

**BOARD ORDER: MGB 068/18**

**FILE: 17/IMD-03**

**IN THE MATTER OF THE** *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

**AND IN THE MATTER OF AN INTERMUNICIPAL DISPUTE** lodged by the City of Calgary respecting the adoption of Bylaw C-7700-2017, the Omni Area Structure Plan on September 26, 2017

**CITATION:** City of Calgary v Rocky View County (re: Rocky View County Bylaw C-7700-2017 the Omni Area Structure Plan, 2018 ABMGB 68

**BEFORE:**

Members:

H. Kim, Presiding Officer  
F. Wesseling, Member  
D. Thomas, Member

Case Management:  
C. Miller Reade  
A, Drost

This dispute concerns Bylaw C-7700-2017, the Omni Area Structure Plan (Omni ASP) as adopted by Rocky View County (Rocky View). The City of Calgary (Calgary) filed the dispute under section 690 of the *Act*, claiming that portions of the Bylaw have or may have a detrimental effect on it. The hearing was held in the City of Calgary from July 30, to August 3, 2018.

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## **OVERVIEW**

[1] Calgary filed this appeal because it anticipated detrimental effects from the Omni ASP's proposed commercial and industrial developments in Rocky View. This proposed development lies just east of Calgary adjacent to NE Stoney Trail and north of Rocky View's existing Conrich ASP. Argument focussed on three main reasons for detriment: (1) planning uncertainty from inconsistency between the scale of development contemplated in the Omni ASP and Rocky View's MDP, (2) impacts on the regional transportation network from traffic connected with the Omni ASP, and (3) impacts on emergency services.

### Planning Uncertainty

[2] Calgary argues the Omni ASP proposes a regional business centre (RBC) development (similar to the Cross Iron Mills development in the Balzac East ASP), and not a highway business area (HBA) as described in Rocky View's Municipal Development Plan (MDP). It says the scale and intensity of development described in the Omni ASP is at a higher density than anticipated, and the existing and planned area road network is insufficient to support it.

[3] Rocky View believes the Omni ASP is consistent with the Municipal Development Plan, and merely combines two HBAs. It says traffic data from the Omni, Conrich and East Stoney ASP network analyses were incorporated into the jointly produced 84 Street NE Study, which shows existing roadways can accommodate initial traffic to the area. The study also recommends intersection designs to deal with the projected increase in traffic volume.

[4] The MGB determined the Omni ASP is larger than an HBA, and has no direct highway access – which would ordinarily be expected of an HBA. Therefore, the Omni ASP is inconsistent with Rocky View's MDP, and out of step with Calgary's expectation as to the intensity, type, and scale of development in an HBA. Although the 84 Street NE Study goes some way to identifying intersection and roadway upgrades, it also forecasts intersection failure at full build out, suggesting further transportation planning is required. This conclusion is supported by Calgary's engineering study, which recommends further planning be conducted before Omni ASP proceeds.

### Impact on Transportation Network

#### *Network capacity and planned infrastructure upgrades*

[5] Calgary is concerned the Omni ASP represents another large-scale development, close to the Conrich ASP, which will impact Calgary's roadways and Stoney Trail. Calgary's east boundary road, (84 Street NE) is the primary point of access to the Omni lands, and 84 Street NE is already acting at capacity. Calgary's consultant analyzed the background materials for the Omni

ASP and the 84 Street NE Study and determined they have several shortcomings. Traffic counts are underestimated; in addition, the 84 Street NE Study used Rocky View's traffic model rather than Calgary's multi-modal urban traffic model; as a result, the 84 Street NE Study recommends inadequate upgrades that will ultimately fail.

[6] Rocky View disagrees with Calgary's analysis, noting that it assumes an overly-accelerated build out schedule for the Omni ASP. The Omni Project, Genesis' proposed development will be built out over the next 10-15 years, but the balance of the Omni ASP will not achieve full build out for at least 25 to 30 years. In addition, Calgary's analysis incorrectly attributes traffic to the Omni ASP rather than the East Stoney ASP. Rocky View believes construction of infrastructure will keep pace with development, and that Calgary's concerns about area roadways are unfounded. Rocky View maintains no further study is required at this time to ensure roadways can accommodate future traffic.

[7] The MGB heard the engineering evidence from both Calgary and Rocky View projects intersection failure due to traffic volumes from the build out of the Omni ASP. While the time horizon for full build out is uncertain, the MGB determined additional studies - including the completion of the East Stoney Functional Analysis - are prudent to allow appropriate planning for infrastructure upgrades to accommodate growth along NE Stoney Trail.

#### *Funding for planned upgrades*

[8] Calgary notes the Omni ASP and its accompanying analysis provides no detail as to the timing of necessary infrastructure upgrades, their costs, or potential sources of funding. Upgrades to 84 Street NE are not included in Calgary's 4 and 10-year budget and capital plans, and any upgrades to 84 Street NE would result in delay to Calgary's other capital projects. Calgary estimates that even the intersection upgrades recommended in the 84 Street NE Study will cost approximately \$240 million. These costs would increase substantially if additional upgrades such as interchanges along 84 Street NE become necessary to accommodate increased traffic.

[9] Rocky View counters that while new infrastructure will be necessary as development proceeds in Omni, funding will not pose difficulty to Calgary, because Rocky View's policy is to require developers to construct or pay for the infrastructure necessary to support their developments. The MGA establishes several ways to ensure developers fund appropriate infrastructure, including off site levies and agreements to reimburse for oversized improvements.

[10] The MGB finds Calgary's concern about funding is well founded. 84 Street is a Calgary roadway, so in the absence of a funding arrangement with the Province or Rocky View, Calgary will be responsible to provide any upgrades not paid for by developers and will be responsible for any shortfalls. Furthermore, since the development is in Rocky View, Calgary lacks assurance that it can fund the infrastructure through off site levy bylaws or development agreements.

[11] While Genesis has stated a willingness to construct upgrades and enter oversizing agreements, the Omni lands are located in Rocky View and there is no certainty as to how costs will be allocated or any agreement for cost sharing. Until appropriate agreements are in place, Calgary bears a significant financial risk connected to unfunded transportation infrastructure upgrades, which constitutes detriment.

#### Emergency Services

[12] Calgary believes the Omni ASP will be detrimental to Calgary's Emergency Services, as there is a positive relationship between an increase in traffic, motor vehicle collisions and commercial areas and shopping centres.

[13] In reply, Rocky View indicates it has dedicated staff and equipment in the area and is also planning to build another fire station in Conrich by 2021. Further, Calgary's evidence does not establish a link between commercial development such as that contemplated for Omni and a disproportionate increase in motor vehicle collisions.

[14] The MGB sees insufficient evidence to link Omni's commercial-style development with a disproportionate increase in motor vehicle collisions. In addition, it finds Rocky View has sufficient resources either in place or at advanced stages of planning to service the Omni ASP.

#### Genesis

[15] Genesis Land Development Corporation owns about 50% of the lands included in the Omni ASP. Genesis has been coordinating its plans with the developer of the East Stoney ASP and believes transportation issues will be resolved without detriment to Calgary. Genesis noted the purpose statement in Part 17 of the *Act* intends that planning decisions avoid infringing on the rights of individuals, this includes the right to proceed with its plans approved in the Omni ASP. Finally, Calgary's concerns about transportation may be addressed through plans, policies or agreements which do not form part of an ASP.

[16] The MGB accepts Genesis' evidence. Considering the approval of the Omni ASP and the advanced state of planning for the 185-acre Omni Project, further delays would unnecessarily affect Genesis, the individual.

#### Conclusion and Remedy

[17] The MGB finds the balance of the Omni ASP (beyond the Omni Project) introduces a significant level of planning uncertainty that may result in detriment to Calgary. In addition, detriment arises to Calgary from a combination of the intensity of proposed land uses and associated traffic, together with uncertainty as to the timing and nature of necessary transportation upgrades, and the sources of funding for those upgrades.

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[18] The Omni Project lands, a 185-acre site identified by Genesis in NE and NW of 18, remain designated for commercial uses within the Omni ASP.

[19] To address the detriment, the MGB orders changes to the Omni ASP to place the balance of the lands in the Omni ASP into a special study area. The special study area designation will allow for the comprehensive planning of the area under the Calgary Metropolitan Region Growth Plan and the completion of the required transportation network studies to ensure that the planning budgeting, and construction of appropriate infrastructure occurs.

[20] Accordingly, Maps 5 and 11 in the Omni ASP will be amended to designate the majority of the lands in the ASP as a special study area along with any text references to these Maps.

### **TERMS USED IN THIS ORDER**

Various acronyms and terms are used throughout the order and are listed below for convenience:

**Act** – The Municipal Government Act, Chapter M-26 of the Revised Statutes of Alberta 2000

**Affected Person** – A party granted limited status in the appeal. Genesis, in addition to being a landowner, was granted affected person status in this hearing in DL 009-18

**Balzac East ASP** – the Balzac East Area Structure Plan which contains the Cross Iron Mills Development and the New Horizons Mall Development

**Calgary** – City of Calgary

**Calgary – Rocky View IDP** – Calgary and Rocky View Intermunicipal Development Plan

**CFD** – Calgary Fire Department

**Conrich ASP** – the Conrich Area Structure Plan

**84 Street NE Study** – a joint transportation study undertaken by Calgary, Rocky View and Alberta Transportation. 84 Street NE is Calgary’s east boundary road.

**Genesis** – Genesis Land Development Corporation, landowner and affected person in this matter.

**GMS** – Rocky View 2060 Growth Management Strategy adopted in 2009.

**HBA** – Highway Business Area. Defined in the Rocky View MDP, these are of limited size and should be located in proximity to highway intersections and interchanges, which offer local employment opportunities.

**Intermunicipal Dispute Procedure Rules or IMD rules** – Procedure rules adopted by the members of the Municipal Government Board under section 523 of the Act, amended June 2018.

**MVC** – Motor Vehicle Collisions

**Omni ASP** – the Omni Area Structure Plan, which is the plan under appeal. Two previous decision letters referred to this document as the OMNI ASP.

**Omni Project** – Phase one of the Genesis Land Development Corporation’s proposal in NW18-25-28-W4M and NE 18-25-28-W4M

**PM peak hour trips** – Estimated traffic generated in defined area for a particular land use between 4 PM and 6 PM weekdays. This is an accepted measure of the highest daily traffic volume.

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**RBC** – Regional Business Centre, as defined in the Rocky View MDP, which contains medium-to-large sized commercial and light industrial uses, which offer employment opportunities to regional work force.

**Rocky View** – Rocky View County

**Rocky View MDP** – the County Plan, Bylaw C-7280-2013 as amended

**SSRP** – South Saskatchewan Regional Plan made under the *Alberta Land Stewardship Act*

**Vpd** – Vehicles per day, an indication of the maximum traffic volume.

**Vph** – Vehicles per hour

## **PART A: PRELIMINARY MATTERS**

[21] Three preliminary matters arose at the beginning of the hearing. The panel delivered rulings on each one orally at the hearing, together with brief reasons. The presiding officer also reserved the right to provide more fulsome reasons in writing.

Preliminary Issue 1: Emergency Services

### *Summary of Party Positions*

[22] Rocky View noted that Calgary’s written notice prior to second reading did not mention that the Omni ASP would be detrimental to emergency services. Until it received the submissions for this appeal, Rocky View had not had notice nor opportunity to respond to Calgary’s concerns about emergency services. Since this area of detriment had not been previously raised, Rocky View argued that the MGB should not hear or consider evidence in this matter.

[23] In its written submission, Genesis argued that emergency services appears to be an afterthought as an area of detriment as it was neither included in the written notice, nor mentioned in the seven intermunicipal committee meetings. Calgary therefore did not fully meet the legislated notice requirements and the MGB cannot hear the matter.

[24] In response, Calgary argued section 690 allows for the filing of “an appeal of the matter” and does not limit the appeal to grounds put in writing before second reading. In MGB 018/99, the panel there determined a fair and liberal interpretation of section 690 does not tie the contents of an appellant municipality’s notice of concern to its notice of appeal. Calgary’s written notice identified a concern about traffic safety. Impact on emergency services is related to safety and is an element of detriment. Calgary filed evidence and argument describing this area of detriment, and Rocky View has had adequate time to review and respond.

### *Findings, Decision and Reasons – Emergency Services:*

[25] The panel determined that it would hear evidence from Calgary about detriment to emergency services. The reference to safety as an issue in the written notice ties in with detriment

relating to emergency services. In any event, sections 690 and 691 do not define narrowly the issues of detriment to be argued by the appellant municipality. While it has been some time since MGB 018/99 was issued, the reasons set out in that decision still apply. What is heard by an MGB panel in an intermunicipal dispute is not limited to those matters identified by the appellant municipality in the written notice prior to second reading. Often, parties refine the detriment arguments as mediation occurs, studies are conducted, and evidence and arguments are developed. In this case, Calgary's disclosure regarding emergency services was sufficient to allow Rocky View and Genesis a fair opportunity to review and respond to the case against them.

Preliminary Issue 2: Genesis's submissions in Exhibit 19L

*Summary of Party Positions*

[26] The second preliminary matter concerned the scope of Genesis' submissions, which Calgary argued was beyond that contemplated by the *Act*, as well as the MGB's directions in DL 09/18 and DL 027/18.

[27] In particular, Calgary argued the Board should exclude Exhibit 19L, as section 691(2) only requires the MGB to provide notice to and hear from landowners at the merit hearing. The legislative intent is for landowners to provide oral submissions at the merit hearing - not to file written submissions beforehand. Further, Exhibit 19L includes evidence and argument about regional planning, which does not form part of Calgary's claim of detriment. Since DL 09/18 and 027/18 instructed Genesis to limit its submissions to issues raised by Calgary, the MGB should exclude that portion of Genesis's submission.

[28] In response, Genesis argued section 691 requires the MGB to hear from the municipalities and the owner of the land. There is no limitation on how each party may be heard, or any bar to written submissions. Further, Genesis' written submissions in Exhibit 19L were prepared in response to Calgary's evidence and argument - particularly Calgary's requested remedy, which is to repeal the Omni ASP. This remedy would have grave consequences for Genesis, which has invested time and resources into the Omni Project. Repealing the Omni ASP would be contrary to the intent of section 617, which encourages orderly, economic development without unnecessary infringement on individual rights, including Genesis' expectation that it may proceed with its development. In the interest of fairness, Genesis should be able to respond to Calgary as fully as possible including by written submission.

[29] Rocky View took no position on this matter.

*Findings, Decision and Reasons – Genesis' Exhibit 19L*

[30] The MGB allowed Exhibit 19L into the record. There is nothing in the *Act* or IMD Procedure rules to preclude written submissions from landowners before the hearing. While



section 690 does not require the board to “hear from” anyone other than the landowners and affected municipalities, the MGB does not interpret this phrase to preclude filing of written submissions before the hearing. Indeed such an interpretation would undermine the fairness of the Board’s procedure, since parties would have less opportunity to review and prepare for the case against them.

[31] Further, while DL 027/18 instructs Genesis to confine itself to the issues raised by Calgary, the MGB accepts that the potential remedy is itself an issue raised by Calgary to which Genesis is entitled to respond. Calgary’s requested remedy to repeal the entire Omni ASP may have serious consequences for Genesis that it is best placed to identify. Information about potential consequences of repealing the bylaw will assist the panel should it decide to order a change to or repeal of the bylaw to address detriment.

### **Preliminary Issue 3: Genesis’ Surrebuttal**

#### *Summary of Party Positions*

[32] The third preliminary matter was a request to exclude Exhibit 23L, Genesis’ written surrebuttal. Calgary asked the MGB to exclude the document as the DL 027/18 did not order it, and Calgary did not anticipate any surrebuttal from Genesis. Moreover, since Genesis filed late on Friday and the hearing began the following Monday, Calgary had insufficient time to respond.

[33] Genesis conceded that DL 027/18 did not order surrebuttal; however, it noted Calgary itself did not follow the timelines in DL 027/18, which were extended to give Calgary more time to respond to Genesis’ written submissions. While Genesis could have waited until the hearing to respond, it filed surrebuttal on Friday to let Calgary review it over the weekend. The surrebuttal document is a short document, and easily reviewable over two days.

[34] Rocky View took no position on this matter.

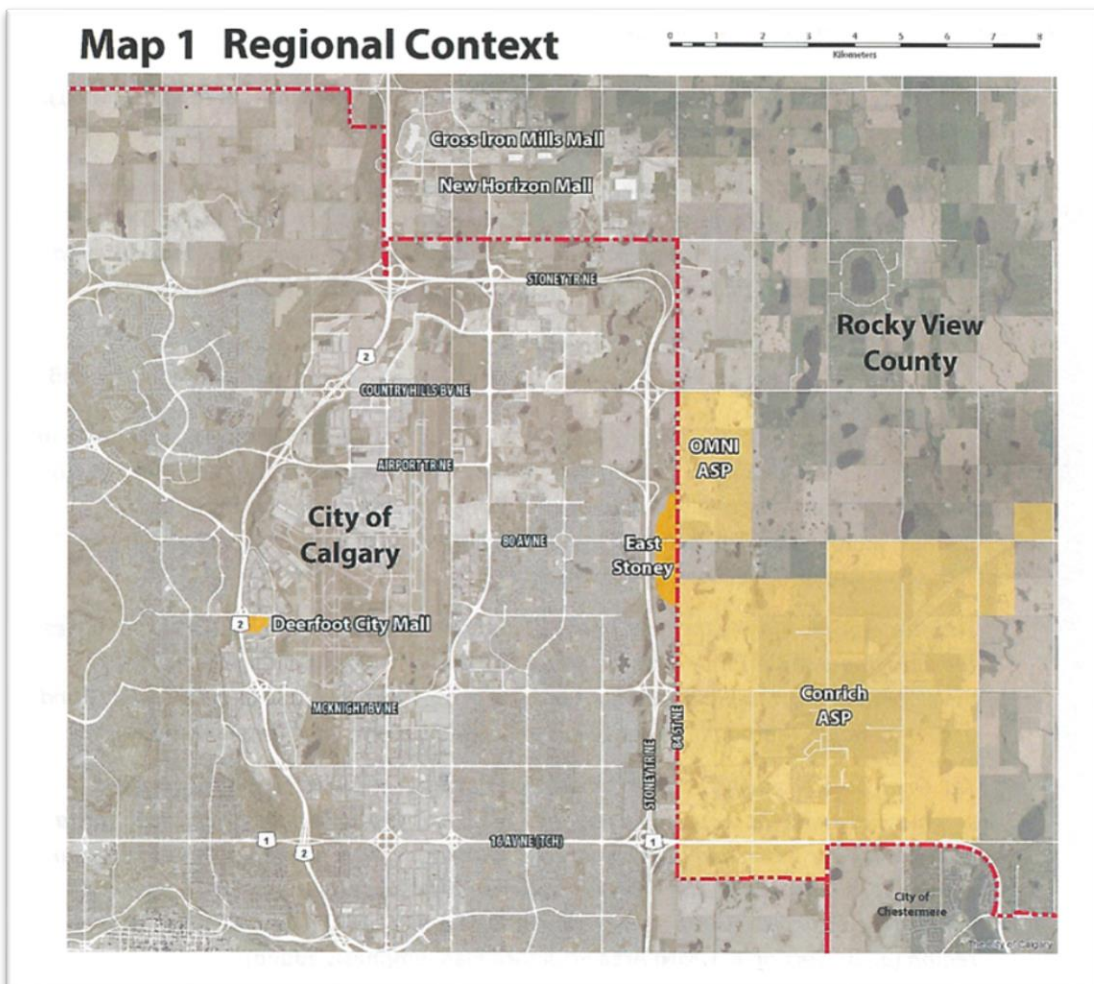
#### *Findings, Decision and Reasons – Genesis’ Surrebuttal Exhibit 23L*

[35] The MGB allowed the Exhibit 23L surrebuttal submissions into the record. Genesis’ arguments about section 617, its applicability in an intermunicipal dispute and the role of a landowner give a perspective that neither Calgary nor Rocky View would provide, and are relevant to the issues raised in this intermunicipal dispute. While Genesis did not request to file surrebuttal when the Board set out the timeline in DL 027/18, Exhibit 23 L, there was nothing to prevent Genesis from presenting its arguments at the hearing without first filing Exhibit 23L. Exhibit 23L simply gave Calgary and Rocky View the weekend to consider the arguments before the hearing began on Monday.

**PART B: BACKGROUND TO THE INTERMUNICIPAL DISPUTE**

[36] Section 690 of the *Act* states that if a municipality is of the opinion that a statutory plan or land use bylaw or an amendment adopted by an adjacent municipality has or may have a detrimental effect on it, the municipality may file an intermunicipal dispute. In this case, Calgary provided written notice (as required by section 690(1)) prior to second reading of the Omni ASP to Rocky View. In its letter, Calgary objected to the impact that the highway business area would have on the transportation network, storm water management and on Calgary’s emergency services. The bylaw was given third reading and adopted on September 26, 2017.

[37] As described in DL 09/18 and DL 027/18, this dispute concerns an area of 1260 acres NE of Calgary, and NW of the Conrich ASP lands shown in Map 1: Regional Context.



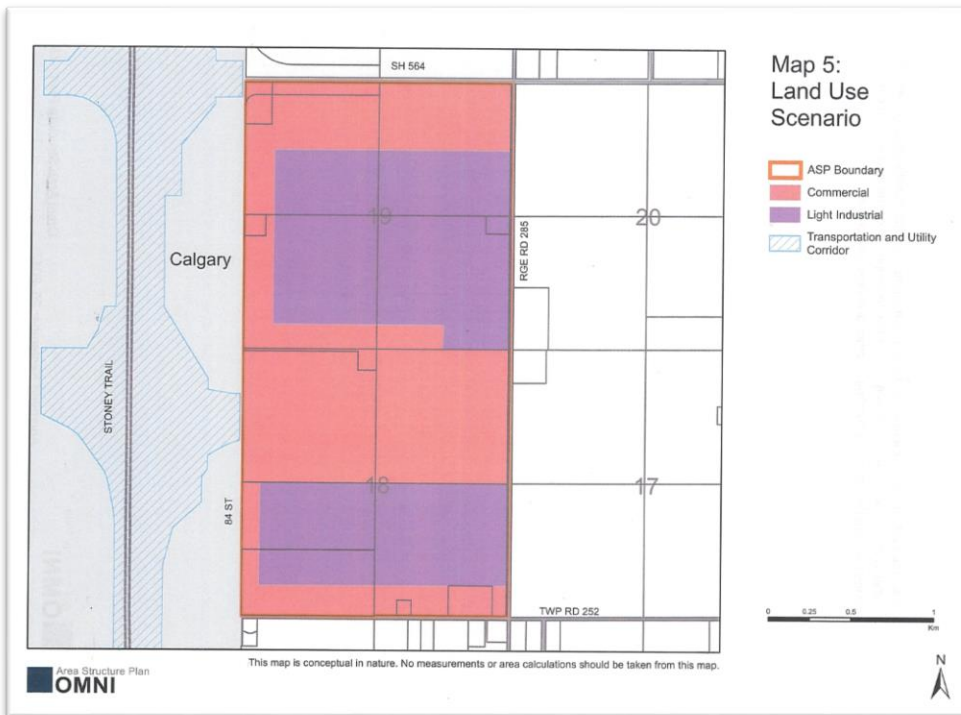
Source: City of Calgary, Exhibit 13A

[38] The lands lie east of 84 Street NE and west of 100 Street NE. The northern boundary of the lands is Country Hills Blvd/ Highway 564, and the southern boundary is Township Road 252. The County Plan, which is Rocky View’s municipal development plan (Rocky View MDP) shows two highway development areas in the vicinity of the Omni ASP lands. The lands contain a number of Class IV wetlands that form part of the drainage basin of the Rosebud River, which drains north to the Red Deer River. The lands are currently in agricultural use. The Omni ASP was developed over 18 months beginning in December 2016 with initial public engagement sessions, continuing with plan and policy development, intermunicipal engagement and culminating in a public hearing in September, 2017.

[39] Calgary’s statutory declaration appended to its notice of appeal identifies three issues of detriment, as follows:

1. The proposed land use in the Omni ASP is significantly more intense than envisioned in the Rocky View MDP and the location is inappropriate.
2. Development in the Omni ASP will detrimentally affect Calgary’s transportation network.
3. Development of the Omni ASP will detrimentally affect Calgary’s Emergency Services.

[40] The Omni ASP proposes the lands be used for commercial and industrial uses as depicted in Map 5.



**Source: Omni ASP, Rocky View Exhibit 17R**

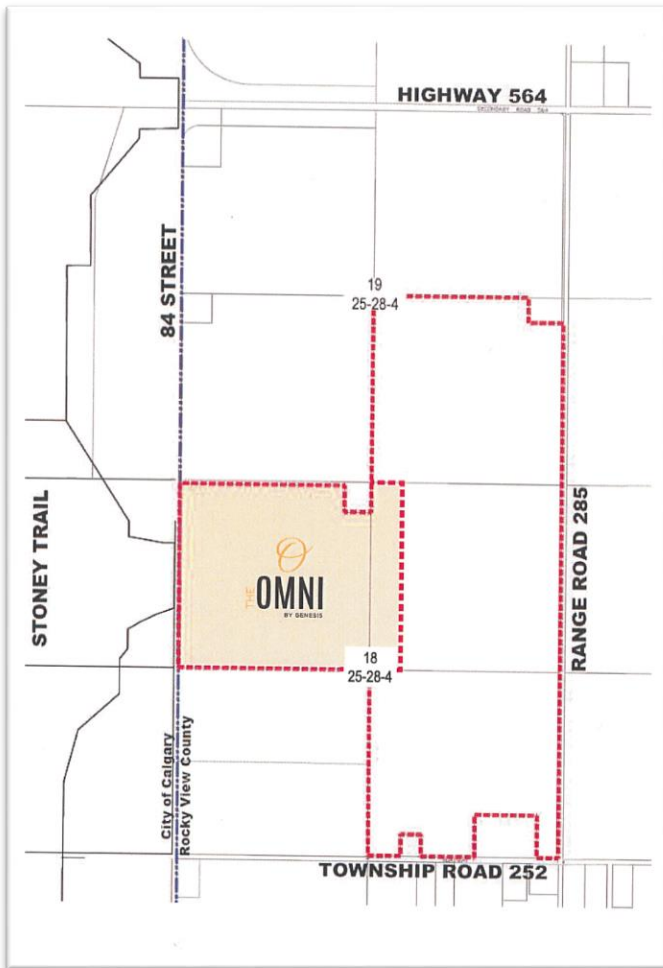
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[41] The staging of the Omni ASP has the lands owned by Genesis contained in Phase 1, and in particular, the lands which Genesis refers to as the Omni Project lands are located at the intersection of 84 Street NE and the future extension of Airport Trail NE (Township Road 253). These lands are shown in Figure 3 below:



**Map 3: The Location of the Omni Project. Source: Exhibit 19L, Genesis Land Development Corporation**

[42] The Omni Project lands and those along 84 Street NE are intended to include large format retail stores, shopping centres, outlet malls entertainment and offices, personal services and institutional uses. The other commercial areas (Highway 564 and Township Road 252) are intended for highway commercial uses such as banks, restaurants, service stations, truck stops and other uses that benefit from access to major transportation routes.

**PART C: THE MEANING OF DETRIMENT**

[43] The legislation states the MGB must, subject to any ALSA regional plan, decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the appellant municipality.

[44] Detriment is not defined in the *Act* or its regulations; however, the MGB commented on the meaning of detriment in *The City of Edmonton, the City of St. Albert, and the Town of Morinville v. County of Sturgeon* (MGB 077/98) or the Sturgeon decision. While not binding, these comments have served as a useful reference point for many subsequent decisions.

[45] The meaning of detriment was discussed in the Sturgeon decision as follows:

The dictionary definition is straightforward enough. According to Webster's New World Dictionary, "detriment" means "damage, injury or harm" (or) "anything that causes damage or injury." This basic definition or something very similar to it seems to have been generally accepted by the parties involved in this dispute. Clearly, detriment portends serious results. In the context of land use, detriment may be caused by activities that produce noxious odours, excessive noise, air pollution or groundwater contamination that affects other lands far from the site of the offending use. For example, the smoke plume from a refinery stack may drift many miles on the prevailing winds, producing noxious effects over a wide area. Intensive development near the shore of a lake might affect the waters in a way that results in detriment to a summer village miles away on the far shore. These are examples of detriment caused by physical influences that are both causally direct and tangible, some of which are referred to as "nuisance" factors (page 44/84).

But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact "could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another". Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth. In the present dispute before the Board, Edmonton and St. Albert have claimed that mere uncertainty arising from deficiencies in the County's MDP will result in detriment to them (page 44/84).

[46] The Sturgeon decision also noted the invasive nature of the remedy under section 690, which is not to be imposed lightly or in circumstances where detriment cannot be clearly identified or will not have a significant impact:

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 reasonably likely to occur, and to have a significant impact on the appellant municipality should it occur (page 48/84; emphasis added).

There is also a functional or evidentiary component to the Board's ability to direct an effective remedy under s.690. Simply put, the Board must have enough information before it, and of sufficient quality, to establish a reasonable likelihood of detriment. Where the condition complained of appears to raise only a mere possibility rather than a probability of detriment, or if the harm is impossible to identify with a reasonable degree of certainty, or may occur only in some far future, the detriment complained of may be said to be too remote (page 48/84).

[47] Similar points appear in later decisions, including *Sunbreaker Cove v. Lacombe County*, MGB 007/11, where the MGB observed there must be

evidence...of sufficient quantity and quality to convince the MGB that the detriment is both likely to occur and to have a significant impact (at para. 71).

[48] Generally, the onus rests with the initiating party to show a detrimental effect rather than with the respondent to refute the allegation of detriment. In this case, the MGB weighed the evidence and submissions of the parties to determine if harm was reasonably likely to occur and if it would have a significant impact on Calgary. Each issue was measured against this test.

#### **PART D: ISSUES**

[49] The following issues arise from the arguments and material presented:

1. Is the development in the Omni ASP consistent with the definition of Highway Business Area (HBA) in the Rocky View MDP? If the development in the Omni ASP is inconsistent with the definition for such an area in Rocky View's MDP, will the development size or intensity result in detriment to Calgary?
2. Will development in the Omni ASP detrimentally affect Calgary's transportation network? In particular:
  - 2.1 Will Omni's requirements for transportation upgrades be detrimental to Calgary?
  - 2.2 Will Calgary be required to pay for upgrades ahead of schedule?

3. Will traffic volume increase due to development of the Omni ASP area result in a detrimental increase of demand for Calgary's emergency services?

**ISSUE 1: Is the development in the Omni ASP consistent with the definition of Highway Business Area (HBA) in the Rocky View MDP? If the development in the Omni ASP is inconsistent with the definition for such an area in Rocky View MDP will the development size or intensity result in detriment to Calgary?**

### **Summary of Calgary's Position - Issue 1:**

#### Inconsistency with Statutory Plans

[50] Calgary argued the Omni ASP is inconsistent with existing statutory planning documents, resulting in an unanticipated intense land use pattern, which is detrimental to Calgary. The Rocky View MDP outlines a hierarchy of plans and identifies the ASP as a subordinate plan. Thus, the Omni ASP should be consistent with the Rocky View MDP. The fact that it conflicts with the MDP creates planning uncertainty, and consequently detriment.

[51] Calgary acknowledged that a change in plan, resulting in non-compliance with previously adopted municipal and intermunicipal plans may not always be detrimental. However, in this case, the Omni ASP is detrimental because of an already significant investment from Calgary into comprehensive planning that did not anticipate the intensity of the Omni ASP.

[52] In support of its position, Calgary emphasized the definition of an HBA in the Rocky View MDP is inconsistent with the intense development contemplated in the Omni ASP. The Rocky View MDP defines an HBA as follows:

Highway business areas are intended to take advantage of the provincial highway system. They are of limited size and should be located in proximity to highway intersections and interchanges. The purpose of a highway business area is to contribute to the County's fiscal goals, provide destination commercial and business services, provide services to the traveling public, and offer local employment opportunities.

[53] It also pointed to the testimony of its main planning witness, Mr. A. Palmiere, a professional planner employed by O2 Planning + Design. He testified that the proposed land uses are not 'highway business' as contemplated in the above definition of HBA; rather, they reflect uses expected in a 'regional business centre' (RBC), which is also defined within the Rocky View MDP:

Regional business centres are large areas of commercial and industrial development within the County. The purpose of a regional business centre is to provide regional

and national business services, and local and regional employment opportunities. Regional business centres make a significant contribution in achieving the County's fiscal goals.

[54] Calgary emphasized the differences between the HBA and RBC descriptions within the MDP, and contrasted them to the development contemplated within the Omni ASP. The size, intensity, scale, and permitted land uses in the Omni ASP are all more reflective of an RBC than an HBA. For example, in the Rocky View MDP, the definition of an HBA states commercial development would be of limited size, whereas the RBC definition states the area for commercial and industrial development will be large. In keeping with the MDP's RBC definition, the Omni ASP identifies commercial and light-industrial uses to be of "medium to large" size. Policies 8.3 and 8.4 of the Omni ASP also speak to the large-scale uses and intensity of development. Likewise, the Omni ASP specifically speaks to 'regional' employment opportunities, rather than local employment opportunities.

[55] Calgary also pointed to the evidence of Ms. Zaluski, a professional planner and Rocky View's Policy Planning Supervisor. She confirmed the Omni ASP area is too large to be a single HBA; in addition, she indicated Policy 14.10 of the Rocky View MDP suggests an HBA contemplates at most four quarter sections, whereas the Omni ASP covers eight.

*Size as factor distinguishing an HBA from an RBC*

[56] Calgary disagreed with Rocky View's position that the Omni ASP area is too small to qualify as an RBC, and that the only difference between an HBA and an RBC is size. In Calgary's view, a development area's size is not definitive as it does not necessarily determine intensity of use or land use designation, which are important considerations for long term planning. Despite Rocky View's argument that it merely combined two HBA nodes to create infrastructure and servicing efficiencies, Calgary maintained this combination actually intensifies development and creates a larger impact on one area. The Omni ASP, as an RBC, creates a greater scale of business use and higher demand than two HBAs. Calgary could not have anticipated the two HBAs were to be combined; accordingly, its infrastructure and transportation plans do not accommodate the new development now contemplated.

[57] Calgary emphasized that Rocky View's own evidence suggests the nature of the Omni ASP is more urban than rural in nature. For example, Section 6 of Rocky View's *Transportation Offsite Levy Support Summary* ("Sedulous Report") anticipates charging three times higher offsite levies for the increased costs of development associated with urban ASPs like Omni. This evidence suggests the Omni ASP will have a significantly higher impact and result in higher associated costs associated with commercial urban development than with typical lower density rural development. Even the developer's website identifies the subject lands as a "Regional Commercial Centre", further supporting the City's interpretation.



*Planning uncertainty as detriment*

[58] The Rocky View MDP states no RBC will be considered unless all others within Rocky View have reached maximum capacity. As Ms. Zaluski confirmed, Rocky View's other RBCs are not approaching full build-out. Furthermore, the Rocky View MDP says "substantive planning, time, and public and private investment have resulted in identifying and developing regional business centres". Creating an RBC requires careful planning that should not be carried out *ad hoc*.

[59] The Omni ASP overlooks the policies within Rocky View's MDP for an RBC by neglecting the need to ensure sufficient infrastructure - including a transportation network - is in place. The Omni ASP is also inconsistent with the higher level Calgary-Rocky View IDP, which does not identify the subject area as one of its seven growth corridors. Accordingly, the ASP will create a greater demand for services than anticipated. The lack of planning coordination is detrimental to Calgary, since it did not anticipate Rocky View would direct a regionally scaled and intense development adjacent to City boundaries.

[60] Calgary depends on the Rocky View statutory plans (MDP, IDPs, and other ASPs) to anticipate and plan for future development in Rocky View. Rocky View approved the Omni ASP despite municipal and intermunicipal policy contradictions, which sets precarious planning precedent for 'leapfrog' development. Furthermore, the Calgary-Rocky View IDP under policies 13.1.5 and 13.1.6 requires the host municipality to consider the impact a proposed development will have on the transportation infrastructure of the adjacent municipality and that any required upgrades should be coordinated. The lack of coordinated planning limits Calgary's ability to accommodate growth and development within its own jurisdiction.

[61] If an RBC had been identified for this location during the approval stage of the Rocky View MDP, Calgary would have opposed it. Similarly, Calgary would have responded differently to the Conrich ASP if it had been aware of the proposed intensity within the Omni ASP.

Cost

[62] Calgary stated its East Stoney Area Structure Plan (East Stoney ASP), which is adjacent to Omni, contains language reflecting intermunicipal coordination and cost-sharing opportunities. For example, Calgary intends to negotiate an agreement with Rocky View regarding storm water management if the East Stoney ASP proceeds. In contrast, the Omni ASP does not contain the same level of detail to ensure co-ordination and cost sharing.

[63] Calgary also relies on a Growth Management Overlay system tied to land use approval to manage and ensure staged growth that will make best use of private and public investments. This system ensures proper budget is allocated and development initiated in time to accommodate increases in traffic volume and demand for services. The Omni ASP forces Calgary to reprioritize

its capital budget timelines to respond to unplanned growth in Rocky View. Furthermore, development in the Omni ASP benefits from proximity to Calgary, but does not shoulder associated costs. Instead, these costs will be downloaded onto Calgary, which receives no tax revenue from the development.

### Growth Management Board

[64] Calgary argued it is premature for the Omni ASP to proceed while a Growth Management Board is being established to undertake comprehensive intermunicipal planning. Once a new growth plan is in place, the detriment can be addressed in a holistic regional manner. Rocky View did not address the concerns outlined by Calgary prior to second and third reading.

[65] Calgary submits that the remedy to the detriment is to repeal the Omni ASP completely. Alternatively, Calgary requests the commercial and light industrial uses on page 24 of the Omni ASP be replaced with a “Special Policy Area” designation. This remedy would ensure any future amendments required to facilitate commercial or light industrial uses would be subject to review by the Calgary Metropolitan Region Board.

### **Summary of Rocky View’s Position - Issue 1:**

#### Inconsistency with Statutory Plans

[66] The MGB has been clear that according to section 690(5.1), inconsistency between statutory plans does not itself result in detriment. The issue is not whether the ASP complies with the spirit of the IDP, but whether failure to comply is detrimental for the purpose of section 690 of the *Act*. Rocky View emphasized the 2001 Queens Bench decision in *Brown v Sturgeon, 2001 ABQB 920*, which held an ASP is not required to be entirely consistent with the MDP or IDP. The court stated:

... a MDP is a broadly stated plan outlined before a truly detailed study has been made of the areas in question, and it is the detailed study and consultation that is part of it that ultimately brings to the fore the land use considered to be most desirable from all perspectives and the methods of achieving them through an ASP. There will be general consistency with flexibility. There should be considerable latitude when considering the consistency of the more detailed plans and bylaws that follow.

[67] A municipality must be able to respond to changing circumstances and change its planning priorities accordingly. As stated by Professor Laux in *Planning Law and Practice in Alberta*, 3d edition, both the MDP and IDP provide general objectives rather than setting binding rules. They are policy documents rather than regulatory, and such, they are to be “afforded a liberal

construction that permits room to maneuver in the implementation and administration stages of the planning process”.

[68] Rocky View argued that in any event, the ASP is consistent with both the Calgary-Rocky View IDP and the Rocky View MDP. The 2009 Growth Management Strategy (GMS) identified the subject area for commercial development, and the 2013 Rocky View MDP refined the location of the Omni ASP by identifying two HBAs in its proximity. The Omni ASP combined these two 640 acre areas into one comprehensive 1280-acre area to achieve efficiencies.

[69] Combining the two HBAs achieves efficiencies in several ways. For example, a single contiguous area allows Rocky View to plan more effectively to ensure transportation connectivity. Likewise, providing services to contiguous land is more cost effective and efficient than providing them to separate areas. Clustering development also reduces agricultural land fragmentation. Contrary to Calgary’s argument, clustering development will not overwhelm existing infrastructure, since phased development of the Omni ASP ensures infrastructure can be constructed as required to support each successive phase.

[70] The evidence does not support Calgary’s position that combining two HBAs will render the ASP urban in nature rather than rural. As Ms. Zaluski emphasized, the *Act* does not distinguish between urban and rural ASPs. Further, Mr. Hopkins, a professional engineer who is Calgary’s Acting Manager of Transportation Development Services, provided no evidence that combining the HBAs will have a greater impact on the transportation network than two separate HBAs.

[71] Calgary’s position also misinterprets the Rocky View MDP’s definition of HBA. As Ms. Zaluski noted, when the Rocky View MDP refers to “limited in size”, it is referring to the size of the ASP, not the intensity of the uses. There is no provision in the Rocky View MDP that prohibits regional scale uses such as commercial or business services in an HBA.

[72] The Omni ASP meets all the Rocky View MDP policy requirements for an HBA. Size and location – not use - are primary distinguishing features between an HBA and an RBC. An HBA must be located along intersections or interchanges with the provincial highway network, and have a development area limited to one or all of the quadrants of the intersection or interchange. The Omni HBA is consistent with the size of other HBAs such as Springbank at 800 acres, but is inconsistent with the size of RBC such as Balzac East at 5,700 acres or Conrich at 6,500 acres, which are approximately five times the size of the Omni ASP.

### *Planning certainty*

[73] Map 4 in the Calgary-Rocky View IDP identifies areas and corridors for potential future growth within the municipalities. It represents a best estimate as to where future growth may occur. Policy 8.1.2 states Rocky View’s growth corridors should be developed in accordance with the GMS and the Rocky View MDP. The GMS identifies the Omni ASP area as appropriate for a

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Business Node/Regional Employment Centre. The IDP provides no specific direction for land uses other than scale and intensity in the growth areas.

[74] When Rocky View reviewed and amended its MDP in 2013, it refined the GMS into two highway business nodes, which are now the location of the Omni ASP. Since the adoption of the 2013 Rocky View MDP, Rocky View has approved plans and directed growth to areas identified on Map 1 in the Rocky View MDP; these plans introduced a high level of certainty for Calgary that did not exist prior to the GMS and the Rocky View MDP.

[75] Rocky View argued that the Omni ASP provides considerable certainty for Calgary. Uncertainty occurs through ad hoc development. In contrast, the Omni ASP represents comprehensive planning undertaken with Calgary's input. Development along intermunicipal boundaries impacts both municipalities, and does not equate to detriment. The Omni ASP identifies potential impacts on Calgary, which will be addressed and mitigated throughout the development process. Calgary will receive the proposals and supporting technical documents for review. Additionally, any development within the Omni ASP requires redesignation, at which time Calgary can file another section 690 appeal if it finds it may create detriment.

#### Cost

[76] Rocky View stated that Calgary's concerns about unanticipated upgrades assume full build out. Currently, only a small portion of the Omni ASP is proposed for development, which existing infrastructure can support; if any upgrades are required to accommodate Genesis' proposed 185-acre development, these can be developer-funded or be included in an off-site levy calculation. In response to Calgary's concern that development in the Omni ASP will benefit from Calgary infrastructure without shouldering its cost, Rocky View noted Calgary residents will also access the Omni developments without paying taxes in Rocky View.

#### Growth Management Board

[77] Rocky View argued that the MGB cannot delay its decision on the Omni ASP due to the pending Growth Plan or Interim Growth Plan, and accompanying Regional Evaluation Framework. The Omni ASP process was already delayed due to the section 690 appeal, and is causing harm to the developer.

#### **Summary of Genesis' Position: Issue 1**

[78] Genesis argued that Calgary's section 690 appeal is not about planning matters; rather, it is about whether Calgary and Rocky View are able to agree on how to fund infrastructure and when to construct it. Section 690 does not exist for one municipality to impose regional planning on another outside of what is prescribed by the Province. Genesis agrees with Rocky View that it can change its planning at any time, as it is an autonomous municipality. The inconsistency or

changes of Rocky View's planning documents do not create detriment. Yet, the delay through the appeal is inflicting damage on the developer due to time delays and uncertainty about the proposed development.

[79] Genesis stated that it has "Tier 3" status as a developer within Calgary, which means that historically Genesis has completed projects to Calgary's satisfaction and is trusted by the municipality. Genesis was involved in and had completed numerous projects that have since sold.

[80] Genesis is the first developer within the Omni ASP area to be working on a development. Market demand will play a large role in determining what will be developed in the long-term. The risk to any developer is to understand and accommodate the changing market demand. Calgary is basing its concerns on the full build-out of the Omni ASP, whereas the current proposal is for approximately 185 acres only. The Omni Project, which is the development proposed by Genesis, will have approximately 40% of land used up for servicing infrastructure such as road networks and storm drainage ponds, and approximately 60% of the area is developable, resulting in even less development. The Omni Project does not create the need for significant infrastructure upgrades as raised by Calgary. The infrastructure required for the 185-acre development can be developer funded, or negotiated with Rocky View. However, should the cost of infrastructure upgrades be too high, Genesis would have to halt the development and possibly sell their land.

### **Findings – Issue 1**

1. The understood definition of an HBA within the Rocky View MDP differs from what is proposed within the Omni ASP, as it describes a development that is RBC in nature.
2. The conflicting understanding of an HBA creates significant uncertainty regarding the Omni ASP development.

### **Reasons – Issue 1**

#### Inconsistency with Statutory Plans

[81] The MGB finds there is significant inconsistency between the Rocky View MDP definition of an HBA and the development contemplated in the Omni ASP. Despite Rocky View's assertion that the Omni ASP is in line with the size expected of an HBA in the Rocky MDP, the Omni ASP extends over a two-mile area along 84 Street NE and will include area along more than one future highway intersection with Stoney Trail. This configuration is more extensive than the quadrants of a single interchange implied by the wording in the MDP.

[82] Board also finds the extensive development contemplated in the Omni ASP is likely to have a more regional than local focus, which is inconsistent with an HBA. For example, the vision statement for the Omni ASP portrays the area as an attractive location for medium to large-scale commercial and light industrial uses serving a regional labour force. This vision also finds support

in the promotional materials issued by Genesis, which marketed Omni to NE Calgary, suggesting Omni is intended to draw users from Calgary to Rocky View – and not simply to “provide services to the traveling public”, as stated in the MDP definition of an HBA.

[83] The location of the Omni area in relation to Stoney Trail also argues against characterizing Omni as an HBA. The Omni ASP is not directly on Stoney Trail, and access is not convenient for travellers along that route. Although there are plans for a future interchange at Stoney Trail and Airport Road, the only current Highway access from Stoney Trail is along Country Hills Boulevard (Highway 564) at the extreme north end of the ASP. These circumstances also suggest Omni’s primary purpose is not to serve travellers on Stoney Trail, but rather to serve as a destination for local and broader area residents – a purpose more in the nature of an RBC. Accordingly, the MGB finds the Omni ASP is not an HBA as contemplated within the Rocky View MDP.

[84] The question remains as to whether the inconsistency within Rocky View’s planning documents is detrimental to Calgary. As the MGB observed in MGB 003/12, inconsistency between statutory plans does not necessarily result in detriment:

[142] It is self evident that certainty facilitates planning while uncertainty introduces complexity into the planning of any municipality. One cannot plan in a void of information. For this reason, the Act requires certain municipalities to adopt MDPs and facilitates joint planning between neighbouring municipalities by providing for IDPs.

[143] It is equally self evident that plans and planning documents must be able to respond to changing circumstances. Similarly, municipalities are autonomous and retain authority to change their planning priorities, provided they do so responsibly without imposing undue hardship or detriment on neighbouring municipalities. Planning is an iterative process and a mere change in plan – even one that does not conform to previously shared plans - does not necessarily cause planning uncertainty or significant detriment to a neighbouring municipality.

[85] While the inconsistency between the Rocky View MDP and the Omni ASP may not be detrimental in itself, Calgary argues that detriment results from uncertainty about the coordination of plans and funding needed to construct the necessary transportation and infrastructure upgrades, and uncertainty for long-term planning. Furthermore, unlike previous disputes that could be resolved through mediation agreements under an IDP, this remedy is not available in this case since Calgary intends to withdraw from the Calgary-Rocky View IDP.

[86] The MGB acknowledges that in this case, transportation upgrades required to accommodate the 185-acre development can likely be developer funded; further, Calgary’s aggressive timing assumptions for full build-out of the Omni ASP area are probably less realistic than Rocky View’s. Having said this, the lack of planning for Omni’s impact on the regional transportation network remains a significant area of concern.

[87] Calgary believed further studies including the 84 Street NE Study and East Stoney Transportation Network Analysis would be complete before further large-scale developments in NE Calgary and East Rocky View. This belief was reasonable, since it is reflected in the mediation agreement for the Conrich ASP. Without these studies in place, Calgary has neither a clear picture of how to accommodate development in the area, nor an ability to make adequate plans for supporting roads and infrastructure for build out beyond the initial 185-acre phase of development.

[88] The necessary long-term improvements to service the entire Omni ASP area are significant. Although Calgary and Rocky View differed in their approaches to traffic modelling, both forecasted intersection failures at full build out which will need to be addressed. There are few or no plans in place for any of these improvements, and no identified sources of funding to pay for them.

[89] Without information or adequate plans in place, Calgary cannot prepare for such a significant increase in traffic on its local road network. The MGB finds detriment will occur from the unplanned impact of additional traffic using local roadways instead of the highway system. Although the intention is to take advantage of the provincial highway system, the Omni ASP will place a burden on local roads at least until an interchange at Airport Trail is fully constructed.

## **Issue 2: Will development in the Omni ASP detrimentally affect Calgary's Transportation Network?**

### **Summary of Calgary's Position – Issue 2-1: Will Omni's requirements for transportation upgrades be detrimental to Calgary?**

[90] Calgary contends that commercial development in the Omni ASP will overload Calgary's existing infrastructure and will cause traffic congestion. As the Omni ASP area is being marketed to NE Calgary as a commercial area, traffic from Calgary to Rocky View will comprise most of the area traffic.

[91] The Omni ASP does not contain any commitments for roadway upgrades, nor does it include any mitigation for traffic generated by the development. Traffic volumes on 84 Street NE are already at capacity. To support the developments, upgrades are necessary along 84 Street NE, including widening from 2 to 4 lanes, and interchanges at Country Hills Blvd NE and Airport Trail NE.

[92] Through mediation for the Conrich ASP, Calgary and Rocky View had agreed to complete the 84 Street NE Study prior to further land re-designations in the area. When Calgary received Rocky View's evidence for this hearing, Calgary was surprised to note that Rocky View considered the 84 Street NE Study complete. Calgary considers this study as a draft. As 84 Street NE is Calgary's eastern boundary, the roadway is within Calgary's jurisdiction, so according to the agreement the study must be completed to Calgary's satisfaction. Calgary also noted that an

additional transportation study, the East Stoney Network Analysis, should be complete before further developments proceed in the area. Calgary contends the proposed development will generate excessive traffic, cause severe delays in traffic operations, and contribute to the failure of the existing roads and intersections.

[93] There is currently no direct access to the Omni ASP site from Stoney Trail, so traffic from Stoney Trail must use a local roadway, 84 Street NE, for access. An interchange at Stoney Trail and Country Hills Boulevard NE provides access to the north part of the site, and there is indirect access to the south via McKnight Boulevard NE (McKnight Blvd) and Township Road 250 (TR 250) and 84 Street NE. However, neither of these indirect routes are satisfactory means of access for a large commercial and industrial development. While better access is planned via an interchange at Airport Trail NE, there is no certainty as to how or when this interchange will materialize or where the funding will come from.

84 Street NE Study

[94] Calgary, Rocky View, and Alberta Transportation had been developing a functional planning study for 84 Street NE from Highway 1/16 Avenue NE north to Highway 564/Country Hills Blvd NE. This study was intended to identify the ultimate transportation network and the intersection upgrades necessary for 84 Street NE to manage traffic from the Conrich ASP, East Stoney ASP and the Omni ASP. The network analysis for the Omni ASP was included in this draft transportation study.

[95] At the time of preparation of the study, Calgary had concerns that Rocky View’s traffic volumes were inaccurate, as Calgary’s traffic model identified higher base traffic volumes. The study may also require additional modelling as some of the underlying assumptions may not be correct. Calgary views the 84 Street NE Study as a draft because the study is not complete to Calgary’s satisfaction and additional technical studies and details are needed.

[96] Current and projected traffic counts were included in the model to identify the optimal, at-grade design for each intersection on 84 Street NE and the amount of delay occurring at each intersection at PM peak hours. The following intersections, adjacent to the Omni ASP lands, were excerpted from the study as these were required to access the lands. Although Calgary believes the 84 Street NE Study may underestimate traffic, the study still shows intersections will perform poorly at best.

<b>Intersection with 84 Street NE</b>	<b>Optimal Intersection Modeled</b>	<b>Delay by Traffic with Construction of Optimal Intersection</b>	<b>Interchange at Stoney Trail NE</b>



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<p><b>Country Hills Blvd</b> <i>(Currently a re-aligned at-grade intersection at 84 Street NE)</i></p>	<p>4 lane divided roadway with a dedicated left-turn lane and a right turn ramp.</p> <p>Dual left turn lanes on 84 Street NE westbound to Country Hills Blvd</p>	<p>25 seconds (Poor performance)</p>	<p>Yes</p>
<p><b>Airport Trail NE</b> <i>(Currently an at-grade intersection at 84 Street NE)</i></p>	<p>84 Street NE, realigned, as a 4-lane divided roadway with dedicated dual left-turn lanes onto Airport Trail NE and a single right-turn ramp.</p> <p>Airport Trail NE as a 6-lane divided roadway with dual left turn lanes northbound on 84 Street NE. Right turn ramps in all directions.</p>	<p>55 seconds (Poor performance verging on failure.)</p> <p>(Failure at greater than 55 seconds)</p>	<p>No</p> <p>Partial Interchange west of Stoney Trail NE</p>
<p><b>Township Road 252</b> <i>(Currently an at-grade intersection at 84 Street NE)</i></p>	<p>4 lane divided roadway with dedicated right turn ramps from 84 Street NE onto Township Road 252</p>	<p>28 seconds (Poor performance)</p>	<p>No</p>

[97] While the intersection of McKnight Blvd NE and 84 Street NE is not adjacent to the Omni ASP lands, it was included in the 84 Street NE Study because there is currently a constructed interchange with Stoney Trail at McKnight Blvd that provides access to the lands from the south. The intersection is an important link in the regional transportation network. The study recommended additional analysis to explore how an interchange at McKnight Blvd NE and 84 Street NE might improve traffic flow, given that the study projects complete failure at this intersection without upgrades such as grade separations and bridges.

<b>Intersection with 84 Street NE</b>	<b>Optimal Intersection Modeled</b>	<b>Delay by Traffic</b>	<b>Intersection with Stoney Trail NE</b>
<p><b>McKnight Blvd</b> <i>(Currently a re-aligned at-grade intersection at 84 Street NE)</i></p>	<p>84 Street NE as a 4 lane divided roadway with 2 left turn lanes and a right turn ramp onto McKnight</p> <p>McKnight Blvd as a 6 lane divided roadway with 2 left turn lanes northbound and a single</p>	<p>142 seconds (Failure)</p>	<p>Yes</p>

	left turn lane southbound onto 84 Street NE and a and right turn ramps.		
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[98] Calgary’s chief concern with this study was that it relied on traffic counts and data that did not accurately project traffic generated by the Conrich ASP, Omni ASP nor the East Stoney ASP and inaccurately applied reductions for the use of transit and other modes of transportation. With incorrect projections, the recommended roadway upgrades and intersection treatments will be inadequate. Calgary also noted that the mediation agreement with Rocky View for the Conrich ASP required this study as well as the East Stoney Trail Transportation Infrastructure Analysis.

Transportation Network Study: Omni ASP Appeal (the CIMA+ Study)

[99] Calgary commissioned the CIMA+ study to identify the Omni ASP’s traffic impacts, necessary roadway network improvements, and the capital costs on the City infrastructure. After reviewing the Omni ASP and the website information, Calgary and CIMA+ used the following assumptions in the development of the study’s findings:

- The Omni ASP has a buildout timeframe of 20 years. Construction and site improvements for the first phase, which Genesis calls the Omni project, are scheduled to begin in 2020 and would be built out within 10 years.
- The development will include 120 acres of highway business area, 540 acres of destination commercial, and 620 acres of industrial land uses.
- Most traffic will be travelling east - west between Calgary and Rocky View.
- Traffic was modelled using 3.71 vehicle trips per PM peak hour (3.7 vph PM peak) which is the maximum traffic volume for retail commercial traffic used by Institute of Transportation Engineers (ITS). Calgary models such traffic using 6.0 vehicle trips per PM peak hour.

[100] Using Calgary’s Emme software, the CIMA+ study modelled the following traffic volumes from Calgary to the Omni ASP area:

<b>Land Use</b>	<b>Area</b>	<b>Traffic Volumes</b>
Highway Commercial	120 acres	1450 vph AM Peak 1450 vph PM Peak
Destination Commercial	540 acres	3700 vph AM Peak 9600 vph PM Peak
Industrial	620 acres	3700 vph AM Peak 4200 vph PM Peak

[101] The existing roadways (Highway 564 and 84 Street NE) are narrow, 2 lane roadways. While the intersections of Highway 564 and McKnight Blvd at 84 Street NE have been shifted easterly to accommodate future interchanges on Stoney Trail, 84 Street NE has not had any other improvements. There is very little traffic on 84 Street NE, but it is currently at capacity, introducing the traffic volumes noted above will overwhelm the roadway. At full build out, the amount of traffic generated by the Omni ASP lands will be 15,339 vehicles at the PM peak hour. Current traffic in the area is less than 500 vehicles per hour in the PM peak hour. The Omni ASP will generate more traffic in the PM peak hours that can be accommodated in the entire day. When the roadways are overwhelmed, CIMA+ explained that roadway safety will diminish, and collisions will increase. Improvements are needed to accommodate the traffic that will be generated by the land uses in the Omni ASP, but there is no schedule for the upgrades.

[102] CIMA+ noted that there is no indication in the ASP, the functional analysis, nor the 84 Street NE Study, of the timing for intersection upgrades nor their funding. In addition, traffic from the Conrich ASP lands will use Township Roads 252 and 250, and it is not clear 84 Street NE Study considered this traffic. While the CIMA+ study accepts vehicle trips can be sometimes be attributed to other modes of transportation (transit, cycling and walking), they should not be considered in this case because Rocky View does not operate a transit service and Calgary has no plan to extend transit service to this area. Walking or cycling would be difficult because of the amount of traffic and the lack of walkways or paved shoulders adjacent to the roadways to walk or cycle on. More importantly, Rocky View has not tied the land uses in the Omni ASP to the available and planned transportation uses and capacity in Calgary and Rocky View. Readers of the Omni ASP (and its promotional materials) would be left with the impression that LRT or bus transit service will be available; however, there is no current plan to provide these services.

### **Summary of Calgary's Position Issue 2-2: Will Calgary be required to pay for upgrades ahead of schedule?**

#### Cost of roadways, intersection improvements and other infrastructure.

[103] Calgary estimated that the cost of roadways and infrastructure in the Omni ASP to be in the hundreds of millions of dollars. The CIMA+ study provided an estimate of costs of \$240 million dollars for the development of infrastructure recommended in the draft 84 Street NE Study.

[104] Of the total, \$180 million dollars was identified as longer term costs not included in Calgary's 4 and 10 year budget and capital projections. The remaining \$60 million dollars are unidentified costs by either Calgary or Rocky View. If the Omni ASP lands are built out before 2028, Calgary will have to defer other transportation projects for which funds have been committed in favour of the Omni ASP. Any costs included in the Calgary off-site levy bylaw were noted; however, only \$15 million of these costs were identified for the acquisition of right of way and upgrade of 84 Street NE.

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[105] Calgary contends that Rocky View's funds in its capital budget, its off-site levy fund or its other accounts are inadequate to cover the costs of improvements to 84 Street NE. The CIMA+ study did not contain a cost estimate for an interchange at McKnight Boulevard and 84 Street NE, as Calgary did not view the 84 Street NE Study as complete and an interchange analysis was a recommendation. While Rocky View's McKnight Functional Analysis included a cost estimate of over \$40 million dollars for the interchange, there is no indication how these funds are to be collected, and the Rocky View off-site levy bylaw doesn't include costs for 84 Street NE. Rocky View did not invite Calgary to participate in the McKnight Functional Analysis.

#### Summary

[106] Calgary drew the MGB's attention to the decision in MGB 07/11 for the Summer Village of Sunbreaker Cove v. Lacombe County (Sunbreaker Cove). Sunbreaker Cove filed an intermunicipal dispute on the basis that development in one municipality could result in the generation of traffic that is beyond the capacity of facilities in the adjacent municipality. If established by evidence, traffic impacts on Sunbreaker Cove's streets and boat launch might form the basis of a finding of detriment. In that case, there was insufficient evidence for the MGB to find detriment and order changes; however, Calgary's evidence on the current matter includes the draft 84 Street NE Study (84 Street NE Study) and a study commissioned from CIMA+ Consulting Engineers (CIMA+ Study) to demonstrate that the traffic generated by the Omni ASP will be detrimental. Significant upgrades will be required on 84 Street NE due to Omni, Conrich and East Stoney ASPs, and no clear indication when these upgrades will be constructed and who will pay.

#### **Rocky View's Response - Issue 2-1: Will Omni's requirements for transportation upgrades be detrimental to Calgary?**

[107] Rocky View disagreed with Calgary's arguments about the 84 Street NE Study and the Omni ASP network analysis as well as the findings of the CIMA+ study. Watt Consulting prepared both the 84 Street NE Study and the Omni ASP Network Analysis analysing the impacts on the regional network, the transportation infrastructure and the roadway upgrades necessary for the Omni ASP. These studies are consistent with Rocky View's policies and practices, and reflect a comprehensive consideration of the regional transportation network. Calgary has not provided compelling argument for detriment, and Rocky View believes that their appeal should be dismissed.

#### 84 Street NE Study

[108] Rocky View clarified that the 84 Street NE Study assumes full build out of the Conrich ASP, the Omni ASP and the East Stoney ASP; however, a 20% reduction for transit and multimodal transportation was included for the Omni and East Stoney ASPs. 84 Street NE will be contained within a 30-metre right-of-way both within the Omni and East Stoney ASP area - where it will be a 4-lane modified local arterial roadway - and within the Conrich ASP area south of

McKnight Blvd where it becomes a 4-lane primary collector roadway. The study recommends additional analysis for an interchange at McKnight Blvd and 84 Street NE, as all of the at-grade intersection configurations modelled fail to accommodate projected future traffic.

[109] In May 2018, Rocky View deemed the 84 Street NE Study complete. In July 2018, Rocky View finished the 84 Street NE/McKnight Blvd NE Functional Study (McKnight Functional Study) to identify and analyse the transportation infrastructure upgrade options necessary for this intersection. The McKnight Functional Study recommended an interchange rather than an intersection at this location, and estimated a \$42 million dollar cost. Several types of cost sharing arrangements are possible, and the study's findings can be used to determine allocations for each party.

[110] Work has not yet begun on the East Stoney Trail Transportation Network Analysis (East Stoney Analysis). However, all parties have agreed to a terms of reference, and Rocky View has allocated money from its 2019 budget for the study. The East Stoney Analysis is necessary because it will:

1. Determine the impact of development on Stoney Trail interchanges and help develop the appropriate cost contributions
2. Allow Calgary and Rocky View to approach the Province for contributions and funding
3. Determine when upgrades to the McKnight and 84 Street NE Interchange are required and how costs will be shared.

Rocky View would use the East Stoney Analysis to determine its proportionate share of upgrades for Stoney Trail and to determine its transportation levies.

#### CIMA+ study

[111] Rocky View argued that the City's concerns and the report prepared by CIMA+ do not prove detriment. Watt Consulting (Watt), Rocky View's traffic consultants, reviewed the findings of the CIMA+ Study and determined the analysis is flawed and its conclusions incorrect. Calgary's evidence does not prove detriment for the following five reasons:

1. The Omni Network Analysis and the 84 Street NE Study includes traffic data and analysis from anticipated development in the East Stoney ASP in Calgary and the Conrich and Omni ASPs in Rocky View. Rocky View's traffic model considers all existing and planned development in these ASPs. In comparison, the CIMA+ Study overlooks that development in Calgary will trigger roadway upgrades before the Omni ASP develops.
2. The CIMA+ Study assumptions do not reflect how land is developed in Rocky View; therefore, it overestimates vehicle trips generated in the Omni ASP area by 6000 vpd.

CIMA+ based its land use assumptions on the Omni ASP having a variety of uses that would include \$3.5 million sq. ft. of destination commercial, 230,000 sq. ft. of highway commercial, 900 hotel rooms and 250 seniors housing units. In contrast, the adopted Omni ASP allocates land much differently: approximately 375 acres of light industrial, \$1.3 million sq. ft. of commercial, \$1.14 million sq. ft. of business park, 365,000 sq. ft. of highway commercial, and 500 units of seniors living. These allocations are based on the land uses in the Omni ASP as contemplated by Genesis, the actual landowner and developer.

As an example of inaccurate CIMA+ land allocation assumptions, Rocky View noted that CIMA+ anticipates drive-through restaurants in the Omni ASP highway business area; however, the Rocky View Land Use Bylaw does not list drive-through restaurants as a potential use in a highway business area. Another example is that whereas CIMA+ estimates development density at a ratio of 0.82 total to net development area, the Omni ASP suggests a more realistic figure of 0.6 because of wetlands. It also appears that CIMA+ applied urban densities for the area, resulting in additional traffic.

In addition to inaccurate land allocation assumptions, Calgary's studies also assume unrealistic timeframes for growth. For example, Calgary projects the Conrich ASP will be fully built out by 2028, whereas Rocky View projects slower growth: by 2040, development of the Conrich ASP will only have occurred in 8% of the commercial land and 16% of the industrial land.

In support of its slower build out schedule, Rocky View noted the landowner, Genesis, has estimated that the first phase of their development, comprised of the 185-acre Omni project, will take at least 10 years to build. This 185 acres represents about 30% of the Phase 1 lands.

In summary, the CIMA+ Study overestimates the development intensity and build out schedule of the Omni and Conrich ASPs, and overlooks development in Calgary.

3. The Omni ASP identifies transportation network upgrades accurately. As a result of the 84 Street NE Study recommendations, Rocky View began additional analysis for the McKnight/84 Street NE intersection, producing the July 2018 McKnight Functional Study.

CIMA+ included some roadway connections that are not planned for development by 2028. Also, CIMA+ and Calgary relied on the draft 84 Street NE Study and did not confirm current data nor discuss their assumptions with Watt and Rocky View before producing their study.

CIMA+ does not appear to have analysed regional traffic distribution, and some of the turning movements at some of the key intersections in the Omni ASP were not modelled.

These inaccuracies lead to inaccurate traffic projections and analysis of necessary upgrades.

4. Infrastructure improvements will be made as development progresses, and the Omni ASP contains multiple policies and implementation mechanisms to ensure development will not outpace available infrastructure.

CIMA+ did not appear to take these policies into account when it produced the CIMA+ Study. Also, the assumption that the entire area of the Omni ASP will be fully built out by 2028 underlies Calgary's argument that development will outpace infrastructure; however, that assumption is unreasonable.

5. The CIMA+ Study was based on incorrect assumptions, which led to an overstatement of the amount of traffic could be generated by the Omni ASP. In addition, traffic may be reduced by transit available to the site from public or private providers. These providers may or may not include Calgary transit, as the mandate of the Calgary Metropolitan Region Board contemplates collaboration for regional transit solutions.

[112] In summary, transportation planning in the NE Stoney Trail area continues to evolve. Funding will be available to build infrastructure as build out proceeds. For example, there was a funding announcement in July 2018 for construction of the first phase of an intersection at Airport Trail and Stoney Trail NE, which will allow southbound traffic on Stoney Trail to exit onto westbound Airport Trail. Analysis of the regional transportation network should incorporate this roadway connection.

#### Transportation Policies in the Omni ASP

[113] Rocky View drew the MGB's attention to section 16 of the Omni ASP, which contains policies for the regional transportation infrastructure. In addition, Rocky View requires the submission of a Traffic Impact Assessment (TIA) with any local plan or subdivision application. Rocky View explained that if the TIA recommends roadway or infrastructure upgrades, the developer will pay for them. The developer will also construct infrastructure, including oversized infrastructure to serve future development, or pay an off-site levy, as required by Rocky View. All TIAs are to conform to the Network Analysis, be coordinated with Calgary and will be consistent with Map 7. The Omni ASP will not be built out in 10 years as modeled by Calgary's CIMA+ study. While it is possible that Phase 1 of the Omni ASP, comprised of 640 acres, will be constructed within 20-25 years, Phase 2 must wait until the appropriate infrastructure is available.

[114] During development of the ASP and while the Omni Network Analysis was being conducted, Rocky View changed the land uses along Country Hills Blvd (Highway 564) and Township Road 252 to highway commercial to assuage concerns of Calgary and the public about traffic in the area. Uses that generated more traffic were placed in the central portion of the ASP.

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In addition, the results of the Conrich ASP and the Conrich Network Analysis were incorporated into the Omni ASP and the Omni Network analysis.

[115] Finally, Rocky View ensured the Omni ASP contains the same level of detail as Calgary's East Stoney ASP. When Calgary drafted the East Stoney ASP, requisite storm water management and transportation plans were not yet in place. The East Stoney ASP identified roadway improvements for Stoney Trail NE (the east interchange for Airport Trail NE and the flyover for 64 Avenue NE) which were included in Calgary's 60-year plan and reflected in the off-site levy calculations. In addition, East Stoney ASP identified that increased traffic would require improvements to Township Road 252, Range Road 285 (100 Street NE) and Range Road 290 (84 Street NE). Although the roadways in the East Stoney ASP extend into Rocky View County, no network analysis was prepared to analyse the impact of traffic on Rocky View's roadways. There is no mention of off-site levies, cost contributions or Calgary's plans to mitigate the impacts of the East Stoney ASP on Rocky View.

**Summary of Rocky View's Position 2-2) Will Calgary be required to pay for upgrades ahead of schedule?**

Cost of roadways, intersection improvements and other infrastructure

[116] Rocky View provided the MGB with copies of several policies relating to transportation upgrades, its engineering standards and a copy of its draft Regional Off-Site Levy Bylaw. Rocky View noted the cost of upgrades and improvements would be covered by the developer, landowners and by Rocky View, consistent with other land development within the County. Rocky View's practice is to require traffic impact analyses for any new local area structure plan, subdivision or development permit application.

[117] Since the 84 Street NE Study recommended further analysis of the McKnight Blvd and 84 Street NE intersection, Rocky View retained Watt Consulting to conduct the McKnight Functional Study. This study was completed in July 2018 recommending a preferred interchange design that would cost \$42 million. Since the intersection of McKnight Blvd and 84 Street NE is in Rocky View, Rocky View consulted the area landowners, not Calgary, when it undertook the McKnight Functional Study.

[118] In its written submissions, Rocky View noted that developers are required to pay for any new infrastructure required to serve a development. Any new infrastructure must be completed prior to new development, so the cost is a "front end" cost. Rocky View included policies in the Omni ASP to reflect its willingness to cost-share improvements to the transportation network. While Calgary has stated the Omni ASP requires infrastructure costing \$60 million, it is unclear how this amount was calculated. More importantly, since developments other than Omni will benefit from new or upgraded infrastructure, they will also contribute funds to pay the cost. Once



the East Stoney Analysis is complete, Calgary and Rocky View will have to update their off-site levy bylaws.

[119] Finally, Rocky View noted that during its off site levy review, the engineering consultant advised background traffic - consisting of existing traffic from Rocky View and its urban neighbours and the broader travelling public – has added \$340 million in costs and upgrades to County infrastructure. There has been no discussion to recover these costs.

### **Genesis' submissions regarding transportation**

[120] Genesis provided funding for the 84 Street NE Study and was involved in its development and review. Access to the Phase 1 lands (or the Omni Project) will be from 84 Street NE and can be accommodated through the existing roadway structure. The Omni Project will take more than 10 years to build out. The artist rendering on the Omni project website was for promotional purposes is not a reliable depiction of ultimate site development.

[121] While traffic will increase as new residential, commercial and industrial developments are proposed in the Omni Project, traffic analysis will be conducted at each stage. Mr. Stefaniuk, Genesis' Vice President, noted that changing market demands mean the types of land uses in the Omni Project will evolve over time and new traffic impact assessments and functional studies will be required. Genesis will participate in roadway upgrades in this area, but developments in this area other than the Omni Project and Omni ASP will also impact traffic. Genesis has been working closely with the developer of the East Stoney ASP lands to coordinate infrastructure.

[122] Genesis maintained the CIMA+ Study uses incorrect assumptions and overestimates traffic growth and associated transportation improvements for the Omni ASP. Whereas the 84 Street NE Study projects traffic at the Country Hills Boulevard and 84 Street NE intersection as only 594 vph PM peak, the CIMA+ Study projects nearly double that volume (1177 vph PM peak) at the same location. CIMA+'s explanation for its much higher number is that its model properly distributes trips and includes data from the East Stoney and Conrich ASPs; however, Genesis argued the model should have included inputs from the Omni ASP, and noted no such inputs were ever requested from its transportation engineer.

### **Findings – Issue 2**

4. Even the optimum configurations identified to date for proposed intersections to serve the Omni ASP result in poorly performing or failing intersections
5. The large commercial and industrial area proposed for the entire Omni ASP will require significant transportation infrastructure upgrades.
6. Further study such as completion of the East Stoney functional analysis is needed to provide an appropriate framework for completion of a safe and efficient area transportation network.

7. There is detriment to Calgary from unfunded transportation and infrastructure projects required to serve the Omni ASP area and from the uncertainty as to their timing and source of funding.

### **Reasons – Issue 2(1): Will Omni’s requirements for transportation upgrades be detrimental to Calgary?**

#### Beyond Phase 1, the Omni ASP has or will have a detrimental effect upon Calgary

[123] Both municipalities were able to point to flaws in the other’s traffic studies. Rocky View’s 84 Street NE Study does not appear to anticipate fully the changing nature of traffic that is likely to occur with increased development in the area of NE Stoney trail. For example, it is not clear the 84 Street NE Study reflects Calgary’s transportation plans or the more “urban style” traffic likely to develop, or that the network analysis it relies on includes Conrich data. On the other hand, Calgary’s CIMA+ study appears to assume an overly aggressive build out schedule, given that the developer does not anticipate full build out for at least 20 to 25 years.

[124] While it may be that neither party’s predictions are entirely accurate, they all agree that intersection failure on 84 Street NE will occur as traffic volumes increase. The MGB finds the near certainty of intersection failure from future development in the Omni ASP is enough to establish detriment unless further planning is undertaken. Additional studies, including the completion of the East Stoney Functional Analysis, are necessary to provide certainty that traffic in this area is modelled in a method which reflects the regions traffic and can be used to determine the appropriate transportation infrastructure.

#### What the transportation studies say and don’t say

[125] Although Rocky View’s various studies and analyses discussed the necessary road improvements, they did not discuss timelines. The lack of clear timelines makes it difficult to determine if the required interchange or intersection improvements are in place to accommodate development. The 84 Street NE Study contains useful analysis and recommendations as to different intersection types and improvements at various locations on 84 Street NE. However, even with improvements, it predicts that two of the four intersections in the area of the Omni ASP will perform poorly (with a wait time of 55 seconds or more), and one - 84 Street NE and McKnight Boulevard - was noted as failing (with a wait time of 142 seconds).

[126] The MGB also shares Calgary’s concerns with the method the 84 Street NE Study uses to model traffic. As development proceeds, the amount and type of traffic will differ from the existing volumes and patterns in Rocky View. The traffic model used by Rocky View does not appear to reflect these changes, and an approach that does so (such as Calgary’s traffic modelling software) is better suited to reflect future reality. For example, the 84 Street NE Study proceeds with 64 Avenue NE being modelled for traffic, even though Calgary’s current plans are for that overpass

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to be used for transit and other modes of traffic. Similarly, while the 84 Street NE Study recommended that further analysis be undertaken for an interchange at 84 Street NE and McKnight Boulevard, a similar recommendation was not made for the other poorly performing intersections. The MGB observes that additional work on the 84 Street NE study is necessary to consider Calgary's concerns about traffic volumes and funding for upgrades.

[127] The McKnight Functional Study completed by Rocky View in July 2018 investigated interchange options for 84 Street NE and the McKnight Boulevard. The McKnight Functional Study recommended a Single Point Urban Interchange, at an estimated cost of \$42.0 million dollars, for which there is no agreed funding arrangement. Consultation for this study appears to have been limited to adjacent landowners, leaving out Calgary and Alberta Transportation. Similar to the MGB's observations about the 84 Street NE study, the Board finds additional analysis and consultation with Alberta Transportation and Calgary about the McKnight Functional Study are needed to avoid detriment.

[128] While Rocky View has completed a future network analysis to support its draft Regional Off-Site Levy, the analysis did not include the McKnight functional analysis, and Rocky View has not discussed the analysis or off site levy with Calgary – at least until the time of this hearing.

**Reasons – Issue 2(2): Will Calgary be required to pay for upgrades ahead of schedule?**

Uncertain funding for transportation upgrades resulting from the Omni ASP

[129] The MGB finds there is uncertainty about the source of funding as well as the nature and timing of required infrastructure projects and this uncertainty is detrimental to Calgary. While Rocky View maintained development can “pay for itself” through off-site levies or other arrangements, Calgary is concerned it may be responsible for at least some of the cost.

[130] Calgary's concern about funding is well founded. 84 Street NE is a Calgary roadway, so in the absence of a funding arrangement with the Province or Rocky View, Calgary will be responsible to provide any upgrades not paid for by developers and will be responsible for any shortfalls. Furthermore, since the development is in Rocky View, Calgary lacks assurance that it can fund the infrastructure through off site levy bylaws or development agreements.

[131] Based on the information in the Omni ASP and its supporting documentation, CIMA+ modeled traffic to forecast the necessary transportation system improvements and associated costs. As noted previously in this decision, the roadway improvements and upgrades identified in the draft 84 Street NE Study will not be sufficient at full build out. Since the timing and sequence of upgrades are not defined, cost estimates are bound to be uncertain. However, even though the CIMA+ estimate of \$240 million for improvements identified in the draft 84 Street NE Study may prove inaccurate, it is certain the costs will be substantial – and the \$240 million could grow

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significantly should additional studies show traffic volumes require further roadway upgrades and interchanges (as CIMA+ predicts).

[132] As yet, there is no certainty as to how costs will be allocated or any agreement for cost sharing. The CIMA+ analysis shows Calgary's 4 and 10-year capital projections do not account for 180 million of the 240 million projected cost for the 84 Street NE Study improvements; the source of the remaining 60 million is unidentified, as it is included neither in these two documents, nor in Calgary's off-site levy bylaw. It is true that the federal government recently made a funding announcement for the Airport Trail NE and Stoney Trail NE interchange, but this interchange is not included in the 84 Street NE study. Additional study - such as the East Stoney Network Analysis - is needed to inform infrastructure and funding requirements in the NE quadrant of Stoney Trail. Calgary and Rocky View also require time to discuss potential funding arrangements and the content of off-site levy bylaws. Until appropriate agreements are in place, Calgary bears a significant financial risk connected to unfunded transportation infrastructure upgrades, which the MGB finds constitutes detriment.

[133] The MGB observes this is not the first time it has found detriment from increased traffic anticipated from development in a neighbouring municipality. In *Wheatland County v Kneehill County re: Bylaw 1657, MGB 016/15* (Wheatland decision) the MGB found detriment due to increased traffic volumes from an anticipated motorsports complex in Kneehill, which would result in the need to upgrade certain roads within Wheatland. Although the Wheatland decision addressed a single site in a remote location, the decision illustrates that large scale development in one municipality can have impacts on road usage in another, which requires planning, analysis and agreement about the type, timing and cost sharing of such improvements. In that case, the MGB ordered changes to the text of the land use bylaw to increase assurance that any roadway upgrades would be to standard and at the developer's expense.

**ISSUE 3: Will traffic volume from the Omni ASP area result in a detrimental increase of demand for Calgary's emergency services?**

### **Summary of Calgary's Position – Issue 3**

[134] Calgary argued a full build-out of the Omni ASP is detrimental to the City's emergency services. The Omni ASP is located near one of Calgary's busiest emergency service areas and development of the Omni ASP lands will increase demand for emergency services. Rocky View has not discussed the potential increase in emergency service calls to Calgary due to the Omni ASP.

#### Resources and Demand

[135] The Omni ASP area is closest to Calgary's northeast quadrant, where emergency services are already in high demand. Furthermore, the two closest fire stations to the Omni ASP are within

City boundaries. Calgary estimates that development of the Omni ASP will result in approximately 300 calls per year for the Calgary Fire Department (CFD). Any increase in calls will increase emergency response times. Calgary's witness, Deputy Fire Chief Uzeloc, explained that a fire doubles in size every 30 seconds, and response times are critical. Calgary Council's mandated response times are 7 minutes for the first unit, whereas Rocky View's standard is 10 minutes. Given the distance between the two CFD stations and the Omni ASP lands, it is unlikely that Rocky View's response time could be met for initial development within the Omni ASP. This increased demand for services creates a future burden on Calgary requiring additional resources and increasing expenditures.

[136] The Omni ASP proposes mixed land uses, which Calgary anticipates will require rapid intervention and specialized resources. Calgary is concerned that Rocky View does not have sufficient resources, and expects to receive calls, especially for hazardous materials. Within the last 5 years, the CFD has responded to 7 hazardous material calls within Rocky View. All fire fighters receive basic training to respond using defensive actions, but Calgary also trains and equips its fire fighters to provide hazardous materials (Hazmat) responses. Although Rocky View relies on private contractors for hazardous material responses, Calgary explained that private contractors manage clean-up operations, not the actual response.

[137] Calgary is also concerned that Rocky View will have to respond to emergencies in the Omni ASP area, thus leaving a deficit of resources for other areas; the result will be that Calgary's emergency response resources will be called on to make up the deficit. As a result, Calgary would have fewer resources to respond to calls within its own boundaries.

[138] Calgary explained it is concerned about a policy within the Omni ASP that states Rocky View may contract fire services from other municipalities to respond to the Omni ASP area. If Rocky View is capable of supplying emergency services to the Omni ASP area, this policy should be removed.

#### Secondary Emergency Response Fire Services Agreement

[139] Calgary acknowledged there is a Secondary Emergency Response Fire Services Agreement (Agreement) with Rocky View, which sets out how emergency service requests are to be handled. The Agreement allows Rocky View to contact Calgary to request assistance. Calgary will respond to such requests if it can, but is not obliged to respond if resources are not available. Although the Agreement does not cover future development areas, such as the Omni ASP, Rocky View can still request Calgary's assistance.

[140] Calgary emphasized that Rocky View is already asking for more response services along the west side of Calgary, and the Omni area is likely to generate similar requests. When there is a request, Calgary can refuse to respond, but it typically acts in the caller's best interest. Deputy Chief Uzeloc can recall only one instance when Calgary refused to provide assistance to Rocky

View – this refusal occurred during the 2013 floods, when hundreds of Calgary residents were awaiting rescue.

### Motor Vehicle Collisions

[141] Calgary also argues the Omni ASP must draw in Calgary residents to be economically feasible. More traffic to an area means the potential for more collisions, and there is a correlation between Motor Vehicle Collisions (MVCs) and large commercial developments such as shopping centres. Calgary expects the additional traffic to the Omni ASP lands to increase MVCs in Calgary's northeast quadrant by an estimated 146%, which will result in a corresponding increase in demand for emergency response services.

### **Rocky View County's Position – Issue 3**

#### Resources and Demand

[142] Rocky View has multiple fire stations and is well prepared to manage current and future demand. In addition to its own resources, Rocky View also has mutual aid agreements with the cities of Chestermere and Airdrie and the Towns of Crossfield and Cochrane. Accordingly, Rocky View does not intend to request emergency services from Calgary to respond to calls within the Omni ASP area and disagrees that the Omni ASP will have a detrimental effect on Calgary's emergency services.

[143] The existing Balzac East Fire Station 107 and a planned new fire station in Conrich will provide emergency services to the Omni ASP area. Fire Station 107 is staffed with full-time firefighters. The average response time to the Omni ASP area will be less than 8 minutes once the Conrich Fire Station is in operation. If necessary, Rocky View will construct another station in the Omni ASP area as well.

[144] Rocky View's Fire Chief Smith provided some emergency response statistics for Balzac East ASP, which is northwest of this site. The land included in the Balzac East ASP is 4.5 times larger than the Omni ASP and contains more intense and diverse development. For example, the Balzac East ASP contains two large regional shopping centres (Cross Iron Mills and the New Horizon Mall), an equine racetrack and casino, hotels, large format retail stores, distribution warehousing, gas stations, churches and other institutional uses.

[145] In 2017, Rocky View had 607 emergency calls for the Balzac East ASP. It requested Calgary's assistance only once. Since the Omni ASP is smaller and will contain less development, Rocky View's experience with emergency response requests in the Balzac East ASP suggests Calgary's estimate of 300 emergency calls after build-out of the Omni ASP is too high.

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[146] The water supply infrastructure in the Omni ASP area is sufficient to deliver the appropriate level of protection. The Omni ASP will not create water supply challenges, and hydrants from this development must meet Rocky View standards. If special tools are required to connect to Rocky View’s hydrants, these can be provided – alternatively, should the Calgary Fire Department have concerns, they can refuse to provide assistance.

#### Secondary Emergency Response Fire Services Agreement

[147] Under the Agreement, Calgary only responds when called by Rocky View. When Calgary does respond, it can charge Rocky View full cost recovery at rates set by Calgary. Calgary can also adjust its rates, or terminate the Agreement. Since 2016, Rocky View has responded to more calls in Calgary than Calgary has to calls in Rocky View. Fire Chief Smith explained that historically, both municipalities have worked well together, and generally treat cost recovery for services as a “wash”.

[148] The Agreement does not require Calgary to respond to calls involving hazardous materials, and Rocky View does not rely on Calgary’s hazardous material response; rather, it trains its own fire fighters, and some of its personnel are also employed by the Calgary Fire Department.

[149] Chief Smith clarified that the Agreement is reciprocal, and all services are provided on a cost recovery basis with an agreed fee schedule. The Agreement is reviewed annually and can be amended any time, or terminated by written notice.

[150] The Omni ASP is land use planning document, which contains high level policies rather than detailed mechanisms to co-ordinate emergency response. The Agreement is a more appropriate way to deal with Calgary’s concerns about service provision than amendments to the Omni ASP. The current agreement does not oblige Calgary to provide emergency response assistance to the Omni ASP area, or any other future development area.

[151] Fire Chief Smith explained Rocky View has explored various options for fire service delivery, including an Automatic Aid Agreement with Calgary. Unlike a Secondary Emergency Response Fire Services Agreement, an Automatic Aid Agreement would require a fire department to respond upon first alarm. However, Rocky View has not pursued this option for Omni at this time.

#### Motor Vehicle Collisions

[152] Rocky View is unclear how Calgary determined there would be a 146% increase in MVCs as a result of the Omni ASP. The analysis appears to include all collisions within Calgary rather than just those near large commercial and shopping centre areas, or during their operating hours. It does not demonstrate a correlation between a selected land use and the number of MVCs; rather, it merely shows a distribution of MVCs in Calgary. Calgary’s evidence did not include an analysis

of traffic and collisions in the Omni ASP area, and its conclusions do not apply to the Omni ASP development.

### **Summary of Genesis' Position -- Issue 3**

[153] Genesis argued that Calgary provided no evidence to support detriment in relation to emergency response services. Both municipalities have worked together to provide regional services. Agreements and protocols are in place when an emergency response is required, including responding to calls due to a MVC. Finally, Calgary can refuse any emergency services request from Rocky View.

### **Findings – Issue 3**

8. Rocky View has sufficient resources planned or in place to provide emergency response services in the Omni ASP area.
9. Increased traffic volumes from the Omni ASP do not result in a foreseeable detrimental increase in demand for Calgary's emergency response services.

### **Reasons – Issue 3**

#### Resources and Demand

[154] Calgary argues Rocky View has insufficient resources to service the Omni ASP area, and that it will create detriment by significantly increasing demand on Calgary's emergency services. The MGB does not accept this position.

[155] Rocky View has resources in place and employs full-time firefighters at the Balzac East Fire Station who can respond to the area in under 10 minutes. Rocky View also plans to construct a fire station in 2021 in the Conrich ASP area, just south of the Omni ASP lands. The Conrich fire station will provide emergency services to the Omni ASP area, and will increase Rocky View's ability to provide emergency services to itself and its mutual aid partners. The scheduled timing of construction aligns with the first phase of development within the Omni ASP. Since the Omni ASP will develop in stages, Rocky View can increase its emergency response resources in step with demand, and can construct another fire station in the Omni ASP lands if and when needed.

[156] The MGB also accepts the testimony of Fire Chief Smith that Rocky View does not require Calgary's assistance to serve new development. The fact that Rocky View only requested Calgary's assistance once in 2017 for the Balzac East area demonstrates its existing emergency response network does not depend significantly on Calgary's resources.



### Secondary Emergency Response Fire Services Agreement

[157] The municipalities' Secondary Emergency Response Fire Services Agreement does not oblige Calgary to assist Rocky View if resources are not available. Similarly, as the Omni ASP area is considered a future development area, the Agreement does not require response within the Omni ASP (although Calgary can choose to respond). Finally, Calgary can terminate the Agreement with 6 months notice. In view of these circumstances, the MGB concludes the Secondary Emergency Response Fire Services Agreement does not place Calgary under an obligation to respond to emergency services in the Omni ASP area; consequently, it does not create detriment to Calgary in that respect. The MGB also observes Rocky View has mutual aid agreements with other surrounding municipalities, thus reducing potential demands on Calgary.

### Motor Vehicle Collisions

[158] Calgary argued the Omni ASP will cause detriment by increasing both traffic and MVCs in Calgary. The MGB acknowledges that as the amount of traffic increases, the number of MVCs may increase as well. Nevertheless, the MGB sees nothing to suggest the increase will be disproportionate based on the type of development, or will unduly strain emergency response services.

[159] It is true the map in Calgary's evidence suggests intersections near shopping centres and commercial areas experience a higher number of MVCs; however, as Rocky View's engineering consultant observed, there is insufficient data or analysis to establish a causal relationship between shopping centre traffic and a disproportionately high number of collisions. For example, Calgary's analysis included all MVCs at all hours of the day, not merely those occurring during operating hours.

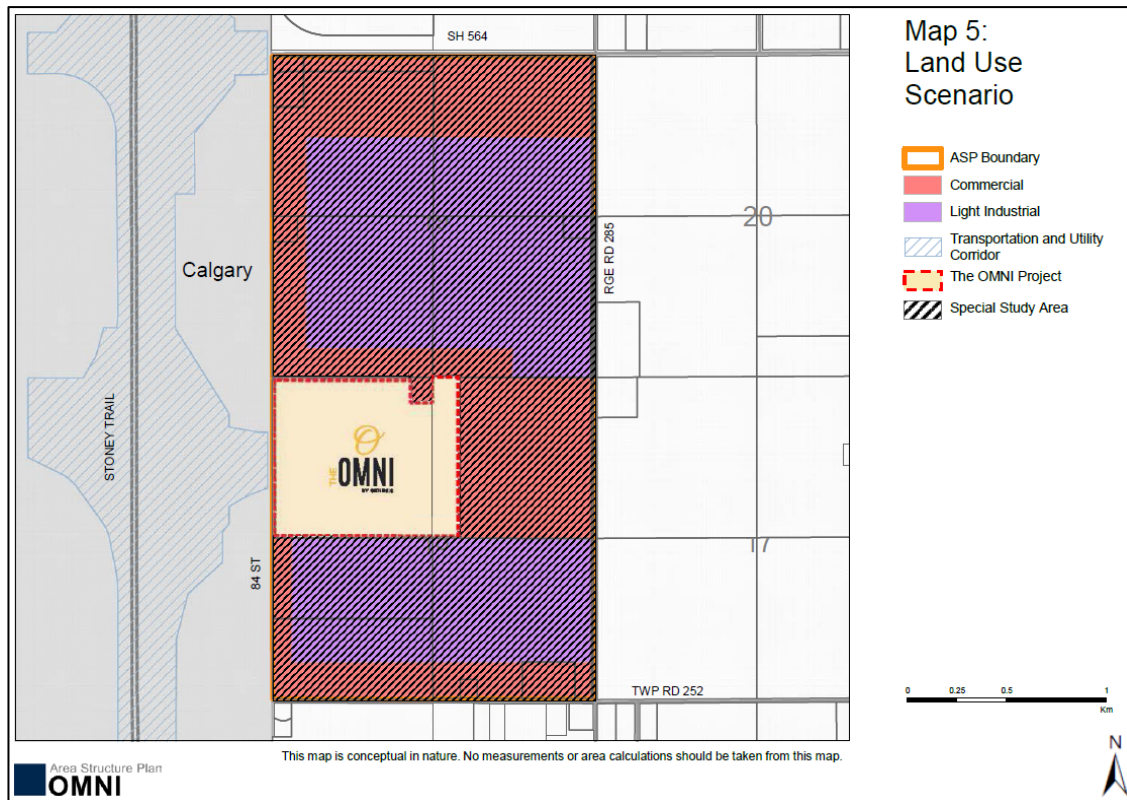
[160] The MGB finds that while traffic will increase once development occurs, the increase is unlikely to strain Calgary's emergency response resources. The MGB is confident both municipalities will be able to increase their resources in step with development in their respective municipalities.

## **PART E: CONCLUSION**

The scale, intensity and range of land uses within the Omni ASP area will impact the regional transportation network by introducing a large volume of traffic onto local roadways and Stoney Trail without an accurate picture how the traffic will be accommodated, and without a clear sense of the timing and necessity for upgrades, the cost of upgrades and how these upgrades will be paid for. Detriment will occur if the Omni ASP proceeds to full build out without appropriate plans and funding arrangements for the transportation and infrastructure needs of the region.

**REMEDY – Special Study Area**

1. MGB orders changes to Map 5 of the ASP, as depicted in Figure 4 to show the 185 acre Omni Project lands in NW 18 and a portion of NE 18 as a commercial project and the balance of the lands in the Omni ASP as a Special Study Area.
2. Any text references to Map 5 or Land Use Scenario shall also be amended to reflect the revised Map 5.



**Figure 4: Revised Map 5, Land Use Scenario for Omni ASP**

3. Further Map 11 in the ASP will be replaced with the Revised Map 11, as depicted in Figure 5, to reflect the boundaries of the Omni Project.
4. Any text references to Map 11 Phasing are to be amended to reflect these revisions.
5. Rocky View County shall make the above amendments to Omni ASP by March 1, 2019, in accordance with section 690(7) of the Act.

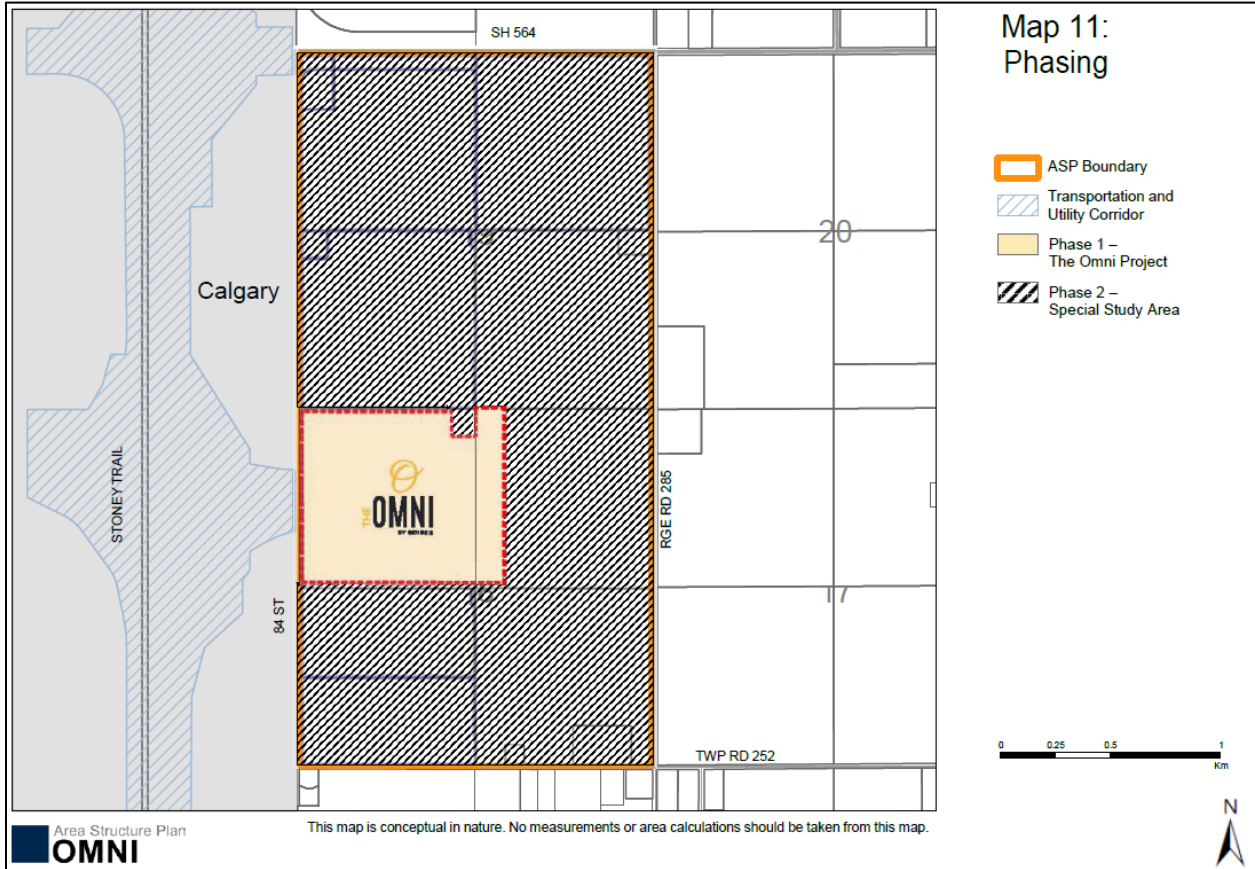


Figure 5: Revised Map 11, Phasing Plan for Omni ASP

The Omni Project may continue without causing detriment

[161] The MGB finds the 185 acres Genesis has designated as the Omni Project lands will not be detrimental to Calgary. Allowing the Omni Project lands as noted in the revised Map 5: Land Use Scenario will have limited effect upon Calgary, and will allow Rocky View and Genesis to proceed with plans for the development of the area.

[162] The MGB observes the landowner and the two municipalities have worked together previously and appear willing to address any difficulties that could arise during the development of local plans and redesignation applications for the Omni Project lands. The MGB understands Genesis has developed detailed plans for the Omni Project and is nearing the point where construction may begin. Accordingly, the level of planning uncertainty is much lower for this area and the MGB is confident existing arrangements are sufficient to allow the two municipalities to deal with the Omni Project’s impacts on the transportation network without detriment to Calgary.

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[163] The balance of the lands in the Omni ASP appear to be a longer term development area, and the scale and intensity of the development is more indicative of a regional business centre (RBC) than a highway business area (HBA). The nature of the development, and the resulting infrastructure and transportation plans and traffic patterns in the area may change over time. The MGB accepts the landowner's statement that market pressures may change the uses of the balance of lands as observed by the trend away from big box retail stores.

The balance of the Omni ASP has or may have a detrimental effect on Calgary

[164] For reasons explained earlier in this order, the balance of the Omni ASP (beyond the Omni Project) does introduce a significant level of planning uncertainty and may have a detrimental impact on the transportation network from Calgary's perspective. The detriment arises from the combination of the intensity of land uses proposed in the HBA, the increase in traffic, and the uncertainty of transportation upgrades and funding for those upgrades.

[165] The MGB sees the remedy of allowing the Omni Project to proceed while placing the balance of the ASP lands into special study area represents an appropriate balance of public and private interests as required under section 617. On the one hand, it allows Genesis to proceed with a project for which it has already committed significant resources. On the other hand, it respects both Calgary's and the overall public interest in prudent land planning. All of the lands on the east side of Stoney Trail --including this area-- require transportation and infrastructure planning, and a discussion about funding prior to servicing, construction and development of the lands.

[166] The MGB observes that planning policy embodied by recent amendments to the MGA and other planning legislation (e.g. Alberta Land Stewardship Act) demonstrates a shift to more intermunicipal co-operation and more robust planning for public and private lands. Placing the balance of the Omni ASP in a special study area will both alleviate detriment to Calgary and facilitate comprehensive intermunicipal planning by allowing Calgary Metropolitan Region Growth Board to influence planning decisions for this important corridor. Unlike the situation the MGB considered in *Strathcona v Edmonton MGB 098/08*, where the Radke Report was suggesting a return to regional planning and development of enabling legislation, the situation currently under consideration includes the *Calgary Metropolitan Region Board Regulation*, which requires a regional growth plan. Since April 2018, the Calgary Metropolitan Growth Board has organized, developed, and finalized a regional growth plan that has been submitted the Minister of Municipal Affairs for approval.

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Why the MGB is ordering a special study area

[167] The MGB finds that designation of a special study area is the least intrusive way to remedy detriment while respecting Genesis' interest in proceeding with its development. By designating the balance as a special study area, both municipalities can invest time to develop infrastructure plans and cost sharing arrangements, and off-site levy bylaws to ensure the appropriate intersections and interchanges are developed and funded for the NE Stoney Trail area.

DATED at the City of Edmonton, in the Province of Alberta, this 17<sup>th</sup> day of December 2018

MUNICIPAL GOVERNMENT BOARD

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(SGD) H. Kim, Presiding Officer

**APPENDIX "A"**

PERSONS WHO WERE IN ATTENDANCE OR MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

<b>NAME</b>	<b>CAPACITY</b>
H. Chan	Legal Counsel, City of Calgary
D. Mercer	Legal Counsel, City of Calgary
H. Oh	Legal Counsel, City of Calgary
K. Fellows	Witness, Senior Transportation Planner, CIMA+, Consultant for City of Calgary
R. Haggith	Witness, Manager, Strategic Services, Calgary Fire Department
T. Hopkins	Witness, Acting Manager, Transportation Development Services, City of Calgary
A. Palmiere	Witness, Principal Planner, O2 Planning + Design Inc. s Urban + Regional Planning, Consultant for City of Calgary
K. Uzeloc	Witness, Deputy Fire Chief, Emergency Services, City of Calgary
J. Klauer	Legal Counsel, Rocky View County
C. Van Hell	Legal Counsel, Rocky View County
T. Baumgartner	Witness, Senior Transportation Engineer, Watt Consulting, Transportation Consultant for Rocky View County
E. Hofbauer-Spitzer	Witness, Senior Transportation Engineer, Watt Consulting Group, Consultant for Rocky View County
T. Kroman	Witness, Senior Transportation Engineer, Watt Consulting Group, Consultant for Rocky View County
R. Smith	Witness, Fire Chief and Director of Emergency Management, Rocky View County
R. Wiljamaa	Witness, Manager of Engineering Services, Rocky View County
A. Zaluski	Witness, Policy Planning Supervisor, Rocky View County
C. Elgart	Legal Counsel, Genesis Land Development
A. Stefaniuk	Witness, Vice President, Land Development, Genesis Land Development Corporation
N. Younger	Observer, Intergovernmental & Corporate, City of Calgary
D. Shearer	Observer, Intergovernmental and Corporate City of Calgary
S. Baers	Observer, Manager of Planning Services, Rocky View County
V. Diot	Observer, Engineering Technologist, Rocky View County

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J. McKenzie	Observer, Sedulous Engineering, Consultant for Rocky View County
C. Sargent	Observer, Genesis Land Development
I. Stewart	Observer, Genesis Land Development
T. Richelhof	Observer, Representative of Alberta Transportation
B. Kendall	Observer, Resident, Rocky View County

**APPENDIX “B”**

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

<b>NO.</b>	<b>ITEM</b>
1A	City of Calgary Intermunicipal Dispute Application And Statutory Declaration
2R	Rocky View County Statutory Declaration
3AP	Correspondence from Genesis Land Development
4AP	Request for Affected Party Status – Genesis Land Development
5	Correspondence from City of Calgary re: Mediation and Schedule
6A	Email from City of Calgary re: evidence exchange and merit hearing dates
7R	Email from Rocky View County re: evidence exchange dates
8A	City of Calgary submission re: dates
9R	Rocky View County submission re: dates
10L	Genesis Land Development Submission
11A	City of Calgary Rebuttal to Rocky View County and Genesis Land Development Corporation submissions
12A	City of Calgary Legal Argument
13A	City of Calgary Evidence
14R	Rocky View County Legal Argument
15R	Rocky View Transportation Evidence, Volume 1
16R	Rocky View Transportation Evidence, Volume 2
17R	Rocky View Planning Evidence
18R	Rocky View Emergency Services Evidence
19L	Genesis Land Development Corporation
20A	Calgary Rebuttal and Evidence Submissions to Rocky View Submissions
21R	Rocky View Surrebuttal submissions

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**APPENDIX "C"**

DOCUMENTS RECEIVED AT THE HEARING:

<b>NO.</b>	<b>ITEM</b>
22A	Calgary Rebuttal to Genesis Land Development
23L	Surrebuttal of Genesis – Merit Hearing
24A	Aerial Map – Submitted Electronically
25L	Summary Chart of Vehicle Movement
26R	PowerPoint – Rocky View – Omni ASP Planning Response
27R	PowerPoint – Rocky View – Review of Analysis of Motor Vehicle Collisions in Proximity of Shopping Centres
28R	PowerPoint – Rocky View
29R	PowerPoint – Rocky View – Omni ASP Transportation
30R	PowerPoint – Rocky View – Fire Services

**APPENDIX "D"**

DOCUMENTS RECEIVED AFTER THE HEARING:

<b>NO.</b>	<b>ITEM</b>
31A	Legal Summation of Calgary
32R	Legal Summation of Rocky View
33L	Closing Summary of Genesis Land Development
34A	Response Summation of Calgary
35R	Response Summation of Rocky View
36L	Response Summation of Genesis Land Development

TRANSCRIPT OF HEARING

37	Transcript, Monday, July 30, 2018
38	Transcript, Tuesday, July 31, 2018
39	Transcript, Wednesday, August 1, 2018
40	Transcript Wednesday, August 1, 2018 evening
41	Transcript, Thursday, August 2, 2018
42	Transcript, Friday, August 3, 2018



**APPENDIX "E"****LEGISLATION**

The *Act* contains criteria that intermunicipal disputes filed under section 690. While the following list may not be exhaustive, some key provisions are reproduced below.

***Municipal Government Act***

Section 488 is the section of the *Act* that sets out the jurisdiction of the MGB.

*488(1) The Board has jurisdiction*

- (a) to hear complaints about assessments for designated industrial property,*
- (b) to hear any complaint relating to the amount set by the Minister under Part 9 as the equalized assessment for a municipality,*
- (c) repealed 2009 c29 s 34,*
- (d) to decide disputes between a management body and a municipality or between 2 or more management bodies, referred to it by the Minister under the Alberta Housing Act,*
- (e) to inquire into and make recommendations about any matter referred to it by the Lieutenant Governor in Council or the Minister,*
  
- (e.1) to perform any duties assigned to it by the Minister or the Lieutenant Governor in Council,*
  
- (f) to deal with annexations in accordance with Part 4,*
- (g) to decide disputes involving regional services commissions under section 602.15,*
- (h) to hear appeals pursuant to section 619,*
- (i) to hear appeals from subdivision decisions pursuant to Section 678(2)(a),*
- (j) to decide intermunicipal disputes pursuant to section 690, and*
- (k) to hear appeals pursuant to section 648.1.*

*(2) The Board must hold a hearing under Division 2 of this Part in respect of the matters set out in subsection (1)(a) and (b).*

*(3) Sections 495 to 498, 501 to 504 and 507 apply when the Board holds a hearing to decide a dispute, or hear an appeal, referred to in subsection (1).*

Section 617 is the main guideline from which all other provincial and municipal planning documents are derived. Therefore, in determining an intermunicipal dispute, each decision must comply with the philosophy expressed in 617.

*617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted*

*(a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and*

*(b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,*

*without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.*

Section 690 and 691 govern the process and procedure for intermunicipal disputes. In addition to these sections, the MGB utilizes the Intermunicipal Dispute Procedure Rules

Intermunicipal disputes

*690(1) A municipality that*

*(a) is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it,*

*(b) has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, and*

*(c) has, as soon as practicable after second reading of the bylaw, attempted to use mediation to resolve the matter,*

*may appeal the matter to the Municipal Government Board.*

*(1.1) An appeal under subsection (1) is to be brought by*

*(a) filing a notice of appeal and statutory declaration described in subsection (2) with the Municipal Government Board, and*

*(b) giving a copy of the notice of appeal and statutory declaration to the adjacent municipality*

*within 30 days after the passing of the bylaw to adopt or amend a statutory plan or land use bylaw.*

*(2) When appealing a matter to the Municipal Government Board, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and provide a statutory declaration stating*

*(a) the reasons why mediation was not possible,*

*(b) that mediation was undertaken and the reasons why it was not successful, or*

*(c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal.*

*(3) A municipality, on receipt of a notice of appeal and statutory declaration under subsection (1.1)(b), must, within 30 days, submit to the Municipal Government Board and the municipality that filed the notice of appeal a statutory declaration stating*

- (a) the reasons why mediation was not possible,*
- (b) that mediation was undertaken and the reasons why it was not successful, or*

...

*(4) When a notice of appeal and statutory declaration are filed under subsection (1.1)(a) with the Municipal Government Board, the provision of the statutory plan or amendment or land use bylaw or amendment 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 notice of appeal and statutory declaration are filed with the Board under subsection (1.1)(a) until the date the Board makes a decision under subsection (5).*

*(5) If the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1.1)(a), it must, in accordance with subsection (5.1), 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 and may*

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

*(5.1) In determining under subsection (5) whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal, the Municipal Government Board must disregard section 638.*

*(6) A provision with respect to which the Municipal Government Board has made a decision under subsection (5) is,*

- (a) if the Board has decided that the provision is to be amended, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date of the decision until the date on which the plan or bylaw is amended in accordance with the decision, and*
- (b) if the Board has decided that the provision is to be repealed, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from and after the date of the decision.*

*(6.1) Any decision made by the Municipal Government Board under this section in respect of a statutory plan or amendment or a land use bylaw or amendment adopted by a municipality must be consistent with any growth plan approved under Part 17.1 pertaining to that municipality.*

*(7) Section 692 does not apply when a statutory plan or a land use bylaw is amended or repealed according to a decision of the Board under this section.*

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*(8) The Municipal Government Board's decision under this section is binding, subject to the rights of either municipality to appeal under section 688.*

Board hearing

*691(1) The Municipal Government Board, on receiving a notice of appeal and statutory declaration under section 690(1)(a), must*

*(a) commence a hearing within 60 days after receiving the notice of appeal or a later time to which all parties agree, and*

*(b) give a written decision within 30 days after concluding the hearing.*

*(2) The Municipal Government Board is not required to give notice to or hear from any person other than the municipality making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal.*