

<b>MGB FILE NO.</b>	<b>17/IMD-003</b>
<b>IN THE MATTER OF</b>	<b>AN INTERMUNICIPAL DISPUTE FILED PURSUANT TO SECTION 690 OF THE <i>MUNICIPAL GOVERNMENT ACT</i>, R.S.A. 2000 CHAPTER M-26 WITH RESPECT TO ROCKY VIEW COUNTY BYLAW NO. C-7700-2017, OMNI AREA STRUCTURE PLAN</b>
<b>INITIATING MUNICIPALITY</b>	<b>CITY OF CALGARY</b>
<b>RESPONDENT MUNICIPALITY</b>	<b>ROCKY VIEW COUNTY</b>
<b>DOCUMENT</b>	<b>SUBMISSIONS OF THE CITY OF CALGARY - REBUTTAL TO GENESIS</b>
<b>FILED BY</b>	<p><b>THE CITY OF CALGARY</b>  David Mercer/Hanna Oh/Henry Chan  12<sup>th</sup> Floor, 800 Macleod Tr SE  Calgary, AB T2G 2M3</p> <p>david.mercer@calgary.ca  hanna.oh@calgary.ca  henry.chan@calgary.ca</p> <p>Phone: 403-268-2453  403-268-3662  403-268-5535</p> <p>File No. P8577</p>

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## I. INTRODUCTION

1. This rebuttal submission is filed on behalf of the City of Calgary ("**City**") in rebuttal to the submissions of Genesis Land Development Corp ("**Genesis**") filed on July 12, 2018.
2. The City respectfully submits to the Municipal Government Board ("**Board**") that the materials filed by Genesis go well beyond the limited role set out for it within the Board's preliminary decision. Section 690 appeals are disputes between two municipalities. While there is a need to hear from all affected landowners, the materials from Genesis go well beyond what would be expected from a landowner and delve into irrelevant and spurious issues.
3. The City respectfully submits that the City's evidence proves that the detriment complained of resulting from the Omni Area Structure Plan ("**Omni ASP**") is both likely to occur and will have a significant impact on the City. As a consequence of this detriment to the City the Board should exercise its authority under section 690 of the Municipal Government Act ("**MGA**") to repeal the Omni ASP in its entirety or in the alternative order the amendments to the Omni ASP requested by the City in its rebuttal submission to Rocky View County ("**County**").

## II. ROLE OF GENESIS

4. The decision of the Board from the preliminary hearing held on the Omni ASP section 690 appeal on December 6, 2017 set out Genesis's role in this hearing. Genesis was determined by the Board to be an affected person and the Board directed that:
  - (a) Genesis will limit its submissions to the issues raised by Calgary, the appellant municipality.
  - (b) If Calgary and Rocky View resolve any matters in mediation and withdraw them from the appeal, Genesis may not file submissions on these matters.
  - (c) When questioning witnesses from Calgary or Rocky View, Genesis is limited to questions of clarification on those matters remaining under appeal in this dispute.

## III. PRELIMINARY ISSUE – APPLICATION TO STRIKE

5. As a preliminary matter, at the beginning of the hearing on July 30 the City will request that the Board strike out the portions of the Genesis submission that are irrelevant to this appeal or go beyond the limited role for Genesis prescribed by the Board and should not be received or considered by the Board in making its decision.
6. Section VI. Regional Planning, paragraphs 49 through 71 of Genesis's submission should be struck from the record to avoid any implication that the Board might be influenced by anything other than legitimate planning considerations. These paragraphs do not deal with relevant planning considerations and go beyond the issues raised by Calgary in this appeal. The City's efforts to ensure good regional planning, its willingness or unwillingness to provide

servicing to landowners outside City boundaries, Genesis's difficulty developing its land, and the City's motivations for filing an appeal are not planning considerations relevant to whether or not the Omni ASP is detrimental to the City.

7. In addition, the Will Say Statement and introduction of Arnie Stefaniuk as a witness should be struck because the evidence he proposes to submit is irrelevant to the issues raised by the City and the Board has not authorized Genesis to submit expert witnesses. Genesis's work in Calgary, purchase of the Omni lands and reasons for the purchase, development of land use alternatives for the site, discussion with Councillor Jim Stevenson and City administration, Calgary's Amazon bid, and Genesis's development plans and expectations, are not relevant planning considerations. A section 690 appeal is about assessing the detriment imposed on the appealing municipality. The Board's authority is limited to considering only whether a municipality will suffer detriment. Section 690 does not allow for the expansion of issues beyond those filed by the affected municipality, in this case the City.

8. To quote this Board, "Genesis will limit its submissions to the issues raised by Calgary, the appellant municipality." The City submits that the materials provided by Genesis go well beyond the limited role set out by the Board. In particular, the issue of regional sanitary water servicing was never raised by Calgary. However, Genesis dedicates a lot of their materials to that issue and how it has been a constant detriment for Calgary in relation to Highway 8 regional sanitary water servicing.

9. If the Board denies the City's application to strike the portions of Genesis's submission that the City considers irrelevant and beyond the scope of Genesis's limited role in this hearing, the City has submitted a planning and transportation rebuttal concurrently with this legal submission that addresses those issues.

10. If this Board allows the Genesis materials to remain, then the City would welcome the opportunity to speak to how improper planning approvals made by the County have resulted in residents continually coming to the City seeking servicing. Genesis is submitting this as an impact on developers, which is inaccurate. The examples cited by Genesis, in particular Elbow Valley West, are examples of County residents seeking City assistance for subdivision servicing, due to unsustainable County approvals. If the Highway 8 subdivisions had been properly planned, then no residents of the County would ever need City services.

#### **IV. RESPONSE TO GENESIS**

11. Genesis has made submissions that: (a) The City's emergency services concern is outside the jurisdiction of the Board; (b) The City's funding concerns are a product of its wrong assumptions; and (c) The City's arguments on detriment misread the Board's prior decisions. The City submits the following response to Genesis's assertions.

## Emergency Services

12. The City's emergency services concern is not outside the jurisdiction of the Board. As detailed in the City's rebuttal submissions to the County filed July 18, 2018, section 690 of the MGA should be read broadly in the greater context of planning and the legislation. The Board has previously determined that an appealing municipality is not required to raise an issue prior to second reading or to mediate a concern prior to filing a notice of appeal under section 690. In the absence of any regional planning system, section 690 offers the last opportunity for an adjacent municipality to protect itself from a perceived detriment resulting from neighbour planning decisions and creates the last forum in which alleged inter-municipal planning issues can be debated and disputes resolved by an independent adjudicator. The City has significant concerns about the detrimental impact the Omni development will have on the City and it is essential that the City have the opportunity to fully present its concerns with the Omni ASP at this appeal. The City relies on its rebuttal submission filed July 18, 2018 to respond to this issue.

## The City's Assumptions

13. **Build out:** As detailed in the City's *Transportation Rebuttal* evidence filed July 18, 2018, even using an estimated build out of 20-25 years, the significant traffic generated by the Omni ASP will require the City to fund significant capital costs of transportation infrastructure without any practical commitment on the part of the County to contribute to the funding or construction of the required infrastructure.

14. **ASP as funding contracts:** The approval of the Omni ASP will provide the signal to developers that land is available for development and submissions of outline plan/land use amendment applications typically follow closely after ASP approval. The City has no jurisdiction over the approval of Omni development as it proceeds and the City's transportation analysis shows that such approvals will have a significant impact within the City as set out in the City's *Transportation evidence* and *Transportation Rebuttal*. Clearly, as demonstrated through the evidence filed for this appeal, the County and the City strongly disagree on the transportation infrastructure required to support the Omni ASP and as such the City cannot rely on the County's assurances that the City's concerns will be addressed. Additionally, even if the County were to agree with the City on the infrastructure required in the City as a result of Omni and even if the County were then to pay its proportionate share of such infrastructure to the City, a proportionate share is not the full cost and the City would still be forced to pay for millions of dollars of infrastructure required for County development on a timeline the City does not control which is a detriment the City needs alleviated.

15. **Other funding sources:** Whether or not the City is able to obtain funding from other orders of government for the improvements required in the City as a result of the Omni development should be given no weight by the Board. If the Board approves the Omni ASP as it is, the City will be obligated to fund millions of dollars of improvements required because of County development. Whether the City pays for those improvements by applying for grants, passing an off-site levy bylaw, or general City tax revenue is the prerogative of the City. The detriment to the City is that the City will have to find some significant source of funding to pay for the required improvements. The City submits that how the City comes up with the funds to pay for the infrastructure required by the Omni development is irrelevant unless the developer is willing to pay the entire cost of such improvements to the satisfaction of the City which is in the tens of millions of dollars and beyond the funding capability of most developers.

## The City's Read of the Board's Prior Decisions

16. The City does not believe it has misread the Board's prior decisions. The City's position is that the Board should not, and to the City's knowledge the Board has never before, declined to find detriment solely on the basis that the appealing and responding municipalities could possibly resolve all the appellant municipality's concerns through future agreements.

17. Genesis cites the **Okotoks** Board decision to claim that it stands for the proposition that if the municipalities have a history of developing cost sharing agreements and if the developer is prepared to pay its proportionate share of transportation costs detriment is not established. The City strongly disagrees with Genesis's interpretation. At paragraphs 217 to 220 of the **Okotoks** decision the Board determined that the Town of Okotoks had not provided enough evidence to support its detriment claim and observed that if in the future there are impacts on the traffic, the effects may be accommodated through existing infrastructure or by agreement and cost sharing if new infrastructure was needed. The City respectfully submits that the outcome could have and should have been different if Okotoks had been able to prove detriment at the time of the appeal. This Board should not agree that a future possible agreement between the parties negates detriment on the City. As set out in the City's legal rebuttal submission, there is no guarantee that the City and the County will be able to come to an agreement on the issues that led to this appeal and the Board should not consider a hypothetical future agreement between the parties as addressing the detrimental effects of the Omni ASP on the City. It is patently evident that the City and the County cannot agree on what impacts the Omni ASP will have on the City and the City respectfully submits that it cannot be that the Board can conclude there is no detriment to the City on the basis of assurances from the County an agreement in the future between the County and the City may be possible.

City original legal authorities at Tab 4: *Town of Okotoks v Municipal District of Foothills*

18. Genesis cites the **Chestermere** Board decision at paragraph 38 of its submission, presumably to argue that the Board is limited to finding detriment where there has been an unreasonable failure to cooperate with a neighbouring municipality to facilitate service provision, mitigate risks, and share costs. The City disagrees that the Board's decision in **Chestermere** limits the definition of detriment in section 690 in this way. As already detailed in paragraph 20 of the City's original legal brief and paragraph 26 of the County's legal response the test for detrimental effect that has been accepted in numerous Board decisions is from the Board's seminal decision **Sturgeon County**. While the Board in **Chestermere** provides some commentary on examples of where detriment may be found, the Board is not precluded from finding detriment in different circumstances including, for example, where an area structure plan will cause an adjacent municipality tens of millions of dollars in unanticipated infrastructure costs on a timeline it has no control over.

City original legal authorities at Tab 5: *City of Chestermere v Rocky View County*

## **Statutory Plan Compliance**

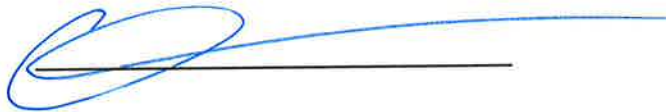
19. The City's concerns regarding misalignment between the Omni ASP and the County's other statutory documents is not about the inconsistency in and of itself. As detailed in the City's Planning Rebuttal to the County's submissions the misalignment of the Omni ASP from the County's Municipal Development Plan and Intermunicipal Development Plan results in the City losing the ability to predict and incorporate adjacent County development into its own growth

management, infrastructure and servicing plans which is a detriment to the City. In addition the consolidation of two Highway Business Areas consolidates the impacts of development into one concentrated area which means that instead of distributing transportation demand across a network, the demand is concentrated in one area of the network. The combined load of two Highway Business Areas and the additional intensity of uses proposed in the Omni ASP causes detriment to the City.

20. Finally, Genesis makes the submission in their materials that "It is Genesis that is paying here." However, the City submits, similar to the Highway 8 examples given, that it will be the residents of the County and Calgarians that will pay the cost for the detriment caused.

All of which is respectfully submitted this 25 day of July, 2018

Per:



—  
David Mercer  
Counsel for the City of Calgary

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3	Development Services Report, Rocky View County
TAB	TRANSPORTATION – Rebuttal Submission



## CITY OF CALGARY PLANNING REBUTTAL TO SUBMISSIONS OF GENESIS

### Summary

1. The picture painted through the Genesis submission is that Calgary efforts to achieve sustainable regional planning have been malicious and vindictive at best, causing great adverse impact to area developers. This picture is not fair. Where the Genesis submission implicates Calgary as the source of problems for developers in the County, The City contends that the responsibility for poorly planned development in the County lies with Rocky View County, not with the City of Calgary. Calgary has a history of resolving inadequate servicing scenarios for citizens and landowners in Rocky View County.

### Regional Planning

2. Under Section VI, Regional Planning, of the Genesis submission, there are inaccurate statements made about Calgary's overall intent and role relative to the region. While many of the statements are simply not material to this appeal; a Calgary response is necessary to address inaccuracies. It appears that Calgary is being judged as accountable for development problems whose root cause lays at the feet of Rocky View County decisions. Not with the City of Calgary.
3. As reported in the Genesis submission, Calgary was a member of the Calgary Regional Partnership. The governance of that organization was based on a double majority system and not simply Calgary veto as implied in the submission. The wise use of water and land was a fundamental underpinning to the Calgary Metropolitan Plan (CMP) as stated in the 2014 edition of the CMP on page 1:  
*"How we guide and shape the area's growth is fundamental to protecting the elements we value most – the natural environment, our communities, fresh air, clean and plentiful water and economic prosperity."*
4. Genesis claimed that *"development along the County's Highway 8 that had not yet connected to the City's wastewater line were badly affected"* (Genesis Submission, page 13, paragraph 52), it should be noted that The City provides water and wastewater service to many locations in Rocky View County, including wastewater servicing for residential development along the Highway 8 corridor<sup>1</sup>. In 1996, to protect and mitigate potential environmental and drinking water impacts resulting **from County approvals** along Highway 8, The City agreed to provide wastewater servicing to Pinebrook and Elbow Valley. Other Highway 8 Country Residential areas followed with City provision of wastewater servicing through the late 1990s and early 2000's. The City's intent at that time was to protect the environment and Calgary's drinking water quality, for potential impacts on the Elbow River and the Glenmore Reservoir.
5. The fundamental problem is not, as Genesis suggests, with The City of Calgary but with County approval of development patterns that were unsustainable in the first place.

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<sup>1</sup> (Balzac Hall, Bears paw School and Recreation Centre, Nexen Gas Adandonment Facility, Nexen Power, Elbow Valley, Pinebrook, Glencoe, Stonepine, Country Haven Estates, proposed Springbank School and Park for All Seasons wastewater)

Genesis implied that Calgary was at fault and responsible for the private trucking of wastewater “four times a day” to a City treatment plant, when responsibility for planning and approving intensive Country Residential developments along Highway 8 without a reasonable wastewater servicing strategy lies fully with Rocky View County.

6. Genesis stated that developers along Highway 8 had built wastewater systems with an intention of connection to City infrastructure, “*The MacKenas developer built an interim wastewater system though the pipes are in the ground awaiting connection to the City line.*” (Genesis Submission, page 13, paragraph 52). In the City’s opinion, it is not appropriate for a developer to construct, and for Rocky View County to approve, a wastewater system where the proposed solution has not been agreed to and deemed physically feasible by the owner of the system required for the ultimate solution. At the time of construction and approval of the stated development, there were no servicing agreements or City infrastructure in place intended to service these areas. One of many factors in deciding whether The City can or will provide servicing outside of its boundaries is infrastructure capacity and alignment with future capital investments. For a period of time, the existing servicing areas along Highway 8 exceeded maximum flows in the servicing agreements and there was no capacity remaining for the additional service areas.
7. In the matter of Highway 8, Calgary has been shown to resolve developer and citizen concerns with wastewater servicing that were approved by Rocky View County. Further to the point, Calgary Council recently approved additional wastewater servicing to another cell along Highway 8 (Genesis Submission, Tab 13, page 4). As recently reported in the Rocky View Weekly, Councilor Kevin Hanson stated that “*This community of 118 people have spent over \$2 million on hauling sewage, approaching \$2.5 million, and, related to that, over \$600,000 in civil suit legal fees,*” he said. “*When we are approving subdivisions and looking for interesting ways to solve problems, this is the kind of bad news story that can result when things don’t turn out exactly as planned.*” (TAB 1: Rocky View Weekly, Calgary to Provide Wastewater Service to Elbow Valley West) City of Calgary wastewater servicing to Highway 8 country residential development is not an example of The City of Calgary being vindictive, but rather The City resolving citizen concerns in Rocky View County.
8. Genesis incorrectly stated that Calgary intended to “*use water licenses as bargaining chips*” (Genesis Submission, page 13, paragraph 51) against Rocky View County. Calgary participated and supported the Calgary Regional Partnership and the Calgary Metropolitan Plan to ensure that limited water resources were aligned to sustainable development patterns.
9. Genesis further claimed (Genesis Submission, page 15, paragraph 61) that Calgary decided to negotiate a new master servicing agreement with the County and service Elbow Valley West due to the Province’s position on The City’s water licenses and regional servicing. The City struggles to understand how Genesis feels the two are linked. Water licenses deal with potable water servicing, whereas wastewater servicing to Elbow Valley to alleviate the negative impacts of County approvals deal with wastewater servicing; the two are not connected.

10. Elbow Valley West is not the first time that Calgary has provided assistance to ill-fated development cells approved by Rocky View County. Notably, the Lynx Ridge annexation was ordered by the Province of Alberta in 2004 (Rebuttal Submissions of The City of Calgary, TAB A, Order in Council 486/2004) The Province required that the City of Calgary bring the development cell into Calgary's jurisdiction to **address serious environmental and health concerns** relating to failing septic systems. Not only did the Province order that The City address a failing wastewater system in this Rocky View County development cell, but it ordered Calgary to also pay tax compensation to the County in the amount of \$687,000. (**TAB 2**, PDA Report, Lynx Ridge Annexation – Compensation Funding). Calgary has direct experience dealing with the costs and implications of failed development in Rocky View County.
11. Questionable County decision making was also evidenced during the process to determine whether to move forward with the preparation of the Omni ASP. On September 27, 2016, County Administration recommended **against** moving forward with the developer funded Omni Area Structure Plan until such a time as waste water servicing is determined through legal agreements. As reported by County administration "*Allowing Genesis Corporation to proceed with the Omni Area Structure Plan is against Council policy*" (**TAB 3**, Development Services Report, Rocky View County). Calgary commends County administration for being concerned with wastewater servicing given the track record of development. This position was not supported by the majority of Rocky View Council.

### **Previous Mediated Settlements**

12. Genesis has made the claim that City of Calgary previous s.690 appeals were rooted in politics rather than substance of detriment. This is false. It has already been clarified by Calgary that previous decisions of the MGB did find detriment (Rebuttal Submissions of The City of Calgary, page 4, paragraph 4). Given the high bar of establishing detriment with the MGB, the Genesis claim makes no logical sense.
13. In MGB Board Order MGB 020/17, the decision stated that "*Based on this agreement, the MGB accepts the policies in the Conrich ASP are inconsistent with policies in the 2011 IDP; further, this inconsistency represents detriment to Calgary. The agreed-to additions and changes will eliminate this inconsistency.*"
14. In MGB Board Order MGB 058/17 the MGB found that the Agreement illustrated awareness that the actions of one municipality can have a detrimental effect on a neighbouring municipality. The Board Order further stated: "*As such, the MGB accepts the Calgary and Rocky View's positions that the proposed amendment to the Glenbow ASP will cure the detrimental impact to Calgary.*"
15. Genesis claims in its submission (Page 15, paragraph 60) "*The resulting changes to the ASP were fundamentally non-substantive; the County agreed to do things it was clearly*

*already going to do, and the two municipalities agreed to work together on a few items".*  
This is not fact.

16. The Board Order relative to Conrich ASP (MGB 020/17) includes very substantive matters and an unprecedented recognition from Rocky View County that development would have an impact on both City Roads and Provincial Infrastructure. The substantive elements of note include but are not limited to:
  - a. ASP Amendment, Section 27 - New Action Policy Item to prepare the East Stoney Trail and Related Infrastructure Analysis (Board Order MBG 020/17, Appendix A, page 7,) The result of this analysis will ensure that funding structures are created and mutual coordinated transportation priorities relative to the East Freeway would be developed. This represents an unprecedented recognition by The County of the impact of their development.
  - b. ASP Amendment, Section 27 - New Action Policy Item 2 (Board Order MBG 020/17, Appendix A, page 8) to prepare a study of 84<sup>th</sup> Street to determine future alignment, access management and right of way requirements for this north/south boundary road located in The City of Calgary.
  - c. ASP Amendment, Section 27 - New Action Policy Item 9 (Board Order MBG 020/17, Appendix A, page 8) to amend the joint IDP to enable more certainty for land parcels (residual lands) inside the City of Calgary.
17. Like in the Conrich ASP mediation a number of significant agreements were achieved to reduce the detriment caused by the Glenbow Ranch ASP (Board Order MBG 058/17):
  - a. Delete and replace ASP policy 19.3 to require a future functional study of Highway 1A to determine cross section and intersection/interchange requirement. This was a significant and major shift in policy.
  - b. Delete and replace ASP policy 16.16 to include requirements for transit planning and a new policy 24.18 to participate in Sub-Regional Transit Feasibility Study. Transit was not adequately addressed in the approved ASP which will accommodate an estimated 14,000 people at full build out.
  - c. Agreement to conduct a joint study and assessment of regional recreation needs of residents in NW Calgary, Bearspaw, Glenbow Ranch and surrounding area including mechanisms for cost sharing.
  - d. Agreement for The County to participate in a task force with the City of Calgary, and other relevant stakeholders, to discuss opportunities to collaborate on issues of mutual interest regarding the Bearspaw Reservoir.
18. Both Board Orders illustrate the substantive nature of the detriment caused and the remedial steps needed to address this from the City's perspective.

**PLANNING REBUTTAL: SUPPORTING DOCUMENTS**

TAB 1: Rocky View Weekly, Calgary to Provide Wastewater Service to Elbow Valley West

TAB 2: PDA Report, Lynx Ridge Annexation – Compensation Funding

TAB 3: Development Services Report, Rocky View County

TAB 1



YOU ARE AT: Home » NEWS » Municipal Council » Calgary to provide wastewater service to Elbow Valley West



With a new Master Servicing Agreement between the City of Calgary and Rocky View County, Elbow Valley West will receive wastewater services from the City. Currently, the area hauls sewage to a County wastewater treatment facility at the expense of homeowners.

**Photo credit:** Ben Sherick/Rocky View Publishing

**MUNICIPAL COUNCIL**

**Calgary to provide wastewater service to Elbow Valley West**

**BY BEN SHERICK JUL 17, 2018**

Rocky View County (RVC) council authorized administration to enter into a Master Servicing Agreement with the City of Calgary for wastewater services to the Elbow Valley West development at a regular meeting July 10.

Stuart Jewison, manager of Utility Services, said the City of Calgary approved the extension of wastewater to the area May 28, on the condition the development be included in a Master Servicing Agreement between the municipalities.

"Prior to this approval, the City and County administrations had been working on completing a Master Servicing Agreement to replace a number of existing servicing agreements currently in place that are considered to be a bit outdated and not reflective of current operating environments," he said.

The new agreement would include the Bears paw School, the Bears paw/Glendale Community Centre and the Elbow Valley/Pinebrook area, which currently receive services from the City of Calgary. With council's decision, Elbow Valley West will also be added to the agreement.

Jewison said the agreement resolves a persistent servicing hardship for Elbow Valley West and will lead to cost savings for RVC. According to his report, the County has made several requests since 2005 to Calgary for an extension of the Elbow Valley service area to include the adjacent Elbow Valley West development. Those requests were repeatedly denied, he said, until the City came around in May.

Currently, according to Jewison, Elbow Valley West is serviced through a wastewater collection system that discharges into holding tanks that are hauled away and disposed of at an approved wastewater treatment facility. The County owns the facility and charges the Elbow Valley West Condominium Corporation a fee to recover expenses related to the collection system.

Homeowners in Elbow Valley West accrue a cost of approximately \$500 to \$600 per home per month as a result.

Reeve Greg Boehlke called the agreement with Calgary a "good news story."

"I'm really happy to see this come forward," he said. "This is a longstanding issue for folks out there, and hopefully this puts an end to it and they get some relief."

Prior to making a motion to enter into the Master Servicing Agreement, Coun. Kevin Hanson said Elbow Valley West serves as a reminder that council's decisions do have tangible consequences.

"This community of 118 people have spent over \$2 million on hauling sewage, approaching \$2.5 million, and, related to that, over \$600,000 in civil suit legal fees," he said. "When we are approving subdivisions and looking for interesting ways to solve problems, this is the kind of bad news story that can result when things don't turn out exactly as planned."

Hanson's motion was carried unanimously. Coun. Mark Kamachi was absent from the meeting.

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TAB 2

## LYNX RIDGE ANNEXATION – COMPENSATION FUNDING

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### SUMMARY/ISSUE

Budget request for funding to comply with Order in Council 486/2004 requiring The City to compensate the MD of Rocky View for loss of property tax revenues resulting from the annexation of Lynx Ridge to the city.

### PREVIOUS COUNCIL DIRECTION

No previous Council decisions or direction has been provided regarding the Lynx Ridge annexation. However, in the recent MD of Foothills annexation, Council approved funding to compensate the MD of Foothills for the loss of property tax revenues. Compensation in this regard is common in annexation processes.

### RECOMMENDATION:

That Council:

1. Approve the payment of \$687,382.15 by The City to compensate the MD of Rocky View in accordance with Order in Council 486/2004.
2. Approve a one-time increase of \$688,000 to Operating Program #616, Land Use Planning & Policy, to make the payment. The funding to come from Mill Rate Stabilization Reserve.

### INVESTIGATION

On 2004 October 19 the Province of Alberta issued Order in Council 486/2004 annexing the Lynx Ridge area to the City of Calgary. The purpose of the annexation was to address serious environmental concerns with respect to a failing septic system for the residential development in this subdivision.

The Order in Council specifies a number of conditions. The City of Calgary must provide a connection from its sanitary sewer system to the wastewater system being constructed in Lynx Ridge pursuant to an MD local improvement bylaw. The City must pay to Rocky View an amount equal to five times the 2004 property taxes for municipal

purposes. The 2004 property taxes for municipal purposes amounts to \$137,476.43. The five-year property tax total is therefore \$687,382.15. Landowners in Lynx Ridge are also afforded property tax mitigation; the Lynx Ridge properties must be taxed using The City's tax rate or Rocky View's tax rate whichever is lower for a period of 15 years to the end of 2019.

It should be noted the City Manager sent a letter to the Deputy Minister of Municipal Affairs on 2004 October 8 expressing concerns with these conditions as well as the irregular annexation boundary. Further clarification of the conditions was provided by Municipal Affairs however the requirements remain as in the final Order in Council (Attachment).

### IMPLICATIONS

#### General

The financial and other conditions in this Order in Council may affect negotiations with the MD of Rocky View related to The City's ongoing comprehensive annexation application.

#### Social

The Lynx Ridge site-specific annexation results in primarily urban residential development being annexed to the city. As such, there is unlikely to be any social ramifications resulting from the municipal boundary change, i.e., lifestyle impacts.

#### Environmental

The annexation will result in this area being serviced with City sanitary sewer, which will solve a serious environmental and health concern with the existing septic sewer system.

#### Economic (External)

The annexation brings approximately 88 hectares of land into the city. It includes residential development, a golf course and clubhouse.

## **LYNX RIDGE ANNEXATION – COMPENSATION FUNDING**

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### **BUDGET IMPLICATIONS**

There is no budget allocation in 2005 to fund the compensation payment. It is proposed that the 2005 Operating Program #616, Land Use Planning & Policy, be increased one-time by \$688,000 to make the payment. The funding to come from Mill Rate Stabilization Reserve.

The annexed area will impact upon City services. There are ongoing and future residential development applications in accordance with the existing land use designation resulting in processing and inspection requirements by The City. Moreover, The City assumes jurisdiction over public roads in the area. The extent of these impacts to City budgets is unknown at this time.

### **RISKS**

The risk in not approving the compensation funding is to be in contravention of the provincial Order in Council.

### **ATTACHMENT**

Order in Council 486/2004

# TAB 3



## DEVELOPMENT SERVICES

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**TO:** Council  
**DATE:** September 27, 2016 **DIVISION:** All  
**FILE:** N/A  
**SUBJECT:** Notice of Motion Response – Genesis Corporation Omni Area Structure Plan - submitted by Deputy Reeve Solberg.

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### **<sup>1</sup>ADMINISTRATION RECOMMENDATION:**

THAT Administration continues to manage Area Structure Plan ranking and preparation in accordance with adopted County Policy.

### **EXECUTIVE SUMMARY:**

A Notice of Motion was brought forward at the September 13, 2016 Council meeting by Deputy Reeve Solberg proposing that *based on a formal commitment from the Genesis Corporation to absorb all costs incurred in creating the Omni Area Structure Plan, Genesis Corporation be instructed to immediately proceed with creation of the Omni Area Structure Plan.* Administration recommends not proceeding with the Genesis Corporation Omni Area Structure Plan until such time as waste water servicing capacity is determined through legal agreements, in accordance with **Option #2.**

### **BUDGET IMPLICATIONS:**

The Administrative recommendation does not have any budget implications for Administrative operations, nor does it immediately affect Administration's Work Plan for 2016/2017. The Area Structure Plan will be included in Administration's budget and work plan once the required agreements have been signed. A motion to direct Genesis Corporation has unknown impacts on County budgeting and resources for 2016/2017. The absence of a Terms of Reference defining County expectations, community engagement requirements, the scope of the County's role in the preparation of the Area Structure Plan and the expected timeline for delivery of the project, do not allow establishment of a budget estimate.

### **DISCUSSION:**

Administration prepares and maintains an area structure plan priority list based on the criteria set out in Council Policy #322 – Area Structure Plan Priority Policy. In accordance with the Policy, Genesis Corporation's Omni Area Structure Plan received their rating based on the understanding they would be signing the necessary agreements to meet the waste water servicing requirements. Without having certainty with respect to the Langdon Waste Water Treatment Facility, the proposal does not meet the Area Structure Plan Priority Policy.

### **CONCLUSION:**

Allowing Genesis Corporation to proceed with the Omni Area Structure Plan is against Council policy. Administration recommends proceeding in accordance with **Option #2.**

### **OPTIONS:**

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<sup>1</sup> **Administration Resources**  
Andrea Bryden, Planning Services



- Option #1: THAT based on a formal commitment from the Genesis Corporation to absorb all costs incurred in creating the Omni Area Structure Plan, Genesis Corporation be instructed to immediately proceed with creation of the Omni Area Structure Plan.
- Option #2: THAT Administration continues to manage Area Structure Plan ranking and preparation in accordance with adopted County Policy.
- Option #3: THAT Council provides an alternative direction.

Respectfully submitted,

Concurrence,

“Chris O’Hara”

“Kevin Greig”

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General Manager, Corporate Services

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County Manager

Attachment ‘A’ – Notice of Motion



## ATTACHMENT A – NOTICE OF MOTION

**Notice of Motion:** For the September 13, 2016 Rocky View County Council Meeting

**Title:** Genesis Corporation Omni Area Structure Plan

**Whereas:** Rocky View County Council recently passed a policy with an objective of achieving 35% non-residential assessment. No timeline or strategy was articulated as to how this assessment percentage is to be achieved.

**Whereas:** Genesis Corporation's Omni project has scored at the top of the RVC area structure plan criteria list but due to perceived lack of wastewater capacity and an un-obtainable means of Genesis supplying the needed funding for wastewater plant upgrades they have not been directed to begin the Omni ASP.

**Whereas:** It takes an inordinate amount of time to obtain capacity approvals from Alberta Environment.

**Whereas:** It will take Genesis Corp. 18 to 24 months to formulate the Omni ASP for Council's consideration.

**Whereas:** Genesis has provided a commitment letter assuring willingness to absorb all costs for creating the Omni ASP thus there will be no cost to RVC taxpayers.

**Whereas:** The Omni project if approved by RVC Council will provide a significant step towards achieving the stated policy of 35% non-residential assessment.

**Whereas:** Time is of the essence in providing competitive advantage to both the Genesis Omni project and RVC to make a major step toward the goal of achieving 35% non-residential assessment.

**Therefore Be It Resolved:** That based on a formal commitment from the Genesis Corporation to absorb all costs incurred in creating the Omni Area Structure Plan, Genesis Corporation be instructed to immediately proceed with creation of the Omni Area Structure Plan.

## **CITY TRANSPORTATION REBUTTAL TO GENESIS LAND DEVELOPMENT CORP SUBMISSION**

1. Genesis Land Development Corp submitted materials in response to the City's legal submission and evidence that claim that the City's landuse assumptions and other funding assumptions are flawed.

### **Build out**

2. As detailed in the City's *Transportation Rebuttal* evidence filed July 18, 2018, even using an estimated build out of 20-25 years, the significant traffic generated by the Omni ASP will require the City to fund substantial capital costs of transportation infrastructure without any practical commitment on the part of the County to contribute to the funding or construction of the required infrastructure.

### **Other funding sources**

3. Whether or not the City is able to obtain funding from other orders of government for the improvements required in the City as a result of the Omni development should be given no weight by the Board. If the Board approves the Omni ASP as it is, the City will be obligated to fund millions of dollars of improvements required because of County development.

4. As noted within the City's *Transportation Evidence & Transportation Rebuttal*, the City has two projects listed as Omni ASP required infrastructure; specifically, (i) the Stoney Trail /Stoney Trail interchange and (ii) the Airport Trail road connection are projects that are contained within the City of Calgary Transportation Offsite Levy Bylaw and would have a potential City funding source. Portions of these projects are also contained within the Airport Trail Phase 2 project identified by Genesis points 29 and 30.

5. Genesis claims that the City's assumptions that the City alone will have to fund infrastructure are false based on the Airport Trail Phase 2 project announcement. As noted within the City's *Transportation Rebuttal* evidence filed July 18, 2018, the City has stated that at minimum \$82.75 Million of potential City-funded major transportation capital projects will be needed to support the OMNI ASP and would be a significant detriment to the City. This estimate of costs does not include either of the Airport Trail Phase 2 related projects and as such, Genesis statements around City assumptions and the Airport Trail phase 2 project are irrelevant to the City's claims of potential cost detriment.

6. Whether the City pays for those improvements by applying for grants, passing an off-site levy bylaw, or general City tax revenue is the prerogative of the City. The detriment to the City is that the City will have to find some significant source of funding to pay for the required improvements. How the City comes up with the funds to pay for the infrastructure required by the Omni development is irrelevant unless the developer is willing to pay the entire cost of such improvements to the satisfaction of the City which is in the tens of millions of dollars and beyond the funding capability of most developers.

7. As such, the City has demonstrated that Genesis statements around buildout and other funding sources have been addressed and are irrelevant. It is still clear to the City that the Omni ASP will have a significant transportation detriment through its traffic impact and related significant potential City funded capital costs of transportation infrastructure required to support the ASP