

Discussion Paper

Governance and Implementation of the Calgary Regional Partnership's Regional Land Use Plan

[1] Background

[1.1] What are the basic design principles that will govern the RLUP?

At the 2008 June 20 CRP General Assembly meeting, a RLUP governance and implementation document was tabled. That document presented four basic design principles that would serve as “building blocks” for the design of the RLUP’s governing structure. Those principles were identified as:

- 1. Mandatory Membership for CRP members in the RLUP;*
- 2. Governance structure should be expansive in scope;*
- 3. Governance structure should be addressed in a comprehensive manner; and*
- 4. A super majority decision making process should be implemented for a limited number of decisions that cannot be agreed to by consensus but affect the region as a whole.*

[1.2] What fundamental components should be included in the CRP RLUP Governance and Implementation Plan?

Again, at the June 2008 CRP General Assembly meeting, a unanimous decision was made directing the RLUP committee to coordinate efforts with various CRP projects and committees in order to bring forward an RLUP governance and implementation plan, which addresses the following fundamental components:

- 1. Ensure that the RLUP will align with various provincial government initiatives;*
- 2. Development of General Governance Principles;*
- 3. Development of a Compliance and Enforcement Policy;*
- 4. Design of a super majority decision making process;*
- 5. Development of a dispute resolution mechanism;*
- 6. Definition of CRP’s role and the governance and implementation of Regional Water and Wastewater, Transit and other servicing issues; and*
- 7. Development of a financing and institutionalization plan for the CRP.*

The General Assembly further directed that this plan be presented to the CRP Executive Committee and the November 2008 General Assembly for consideration and adoption.

[1.3] How will the CRP’s RLUP align with Provincial Initiatives?

The CRP is leading the way in the southern region of Alberta with respect to addressing municipal (urban and rural) growth issues, including their impact on community and the environment. This work is being done as part of the RLUP and is expected to address and resolve the regional urban, rural and “rurban” growth issues, and concerns over its collective ecological footprint on the landscape.

The RLUP is based on a regional vision, values and principles that have been aligned with the three main outcomes of the Provincial Land Use Framework (PLUF):

- (1) Sustainable prosperity supported by our land and natural resources;
- (2) Healthy ecosystems and environment; and
- (3) "Liveable" communities and recreational opportunities

Another outcome of the PLUF is the creation of six regional planning areas that will cover the province. The CRP will be a part of the Southern Alberta Regional Plan (SARP] which stretches from Ponoka in the north, Bighorn in the west, the United States Border in the south and the Saskatchewan border to the east. However, the RLUP will be completed before the SARP and this places the CRP in an excellent position to influence the outcome of the provincial plan. The PLUF will require that the SARP Regional Advisory Council will fully integrate the CRP's RLUP, and recognize it as the "Calgary Metropolitan Regional Plan" ¹

As a result, the CRP will make every effort to align its plan with SARP through early cooperation and future plan refinements. It is equally important for the Regional Advisory Council to look closely at the RLUP to consider what elements of the plan's vision, strategies and policy directions it should adopt as part of the larger plan.

In addition to the PLUF and its public policy directions for regional planning, Alberta Municipal Affairs will also be an important stakeholder in the outcome of the governance of the RLUP. As is well known, Alberta Municipal Affairs has jurisdiction over municipal government activities, infrastructure and planning through the Municipal Government Act (MGA) and other related legislation and funding programs. The CRP believes there is an important role for Municipal Affairs to play in the development of the Regional Land Use Plan. This role would stem from supporting and ensuring the effective implementation of the regional plan in local and intermunicipal plans, be it through provincial incentives, supportive enabling legislation, or MGA amendments.

¹ Although details need to be finalized with the Government of Alberta, the Calgary Regional Partnership's Regional Land Use Plan (RLUP) may still be referred to as such. The RLUP will be considered the "Calgary Metropolitan Regional Plan" under the Provincial Land Use Framework. However, in order for consistency within the CRP and given the provincial context of the RLUP, the term RLUP should be slightly refined to Calgary Regional Land Use Plan (CRLUP).

[2] Key Elements of the Calgary Regional Land Use Plan

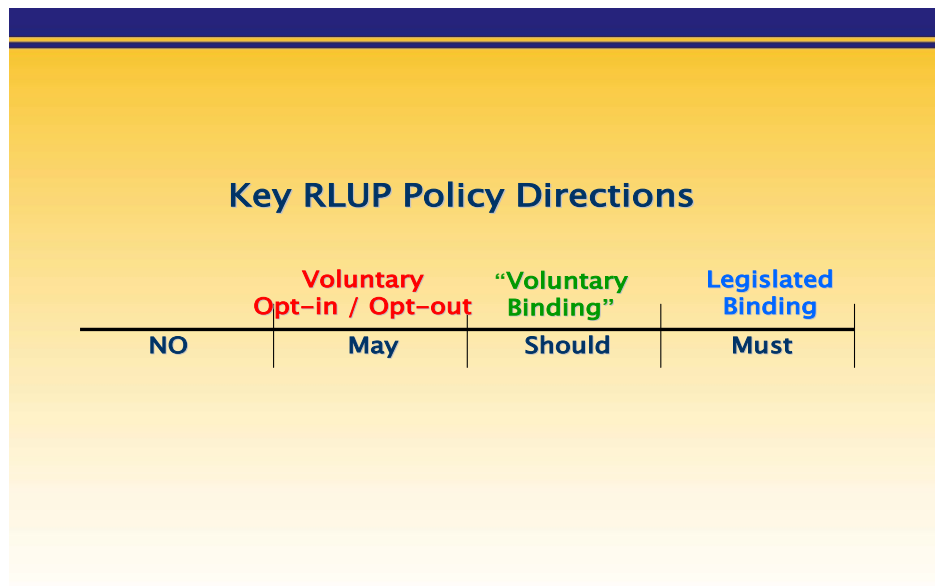
The purpose of this section is to briefly summarize the key elements of the CRLUP, including the preliminary policy directions, development of a compliance and enforcement policy and the development of a dispute resolution process.

[2.1] Preliminary Policy Directions

CRP Member Policy and Implementation Workshops were held May 30 & June 6, 2008. In order to consider what policies should be included in the CRLUP, and how strongly-worded each policy should be expressed and implemented in the new regional plan - the basic governance spectrum was translated it into the scale of “May, Should, and Must”.

The spectrum in Figure 1 (below) helped to provide a filter of ideas and policy directions that members felt very strongly about and would like to see as requirements for all municipalities. A “no policy” option was included for those who felt that the regional plan should not have any such policy whatsoever.

Figure 1 – The Policy Spectrum – Policies may be voluntary to binding



Five key policies emerged as being foundational to the regional plan. These will need to be framed in the “must” language and will require all municipalities to align with and operate within:

- all local plans be aligned with the regional plan;
- all municipalities operate within the decision-making (governance) process that CRP develops;
- compact, urban growth centres be identified and intensively developed;
- that these urban growth centres be serviced with regional water and wastewater; and
- there be protection of 50-year transportation, transit and utility corridors.

The policy workshops provided an indication of the policy directions that need to be further explored and clarified with CRP members, the province and other stakeholders. The clear message resulting from the planning sessions is that most of the draft CRLUP policies show up in the voluntary binding (should) and/or legislated binding (must) areas of the spectrum, enjoying strong support for their inclusion in the plan.

The Government of Alberta is supportive of the CRP's direction to continue along a pathway of self determination. The province has indicated that it will support the CRP in developing enabling policy legislation if and where it is requested. However, at this stage in the planning process it seems that there is general support among members for a largely voluntary binding plan with a few key pieces of supportive legislation.

[2.2] Development of a Compliance and Enforcement Policy

The creation and adoption of the CRLUP contemplates the issues of compliance and enforcement. More specifically, the CRP will need to determine what happens if and when municipal land use decisions become inconsistent with the stated policy direction of the CRLUP. Indeed, such inconsistencies may be inevitable with a comprehensive plan such as the CRLUP. The Capital Region Board has contemplated this matter and recommends that enforcement of its land use plan lay with the province.

In terms of the province's role, the PLUF will have an enforcement mechanism built in to the SARP. However, this direction raises some important questions that will need to be addressed at a future date:

- (1) Will provincial enforcement of the CRLUP be sufficient or desirable?
- (2) When does the CRP's reporting role end and the Province's enforcement role begin?
- (3) How will this impact the autonomy of CRP?

It is assumed, although not yet confirmed, that provincial enforcement of the CRLUP will focus strictly on the need to have it ratified and approved. Additional measures may be contemplated by the Province in discussions with the CRP.

In the event that a CRP member is noncompliant in a policy area of a mandatory or statutory nature, the CRP may request that the municipality voluntarily report to the regional board on the nature and rationale for the noncompliance and the municipality's plans for mitigating further actions in this direction. If the response is unsatisfactory to the region, the CRP may request an independent audit of the municipality from an arms-length authority.

[2.3] Monitoring and Reporting on the CRLUP

Generally, CRP member municipalities would self report, internally, on their progress in implementing CRLUP policies into their local plans. Performance

targets and indicators for the CRLUP will have to be developed. Members may be required to report on movements toward regional targets in which they would potentially outline strategies and actions they will take to move toward the desired direction in the future. However, the fact that it will take time and effort for municipalities to bring actions and decisions on the ground in to full alignment, the reporting mechanism would allow municipalities to self report on non-alignment or areas of challenge in achieving policy alignment and movement towards regional targets.

While much of the of the above focuses on internal reporting, It is also expected that the CRP would report externally to the public and other orders of government, including municipal councils and the provincial government. For example, external reports may consist of a compilation and analysis of local reports and synthesize the findings across the region. The CRP would be responsible for monitoring, analyzing and reporting on issues that are “regional” in scale such as major capital investments and environmental management.

[2.4] Development of a Dispute Resolution Mechanism

Disputes about the CRLUP will be inevitable. The issue is not how such disputes can be prevented, but rather how can they be resolved. It is recommended that the following model be adopted for the CRLUP:

Decisions made either by agreement based on the consensus model outlined or by a vote should be considered final and not subject to the dispute resolution. Notwithstanding the above, *the* following matters may be the subject of a request for dispute resolution by a member municipality:

- *an allegation of a breach of process or improper administration;*
- *a complaint about unfairness or breach of natural justice; or*
- *a complaint about discriminatory treatment of a member municipality by the Board.*

In the event of a request for dispute resolution, the CRP Chair is instructed to proceed as follows:

- (1) by discussion among the members or Executive Committee representatives as the case may be, with a view to finding a mutually agreeable settlement of the subject matter of the request;
- (2) if the matter is not resolved by discussion, by reference to mediation, either privately or through the services of the Dispute Resolution service of Alberta Municipal Affairs and Housing or otherwise; and
- (3) if the matter is not resolved by mediation, by binding fast track arbitration through a mutually acceptable arbitrator (or some mechanism that might be seen as "equally ugly" for all parties in order that any appeal process will "never be used").

An appeal of the outcome regarding any of the dispute resolution processes mentioned above should be permitted only as specifically provided for in legislation or through common law.

[2.5] Amendments to the CRLUP

Much like the regional plans being implemented through the auspices of the PLUF, the CRLUP is a long term strategy. Therefore, any change to the strategic direction of the plan within the first five years would be premature. The province has indicated that there will be no change to their regional plans for the first eight to ten years following their adoption. As a result, it is suggested that there be no amendments to the CRLUP for the first five years following its ratification. In addition, it is suggested that the amending formula, whether it be based on consensus and unanimity or the super majority formula, be determined over the course of the subsequent five years as monitoring, reporting and governance mechanisms unfold.

In the short term it is recognized that there may be requests for specific amendments generated from local municipalities. A process should be put in place at the regional level for hearing and judging the rationale for requests for specific amendments that relate to development within a member municipality.

[3] Decision Making Process

CRP members are aware that the implementation of the CRLUP will require some regional *decision-making capacity*, or more precisely, regional *governance*. Essentially, this refers to the ability of municipal governments, in collaboration, to make decisions with respect to implementation. Generally, those decisions can and will be made through consensus. But occasionally, consensus will not be reached and thus, an alternative decision making process will need to be considered. In other words, effective governance means having the capacity to make binding decisions when a consensus cannot be reached.

As a result, in the absence of a consensus, any CRLUP decision that affects the region as a whole, and for which unanimous consent is considered too restrictive, should be decided through the use of a decision making process that democratically represents the population of the region and the membership that comprises the region.

[3.1] Super Majority of the Membership

As stated above, this satisfies both the population and membership criteria for the design of the decision making process. But rather than having a simple majority of members support a particular decision, this option requires that a binding decision contain the support of two thirds of the membership. Thus, for any binding decision the following will need to occur:

- (1) A vote that contains a majority of the region's population; and
- (2) A vote that contains at least two thirds (12 of 18) of the CRP membership.

What does it mean?

Given that The City of Calgary represents over 85% of the CRP's population, any positive decision would require Calgary's consent. However, the two-thirds super majority requirement, or 12 of the current 18 members of the CRP, strikes a reasonable balance between respect for local autonomy and the ability to act in the broader regional interest. But this option provides a check in that Calgary would need the support of 11 other communities to carry a vote forward. Therefore Calgary cannot impose its will on the region, but neither can regional decisions be made without Calgary's support. This is an important policy trade off considering the influence that Calgary carries within the region.

The Elected Committee considered the possibility of the added requirement of a stratified super majority. In this instance, for a decision to be binding, the vote would still need to have a majority of the region's population and at least two thirds (12 of 18) of the CRP membership. However, this two thirds would have also have to include a majority of Towns and at least 50% of Municipal Districts.

By stratifying the super majority component of the decision making process, regional decision making would then become dependent on the types of municipalities that make up the membership of the CRP.

A stratified voting requirement poses some challenges. The CRP has always advocated that all member municipalities are equal, and the members themselves often refer to the Municipal Government Act (MGA) as the basis of this equality. A stratified voting is at odds with this concept and instead focuses on the legal status of municipalities and bases decision making on the types of members.

While the intent is to ensure municipalities, regardless of geographic size and location, are included in the decision making process, stratified voting is at the same time exclusionary. The requirement for a majority of support of towns and Municipal Districts begs the questions: what about the City of Airdrie and the Townsite of Redwood Meadows, and do their votes not count? While their votes do count in terms of requiring the support of two-thirds of the CRP membership, unfortunately they don't count in terms of the stratification. It then becomes difficult to explain to constituents in the region why the support of certain municipalities is required while the support of others is not. It can be argued that if the issues being debated are truly regional in nature, then a decision which carries a majority of the region's population and two-thirds of the members, regardless of designation, should be sufficient.

There are also operational issues with a stratified vote. This decision-making process is based on the current membership and designations of municipalities. If any member changes its status (e.g. from a town to a city), or as new members are added, this would affect the stratified voting requirement. The membership would then have to agree to a revised number of members required for the stratified decision and amendments to CRP's Constitution would be necessary.

[3.2] Implications of a Super Majority Decision Making Process:

The primary implication of adopting a super majority decision making process, regardless of which of the above options are chosen, is that the new voting formula, if approved at the June General Assembly, would replace—through appropriate constitutional amendment—the weighted vote requirement that is currently written in the CRP Constitution.

The use of a super majority decision-making rule does depart from the CRP commitment that respects the autonomy of local jurisdictions. It is important to note, however, that local autonomy will still be respected and protected in a number of ways through the implementation of the CRLUP:

- (1) The scope of the CRLUP is limited in ways that will be approved by unanimous consent or a weighted vote in June 2009.
- (2) The CRLUP will contain a basket of policies; some will be “for information only,” some will be discretionary, and only some will be mandatory for all members of the CRP.

(3) Local autonomy is protected by retaining the requirement for unanimous consent for a limited set of decisions that are considered so fundamental that all members of the CRP must agree². It is recommended that the CRP include the following as matters requiring unanimous consent:

- (a) changes to the decision rules themselves,
- (b) changes to the legal or statutory authority of the CRP, and
- (c) expansion of the CRP's membership³.

² This is common constitutional practice in federal states; the amending formulae for the Canadian constitution, for example, can only be amended with the unanimous consent of the federal and all ten provincial governments.

³ Regarding acceptance of other communities for full CRP membership, CRP will be developing "criteria for membership." These criteria will include the ability of communities to "hit the ground running and contributing" to the Partnership. Potential members will need to meet these criteria before consideration by the General Assembly.

[4] Ratification of the CRLUP

[4.3] Procedures for the General Assembly

The ratification of the CRLUP in June 2009 must follow the existing decision rules of the CRP, as prescribed by the June 2006 *Terms of Agreement for Working Together*. Although it is recommended that new decision rules for implementation be embedded in the CRLUP and CRP's broader governance structure, those new rules (i.e., super majority decision-making and unanimous consent) cannot be used for the ratification of the CRLUP.

The procedures for ratification are relatively straight-forward. The first step is to determine if a consensus can be reached, and in this case a consensus would entail unanimous consent. If a consensus cannot be reached, then the Chair of the CRP can call for a weighted vote in which Calgary would have 12 votes, communities with populations between 15,000 and 100,000 would have 6 votes each (i.e. City of Airdrie, Rocky View and Foothills) and communities with a population under 15,000 would have 3 votes each (i.e., all other 14 members).

A majority vote under this formula would mean that the CRLUP, as adopted, would apply to all members of the CRP. However, a key element of the CRLUP is that members are bound to align their local and inter-municipal plans with the plan, provided it deals with truly regional matters. It should not be possible, therefore, for communities to *cherry pick*, to opt into or out of individual components of the CRLUP.

Given that caveat, if a member refuses to accept the application of the CRLUP, that member must make known its refusal within 90 days of the CRLUP's ratification by the General Assembly. This notification will result in that member's withdrawal from the CRP. Consequently, belonging to the CRP means adherence to the CRLUP

[5] Future Governance Items.

[5.1] The role of the CRP:

The CRP has been described as a “project manager”, an “incubator” and an “informal and valuable forum for building relationships, sharing information, and addressing regional challenges.” As a result of this role, the CRP may better position itself to spin off certain elements which are completely outside its mandate to stand alone agencies, commissions or develop third party agreements, while retaining its core CRLUP function.

Discussions to date have contemplated whether the CRLUP governance principles will be adopted for use by the broader CRP. In other words, the governance for the CRLUP will therefore lead to a new or enhanced governance model of the CRP. This model may then be applied to the implementation and administration of issues and initiatives that arise from the CRP’s work on the development of the CRLUP (e.g., regional water, wastewater or transit plans).

As the CRP evolves, governance structures should be addressed in a comprehensive rather than evolutionary fashion, guided by a regional vision that extends beyond just the governance of the CRLUP and to the CRP’s corporate governance structures.

[5.2] Financing of the CRP and the CRLUP

The implementation of the CRLUP, and the broader discussion of regional governance for the CRP, raises concerns about the financial relationship between the CRP and its constituent partners, and that relationship between the CRP and the provincial government. The issue is whether the CRLUP should include a broad, yet complete, financial picture to make sure its actions are based not only on a comprehensive and integrated vision, but also on financial realities. As such, the CRP is facing two important financial challenges: (1) core financial support, and (2) cost sharing of regional services.

[5.2.1] Core Financial Support

Because the mandate of the CRP is expected to extend to the implementation of the CRLUP and various other projects such as Regional GIS, it is expected that the CRP will play an important role on behalf of the province to ensure that municipal collaboration occurs in the Calgary region. It would therefore be appropriate that the Province consider contract-like funding for CRP services. Funding arrangements of this nature will provide greater financial stability for the CRP.

[5.2.2] Cost Sharing of Regional Services

Given that the mandate of the CRP may extend to the implementation of regional servicing, regional transportation/transit and other areas of regional service delivery, regional cost-sharing mechanisms need to be considered as part of the planning and implementation process.

[5.3] Regional Servicing Issues

As the CRLUP approaches ratification, regional servicing issues will need to be considered by the CRP. For example, the draft CRLUP will lay out the terms and conditions for regional water and waste water servicing. This would include local compliance with the CRLUP before servicing would be considered. Although the terms and conditions will be worked on over the next few months as the draft CRLUP unfolds, the ownership, cost-sharing, financing and operations for regional infrastructure should be defined as part of the overall governance or implementation structure. .

Until a full regional transit program (potential Bus, LRT, and Commuter Rail systems) is resourced and ready to be appropriately staged and implemented, regional transit implementation might follow similar patterns to regional water and wastewater servicing, as discussed above. That is, The City of Calgary would be the provider of transit infrastructure and operations through agreements with other municipal members. These agreements may be executed incrementally or could take shape under an interim transit operating authority.

Regional services such as future heavy rail/commuter trains or LRT, regional water & wastewater servicing, regional waste management, and regional economic development may require a regional governance structure that could be facilitated and incubated by CRP, but not necessarily operated by it. Current project discussions will begin to develop such a governance plan, in time for the CRLUP and CRP Governance ratification in June 2009.