’s opinion, if the SCMDP is allowed to stand in its current form, the decision for the location of urbanization will have been determined without any analysis relating to inter-municipal impacts and without regard to regional growth strategy management issues and

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planning. What is determined in the SCMDP will foreclose future challenges to the location of such urbanization and preempt any regional determinations of the appropriate location of urbanization in the County and in the region.

The City took the position that Strathcona County council had adopted this Plan against the advice of its administration, in the absence of and, with no requirement, even in the future, for an overall growth strategy for the County or any consideration of the requirements of a regional growth strategy management plan.

The lack of certainty respecting such urbanization in close proximity to its boundaries adversely affects the City's ability to plan on its own boundaries and adversely affects the possibility of a cohesive regional plan which measures the impacts and demands on the City. Both of these are detrimental to the City.

### **Summary of the County's Position – Lack of Growth Strategy & Regional Context**

The County argued that the SCMDP is the result of a strategic plan adopted by county council. Work that would be done in an overall growth management strategy has been done in the form of the SCMDP. The County pointed out that the SCMDP had a vision statement, a strategic direction and policy areas for the entire County.

The County drew the MGB's attention to land use map #13 which, they argued, demonstrated that the County had undertaken the review of where various land uses would be located throughout the County and where other levels of planning would be required. Individual growth strategies are discussed of diagram 13 as being part of an overall planning process. In addition, Policy 4.21 gives an outline of the content of a plan.

The SCMDP is a vision for future planning for the County and also represents the culmination of a number of studies and the incorporation of those studies into the overall vision. Specific examples where regional and inter-municipal impacts have been addressed include:

- The Beaver Hills Moraine Initiative
- The Future of Agriculture Study
- The Heavy Industrial Risk Analysis
- The Future Growth Areas Evaluation
- The Future Growth Scenarios Analysis (A Landscape Cumulative Effects Simulator Workshop)
- The Alberta Heartland Initiative; and
- The Joint Planning Study

In summary, the County contended that there are numerous inter-municipal and regional impacts addressed in the SCMDP, and that it is the equivalent of an overall growth management strategy.

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### **Issues – Lack of Growth Strategy & Regional Context**

1. Is there a lack of an overall growth management strategy that may cause detriment to the City?
2. Is there a lack regional and inter-municipal context to the policies in the SCMDP, causing detriment to the City?

### **Findings – Lack of Growth Strategy & Regional Context**

1. The SCMDP, viewed as a whole, has the attributes of a growth management strategy.
2. There is a regional and inter-municipal context in the policies of the SCMDP.

### **Reasons – Lack of Growth Strategy & Regional Context**

The MGB does not accept the City’s argument that the County has no over all growth strategy. It is true that there is no document entitled “Growth Management Strategy”, however, reviewing the documentation that preceded the SCMDP and the contents of the SCMDP it is clear that planning processes are in place to address the long term land use needs of the County, and that the City has been aware and involved with some of these processes and will be involved in future processes.

The MGB notes from page 1.3 of the SCMDP that prior to the SCMDP a Strategic Plan was adopted by County Council and from that process the SCMDP process commenced. As part of the process of developing the SCMDP the following studies were completed:

- Beaver Hills Initiative and Environmental Mapping;
- The West of 21 Area Concept Plan;
- Country Residential Area Concept Plan;
- Country Residential Water/Sewer Capacity;
- Competing Land Use Statistics and Projections;
- The Future of Agriculture;
- Financial Impact Analysis and Modeling;
- Social Sustainability Framework;
- Transportation Master Plan/Model Update;
- Future Urban Areas Feasibility Study;
- Evaluation of Urban Growth Options;
- Industrial Risk Management;
- Fire Risk Analysis and Mapping;
- Pipeline Corridor Study; and
- Housing Inventor (MDP 4.1)

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The MGB finds that the SCMDP incorporates the major components of a growth plan and agrees that the SCMDP land use map and policies provide the context for further and more detailed studies on areas identified for future development. The SCMDP also states:

The primary function of a Municipal Development Plan is to provide direction, through policies, that guide long-term development contained in both statutory and non-statutory documents, such as area structure plans, area redevelopment plans, and conceptual schemes. (SCMDP, p. 17.1)

The SCMDP read as a whole is the growth strategy for the County and gives interested parties a good indication of general directions of growth. As well, the SCMDP has been developed in a regional and inter-municipal context. The historical population review and projections provide a regional context as do other many references (e.g. Heartland Industrial Area, regional pipeline and utility corridors, regional water and sewer systems etc.) Throughout the plan there are references to a regional context and inter-municipal issues and processes to deal with these issues through specific policy references already mentioned and through the use of transition areas. It appears the City is looking for a more formalized regional planning context. That system will be delivered by the new Capital Region Board (CRB) in its mandate in the near future. This MDP was developed without the assistance of such a regional planning mechanism.

**PART G - IMPLICATIONS OF THE *CAPITAL REGION BOARD REGULATION AR 49/2008* AND THE RADKE REPORT ON THE MEANING OF *DETERMINATION OF DETRIMENT***

During the course of this appeal, a new initiative began for planning in the Edmonton metropolitan area. This came first at a news conference announcing provincial intent, which subsequently resulted in the production of a report and recommendations by Mr. Radke, entitled “Working Together” (Radke Report). Two applications were advanced by the City seeking to postpone this appeal pending the issuance of this report to confirm likely new directions in the capital region. Both applications were denied on the basis that the Radke Report was not legislation and did not vary the MGB’s responsibility to municipalities under section 690 of the Act. Further, the MGB concluded that, if it was the Province’s intention to defer this appeal, it was within the Minister’s power to do so. After the conclusion of testimony and argument, but before this decision was issued, the Regulation came into force.

**Summary of the City’s Position**

The City argued that the coming into force of the Regulation has implications in two areas. The first involves the status of the SCMDP in relation to the Regulation and the nature of the remedy that may be granted by the MGB. That argument has already been addressed in Part A of this decision.

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The second implication of the Regulation argued by the City is that the conclusion of the Radke Report that regional planning and development have failed in the Edmonton capital region, together with the coming into force of the Regulation must be considered in determining whether there is detriment to the City. The City argued that what was not detrimental before may now be considered detrimental in light of the Province's intentions as evidenced by the Report and the new legislation. Accordingly, the City suggests that the MGB must place a greater consideration for regional planning than that in MGB 77/98, which would affect the determination of detriment.

In its final submission to the MGB, the City argues that:

*Despite the lengthy discussion on detriment found in other submissions, the MGB should now clearly consider the Regulation and Schedule A in determining that detriment. What may not have been sufficiently detrimental prior to these documents coming into force, is now detrimental given the clear vision of the Capital Region and the intention of the Province. (EX 57A, para. 23)*

The City argues further that certain considerations are to be taken into account by the Capital Region Board (CRB) on evaluation of plans. This includes the objectives of the Capital Region Growth Plan set out in section 11 of the regulation.

In the City's opinion, the Regulation and the Radke Report mirror the City's argument that a more certain and collaborative plan approach is required than that found in the SCMDP and the consequence of that absence is detriment. The Province has recognized that detriment across the Edmonton Region in the issuance of the Radke Report and the Regulation.

The City goes one step further and suggests that a failure to find detriment in this appeal will deprive the City of the benefits of a Capital Regional Board Review of the SCMDP, as it may potentially be "grandfathered" and thus insulated from scrutiny in relation to the Capital Region Growth Plan.

### **Summary of the County's Position**

In the County's view, neither the issuance of the Radke Report nor the coming into force of the Regulation affects the MGB's mandate, the determination of detriment, or the quality of evidence the City must provide to establish detriment.

The County stated that the MGB's only jurisdiction was the determination of alleged detriment arising from the SCMDP, and that it had no authority to consider broader regional concerns. Further, the Regulation is framed to deal prospectively with statutory plans and, given the adoption date of this statutory plan, it is irrelevant to any MGB consideration.

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The County replied that the Radke report and the Regulation have not in any way changed the jurisdiction of the MGB on disputes before it, nor have they varied the test for detriment or the quality of evidence necessary to establish a case for detriment.

The County notes that the Province directed the new Capital Region Board to take some excerpts of the Radke Report into consideration during the transition period. However, no such direction was given to the MGB.

The County also asks the MGB to consider that the tenor of the Radke Report was prospective, not retrospective, indicating an intention to treat adopted plans, such as the SCMDP as “grandfathered”. This appeal should not result in the SCMDP being treated any differently when weighing its import than other plans adopted before the Regulation came into force.

In summary, the County argues that the Radke Report does not constitute evidence of detriment to the City. It is part of a broader initiative of the Province and does not affect the MGB’S consideration or determination of detriment.

### **Issues**

1. Does the Radke Report and the Adoption of the Capital Regional Board Regulation affect the determination of detriment?
2. Are the Radke Report and the Capital Region Board Regulation evidence of detriment caused by the referenced policies in the SCMDP?

### **Findings**

1. The MGB must determine detriment on the basis of the evidence brought before it.
2. The Radke Report and Capital Region Board regulation is evidence of a general deficiency in regional planning.
3. There was insufficient evidence to illustrate how the Radke Report and the Capital Board Regulation were evidence of detriment with respect to the specific policies in the SCMDP.

### **Reasons**

The MGB received the Radke Report into evidence, however, there was no direct evidence as to its terms of reference nor any witness to give a better indication of how it applied to this specific appeal. The rationale for this conclusion is that the Report’s findings on the “failure of regional planning and development” are stated generally, without identifying if the faults lie in statutory planning or in the political control to be exercised in achieving regional planning.

What is clear is that the CRB, created under the Regulation, operates to plan and implement a regional growth strategy. The CRB undertakes an active planning function not available to, nor



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expected of the MGB. Thus, the MGB does not accept that the determination of detriment within the context of section 690 of the Act is varied by the passing of the Regulation. The MGB's function on a section 690 appeal is solely the weighing of evidence to determine if detriment of sufficient severity and probability exists to warrant intervention in a statutory plan. It is quite clear to the MGB that the Regulation has introduced a significant and new planning function in Alberta. It has resurrected some parts of the old Alberta regional planning model and added to it. That is the Regulation's major impact.

The Radke Report reviewed (among other things) planning documents across 25 municipalities in coming to its recommendation for a mandatory regional planning authority with power to act throughout the Capital Region. The Report and Regulation are certainly intending broader regional considerations possible under the new authority than existed under the previous voluntary approaches to regional planning. However, this MDP must be considered only on the basis of its potential detriment to the City of Edmonton, not to weigh its merits against a new standard for regional planning that may now be possible.

The MGB is concerned that one of the City's requested remedies appears to be asking the MGB to apply the Regulation retroactively and for the MGB to take on a different role or at least defer its decision making to the new CRB. The MGB cannot do something indirectly which it cannot do directly, that is make the Regulations apply retroactively.

In summary, if detriment is to be found, it must be found in the provisions of this statutory plan and its effect upon the City, not by implication from another source. The Radke Report and Regulation 49/2008 clearly found that there was deficiency in regional planning in the Capital Region, but that it not the matter before this board. The matter before this board is this: Are certain provisions within the SCMDP detrimental to the City of Edmonton? Even if one could provide some link between the Rakde Report and the Regulation to the specific detriment in the alleged provisions of the SCMDP, the City failed to do so. It relied on far too generalized arguments to meet the test of detriment required for the MGB to direct the remedies anticipated in section 690 of the Act, that is to intervene in a local municipal legislative process.

Finally, the MGB finds that whether this MDP is "grandfathered", with whatever consequences that may have to the parties, is not an appropriate consideration for this Board. If required, that matter will be decided in another arena. The status of the SCMDP within the Capital Region Plan is a function of the terms of the Regulation as determined by the Capital Region Board, or by the courts should it be required. The MGB has no role in this determination.

## **DECISION**

The Appeal is dismissed.

It is so ordered.

## **PART H OVERALL SUMMARY AND CONCLUSION**

The City provided the MGB with a great deal of argument regarding the requirements of good planning practice in a regional context, yet little in the way of evidence to establish that the appealed MDP causes detriment to Edmonton. The County, however, defended its MDP with studies, reports and expert witnesses, and focused its efforts on matters the MGB is mandated to consider in determining a claim of detriment. The MGB has authority to act under section 690 only upon a finding of detriment based on the evidence submitted to it.

### The MGB's Jurisdiction Under Section 690 of the Act

The City argued that the Radke Report, which was the genesis of the CRB, and the Regulation, which created the new Board, have changed the context in which the MGB must view detriment and may be evidence of detriment in themselves. The MGB rejected the argument that these developments varied the considerations going into a finding of detriment. The MGB believes that the Radke Report speaks to the terms of reference that generated it and, as such, has a much broader consideration of regional planning, governance and implementation in contrast to the MGB's specific jurisdiction for determining detriment. Further, nothing within the Report or the Regulation amended the MGB's jurisdiction or directed variance in the MGB's determination of detriment. The MGB also rejected the argument that the Report and the Regulation evidenced detriment arising from the specific clauses of the appealed MDP.

Along the same vein, the City argued that, rather than attempt its own direction to remedy a provision found detrimental, the MGB could and should refer remediation to the CRB. The basis for that argument was that any finding of detriment would require a statutory plan amendment and, therefore, review by the CRB in any case. Given that result, a practical and liberal interpretation of the MGB's authority should allow such referral. The MGB found that argument difficult. Nothing within section 690 permits the MGB to delegate remediation to another entity. However, as no detriment was found in this appeal the question is moot.

### Uncertainty and Lack of Detail

With respect to the claim of detriment itself, the City's principal allegation was that a lack of detail on uses, density, timing and sequence of development made it impossible to understand the impacts of County growth on the City, thereby preventing the City from proceeding with its own planning. This allegation principally spanned areas 1, 2, 3 and 6 under appeal and included a more global concern; that the SCMDP failed to meet the legislated requirements for the contents of an MDP. The MGB did not find this to be established by the evidence led.

The SCMDP meets the requirements of the Act and its level of detail is consistent with such a high level planning document. The MGB did not find the land uses proposed in the SCMDP unclear and found that it contains policies to direct land use, development and the coordination

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of infrastructure. Moreover, the SCMDP contains in its provisions a process by which to proceed to the growth studies and subsequent plans that will provide an increasing level of detail over time. In short, the MGB found neither sufficient evidence of uncertainty or detriment.

With respect to the Urban Reserve Area, the MGB noted that the SCMDP only sets aside a holding area that will be subject to a Growth Management Strategy and then a MDP amendment, thus providing the City with opportunities for consultation prior to any change to the present 'Agriculture Large Holdings' designation, with which the City took no issue. The same is true for the Rural/Urban Transition Area. After hearing the testimonies of Mr. Vana (Transcript, p. 312, line 26 – p. 313, line 21) and Mr. McDougall (Transcript, p. 636, lines 11-16), the MGB concluded that an amendment to the SCMDP would also be required prior to any change in land use for the Transition Urban Reserve Policy Area.

#### Incompatible Land Uses

The City also argued that detriment arose as a result of incompatible land uses in the County that would restrict potential development in Edmonton. The issue of incompatibility was centered principally in the Transition Urban Reserve Policy Area and Area 5, with the claim of insufficient setbacks to preserve the City's industrial development potential in Clover Bar. The MGB found the County's experts credible on future potential uses in this area. Further, a close examination the City's evidence and the relevant policies in the SCMDP convinced the MGB that detriment was unproven. The MGB also noted that, for Area 5 and at least part of the Transition Urban Reserve Policy Area, the City will be participating in the Joint Planning Study. The JPS is not limited to addressing industrial setback issues only. Should any issue of incompatible land uses arise, it will be able to be dealt with through that process.

#### Fragmentation

Another argument raised by the City was that the SCMDP allows fragmentation of the large agricultural holdings in Area 3 that will preclude potential use of this land for future urban expansion. In considering this issue, the MGB noted the clear plan of the County to move urban development in a different direction. Similarly, the City could not identify when or if Edmonton might need to expand here. Hence, the MGB found this conjectured eventuality too remote to constitute detriment. Again, part of this area is included in the JPS.

#### Consultation

Much was made of alleged deficiencies in the consultative process leading to the passage of the SCMDP. The City argued that, taking that history into account, the MGB should view consultation and referral provisions in the SCMDP askance and intervene to ensure Edmonton's meaningful participation in future planning within the County. This would be done by directing amendments to the Joint Planning Study and Growth Management Strategy policies. Further, the

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City requested a freeze to certain types of future development in the affected areas until these are completed and implemented. The MGB noted that the policies within the SCMDP directed consultation with surrounding municipalities including Edmonton and, in fact, provided Edmonton a planning role under the Joint Planning Study. The MGB found no evidence that would support MGB intervention to strengthen the Plan's consultation and referral policies. The consultative process outlined in the SCMDP should allow the City a meaningful opportunity to receive planning information and to make representations and suggestions as contemplated in the Act. Moreover, the MGB noted that when the requested remedies were viewed cumulatively, the involvement sought by the City appeared more than consultation closer to having a significant level of control over development in the County, this is consistent more in an Inter-municipal Development Plan, which of course is not the document in dispute.

The MGB noted that the principal remedy the City seeks is the referral of all appealed sections of the SCMDP to the CRB, with or without a determination of detriment. Those choices are not open to the MGB to consider.

Further, a principal component of the next substantial remedy is the restriction sought on the development within the growth areas and the Joint Planning Study area until those studies as well as an overall growth management strategy for the County are completed. This lengthy and intrusive remedy could be considered only on the establishment of clear and significant detriment. No such finding was made.

The majority of the remaining remedies sought appeared of limited import, such as seeking specification of consultation with the City by name, rather than references to consultation with adjoining municipalities or the region. The MGB believes these are not substantive enough to warrant an intrusion into the wording of this bylaw.

The MGB having found no detriment either in the specific areas of concern or in general, the appeal is dismissed.

It is so ordered.

Dated at the City of Edmonton, in the Province of Alberta this 19<sup>th</sup> day of August 2008.

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(SGD.) D. Thomas, Presiding Officer

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**APPENDIX "A"**

**APPEARANCES**

<b>NAME</b>	<b>CAPACITY</b>
P.A. Smith Q.C.	Counsel for the Appellant
B.A. Sjolie Q.C.	Counsel for the Respondent
J. S. Grundberg	Counsel for the Respondent
K. D. Wakefield Q.C.	Counsel for Genstar Development Company, Landowner
M. Exner	Witness for the Appellant
P. Vana	Witness for the Respondent
T. MacDougall	Witness for the Respondent
D. McCutcheon	Witness for the Respondent
J. Kristensen	Witness for Genstar Development Company, Landowner
R. Horton	Representative for Trans America Group, Landowner
S. Ericksen	Representative for Qualico Developments, Landowner
W. Candler	Representative for Met Inc., Landowner
M. Golka	Landowner
K. Rowan	Landowner
M. Van Hecke	Landowner
D. Endres	Landowner
S. Kelm	Landowner
M. Young	Landowner
N. Pentelechuk	Landowner
D. Pentelechuk	Landowner
B. Allam	Landowner
M. Boisvert	Landowner

**APPENDIX "B"**

**DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:**

<b>NO.</b>	<b>ITEM</b>
1R	Letter to MGB from J. Grundberg
2A	Letter to MGB from J. Johnson
3A	City of Edmonton Submission with Tabs
4A	City of Edmonton Evidence Binder
5R	Legal Submission and Authorities of Strathcona County

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6R	Strathcona Evidence Binder #1, Strathcona Staff & Expert Reports
7R	Strathcona Evidence Binder #2, Alberta Planning Board Proceedings and Edmonton Planning Documents
8R	Strathcona Evidence Binder #3, Strathcona Planning Documents
9R	Strathcona Evidence Binder #4, Other Documents
10A	City of Edmonton Rebuttal – Legal Submission
11A	City of Edmonton Rebuttal – Evidence
12R	Legal Submission and Authorities of Strathcona County Re: Inadmissibility of Mediation Discussions
13A	Reply of the City of Edmonton Re: the Inadmissibility of Mediation Discussions
14R	Rebuttal of Strathcona County Re: Inadmissibility of Mediation Discussions
15L	Submission of Genstar Development Company & Genstar Titleco
16L	Submission of Trans America Group Ltd.
17L	Submission of Qualico Communities
18L	Submission of Linton Delainey – Oral Notes
18L(a)	Submission of Linton Delainey – Revised Oral Notes
19L	Written Submission of Linton Delainey
20L	Written Submission of Marcel Van Hecke
21L	Written Submission of Ross and Coleen Taylor
22L	Written Submission of Sandra Lindner
23L	Written Submission of Marilyn Macyk for Kendor Farms
24L	Written Submission of D.A. Bentley
25L	Written Submission of Margaret Barry on behalf of Joan and Doug Barry
26L	Submission of John Boonstra and Dave Romaniuk
27L	Written Submission of Doug Endres on behalf of R&M Enterprises and Wiltshire Farms
28L	Written Submission of John and Carolyne Dykstra
29L	Written Submission of Michael Golka
30L	Summary of the Oral Submission of Dr. Bryan Fitz*
31L	Written Submission of P. Gunn-Graham
32L	Written Submission of Lois and William Gordon
33L	Written Submission of Donald and Dulcie Jarvin
34L	Written Submission of Selma Kelm
35L	Written Summary of the Submission of Marina Young
36A	Maps of affected areas requested by MGB and provided by Edmonton

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37A December 10, 2007 letter to Case Manager from P. Smith  
38R December 10, 2007 letter to Case Manager from J. Grundberg  
39R December 10, 2007 letter to Case Manager from J. Grundberg Re: availability of Council Chambers  
40A December 11, 2007 letter to Case Manager from P. Smith  
41L Letter to Case Manager from K. Wakefield Re: alternate dates for landowners submissions  
42A Report of the Capital Region Integrated Growth Management Plan Project Team  
43L Written Submission of Jim and Sandy Bedford  
44A Map Clarifying and Confirming Areas Subject to Appeal  
45L Submission of Kent Rowan - Oral Speaking Notes  
46R Map of East Edmonton  
47A TZ Transition Overlay District Map (Bylaw 2-93)  
48A Letter dated February 8, 2008 from P. Vana to L. Moulton  
49L Evidence Package of Genstar Development Company  
49L(a) Aspen Trails/Emerald Hills Land Use Plan Map  
50R(c.e.) Summary of Evidence of Dr. Uwe K. Terner  
51R(c.e.) Transportation Safety Board Reports  
52A Written Submissions of the City of Edmonton filed April 8, 2008  
53R Final Submission and Authorities of Strathcona County filed April 15, 2008  
54A Reply Argument of the City of Edmonton filed April 21, 2008  
55R Letter dated April 21, 2008 signed by J. Grundberg  
56R Supplemental Submission of Strathcona County filed May 5, 2008  
57A Supplemental Argument of the City of Edmonton filed May 5, 2008  
58L Written Submission of Marina Young Re: Capital Region Regulation  
59R Rebuttal Submission of Strathcona County filed May 12, 2008  
60A Rebuttal Letter dated May 12, 2008 signed by J. Johnson  
61R Letter dated May 14, 2008 signed by J. Grundberg  
62AR Transcripts of Hearing held March 17, 18, 19 and 25, 2008, Volumes 1 - 5