
LOWER ATHABASCA REGIONAL PLAN RELEASED

On August 22, 2012, the Government of Alberta approved and released the Lower Athabasca Regional Plan (LARP). The LARP will come into effect on September 1, 2012, the first regional plan to be adopted under the province's Land-use Framework.

This information bulletin discusses the implications of the approval of the LARP for municipalities in the Lower Athabasca Region. While the LARP specifically applies to the Lower Athabasca Region, regional plans will eventually be prepared for all seven planning regions in the province. Municipalities in the other regions may find the discussion in this bulletin to be of interest.

This information bulletin is not a legal interpretation of the LARP or the *Alberta Land Stewardship Act (ALSA)* that supports the Land-use Framework and the development of the regional plans. It is advisable that a municipality consult with its legal counsel on any matters arising during the implementation of the regional plan.

What is the *Lower Athabasca Regional Plan*?

In 2008, following a period of consultation with Albertans, the Alberta government adopted the provincial Land-use Framework. The Land-use Framework created seven regions in the province with a requirement to develop a regional land use plan for each region. The LARP is the first plan approved under the framework.

The LARP was developed by the Alberta government based on advice from a government-appointed Regional Advisory Council and input received through extensive consultation with the public, municipalities, stakeholders, and Aboriginal groups, over a three-year period that began in December 2008.

Using a cumulative effects management approach, the LARP sets policy direction for municipalities and other decision-makers in the Lower Athabasca Region over the next 10 years to achieve environmental, economic, and social outcomes.

The LARP has four key components:

- (i) **Introduction** – includes the purpose of the regional plan, land use planning and decision-making in Alberta, and how the regional plan will inform land use decisions.
- (ii) **Strategic Plan** – includes the vision for the future of the region along with desired outcomes. It builds on existing policies and initiatives by establishing a set of strategic directions that help achieve the regional vision and outcomes.

- (iii) **Implementation Plan** – includes regional objectives, strategies, and actions that will be undertaken to support achievement of the regional vision and outcomes, and indicators to measure and evaluate progress.
- (iv) **Regulatory Details Plan** – enables the achievement of the strategic direction, strategies, and actions.

The LARP also sets out monitoring, evaluation, and reporting commitments to assess progress. The objectives and policies of the plan will be reviewed and, if necessary, updated every five years as required by the *ALSA*. Every 10 years, the plan will be evaluated for its ongoing effectiveness and relevancy.

What are some of the *ALSA* definitions that will affect municipalities?

When reviewing the LARP, municipalities are encouraged to be familiar with the *ALSA* and its applications to municipalities. For example, *ALSA* contains definitions of terms that municipal officials should understand when they read the LARP; such as “decision-makers”, “local government body”, “regulatory instruments”, and “statutory consent”. These definitions appear in the appendix to this bulletin, along with some notes that elaborate on the definitions from a municipal perspective.

What are municipalities obligated to do upon the approval of a regional plan (e.g., the LARP) under *ALSA*?

The LARP does not change the municipal planning process for municipalities in the Lower Athabasca Region. The *Municipal Government Act (MGA)* provides the legislative authority for municipalities to make land use planning and development decisions within their municipal boundaries.

The relationship between a municipality and an *ALSA* regional plan is established in both the *MGA* and *ALSA*. The LARP also provides direction on how the plan applies to municipalities within the Lower Athabasca Region. There are three ways in which a municipality is obligated to ensure it is acting in accordance with the regional plan. These are:

(1) Municipal planning authorities are required to carry out their functions in accordance with any applicable *ALSA* regional plan.

Section 630.2 of the *MGA* specifies that a subdivision authority, a development authority, an entity established under section 625 (an intermunicipal services agency or regional services commission), a municipal planning commission and/or a subdivision and development appeal board must each carry out its functions and exercise its jurisdiction (as decision-makers) in accordance with any applicable *ALSA* regional plan. This section will apply immediately upon the regional plan coming into force.

(2) The municipal council is required to review its plans and bylaws, and make amendments as necessary to comply with the regional plan.

Section 20 of the *ALSA* specifies that when a regional plan is adopted, local government bodies (e.g., municipal councils) must review their plans and bylaws (and other regulatory instruments), determine what changes are required, make the necessary changes and file a statutory declaration with the provincial Land Use Secretariat stating that the review is complete and the municipality is in compliance with the regional plan (see below).

(3) After the review is complete, the municipality will submit the statutory declaration affirming that it is in compliance with the *ALSA* regional plan.

The LARP specifies that local government bodies will have five years from the plan coming into effect to submit the statutory declaration to the Land Use Secretariat.

The LARP provides a detailed description of how it will apply to municipalities in the Lower Athabasca Region in sections 3 to 7 of part 1 of the plan:

- Sections 3 to 5 state that the Introduction, the Strategic Plan and the Implementation Plan are statements of provincial policy that are not intended to have binding legal effect on municipalities. These statements are to inform municipalities with respect to certain activities stated in sections 4 and 5.
- Section 6 states that the provisions in the Regulatory Details Plan of the LARP are enforceable as law and will bind the Crown, decision-makers and local government bodies.
- Section 7(2) further states that local government bodies, when carrying out their functions and duties, will need to consider the Strategic Plan and the Implementation Plan.
- Section 7(3) stipulates a municipality must not adjourn, defer, deny, refuse, or reject an application or decision-making process if the only reason is non-compliance to direction in the LARP due to an incompleteness or transitioning of undertaking a commitment or direction (e.g., a municipality cannot deny an application because it is in the process of reviewing its statutory plans or waiting for information from the Province to provide environmental management framework information).

How are municipalities in the Lower Athabasca Region to meet these obligations?

Section 630.2 of the MGA and Sections 3 to 5 of the LARP Regulatory Details Plan

Municipalities in the Lower Athabasca Region should begin now to review all components of the LARP and determine what sections of the plan have implications for their municipal planning and development decisions. This review will ensure that the development authority, subdivision authority, subdivision and development appeal board, municipal planning commission, and municipal council will be aware – once the LARP comes into force on September 1, 2012 – of LARP requirements that need to be considered in the course of their decision-making.

For example, municipalities must consider the Air Quality Management Framework for the Lower Athabasca Region in their decision making. Municipalities must check to see whether they have received a notice from the Minister of Environment and Sustainable Resource Development regarding the ambient air quality limits (LARP Regulatory Details Plan Section 25(1)). Municipalities must also consider information on the ambient air quality triggers prior to issuing a statutory consent (such as a development permit, a subdivision approval, etc.). More information on the environmental management frameworks and how they are being implemented can be found on Alberta Environment and Sustainable Resource Development's website: www.environment.alberta.ca.

The above scenario is only one example of the application of the LARP.

However, it should be noted that section 11(3) of the ALSA allows a statutory consent that has been issued prior to the adoption of the LARP to continue despite any inconsistency with the LARP.

Section 20 of the ALSA

As noted previously, municipalities in the Lower Athabasca Region have five years to review their regulatory instruments and file a statutory declaration with the provincial Land Use Secretariat.

An appropriate process for a municipality to adopt to carry out this review might be as follows:

- (1) Review the LARP (all four components) to identify those aspects of the plan that may affect the municipality (this step may be co-ordinated with the review recommended above in relation to section 630.2 of the MGA);
- (2) Identify all the existing regulatory instruments (e.g., Municipal Development Plan, Area Structure Plan, or land-use bylaw) that will need to be re-examined as part of this review;
- (3) Review these regulatory instruments with particular reference to those aspects of the plan identified under step 1;

- (4) Decide whether there is a need to make any amendments to align with the LARP;
- (5) If yes, make the necessary amendments to these instruments;
- (6) File the statutory declaration with the Land Use Secretariat indicating that the review is complete and all regulatory instruments are in compliance with the LARP.

For instance, the LARP encourages municipalities to identify areas where agricultural activities should be the primary land use in the region (Outcome 2 – Agriculture – Strategy (a)). In reviewing their regulatory instruments, municipalities will need to consider whether they have identified areas where agricultural activities should be the primary land use within their municipal boundaries. If these areas are not identified, municipalities will have to consider making any necessary amendments to these regulatory instruments.

Sections 692(8) and (9) of the *MGA* allow municipalities to decide whether public consultation is necessary in amending statutory plans and bylaws to conform to the LARP. If council decides that consultation would not be beneficial, it may proceed to pass the bylaw without further consultation.

Regulatory Details Plan of the LARP

Section 7 of the Regulatory Details Plan requires a municipal council to consider the Strategic Plan and Implementation Plan in the LARP when carrying out any function in respect of council's powers, duties, and responsibilities. This goes beyond the requirement (under section 630.2 of the *MGA*) that a municipality's planning and development entities need to act in accordance with the regional land use plan. This requirement in LARP means that a municipal council will need to keep the LARP policies and directions in mind in making decisions or acting on any matter that falls within the jurisdiction of the municipality. For example, the municipality will consider the Strategic Plan and the Implementation Plan when looking at opportunities for economic development in the municipality.

What is the relationship between the LARP and the Provincial Land Use Policies?

In the Lower Athabasca Region, the LARP will replace the Provincial Land Use Policies developed pursuant to section 622 of the *MGA*. However, all other municipalities in the province will continue to use the Provincial Land Use Policies to guide land use planning and development decisions until regional plans are developed in their regions and are approved by the provincial government.

What if a municipality is found to be not following the LARP?

If a complaint for non-compliance is filed with the Land Use Secretariat and if the Land Use Secretariat is satisfied that there is clearly a non-compliance issue with the regional plan, it may refer the matter to a designated Minister, a government department and/or a local government body (section 62 of *ALSA*).

If, after investigation, a municipality is found to be non-compliant with the LARP and the matter is referred to the Minister of Municipal Affairs, the Minister of Municipal Affairs may take any of a number of actions as set out in section 570.01 of the *MGA*, including:

- suspending the bylaw-making power of the municipal authority on any matter(s);
- making bylaws for the municipality on any matter(s);
- withholding money that is payable from the Government of Alberta to the municipality;
- or
- exercising other lawful authority.

How will Municipal Affairs support municipalities?

Municipalities will continue to receive advisory support during the development and implementation of the regional plans. For further information regarding this bulletin, please contact the Planning Unit of Municipal Affairs. For toll-free access, call 310-0000, then 780-427-2225.

To download a copy of the LARP, or for more information on the regional plan development process or any documents relating to the Land-use Framework, visit www.landuse.alberta.ca.

Appendix: ALSA definitions and notes

Four definitions from the ALSA that have implications for municipal operations are:

- (1) Decision-maker - a person who, under an enactment or regulatory instrument, has authority to grant a statutory consent, and includes a decision-making body.
- (2) Local government body - subject to any regulations made under section 66,
 - (i) the governing body of a municipal authority as defined in the *MGA*;
 - (ii) the board of directors of a regional services commission under the *MGA*;
 - (iii) the council of a Métis settlement and the General Council;
 - (iv) a board of directors established under the *Irrigation Districts Act*;
 - (v) a board of trustees established under the *Drainage Districts Act*;
 - (vi) a management body established under the *Alberta Housing Act*;
 - (vii) any person or entity designated as a local government body by any regulations made under section 66.
- (3) Regulatory instrument - subject to any regulations made under section 66,
 - (i) a bylaw of a local government body;
 - (ii) a rule, code of practice, guideline, directive or instrument having binding, guiding or recommending effect that is enacted under or used for the purpose of administering an enactment;
 - (iii) any of the following instruments of a government department, local government body or decision-making body:
 - (A) policies, plans, objectives or procedures;
 - (B) rules, directions or administrative regulations to guide or direct administrative conduct;
 - (C) instruments used to administer, guide or direct the exercise of regulatory, administrative or decision-making discretion or authority;
 - (D) instruments that manage, authorize, permit or allow an activity, other than a statutory consent or a regulation made under an enactment;
 - (iv) any instrument designated as a regulatory instrument by any regulations made under section 66; but does not include a General Council Policy.
- (4) Statutory consent - a permit, licence, registration, approval, authorization, disposition, certificate, allocation, agreement or instrument issued under or authorized by an enactment or regulatory instrument.

Notes:

“Decision-makers” are bodies or individuals who are responsible for issuing/granting statutory consents such as development permits, subdivision approvals, etc. The definition of decision-makers would include a development authority, subdivision authority, subdivision and development appeal board, municipal planning commission, municipal council (when acting as development authority to approve a direct control development), as well as special committees and boards appointed by council to make decisions. The LARP requires decision-makers to make decisions in accordance with the regional plan. It should be noted that section 11(3) of the ALSA allows a statutory consent that has been

issued prior to the adoption of the LARP to continue despite any inconsistency with the LARP.

Municipal councils are key entities included in the definition of “local government bodies”. In general, the LARP will have two implications for municipal councils: (1) it will apply when a municipal council makes decisions on “regulatory instruments” such as bylaws (for adopting a land-use bylaw, approving a statutory plan), and/or approving a municipal policy or directives, and (2) it will apply when a council is conducting municipal business such as approving its budget.

“Regulatory instruments” would include, but not be limited to, land-use bylaws, bylaws to adopt/amend a statutory plan (Municipal Development Plans, Area Structure Plans, Area Redevelopment Plans, etc.), a council resolution to adopt a non-statutory plan (outline plans, concept plans, etc.), policies (such as a top-of-the-bank policy, housing density policy, park space standards/allocations, transportation policy such as support for cycling, etc.), directives, development guidelines such as construction design manuals, and other plans such as transportation plans.

“Statutory consents” would include, but not be limited to, development permits, subdivision approvals, servicing agreements, development agreements, business licences, etc.

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