

MGA Review Discussion Paper

Statutory Plans and Planning Bylaws

This technical document is part of a series of draft discussion papers created by Municipal Affairs staff and stakeholders to prepare for the Municipal Government Act Review. It does not reflect existing or potential Government of Alberta policy directions. This document is the result of a careful review of what is currently included in the Municipal Government Act (MGA) and regulations, definitions of terms and processes, changes requested by stakeholders over the last 18 years, some highlights from other jurisdictions, and identification of potential topics for discussion during the MGA Review. This information will be used to prepare consultation materials as the MGA Review proceeds.

These discussion papers have been reviewed and approved by the MGA Stakeholder Advisory Committee, comprised of representatives from major stakeholder organizations: Alberta Association of Municipal and Counties, Alberta Association of Urban Municipalities, Alberta Rural Municipal Administrators Association, Alberta Chambers of Commerce, City of Calgary, City of Edmonton, and Local Government Association of Alberta.

The Government of Alberta is asking all Albertans to directly contribute to the MGA Review during online consultation in late 2013 and consultation sessions throughout Alberta in early 2014. This technical document is not intended for gathering stakeholder feedback, but to generate thought and discussion to prepare for the upcoming consultation. Public engagement materials will be available in early 2014. To learn more about how you can join the discussion on how we can build better communities, please visit mgareview.alberta.ca/get-involved.

Preamble



The *Municipal Government Act (MGA)* provides the legislative framework to guide the operations of municipalities in Alberta. The current *MGA* empowers municipalities with the authority and flexibility to provide services in the best interests of the community. The *MGA* Review will proceed along three major themes: *governance and administration*; *assessment and taxation*; and *planning and development*.

This paper is one of 11 discussion papers exploring aspects relating to *planning and development*. It focuses on the statutory plan and planning bylaw requirements as described in the *MGA*. The objective of each discussion paper is to

- 1) Outline the existing legislation,
- 2) Identify issues with specific aspects based on stakeholder requests,
- 3) Look at how other jurisdictions are approaching these issues; and
- 4) Pose questions to help formulate future analysis of, as well as public and stakeholder engagement on the *MGA*.

Below is a list of the papers that relate to the planning and development theme.

- Managing Growth and Development
- Statutory Plans and Planning Bylaws
- Municipal Planning Authorities
- Land – Administrative Decision-Making Processes
- Land Dedication (Reserves)
- Fees and Levies
- Public Participation
- Planning and Intermunicipal Appeals
- Municipal Government Board
- Municipal Relationships and Dispute Resolution
- Fundamental Changes and Municipal Restructuring

Statutory Plans and Planning Bylaws

Statutory plans are developed by a municipality for the purposes of identifying future plans for development within municipal boundaries and the immediately surrounding area. These statutory plans facilitate local planning and economic growth, and act as a guide for future land-use expectations for both citizens and businesses. Statutory plans must be consistent with one another and with any regional plans adopted for the area under the *Alberta Land Stewardship Act (ALSA)*.¹ Although the Land Use Bylaw is statutorily required through the legislation, it is not considered a statutory plan (within the definition of a statutory plan in the *MGA*) and it is the tool by which municipalities implement their statutory plans.

Statutory Plans

Statutory plans include: Intermunicipal Development Plans, Municipal Development Plans, Area Structure Plans, and Area Redevelopment Plans. Subdivision and development decisions are required to be consistent with any approved statutory plan;² however, municipal councils are not obligated to undertake any of the projects identified within a statutory plan. Listed below are the statutory plans as they appear in the *MGA* from general to specific:

- **Intermunicipal Development Plan (IDP)**
Two or more municipalities have the option to develop and adopt an IDP for areas within their boundaries. The plan should provide for future land use within the identified IDP area and is required to identify a procedure to resolve conflicts, to deal with amendments or repeals, and to administer the plan. The Minister may require municipal authorities to establish an IDP.
- **Municipal Development Plan (MDP)**
For a municipality with a population of more than 3,500 it is mandatory to develop and adopt an MDP and, while it is not mandatory for smaller municipalities, many have done so. The MDP addresses future land use and development within the municipality and coordinates land use, future growth patterns, transportation systems, municipal services and facilities within the municipality as well as other infrastructure that relates to adjacent municipalities.
- **Area Structure Plan (ASP)**
A municipal council has the option to adopt an ASP to provide a framework for developing a specific area within the municipality. Unlike other statutory plans, an ASP is generally prepared by a developer and not necessarily initiated by the municipality. An ASP must describe the proposed development sequence, proposed land uses for the

¹ The ALSA regional plans that are referenced are the seven regional plans being prepared under the provincial Land-use Framework.

² The decision-making processes undertaken by planning authorities are discussed in greater detail in the Land – Administrative Decision-Making Processes discussion paper.

area, proposed population density of the area, and the general location of major transportation routes and public utilities.

- **Area Redevelopment Plan (ARP)**

A municipal council has the option to develop an ARP for a designated area of the municipality to preserve land and buildings, to rehabilitate, remove or construct buildings, to improve roads, to generally facilitate development in the area, and for collection of redevelopment levies. An ARP includes the objectives of the plan, the proposed land uses, the reasons for any redevelopment levies to be proposed as part of the plan, and any proposals for acquiring land for municipal uses, schools, parks and recreation.

Land Use Bylaw (LUB)

Under the *MGA*, all municipalities are required to adopt a land use bylaw. The land use bylaw divides the municipality into districts, prescribes the uses of land and establishes development standards for each district, and provides for a system for issuing development permits.

Direct Control (DC) Districts

Direct control districts are special land use districts that may be designated in the land use bylaw, provided the municipality has adopted a municipal development plan. DC districts are typically utilized when a proposed development does not fit within the other land use districts in the land use bylaw, or a development is unique. DC districts are different from other land use districts in that it is the municipal council who issues any decisions on development permits in the area, unless council has delegated this responsibility to another planning authority. DC districts are typically utilized when a council wishes to have control over the development of the land or use of the buildings within a particular area.

Public Involvement during Planning Bylaws Adoption (Statutory Plans and Land Use Bylaws)

All statutory plans and land use bylaws are adopted by bylaw, and when preparing a statutory plan or land use bylaw, the municipality is required to hold a public hearing. A notice of the public hearing is required to be published in a general circulation newspaper or mailed to residents directly affected by the bylaw. The notice contains the purpose of the public hearing and the bylaw, and the date, time and location of the public hearing. If an IDP is being prepared, the councils from both municipalities may hold a joint public hearing. During a public hearing, council hears from those affected by the proposed bylaw and may hear from any person who wishes to make representation (e.g., landowners). After hearing from the public, council makes its decision regarding the bylaw.

When a proposed amendment to the land use bylaw changes the designation of a land use district, the municipality is also required to provide, in the notice, the address and map of the area and send all information in the notice to the landowner, to the landowners adjacent to the area, as well as to the neighbouring municipality, if the area is adjacent to their jurisdiction.

Additionally, when preparing a statutory plan, the municipality must provide a means for local citizens to make suggestions, notify the public of the plan preparation process, notify school boards operating in the area, and notify neighbouring municipalities when an MDP or ASP includes an area adjacent to another municipality.

Planning Bylaw Process Exemptions

The *MGA* exempts some land and several types of development from the planning and development provisions. This includes Métis settlements, an area of Crown land that has been designated under the Public Lands Act that is located within a municipal district or specialized municipality, and development approvals for confined feeding or manure storage facilities, roads, wells, and pipelines. Also, through the *Planning Exemption Regulation*, Cabinet may make additional exemptions from this portion of the *MGA* or its regulations.

Additionally, a license, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy and Utilities Board, Alberta Utilities Commission or the Alberta Energy Regulator prevails over any municipal plans or planning decisions.

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Discussion Points

Below are some identified discussion topics and questions based on a review of requested amendments, cross-jurisdictional research and issues raised by stakeholders. The requested amendments discussed below draw upon an inventory of requests received by the Province over the past 18 years. It is important to note these requests:

- i) do not necessarily represent the views of most Albertans;
- ii) do not necessarily apply to all municipalities; and
- iii) are categorized by policy topic, and have not been evaluated or ranked by number of requests received.

1. Statutory Plans and Land Use Bylaws

Background:

The *MGA* specifies what matters are required to be included within each type of statutory plan and land use bylaw, and what matters are optional. However, other matters of interest are not currently required to be addressed in statutory plans or land use bylaws (such as efficient use of land, affordable housing, inclusionary zoning, brownfields, and climate change) or may fall outside the current categories of statutory plans (such as municipal sustainability, capital asset management planning).

Additionally, the *MGA* states that a municipal council is not required to undertake any of the projects that are identified in statutory plans, which has resulted in some to question the purpose of having statutory plans.

Cross-Jurisdictional Research:

- No jurisdiction other than Alberta provides municipalities with the ability to create intermunicipal development plans; instead, where intermunicipal issues are addressed at all it is through regional strategies, such as in British Columbia and Quebec. In B.C. it is mandatory for each region to create a regional growth strategy. In Quebec, it is also mandatory for the regional county municipalities to create regional land use and development plans.
- In Ontario, there is a tier system for municipalities within the province, an upper tier and a lower tier. It is mandatory for both upper and lower tier municipalities to have official plans; however, lower tier municipalities must send their official plans to the appropriate upper tier municipalities for approval.

Stakeholder and Legislative Amendment Requests:

- There have been several requests for amendments to the *MGA* to require additional matters to be included within statutory plans from a variety of stakeholders, including municipal associations, municipalities, business and industry. Examples of these requests include requiring strategies for:
 - achieving density intensification;

- affordable housing;
 - preserving farm land;
 - preserving natural areas; and,
 - heritage and design.
- Some stakeholders have requested that municipalities be required to adopt municipal sustainability plans or capital asset management plans.

2. Hierarchy and Consistency of Statutory Plans and Land Use Bylaws

Background:

Statutory plans are often applied hierarchically to reflect a range from general to specific. The *MGA* requires statutory plans to be consistent with one another and with any regional plans adopted for the area under *ALSA*. However, other than the order in which statutory plans are listed within the *MGA*, there is no legislated hierarchy of statutory plans.

The land use bylaw, the tool by which municipalities implement their statutory plans, is not required to align with the statutory plans. This flexibility allows municipalities the ability to exercise discretion and judgment in their land use decisions and operations. However, this flexibility may also create elements of uncertainty for decision-makers and, in some cases, may devalue the intended role of statutory plans (e.g. preservation of agricultural land policy within municipal development plan does not carry over into agricultural land use district subdivision rules within the land use bylaw).

Cross-Jurisdictional Research:

- Most provinces provide for some hierarchy of plans from neighbourhood to municipal to regional.
- In Manitoba, there is a hierarchy of plans through the requirement that zoning bylaws are to be consistent with any secondary plans or development plans, secondary plans must be consistent with development plans, and development plans must conform to the regional strategy. This ensures that all zoning bylaws and secondary and development plans ultimately conform to regional strategies.

Stakeholder and Legislative Amendment Requests:

- Some municipalities and many citizens have requested that the Province require land use bylaws to be consistent with statutory plans.

3. Land Use Bylaws

Background:

Currently, the *MGA* requires that land use bylaws divide the municipality into land use districts. This mandatory requirement may limit the ability of municipalities to apply other more flexible or innovative approaches that are currently being explored in other jurisdictions.

Cross-Jurisdictional Research:

- Some communities in the United States have implemented the use of form based code as an alternative to the standard approach of dividing a municipality into districts and identifying what is permitted in those districts. The form-based code approach bases decisions on developments in communities on how the style of the proposed development would fit into the neighbourhood character that has been identified in the plans. This process is being used city-wide in communities such as Gulfport, Mississippi; Leander, Texas; Montgomery, Alabama; and St. Lucie County, Florida.

Stakeholder and Legislative Amendments Requests:

- Members of urban and rural planning professional associations have requested more flexibility in creating land use bylaws.

4. Maintenance of Plans

Background:

Some municipalities have the capacity to create or update statutory plans on a regular basis; in other instances, municipalities may not have the capacity to prepare or regularly update their plans to keep up to the legislative requirements of the *MGA* and *ALSA*. This means that some municipalities operate without appropriate statutory plans, utilize outdated plans, or have plans that do not comply with *ALSA* regional plans.

Cross-Jurisdictional Research:

- Saskatchewan and the Northwest Territories require that council prepare their plan under the guidance of a professional planner, while other provinces such as Manitoba, Prince Edward Island, Newfoundland and Yukon require municipalities to submit their plans to the Minister for approval.

Stakeholder and Legislative Amendments Requests:

- Some stakeholders have requested that statutory plans be prepared by professional planners.

5. Intermunicipal Development Plans

Background:

Currently, the establishment of an IDP is voluntary under the *MGA*. The matters to be addressed in this type of intermunicipal plan (such as future development in an area) are optional, except for the requirement to include provisions for the administration of the plan, the resolution of disputes, and how the plan can be amended or repealed.

Cross-Jurisdictional Research:

- IDPs are unique to Alberta. In British Columbia, a regional growth strategy is prepared by the regional district, with the involvement of the district's participating municipalities and provincial agencies. It is mandatory for a region and must include matters such as regional vision statements, population and employment projections, targets for the reduction of greenhouse gas, and regional actions for key areas. There are also 14 optional matters to address in the strategy, such as ways to avoid urban sprawl, settlement patterns to limit vehicle usage, and protecting environmentally sensitive areas.

Stakeholder and Legislative Amendment Requests:

- Some stakeholders have made requests to amend the *MGA* to make IDPs mandatory.
- Some stakeholders have asked for a mandatory multi-jurisdictional plan to be created in place of an IDP to provide for (i) the future land use within the area, (ii) the manner of and the proposals for future development in the area, (iii) growth management, (iv) land use and density, (v) sustainability planning, (vi) transportation planning, (vii) tax-sharing, cost-sharing, and revenue sharing, and (viii) any other matter relating to the physical, social or economic development of the area that the councils consider necessary. The stakeholders assert these multi-jurisdictional plans would better coordinate land use plans between municipalities and be consistent with provincial goals.
- Some stakeholders have requested that the Province establish principles within the *MGA* and provide guidelines, templates and best practices for voluntary IDPs.
- Some municipalities have raised concerns that IDPs may be repealed when a new council is elected. They assert that the potential to repeal an IDP could undermine the purpose of IDPs by causing inconsistencies and uncertainties in dispute resolution and planning between neighbouring municipalities.

6. Municipal Development Plan Population Criteria

Background:

Currently, the *MGA* requires any municipality with a population of more than 3,500 to adopt an MDP. Smaller municipalities with populations of less than 3,500 are not required to develop these plans. As a result, some towns, villages and summer villages in Alberta are issuing decisions on subdivision or development applications without policies to guide them through their decision-making process. As noted previously, many small municipalities have developed MDPs even though they are not required to do so under the *MGA*.

Cross-Jurisdictional Research:

- In New Brunswick, municipal plans and rural plans are optional; however, the Minister, or a regional plan, may require the municipality to adopt a plan. In municipalities where there isn't a municipal plan or rural plan, the municipality may prepare a basic planning statement. The planning statement may contain objectives for the future development of the municipality, and objectives to be accomplished by a zoning or subdivision by-law.

Stakeholder and Legislative Amendment Requests:

- Some municipalities have requested that the *MGA* be amended to require all municipalities to create municipal development plans regardless of the population.

7. Direct Control Districts

Background:

Within direct control (DC) districts, development permit approval lies with council (or with the development authority, if council has delegated this authority) and there is no appeal mechanism for decisions. With no appeal mechanism, there is no availability for applicants to have a further review of conditions of approval or refusal of an application. In addition, if the development proposal is incompatible with adjacent uses, adjacent landowners do not have recourse available to them.

Also, when the initial proposal is made to change the existing designation of an area of land into a DC district (through a land use bylaw amendment), the owners and adjacent landowners can participate at a public hearing, but the owners cannot prevent the municipality from redistricting the land to a direct control area. This is a particular concern to some stakeholders because of the inability to appeal any subsequent decisions on proposed developments within DC districts.

Stakeholder and Legislative Amendment Requests:

- Some municipalities have requested that the *MGA* clarify the use of a DC district.
- Municipal Affairs has received calls from the public about DC districts allegedly being used in some instances to ensure that there can be no appeal mechanism for adjacent landowners when the development permit is issued.

Discussion Questions

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1. Should there be a legislated hierarchy of statutory plans and land use bylaws? Why or why not?
 - a) To what extent should the land use bylaw be required to align with statutory plans?
 - b) Is there a need to ensure that planning authorities are bound to the plans and policies that have been established by a municipality? Why or why not?
 2. Should the *MGA* provide for other types of statutory plans? If so, what other types of statutory plans should be considered?
 - a) What matters should an IDP, MDP, ASP or ARP address? What matters should be optional? What matters should be mandatory? What should be removed?
 3. Currently the *MGA* does not require a municipality to undertake projects identified within a statutory plan. Should this be amended? Why or why not?
 4. Are the current land use bylaw requirements in the *MGA* appropriate? Why or why not?
 - a) What matters should a land use bylaw contain? What matters should be optional? What matters should be mandatory? What matters should be removed?
 5. Are the legislative requirements for statutory plan preparation in the *MGA* appropriate (e.g., population criteria)? Why or why not?
 - a) Is there a need for the *MGA* to require a regular review of statutory plans? Why or why not?
 6. Are IDPs effective for managing planning between neighbouring municipalities? Why or why not?
 - b) Should IDPs be mandatory? Why or why not?
 - c) Is there a need for legislated provisions regarding the repeal of an IDP? Why or why not?
 - d) Are there other more effective methods? If so, what other methods?
 7. What, if any, appeal mechanism should there be for development permits issued within direct control districts?