

Downtown Plan Development Rights Policy

Recommendation:

That the February 23, 2016, Sustainable Development report CR_3100, be received for information.

Report Summary

This report describes a process by which Administration can administer a sunset clause for Direct Control Provisions.

Previous Council/Committee Action

At the November 2, 2015, City Council Public Hearing, the following motion was passed:

That Administration prepare a policy outlining a proposed mechanism to be added to the Downtown Plan, for example (and other plan areas or direct control zones as appropriate) that reverts development rights if development has not commenced within a reasonable time following up-zoning of a parcel.

Report

Background

In recent years, members of City Council have raised the topic of establishing a process to limit new development rights provided through Direct Control Provision approvals in the downtown within dedicated timeframes. The proposed mechanism is generally referred to as a “sunset clause,” which allows development rights as an opportunity that can be exercised within a specified period of time. After such time has elapsed, and if development has not met the sunset clause condition, the development rights revert back to a lower development opportunity as stipulated in the Direct Control Provisions.

A sunset clause has been used for Direct Control Provisions in the past. There have been two recent examples of approved Direct Control up-zonings within the Downtown that allow for intensification of land for high-density and mixed-use development that applied this clause:

- the Massey-Harris-Ferguson building located 10616 - 103 Avenue NW and 10609 - 104 Avenue NW (Reference: DC1, Massey-Harris-Ferguson Building; Bylaw 17377, September 21, 2015)
- the Augustana building located at 9901-107 Street NW (Reference: DC2.906; Bylaw 17423 - November 2, 2015).

Both proposed developments include sunset clauses with the intent to provide assurances that the development will be underway within a set time following the approval of the respective Bylaws. Currently, the Massey-Harris-Ferguson and

Augustana proposed developments contain site specific zoning regulations that state either in the event that the owner/developer does not obtain a building permit and commence construction under a valid development permit, within a specified period of time from the passage of the Bylaw, then the height of all towers shall be limited to a specified reduced height, or revert back to the provisions of the original zone. The Direct Control Provisions for the Massey-Harris-Ferguson and Augustana proposed developments each contain different specified timeframes for the sunset clause (seven and nine years, and ten years respectively).

Analysis

Sunset Clause:

A sunset clause is a measure contained within a statute, regulation or other law that provides that the law shall cease to have effect after a specific date, unless further legislative action is taken to extend the law.

Sunset clauses are not suitable to be applied to a standard zone, including within the Downtown Special Area and other areas within the City for the following reasons:

- Standard zones are not a form of site-specific zoning.
- Standard zones include particular uses and development rights that are applied across the city.
- Development rights can be removed through rezoning, but only through bylaw passed by Council and would lead to pre-existing uses becoming legal non-conforming.

Direct Control Provisions:

Site Specific Development Control Provisions (DC2) and Direct Development Control Provisions (DC1) are both forms of contract zoning that are tailored to meet the needs of a particular site. Site Specific Development Control Provisions (DC2) are the appropriate zones to incorporate a sunset clause since the zones are customized for specific sites and provide opportunities for additional development rights such as increased height, floor area ratio and density.

Although there is no established directive or City policy for an incentive based zoning system in Edmonton, Site Specific Development Control Provisions (DC2) and some Direct Development Control Provisions (DC1) can function as an incentive zoning system. This is because site-specific zoning creates opportunities for negotiations to obtain public amenity benefits when a parcel of land is up-zoned. Direct Control Provisions are currently used city-wide to enable site-specific development opportunities, not only in the downtown. Not all Direct Development Control Provisions (DC1) and Site Specific Development Control Provisions (DC2) rezoning applications would require or need a sunset clause.

Similarly, there is currently no specific city policy that addresses a sunset clause applied to land development applications that are typically applied to rezone a parcel(s) of land

to Direct Development Control Provisions (DC1) and Site Specific Development Control Provisions (DC2). While there are no formal criteria or procedures in place, as a business practice, it is currently part of the negotiation process between the applicant and Administration through the rezoning process of a Direct Development Control Provisions (DC1) and Site Specific Development Control Provisions (DC2).

Mechanism to include a sunset clause in Direct Control Provisions:

Short Term Action (Administrative Directive):

As a business practice, Administration has begun to implement the use of sunset clauses in some Direct Control Provisions as identified in this report. Administration will continue to consider the application of a sunset clause through the negotiation of Direct Control Provisions with project proponents and bring forward an analysis and recommendation to Council.

In terms of applying a sunset clause to specific projects, key considerations that are reviewed through Direct Control Provision negotiation processes with project proponents include, but are not limited to the following:

- a. To establish a reasonable specified time frame, being mindful of the current and future economic climate.
- b. To establish what level of development to be completed within the specified time frame that would establish conformance to the Direct Control Provision. In the context of a larger scale project that requires a phased approach, a specified time frame to develop a phase of development may be imposed.
- c. To establish and determine what development rights would be removed in order to make the sunset clause effective.

During the Direct Control Provision negotiation process, Administration will recommend whether a sunset clause should be implemented and clearly describe why this is the case. The use of sunset clauses will be considered both within the Downtown and other areas of the City where this is deemed to be suitable.

To further clarify this practice, Administration will prepare an Administrative Directive to outline its intent to use sunset clauses in Direct Control rezonings where appropriate. The Administrative Directive will guide staff as they review applications and discuss them with applicants. Having an Administrative Directive will confirm an ongoing intent to continue this business practice, which provides clarity for project proponents and Council. The differences between an Administrative Directive and a City Policy are explained in Attachment 1.

Medium Term Action (Comprehensive public contribution approach for Direct Control zoning):

Direct Control Zoning provides Council with an ability to tailor site-specific regulations to meet the needs and opportunities of a particular building lot or area. As a form of contract zoning, Direct Control zones can include a variety of components that are not found in regular zones such as:

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- increased height, density and Floor Area Ratio
- unique mixtures of land uses
- alternative site configurations and building design
- the use of sunset clauses
- other items deemed to increase the viability of the site and/or to enhance its contribution to the local context.

Through Direct Control zoning, Council often provides additional development rights to private development interests in exchange for enhanced public contributions.

Administration will prepare a comprehensive implementation approach to Direct Control zoning city-wide that takes these factors into account. The purpose will be to increase transparency of public contributions negotiated in exchange for increased development opportunities and to improve clarity of expectations for all parties through the negotiation process. This approach will be informed by:

- research into the mechanisms undertaken by other Canadian jurisdictions to implement contract zoning that align increased development opportunity with commensurate increases in public contributions
- consultation with industry and key stakeholder groups
- clarification of key elements required to enhance the process, such as developing an accepted methodology to conduct and/or review pro forma analysis
- conducting an analysis of policy options to most effectively clarify intended outcomes and process changes for Administration, project proponents and City Council.

This work is anticipated to take approximately six to eight months to complete and a final recommendation will be provided to Council for consideration by the end of 2016. Depending on the findings of the research, analysis and stakeholder engagement, the forthcoming recommendation may be to prepare and Administrative Directive or a new City Policy. At this time there is no pre-determined mechanism to achieve the intended outcome of the work and all options will be explored.

Next Steps

1. Administration will prepare an Administrative Directive to inform the use of sunset clauses in Direct Control zones.
2. Administration will investigate and report back to Council on a recommended approach to comprehensively address the negotiated content of Direct Control Provisions including the type amount of public amenity contributions.

Policy

The Way We Grow, Edmonton's Municipal Development Plan:

- Policy 3.4: Central Core. Create a strong downtown characterized by high density, mixed-use, transit and pedestrian orientation and excellent urban design.

Legal Implications

City Council has the authority to impose zoning where development rights may be limited after a specified time. Relevant land-use considerations should be addressed when such limitations are imposed.

Attachment

1. Definitions and Comparison of Administrative Directive and City Policy