NAIOP
COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION
CALGARY CHAPTER

May 3, 2013

Members
Calgary Planning Commission | City of Calgary
Municipal Building 4-B11-6, 800 Macleod Trail S.E.
PO Box 2100, Station M
Calgary, AB Canada T2P 2M5

Dear Members:

Re: Proposed Commercial Residential District – (CR20-C20/R20)

We are writing this letter on behalf of NAIOP Calgary ("NAIOP"), a professional organization that represents the interests of the commercial development industry in Calgary, which membership includes the significant institutional and private landowner, developer and real estate management companies active in the city. Our members have developed and currently manage much of what now comprises the downtown urban commercial environment, including most if not all of the significant high-rise office projects that have been added to the Calgary skyline over the last fifteen years.

NAIOP would like to address Calgary Planning Commission members ("CPC") respecting the proposed new Commercial Residential District (CR20-C20/R20) – or "Downtown District", which we understand will be proposed to City Council in July, 2013 and if approved, become fully effective in May 2014. The new Downtown District will update and add to the existing 1P2007 Land Use Bylaw for the City of Calgary ("The City") as it relates to the downtown central core. We appreciate the opportunity to provide support to The City's initiative where appropriate and provide constructive criticism in areas of concern to our members and to make practical suggestions respecting these areas for consideration by City Administration, CPC and City Council.

Background

City Council has directed planning staff to prepare changes to the downtown land use bylaw to bring it into conformance with the Centre City Plan (2007) and Land Use Bylaw 1P2007. A concerted effort has been underway for two years to develop a replacement downtown land use district, including the required bylaws, definitions and incentive provisions to replace those within the current CM-2 downtown district established under Land Use Bylaw 2P80 and which were adopted as an interim measure under 1P2007.

NAIOP and its members are generally satisfied with the existing CM-2 land use district. We would note that this planning regime has generally facilitated a diversified, well designed, high quality urban environment to be developed including many of Calgary's iconic office buildings. This development provides The City with an exceptionally strong tax base, while offering a variety of accommodation options at all price points for downtown Calgary businesses and at the same time provides a continuously evolving rich urban environment along with significant amenities downtown for the benefit of all Calgarians.

While the CM-2 land use district works well, our members still have concerns with the application and approval process being unnecessarily lengthy and at times, subject to significant uncertainty. These delays result in less ability for development to respond in a nimble fashion to the changing needs of Calgary's downtown business community which in turn makes this city a less competitive place to conduct business. While NAIOP is encouraged by the intent of The City's "Transforming Planning" initiative, delays and red tape could become worse within a new system unless care is taken to avoid this.

Stakeholder Input

Before getting into the substance of our views on the new Downtown District, we would like to commend City staff tasked with managing this initiative. Often, impacted stakeholders are not aware of new City initiatives or become aware too late to have meaningful input. The City team on this file has endeavoured to ensure that the new Downtown District was developed in consultation with NAIOP and its stakeholder members. Active and at times animated meetings were held between the parties and while quite often we did not agree (as should be expected), as stakeholders we felt we were treated with respect, received a good hearing and have been able to shape some of the new policies in a manner that we believe is mutually beneficial. This consultation process should be a model City-wide for stakeholder involvement in these types of matters.

NAIOP Support for new Downtown District

While NAIOP's members are generally satisfied with the CM-2 district presently in effect, and still have some strong concerns with respect to aspects of the draft CR20-C20/R20 Downtown District, we are prepared to support the bulk of this new Downtown District as proposed. In providing this endorsement, we aim through this letter to outline the areas where we believe the document can be improved to the further benefit of all Calgarians.

Mutual Aims of a New Downtown District Policy

While a quick summary of the aims of a policy will only capture part of the essence of successful policy goals, it is useful to summarize the key issues NAIOP Calgary believes are important to a new Downtown District:

- The new Downtown District should encourage commercially viable and financeable development of office and other commercial space (eg, hotels, retail), to support a viable, cost competitive downtown employment centre that meets the rapidly changing needs of Calgary's business community as well as maximizes the potential municipal tax base.
- The Downtown District should facilitate development to occur in a timely manner that avoids the excessive rental rate changes (usually increases) that occur due to inordinately long approval times – for Calgary to remain competitive, developers must be able to respond quickly to the changing space demands of Calgary's business community.
- The Downtown District should facilitate development that provides a high quality, enduring and varied urban landscape that offers significant amenities to employers, workers and visitors to the downtown alike.
- The Downtown District should minimize uncertainty in the approval and project budgeting processes. Without greater certainty (quantifiable cost and timing of approval), new investment dollars will continue to be driven to other cities where the downtown development approvals process is more certain and costs are lower.
- The Downtown District should avoid where possible the unintended consequences of good but short sighted intentions. While unintended consequences are often hard to see during policy formulation, periodic review by City Staff with the benefit of experienced stakeholder groups can usually identify better and clearer direction for the policy.

New Density Incentive Table

The City has proposed to change the base density in the Downtown District from 3.0 FAR to 7.0 FAR by adding most of what were the previous Group A item (At Grade Pedestrian Circulation and +15 Contribution) to the base requirement. Furthermore, The City proposes that the CBDIF contribution be required to achieve an additional 1.0 FAR, for a total FAR of 8.0, before a development can access the greater number of incentive density options in the next tier (from 8.0 to 11.0 FAR).

Above 8.0 FAR in the proposed Table, a developer has more choice for Incentive Density than in the previous table, and these choices put a greater emphasis on provision of sustainable, "green" elements within buildings. NAIOP generally supports this expanded tier of Incentive Density options, although we believe some sustainability, public use, and social benefit options are impractical and are not likely to be selected by office tower developers.

The new incentive density options, aimed at providing public amenities and public benefits within the proposed development or in the Downtown District, include:

- Mandatory cash contributions to the Central Business District Improvement Fund ("CBDIF") for projects not deemed to be residential use as defined by the City (ie: office projects).
- Potential for voluntary contributions to the CBDIF instead of provision of amenities.
- Arts and cultural spaces, and associated support spaces.
- "Green" building features and energy conservation measures.
- Transit-oriented and alternative commuting initiatives.
- Retention and improvement of heritage buildings and adaptive re-use of existing structures.
- Alternative incentives for hotel projects providing publicly accessible spaces that animate the streetscape and +15/skywalk areas, particularly after office hours (ie, full service format hotels).
- A de-emphasis of Incentive Density for +15 system expansion and associated construction cost.

Mandatory +15 Contribution

To achieve 7.0 FAR, an office tower developer will be required to provide a cash contribution to the +15 fund, which provides for expenditures to be made by The City on improvements to the existing +15 network in the downtown core - improvements that do not directly benefit that developer's project. We are of the view that, because of the mandatory nature of this contribution, a developer would have no choice but to pay it to achieve 7.0 FAR or greater in its office tower development – and because it does not (or likely does not) directly serve the development (or an adjacent development), The City might not have the legislative authority to impose this contribution. **We recommend that the +15 contribution become one of the incentives available as an option to developers to earn an additional 1.0 FAR above 7.0 FAR.**

This would obviate the mandatory nature of the +15 contribution – it would become one choice among numerous others that a developer may choose to permit greater density in its development. **In addition, The City's +15/skywalk policy under which these funds are collected and spent was created in October 1984 and is now very dated. It should be modernized to recognize the significant level of +15 development that has occurred since that time.**

Mandatory Contribution to CBDIF

To achieve 8.0 FAR and access the next tier of Incentive Density options, an office tower developer will be required to provide a cash contribution to The City's CBDIF fund, which provides for expenditures to be made by The City elsewhere in the downtown core that do not directly benefit that developer's project. This extra cost to office tower development in Calgary will have an adverse impact on the economics of new projects – this cost of development, because it does not comprise a feature in the development itself for which prospective tenants might pay more in rent, is a disincentive to developers, thereby slowing down development and eroding The City's potential tax base while also putting Calgary at a competitive disadvantage to other cities in terms of attracting business. As an example, the CBDIF levy would by itself add a $1.3 million cost to a development such as Jamieson Place if constructed under the new regime.

As with the mandatory +15 contribution, we are of the view that, because of the mandatory nature of this CBDIF contribution, The City might not have the legislative authority to impose it. **Accordingly, we recommend that the CBDIF become one of the incentives available as an option to developers to earn an additional 1.0 FAR above 7.0 FAR.** This would obviate the mandatory nature of this CBDIF contribution – it would become one choice among numerous others that a developer may choose to permit greater density in its development.

We also note that if The City elects to proceed with CBDIF contributions, the fund needs to be established with appropriate governance so that the funds are placed in trust, the selection of projects involves the community and our stakeholders, expenditure occurs on a timely basis and the benefitting area is clearly established as being within the CR20 portion of the downtown core.

Affordable Housing Fund

The new Bylaw as proposed advances the concept of affordable housing (subsidized or socialized housing) as a public amenity by way of cash contributions to a housing fund, although

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no defined methods of using those funds or justifying how those funds are spent have been included. This essentially makes it into a "future good intentions fund". While we acknowledge that this contribution is at the option of the developer, it is not reasonable for The City to collect these monies without defining a methodology to determine timing of expenditures, targeted areas for development, the structure for stakeholder input and establishment of appropriate governance for the fund.

Residential & Hotel Projects

Significant discussion occurred on how to increase animation and after office-hours pedestrian activity in the core. Historically, extensive incentive has been available to residential development in the central area but, to date, little development of this type has occurred. In part, this is because of lack of amenities (convenience shopping, primarily) and also because, economically, residential use can be better accommodated on the periphery of downtown rather than in the core (Eau Claire, west-end of the core and more recently, East Village). That said, development of active restaurant-entertainment business in the core is supported by increased development of residential and full service hotels incorporating amenities that bring new customers to the core (tourist and business travelers).

Our members support ongoing incentive for residential projects. We also believe hotels should receive the same treatment as residential uses – hotel rooms are effectively residential uses with one-night leases. In fact, hotels, due to the nature of their occupants, drive more traffic and patronage for downtown business than conventional residential uses.

City staff disagreed with treating hotels as residential uses for the purpose of Incentive Density but ultimately a workable solution was developed offering incentive density to hotel projects that provide conference, retail, lounge and restaurant area (ie: the types of hotels that increase vibrancy and animate the streetscape and +15 areas for more than just the working day). However, close to the end of the stakeholder review process, the granting of this incentive was made subject to meeting an "exceptional design" provision of the bylaw which now made receipt of this density by hotel projects prohibitively subjective both in terms of availability and approval time required.

We recommend that qualifying hotel uses be treated purely as "residential use" as defined in the Land Use Bylaw. In the alternative, we strongly recommend that "exceptional design" as a pre-requisite to receiving Incentive Density be removed as it too subject to opinion and subjective for a bylaw.

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Adaptive Re-use

To encourage, where appropriate, the "recycling" of existing buildings in the Downtown District, the new Incentive Density Table offers density for a development that retains or reuses all or a significant portion of an existing building. If the additional density is not used in the adapted building, it may be transferred to another parcel. NAIOP Calgary supports these options. However, we are of the view that they might be of limited utility unless the issue of legal non-conformance is also addressed. This is because a result of adopting a new land use district and new development rules within that district is that many buildings within that district will no longer conform to those rules. Such buildings are then deemed to be legally non-conforming pursuant to s. 643 of the Municipal Government Act ("MGA"). This section would restrict efforts at adaptive reuse unless such redevelopment of the existing building brought it into conformity with all aspects of the Downtown Land Use Bylaw or such redevelopment fit within the minor variance powers provided in 1P2007 for non-conforming buildings.

A possible solution would be to develop a policy for the application of discretionary powers by the development approving authority when considering a development permit application for an adaptive reuse that also seeks relaxations for those elements of the development that are non-conforming. Such a policy would provide guidance to the approving authority to, for example, grant larger relaxations where appropriate to bring existing elements of the building into conformity. An alternative solution would be to provide a clause in the proposed downtown bylaw that deems all non-conforming buildings in the district to be conforming. However, this might be too blunt an approach and would defeat a purpose of s. 643 - to encourage full redevelopment of sites where existing buildings are not worth preserving or re-adapting.

Tower Separation Requirements

Much discussion was had around this issue – City staff is concerned, legitimately, that privacy be afforded to residents in buildings from their neighbours. The solution proposed in Division 2 Section 1313 of the draft is too prescriptive, however, and does not allow for design flexibility or the particular attributes of a given site. The impact of this requirement is greatest for smaller sites.

Our view is greater flexibility should be offered, and that not all windows should be deemed to be "facing" or "adjacent" when determining a requirement for horizontal separation – it is possible through building articulation and re-positioning of the floor plate at an angle (rather than parallel with the lot lines) to achieve privacy for residents without the prescribed horizontal separation (which under the draft proposal would be required to be 15m to 18m between buildings for most sites). Further, tower separations skew urban developments to favour large site consolidation and mega projects (larger towers). This does little to further The City's stated ambitions of creating more sunlight penetration, adding to urban interest and severely disadvantages small sites and smaller, more modest developments. There are already too many massive "block" residential developments in the city.

We recommend Council direct staff to consider changes to Division 2 Section 1313 "Residential Window Separation from the Property Line" to make horizontal separation requirements more flexible but in a manner that ensures sufficient privacy is afforded to occupants of adjacent buildings.

Parking Cash-in-Lieu Policy

A major issue for our members continues to be The City's cash-in-lieu policy regarding downtown parking stalls. We were advised by City staff that amendments to that policy as part of this updated Land Use Bylaw would not be considered even though the policy is enshrined in the new proposed Downtown District. NAIOP's membership continues to strongly object to this policy. Our reasoning is as follows:

- The parking removed from office buildings continues to be demanded by tenants in downtown buildings and lack thereof has driven downtown parking rates to extreme levels. A Colliers survey in October 2012 named Calgary as having the highest parking rates in Canada and second highest in North America after New York (Manhattan Island). This is clearly not good for business or competitiveness.
- The policy was originally established at a time when The City was encouraging changes to the commuter modal split (C-Train was running well under full capacity). Required modal split changes have been achieved and C-Train is now running at full to excess capacity and downtown office staff members complain about the C-trains being too full. While additional investment in expanded service has been occurring, it still significantly lags that required by demand.
- The cost of the lost parking is still paid for by developments, whereas revenues are no longer received by the developments. In addition, City parking historically has been constructed long after the contributions were made, leaving the core "under parked" in the intervening period (most of the last fifteen years).
- The City parking facilities which are eventually built (usually 10 to 15 years later) to meet the other 50% of the mandatory minimum required stalls have also historically been constructed above grade (eg: Centennial Parkade). This is a direct contravention of the Centre City Plan and the Urban Design Guideline initiatives, which both state that

above grade parking destroys urban street life and the "active streets" concept. Above grade and remote parking is also less safe for pedestrians.

- The cash-in-lieu policy unfairly advantages existing developments with 100% on-site parking over those that lose the benefit of this portion of the parking (and associated revenue) and still pay the cash-in-lieu for the cost.
- The cash-in-lieu policy is a short sighted policy with the long term effect of driving 50% of all new parking above grade and away from the demand generators (mainly the office projects).
- Parking belongs below grade on the site that generates demand for it - and new (additional) parking cannot be created in the future under any developments built under the 50% cap.
- The cash-in-lieu payment is not a voluntary or freely negotiated payment between the City and the downtown developer. Nor does it, in our view, fit within The City's authority to levy such a charge under the *Municipal Government Act*.
- Historically, the transparency of administration of the parking cash-in-lieu fund has fallen short of appropriate governance requirements and stakeholders expectations.

We strongly recommend Council direct staff to rescind the Cash-In-Lieu Policy – specifically a removal of Division 2, Section 1326 of the proposed Land Use Bylaw "Restricted Parking Area" or repeal of its equivalent section in existing 1P2007 as appropriate.

Summary

We thank you for the opportunity to comment on the proposed new Downtown District. While our membership overall did not believe the CM-2 framework required many changes, we are prepared to support the majority of the new Downtown District as proposed, with the important exceptions noted herein. We look forward to working with City staff to address these areas as well as on the overall implementation of the new Downtown District if this occurs.

If any member of CPC would like further discussion on these issues, we would be pleased to meet either formally or informally to discuss further. City staff and our stakeholder committee have spent significant effort working on the new Downtown District over the last two years and with the few changes we recommend herein believe The City would have a new Downtown District land use bylaw that meets the aim of landowners and developers being able to responsively and responsibly supply high quality developments to meet the growing needs of Calgary business. It would maximize The City's tax base by facilitating new development that more quickly responds to downtown's changing needs. It would also offer tangible benefits to

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all Calgarians in the form of a well-designed downtown urban environment – one that becomes increasingly vibrant and animated as, along with the office space required for Calgary business to grow, hotels and other mixed use developments can increasingly stake their claim to space in the core.

Yours very truly,

On behalf of NAIOP Calgary

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