

**PURSUANT TO THE  
MUNICIPAL GOVERNMENT ACT, s. 690**

BETWEEN:

**THE CITY OF EDMONTON**

Applicant

-and-

**STRATHCONA COUNTY**

Respondent

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**Before The Municipal Government Board  
Filed the 30<sup>th</sup> day of November, 2007**

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**REPLY OF THE CITY OF EDMONTON  
TO SUBMISSIONS OF STRATHCONA COUNTY  
FILED NOVEMBER 14, 2007**

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## I. THE TEST FOR DETRIMENT

### Evidence

1. Strathcona County (“Strathcona”) asserts that the City of Edmonton (“Edmonton”) has failed to provide any evidence of detrimental effect arising from the 2007 MDP of a quality and sufficiency that can be relied upon by the Board in assessing whether there is a reasonable likelihood that the identified provisions of the County’s MDP will cause detriment.
2. Edmonton does not dispute that the Board’s previous decisions cited by Strathcona provide guidance with respect to the Board’s determination on the issue.
3. Edmonton submits that having regard to the decision of the Board in **Morinville v. Sturgeon** (Tab 10, Edmonton’s Submissions) and referred to extensively by Strathcona in its submissions that it has provided evidence and submissions sufficient to support a conclusion that one or more provisions will have a detrimental effect on Edmonton flowing from both uncertainty and incompatibility.
4. The primary difficulty raised by Edmonton relates to uncertainty. That uncertainty flows from the lack of detail in relation to the fringe area proposals and the Urban Reserve. Such lack of detail adversely affects the ability of Edmonton to plan effectively on its boundaries with Strathcona as there is little or no certainty of ultimate land uses, and there are provisions which may permit uses incompatible with future use and development of lands in Edmonton.

### Compliance with Statutory Regime

5. The matters complained of are matters that are required to be addressed in the Municipal Development Plan pursuant to s. 632 and the uncertainty created by their absence is the essence of the detriment alleged.
6. While the Board in its Sturgeon decision “*did not agree with the proposition that because a MDP did not conform to the requirements of the Act of the Land Use Policies detriment must necessarily result*”<sup>1</sup>, and noted that “addressing” an issue is a broad direction, it also stated that:

The MDP is the “guidance system” for the LUB. Whether or not a particular land use redesignation will be approved will depend to a large extent on what is provided for in the MDP’s policies and future land use map. The plan therefore plays a significant role in land use regulation, only a little removed from the more “direct” effect of the LUB. The MDP is often determinative in deciding whether or not to approve a discretionary use. It also manifests itself pursuant to certain provisions of the Act by preventing the approval of a subdivision that does not conform to its provisions [s.654(1)(b)]; ensuring that its provisions are taken into account in subdivision appeals [s.680(2)(a)], or forcing subdivision and development

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<sup>1</sup> Sturgeon, (MGB 77/98) p. 50

appeal Boards to comply with it [s.687(a)]. This illustrates the restraining effect of the plan, operating through the LUB.<sup>2</sup>

7. The very uncertainty of what will be developed in the fringe policy areas combined with potential for adverse incompatible development creates the detriment alleged. That detriment is not eliminated by the proposal to implement the plan over time through further planning exercises.<sup>3</sup>
8. Moreover the County's complaints about the quality and sufficiency of the evidence provided by Edmonton must be measured against the quality and sufficiency of information provided for the purpose of assessment. This is particularly so in the Urban Reserve area. What Edmonton does know is that it is intended for future growth and the size of the area proposed for such growth. No other specifics are provided and therefore Edmonton of necessity has little to analyze and comment on.

### **Remoteness**

9. Edmonton acknowledges that the Board has previously determined that detrimental impact may be geographically limited to a defined fringed area, but submits that any such determination must be assessed in the context of the proposals in the MDP. While the Urban Reserve is not in the fringe area as defined by the Board, it is a proposal for a new major urban growth centre commencing two miles from Edmonton's boundaries. It would be completely contrary to practical realities to conclude that there could be no detriment to Edmonton arising from such a development merely because it is more than two miles from Edmonton's boundaries.
10. This situation is entirely distinguishable from the Sturgeon county circumstances where the Board found, in restricting the analysis of detriment to the fringe area, that *"development outside the fringe will not only be more distant from municipal boundaries, but more dispersed as well"*.<sup>4</sup>

## **II. SPECIFIC ISSUES**

### **General Observations**

11. The attached report from Edmonton Planning responds to the matters raised by Strathcona with respect to the specific issues identified by Edmonton as creating a detriment to Edmonton.
12. In general terms however the substance of Strathcona's response with respect to the concerns raised by Edmonton is two-fold:

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<sup>2</sup> MGB 77/98 p. 52

<sup>3</sup> MGB 77/98 p. 52

<sup>4</sup> MGB 77/98 p. 60

- That the lack of any detail with respect to future uses of the land is of no consequence because the areas will be subject to further planning and the general plan policies place sufficient constraints so that no detriment is possible
  - That Edmonton will be involved in such future planning both through specifically contemplated participation or through the Joint Planning Study requirement incorporated into the MDP
13. Edmonton submits that while the MDP may be a broad brush document, it should be more than a document which specifies the requirement to paint. Failing to provide any direction as to land uses means that there is significant uncertainty created for Edmonton's planning process on its eastern boundary the resolution of which is equally uncertain in time and substance. That Edmonton submits is a real detriment.
14. The detriment is further not avoided by a proforma recognition of the need for cooperation when even the Joint Study specifically contemplated in the MDP and agreed to as part of the resolution of a previous MGB appeal is given no more status than it will be done with no requirement to reflect its findings in the MDP.

### **Agricultural Small Holdings Policy**

15. Contrary to Strathcona's assertions Edmonton is not alleging detriment caused by name changes and such an assertion is only intended to trivialize Edmonton's real concerns which is the uncertainty created through the various iterations that this area has gone through in the Strathcona planning process.

### **Heavy Industrial Separation**

16. Edmonton's concerns respecting heavy industrial separation is not that the MDP fails to provide for appropriate separations, but that it fails to explicitly include Edmonton's adjacent developments in the requirements for separation.
17. Edmonton is uncertain from the material provided by Strathcona whether it is alleging that it has provided the separation between Edmonton's heavy industrial development and incompatible uses contemplated by the Alberta Planning decision, or that such separation is not necessary.
18. Edmonton assumes the latter is the case because of the expert evidence filed by Strathcona on this issue. The explicit assumption underlying both reports is that no heavy industrial uses can be or will be approved in Edmonton's Clover Bar area long planned for heavy industrial.
19. If that is the basis upon which Strathcona declines to specify the appropriate separation in its MDP it is in effect planning for Edmonton, and arguing detriment cannot be found if Edmonton does its planning for an area long planned for heavy industrial use on the basis that Strathcona says should be done.

## Urban Reserve

20. Edmonton has already addressed the remoteness issue.
21. With respect to the alleged lack of evidence, Edmonton again notes that the lack of any meaningful detail of any of the matters specified in section 632 it is impossible to provide detailed evidence analyzing specific impacts, but that there is no doubt that a large new urban centre just two miles east of Edmonton's borders will have an impact.
22. To say that because Sherwood Park currently operates as an urban municipality receiving no services from Edmonton means no services are provided to the residents of Sherwood Park appears entirely disingenuous.
23. In response to Strathcona's assertion that Edmonton failed to address its concerns respecting the Urban Reserve when it had plenty of opportunity to do so, Edmonton notes that:
  - It clearly raised the concerns respecting new urban growth centres in communications to Strathcona (Tabs K and M, Edmonton's submissions)
  - While the currently identified Urban reserve was identified as an Urban Growth Strategy area in maps dated August 5 and October 6, 2006, it was not on the initial circulation map to which the letter in Tab K responded, and it again vanished from the map dated December 19, 2006 which was the map received by Edmonton and upon which it based its formal comments to Strathcona on February 5, 2007 (which raised issues about urban growth areas (Tab 5 to Edmonton's submission)
  - The Joint Planning Study terms of reference did not incorporate that which had not been identified but Edmonton made it clear that large urban growth areas should be included within the Joint Planning Study in its letter of February 5, 2007

## Other Issues

24. Edmonton's appeal is not to be taken as challenging already approved land use designations, area structure plans and development permits. No doubt while some of the lands included in the policy areas which concern Edmonton are the subject of such plans, land use designations and permit approvals, at law this appeal could not affect such lands.
25. However those approvals are relevant to the issue of what might be developed in an area in which there are no designated uses but which is subject to the same planning process which has led to approved land uses which cause concerns to Edmonton respecting compatibility and future impacts.
26. In other words reference to those matters is not arbitrary but illustrative.

27. Other references were included to illustrate concerns about the supposedly protective referral process which has been watered down from that previously negotiated in the 1998 MDP. Again the references were not arbitrary but illustrative.
28. Finally Edmonton notes Strathcona's renewed allegation of abuse of process – a refrain that has permeated each and every document that Strathcona has filed in this proceeding. The information given for notification may have been over inclusive to avoid any possibility of an affected landowner being deprived of notice – but Edmonton notes that it made it patently clear which provisions of the MDP it was appealing. The County is more knowledgeable about its land use districts and the location of lands in the policy areas referred to in the MDP and the appeal but made no effort to inquire as to whether there was any appeal with respect to lands within the one mile strip that were not within any of the policy areas specifically identified by Edmonton it is appeal.
29. Edmonton takes serious exception to Strathcona's consistent assertions that Edmonton's exercise of its statutory rights constitutes an abuse of process.

All of which is submitted this 30<sup>th</sup> day of November 2007.

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