BOARD ORDER: MGB 016/15

FILE: 14/IMD/001

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF AN INTERMUNICIPAL DISPUTE pursuant to Section 690 of the Act by Wheatland County respecting the adoption of Bylaw No. 1657 by Kneehill County on January 14, 2014.

CITATION: Wheatland County v Kneehill County (*Re: Bylaw 1657 an Amendment to the Kneehill County Land Use Bylaw (Bylaw 1564) to add Direct Control DC4 District)*, 2015 ABMGB 16

BEFORE:

H. Kim, Presiding Officer
T. Golden, Member
B. Horrocks, Member

Case Managers:

C. Miller Reade
R. Duncan
A. Drost (Assistant)

This is a dispute filed with the Municipal Government Board (MGB) after the adoption of Bylaw 1657 by Kneehill County (Kneehill). Wheatland County (Wheatland) has filed a dispute under Section 690 of the Act claiming that portions of the Bylaw have or may have a detrimental effect on it. Upon notice being given to the interested parties, a merit hearing was held in the Town of Drumheller, in the Province of Alberta, on November 18, 2014. On April 13, 2015, the panel met to consider a written request for the MGB to consider new evidence.

OVERVIEW

[1] Wheatland filed this appeal because it anticipated detrimental effects from a direct control bylaw for a motorsports complex on neighbouring lands in Kneehill County. The primary issues before the MGB relate to effects that traffic associated with the development may have on roads within Wheatland, including the necessity for potential upgrades.

[2] Engineering reports and written submissions to the MGB convinced it that the increased traffic volumes owing to the anticipated motorsports complex will most likely result in the need to upgrade certain roads within Wheatland. The MGB ordered that the direct control bylaw be amended to provide Wheatland an appropriate level of assurance that any necessary roadway upgrades will take place to Kneehill's standards and at the developer's expense.

[3] There were three additional matters dealt with by the panel. The first issue was a procedural matter to determine if MGB 031/14 allowed area ratepayers to ask questions. The panel determined that questions could be asked but the scope was limited to the matters appealed by Wheatland. After the proclamation of the South Saskatchewan Regional Plan (SSRP), the municipalities, landowner and area ratepayers were asked for submissions about the applicability of the Plan. Finally, before the panel closed the hearing, a request in writing from the Area Ratepayers under section 504 asked the MGB to consider new evidence and its role as a decision maker under SSRP as Kneehill had begun consultation on a draft land use bylaw which included an altered DC4 Bylaw. As the new land use bylaw is still a draft, and section 690 defines the role of the MGB, the MGB declined the rehearing request.

PART A: BACKGROUND
INTERMUNICIPAL DISPUTES AND DETRIMENT

[4] Section 690 of the Act states that *"…if a municipality is of the opinion that a statutory plan or land use bylaw or an amendment adopted by an adjacent municipality has or may have a detrimental effect on it, the municipality may file an intermunicipal dispute."* The MGB may dismiss the appeal if it decides that the provision is not detrimental, or order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental. Wheatland, as the initiating party, must show a detrimental effect rather than requiring Kneehill to refute the allegation of detriment.

[5] Detriment is not defined in the Act or its regulations, but the MGB has previously considered its meaning in previous decisions. Though not bound by these decisions, the MGB relies on them to provide context and guidance. *The City of Edmonton, the City of St. Albert, and the Town of Morinville v. MD of Sturgeon*, MGB 77/98 [*Sturgeon*] contains a thorough discussion of detriment.

[6] The meaning of detriment was discussed in the *Sturgeon* decision as follows:

> "The dictionary definition is straightforward enough. According to Webster's New World Dictionary, "detriment" means "damage, injury or harm" (or) "anything that causes damage or injury." This basic definition or something very similar to it seems to have been generally accepted by the parties involved in this dispute. Clearly, detriment portends serious results. In the context of land use, detriment may be caused by activities that produce noxious odours, excessive noise, air pollution or groundwater contamination that affects other lands far from the site of the offending use. For example, the smoke plume from a refinery stack may drift many miles on the prevailing winds, producing noxious effects over a wide area. Intensive development near the shore of a lake might affect the waters in a way that results in detriment to a summer village miles away on the far shore. These are examples of detriment caused by

physical influences that are both causally direct and tangible, some of which are referred to as "nuisance" factors (page 44/84).

But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact "could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another". Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth. In the present dispute before the Board, Edmonton and St. Albert have claimed that mere uncertainty arising from deficiencies in the County's MDP will result in detriment to them (page 44/84)."

[7] The *Sturgeon* decision also noted the invasive nature of the remedy under section 690, which is not to be imposed lightly or in circumstances where detriment cannot be clearly identified or will not have a significant impact:

"If the Board is to exercise its power to reach into municipal bylaws and perform what amounts to legislative surgery by amending or repealing parts of them, it must be satisfied that the harm to be forestalled by so invasive a remedy is both reasonably likely to occur, and to have a significant impact on the appellant municipality should it occur (page 48/84; emphasis added).

There is also a functional or evidentiary component to the Board's ability to direct an effective remedy under s.690. Simply put, the Board must have enough information before it, and of sufficient quality, to establish a reasonable likelihood of detriment. Where the condition complained of appears to raise only a mere possibility rather than a probability of detriment, or if the harm is impossible to identify with a reasonable degree of certainty, or may occur only in some far future, the detriment complained of may be said to be too remote (page 48/84)."

[8] The MGB made similar points in *Sunbreaker Cove v. Lacombe County*, MGB 007/11 [*Sunbreaker Cove*] (at para. 71), observing that "evidence…of sufficient quantity and quality to convince the MGB that detriment is both likely to occur and to have a significant impact."

PART B: BACKGROUND
WHAT IS THE SUBJECT OF THIS INTERMUNICIPAL DISPUTE?

[9] In 2013, Kneehill County adopted Bylaw 1597, the Badlands Motorsports Area Structure Plan (ASP), which stated that a direct control bylaw would be developed to outline preparation and development for the motorsports resort prior to site development. In 2014, Bylaw 1657, the Direct Control Bylaw (DC4 Bylaw) was developed. Wheatland provided notice to Kneehill (as required by section 690(1)) prior to second reading. The details of the dispute were set out in DL 017/14 and will not be restated in this order. Two maps, reproduced from the submissions are included for reference below. The first shows the area of the Badlands Motorsports Park, and the second shows the access routes from MGB 031/14. In MGB 031/14, the MGB framed the issues under dispute as follows based on the parties' submissions:

1) Does the Bylaw give sufficient clarity about to what extent?
   a. roads within Wheatland will be used to access the proposed development?
   b. road upgrades will be necessary within Wheatland, and who is to pay for them?

The following maps show the area and access routes that may be affected by Bylaw 1657

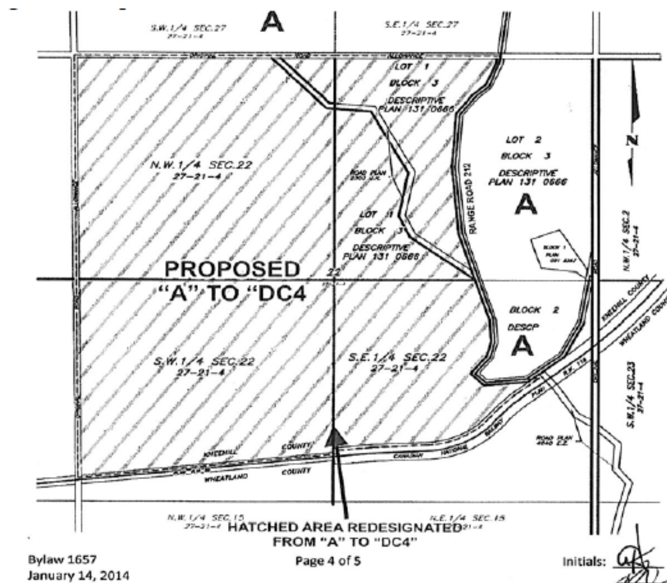

Figure 1. Area of Bylaw 1657

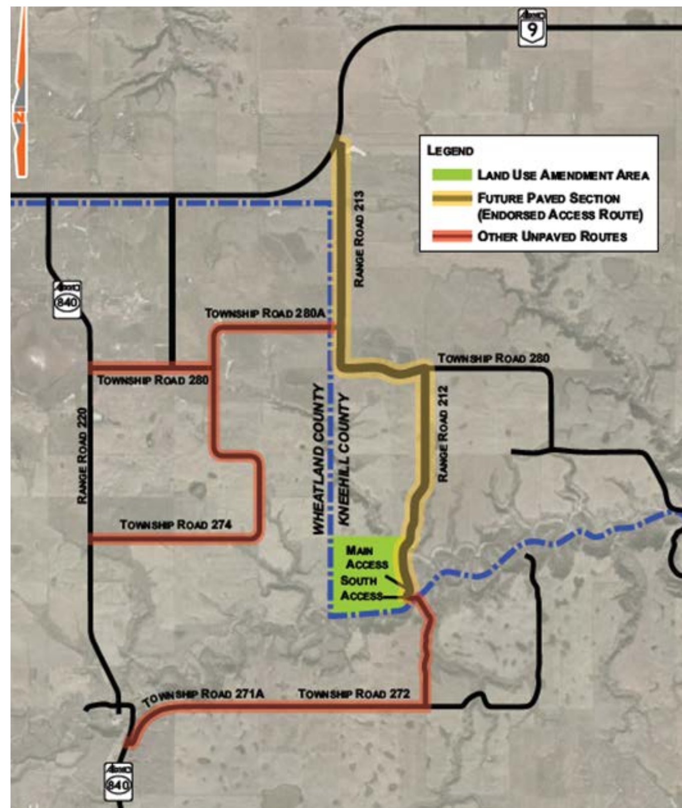

Figure 2: Access routes to Badlands Motorsports site.

[10] The parties raised several procedural or preliminary matters at the merit hearing. For convenience, these matters are set out separately to distinguish them from the main dispute and have been placed in PART E after the decision.

PART C: THE MERIT HEARING
TECHNICAL REPORTS AND AGREED-TO RECOMMENDATIONS

[11] Before the hearing, the parties agreed to the findings of a traffic impact assessment prepared by Watt Transportation (Watt TIA) and a letter prepared by AMEC Environment and Infrastructure (AMEC letter).

[12] The Watt TIA evaluated three possible access routes in the ASP and the DC4 Bylaw: one located in Kneehill and two in Wheatland. The north route, Option 1, is wholly contained within Kneehill. This route would travel north along Range Road 213 to Highway 9, then west to Calgary. Although the longest distance, the Watt TIA identifies Option 1 as the preferred route and recommends that it be designed, constructed, paved and signed for traffic at certain projected volumes. Currently, all three roads are gravel and are designed for minimal local traffic.

[13] Wheatland subsequently commissioned AMEC to review and supplement the findings of the Watt TIA. This report, (AMEC letter), concurred with the approach, methodology and findings of the Watt TIA and added some analysis of the traffic-related issues for BMR expressed by Wheatland. As the Watt TIA did not analyse certain intersections, the AMEC letter analysed these intersections, reported on traffic volumes and projections, road standards, and costs to upgrade the roadway.

[14] Although the parties agreed on the recommendations of the two reports, they differed on implementation. Kneehill and the Landowner rejected the idea of amending the DC4 bylaw. They maintained that the recommended improvements could occur through a development agreement at the time of site development or a subdivision application. Wheatland disagreed with this approach, arguing that requiring access road upgrades in a development agreement will not guarantee that the roadway will be paved and improved. Instead, Wheatland requested an amendment to the DC4 Bylaw to include the relevant findings and recommendations.

ISSUE 1:
TO WHAT EXTENT WILL ROADS WITHIN WHEATLAND BE USED TO ACCESS THE PROPOSED DEVELOPMENT?

Wheatland's Submission

[15] Wheatland commissioned the AMEC letter to illustrate the impact that the development would have on Wheatland's roads. When fully developed, BMR will be able to support 400 drivers, 1,400 guests and employees, 185 residential units and retail components. Based on the Watt TIA and projections in the ASP, the development would generate 830 vehicles per day (vpd) with an estimated 700vpd coming from the west to the site. The effect on Wheatland's roadways if the Option 1 route is not built and paved will be substantial. Currently, the AMEC letter reports that the road usage of both the south and west access is 50vph.

[16] Mr. Parkin, the CAO, explained the access routes to the BMR site, highlighting these routes on the TIA maps and drawing the panel's attention to the findings of the AMEC letter relating to the use of west route, Township Road 280/280A (TR280) and the south route, Township Road 271A/272 (TR272). Both TR280 and TR272 provide access to only one or two residences and agricultural operations and, therefore, have limited amounts of traffic. More importantly, TR272 is the shortest route to Calgary, and, while it is good condition, it is narrow and impassible during wet conditions. In 2011, a portion of TR272 collapsed, just as the roadway drops into the Rosebud River Valley. That portion of the roadway was rebuilt at a cost of about $250,000. This area was also shown in the AMEC letter as Photo 5 in Appendix B.

[17] Mr. Parkin explained that both routes are currently rural local unpaved standard (RLU), and not included in any of Wheatland's capital upgrade plans because each has only one

residence and a limited amount of daily traffic. The area is also not identified in the Wheatland MDP as a growth node. Instead, the hamlet of Rosebud, some three miles west, is identified as a growth area.

[18] When the draft ASP was circulated, Wheatland identified its concerns to Kneehill of the potential for the increased use of TR280 and TR272, and the environmental and ecological impacts of the development. When the ASP was adopted in 2013, the routes were not removed from the plan. Wheatland did not file an intermunicipal dispute at that time as they relied on assurances from Kneehill that the DC4 Bylaw would address the primary access route and establish the standard of the roadway. In addition, Wheatland determined that even though environmental concerns were raised by the Area Landowners and others, these were not an element of detriment that they wished to raise and the issues would be addressed by Alberta Environment and Sustainable Resource Development, Kneehill and Wheatland.

AMEC Letter

[19] Within the body of the AMEC letter, AMEC agreed with the methodology and the findings of the Watt TIA. AMEC asserts that if Option 1 is built, most traffic from the BMR site will drive north because RR212 will be paved, but approximately 15% of the traffic will go south. The AMEC letter, at page 3, states that the current traffic volumes on the relevant Wheatland roadways are 50 vehicles per hour (vph). In comparison, the Watt TIA modelled the traffic count at the intersection of RR212 and TR271A at 11 vehicles per day (vpd), and peak hour traffic access from BMR at an additional 2vph. Given the estimate of traffic generation as 830vpd, the amount of traffic generated should be approximately 125vpd. Following current practices, since the amount of traffic is in excess of 50vph; Wheatland would be required to upgrade the roadway.

[20] Wheatland's Policy 9.4.1.1, Road Classification and Pavement Structure Guideline is a council policy which established, based on the engineering standards developed by AMEC, roadway classification, description of type of road, road base course, minimum asphalt thickness, and finished width. If the traffic on the roadways increased to 100vpd, the policy requires upgrading of the roadway to CR50 (grading, dust abatement and double seal coating) within a reasonable time frame. If the traffic were to increase to 200vpd, further construction of the roadway to CR60 (including widening and hard surface paving), would be required.

[21] If the upgrading does not occur, and traffic increases on both routes due to vehicles accessing BMR, there could be liability for Wheatland. There is both an expectation and a requirement that Wheatland will ensure that the roadways are built and maintained to a safe standard. Mr. Parkin explained that the maintenance of the roadways would be the responsibility of Wheatland. Section 532 of the Act establishes that municipalities have both a duty under common law and an obligation for the roadways to be kept in a reasonable state of repair. Increased traffic will require maintenance and upgrades.

Watt TIA

[22] Wheatland observed that, while the Landowner has stated that it will follow the recommendations of the Watt TIA and construct the roadway, there is no specific reference in the DC4 bylaw or the ASP. Further, Wheatland argued, that Kneehill could have made amendments to either document to ensure that the roadway upgrades are tied to the development or subdivision approvals on the BMR property. Wheatland needs assurance that Option 1, the north access is the primary route for traffic to the BMR lands.

[23] Wheatland acknowledges that while the Landowner says they will pave the access road, and that people attending BMR will travel the paved access rather than choosing the gravel access, traffic will still find its way onto Wheatland roads.

Road Standards

[24] In response to questions from Kneehill, Mr. Parkin explained that the Wheatland County Road Standards were developed by AMEC for the County and have been in place for several years. While both TR272 and TR280 serve a small number of residents, Wheatland has a responsibility for those roads. The RUL standard, set out in Wheatland County Policy 9.4.1, applies to both roads. More traffic would trigger a need for widening and upgrading. In response to a question posed by the Landowner about the potential for Wheatland closing off these roads in order to limit their usage, Mr. Parkin stated that is was not possible for Wheatland to close all of the roads in the vicinity of the BMR site as there are residents as well as agricultural, oil and gas companies that use the roadways each day.

Kneehill's Submission

[25] Relying on its written submissions and questions, Kneehill asserted that there would not be any detriment suffered by Wheatland when the BMR site develops and traffic accesses the site. Kneehill argued that the MGB's determination of detriment must, in addition to determining its function and powers, also consider its nature. The following paragraph, which was the final paragraph in the discussion of detriment in Sturgeon decision MGB 77/98 which was missing from Wheatland's submission and is very relevant to this appeal:

> "Finally the nature of the Board itself must be taken into account. The Board is not a Regional Planning Commission. The detriment complained of must therefore be of the nature of an adversarial hearing. This means that issues for which detriment cannot be readily established, or which would require further study before an effective remedy can be developed, will fall outside of the ambit of matters that can effectively be dealt with by the Board" (p 48 of 84).

[26] Kneehill acknowledged that Wheatland was provided with notice of both the ASP and this DC4 bylaw, and participated in the public processes for each bylaw. In defence of its action, Kneehill stated that they have all of the required documents in place for this development to proceed. Kneehill has a Municipal Development Plan, a Land Use Bylaw, and for this development an Area Structure Plan, and the DC4 Bylaw in place for the BMR development. These plans were adopted by Kneehill consistent with the Act. The Watt TIA, required by the ASP and mentioned again in the DC4 Bylaw was prepared and accepted by Wheatland. Option 1, the north route, was identified as the access route which would be upgraded and paved to connect the development to Highway 9.

[27] Further under section 650 and 655; a municipality and a developer may enter into an agreement at the subdivision or development approval stage. This is an accepted practice and the same practice is used by most Alberta municipalities. Wheatland also uses direct control districts and development agreements for its major subdivision and development projects. Finally, Kneehill noted that there were specific references in Section 2(4) of the Bylaw to the development agreement, the construction and pavement of the access road, and a TIA that includes an analysis of the access routes in both Counties. Section 2(4) Conditions of Subdivision and Development stated that:

> "the County shall not prior to approval of a development permit or endorsement of a subdivision plan of survey application…."
>
> "Submitted to the Subdivision and Development Authorities in the form and substance satisfactory to the County, the following documents:…
> - Road access route and design
> - Transportation Impact Assessment (TIA)
>   - Including all primary and secondary routes to the plan area in both Wheatland and Kneehill County"

These references were added to bylaw to address the concerns raised by Wheatland County.

Landowner's Submission

[28] The Landowner stated that they could not consider continuing with the project without first paving the Option 1 route. The Landowner is prepared to upgrade and pave the road. They have expressed to both municipalities that they are willing to do so, either under a development agreement or, should the MGB determine detriment, by adherence to the DC4 Bylaw. The Landowner observed that there isn't detriment in this case, just dissatisfaction by Wheatland with the current process. Whatever the decision, the Landowner would abide by the direction of the Board.

[29] The Landowner argued that while there is a possibly that there will be a negative impact on the road system, Wheatland's evidence is insufficient to show detriment. Wheatland did undertake some road closures in the summer adjacent to the BMR site, removing those road allowances from the potential for development. The Landowner and Kneehill are bound by statutory plans, land use bylaw and the DC4 Bylaw for the BMR development. There was a TIA developed which all have accepted. The issue for Wheatland is a lack of trust, which is not detriment.

Findings

1. Both recommendations of the Watt TIA and the AMEC letter show that traffic will be generated by BMR.
2. Traffic generated by BMR will be detrimental to Wheatland County's roadways. Detriment can be mitigated if Option 1, the north access, is constructed and paved to Highway 9, as recommended in the Watt TIA.
3. Wheatland's roadways will be affected by the BMR development and will require upgrades to maintain safety.

Reasons

[30] The MGB panel was encouraged by the ongoing discussions and negotiations which allowed the parties to narrow the dispute to two issues: the extent of the use of Wheatland's roads to access the development, and; secondly, what upgrades would be needed, how should they be undertaken and who should pay for them.

[31] In the presentation of the evidence by the various parties, there appeared to be agreement that there would be an impact on Wheatland's roads, but disagreement if the amount of traffic would be significant and; secondly, if traffic would chose to use the south or west accesses when Option 1, north route was paved. To address this, the Landowner commissioned the Watt TIA based on a terms of reference set by all three parties. In the introduction of the Watt TIA, it was stated that the Option 1 route along RR212/RR213 travelling north from the site to Highway 9 would be improved to a paved standard and most or the traffic would be travelling north. In the Watt TIA, it was established that the south access route TR271A/TR272 has a traffic count of 2vpd, but is constructed, albeit in poor condition, to handle 50vpd. The Watt TIA did not analyse the other intersections, stating in section 3.4 on page 23:

> "Wheatland County had requested a number of additional intersections to be included in the TIA to evaluate the operating conditions at the intersections along other routes to/from the site. However, after reviewing the site generated traffic volumes, it was determined that it is not realistic to analyse most of these intersections, as they would not be greatly impacted by the proposed development

> (each intersection will only experience a minor traffic increase of 2 vehicles per hour in the most conservative scenario)."

So, despite agreement with the Watt TIA, the traffic estimates or intersection models requested by Wheatland were not analysed or included in the TIA. It's unclear to the MGB if the numbers for the TR280 or TR272 were available at the time of the Watt TIA. Despite the paving and signage on the Option 1 route, vehicles will still attempt to use the southern or western routes to exit the site. The Watt TIA states that the amount of traffic will be minimal, but there would still be traffic generated.

[32] The AMEC letter analysed the routes that Wheatland requested, explaining the nature of the traffic in the area, current usage, and the impact of additional traffic on TR280 and TR272 even after the pavement of Option 1 route. The MGB accepts that the additional traffic on these two roadways is highly probable and would require design, construction, and additional maintenance. The AMEC letter established that both routes accommodate 50vph, but an influx of traffic from BMR could increase the usage on TR272 (acknowledged as the shortest route to Highway 1) to 125vpd. In the Watt TIA, the traffic increase was characterised as minimal, with an increase of 2 vph during peak hours (at the intersection of RR212 and TR271A), but did not measure or report on a short term influx of traffic.

[33] Wheatland explained that, under section 532 of the Act, if a municipality is aware that roadways required maintenance or upgrading, they would be required to undertake the work. If the work is not undertaken, and since Wheatland is aware of the increased traffic usage, they would be liable under section 532(2) and (6) for damage since they were aware of the state of the roadway and its state of repair, and did not undertake the appropriate measures to repair the roadway. Despite BMR being located in Kneehill County, the amount of road usage would trigger the need for additional maintenance, construction and upgrading of the roadways. This impact is probable.

[34] The MGB accepts the arguments of Wheatland in this case, as Kneehill did not counter the traffic volumes in the AMEC letter, nor did it characterize the roadway usage west of the BMR site along TR 271A, TR 274 and TR 280A. There is a requirement for Wheatland to ensure that the roadways are safe for all users. Currently, the traffic in the area is primarily local traffic, using the roadways as access for agricultural holdings. If the roadway were used by someone unfamiliar with the area or if another slide occurred along the roadway, Wheatland could face litigation. If the Option 1 route is not designed, constructed, paved and signed to serve the BMR site, there is the potential for even more traffic.

ISSUE 2:
TO WHAT EXTENT WILL ROAD UPGRADES BE NECESSARY WITHIN WHEATLAND AND WHO IS TO PAY FOR THEM?

Wheatland's Submission

[35] In September 2013, the CAO and Reeve from each municipality travelled the roadways adjacent to the BMR site to view the access route, and to confirm that Option 1 (the route following RR212/213 to Highway 9) was the intended road access. The group discussed preparing an intermunicipal development plan (IDP); however, Kneehill needed to discuss the matter with council to determine if the plan could be integrated into council's strategic planning exercise.

[36] Wheatland left the meeting with the understanding that:

- their concerns were heard;
- there was a firm commitment to the designation and development of the Option 1 route; and
- Kneehill would establish a means to protect Wheatland's roads.

[37] After the site meeting, Kneehill sent a follow up letter summarizing the meeting and explaining their understanding of the access roadways. The letter did not reflect Wheatland's understanding of the issues discussed at the meeting. On November 15, 2013, when Wheatland received the proposed DC4 Bylaw, it did not include a TIA or any other requirements that were set out in the ASP. Option 1 was not designated as the access route to the site, nor was there a requirement that the road be constructed and paved before development of the BMR site. Wheatland's Reeve, Mr. Koester, attended the public hearing and presented the concerns of detriment on Wheatland's infrastructure, requesting that the TIA be completed before adoption of the DC4 Bylaw.

[38] If the TIA was completed, Wheatland anticipated that the DC4 Bylaw would designate Option 1 as the access route: set standards; outline plans, and schedule construction. Wheatland also hoped that the DC4 Bylaw would allow its involvement in the access route discussion. Instead the DC4 Bylaw was silent on a number of the matters that Wheatland had believed their discussions had resolved. Of significance was the omission of identifying Option 1 as the access route, and referencing the TIA in the DC4 Bylaw.

[39] Although Section 5 of the DC4 Bylaw refers to development standards and makes references to the ASP, there are no details within either document that would provide assurances to Wheatland that Option 1 is the preferred routing; it will be upgraded, paved and signed. In addition, if TR272 or TR280 were to be used, that the roads would be constructed to Wheatland engineering standards by the developer. Wheatland argued that there was no certainty with the

DC4 Bylaw as a direct control district. Under the Act, Council or a delegated person identified in the bylaw would be able to approve development permits related to the site, disregarding concerns about traffic. Both parties -Council and the delegated person- can change.

[40] Wheatland continued to try to work with Kneehill prior to filing this appeal. Prior to both third reading and filing this dispute, a request for a meeting between the Reeves and CAO's was sent, but Kneehill did not respond.

Watt TIA

[41] The Watt TIA proposed improvements to the Option 1 route, arguing these would be able to support the development. Wheatland reasoned that, since the ASP referred to a TIA, and that the Watt TIA was acceptable to all parties, that both the ASP and the DC4 Bylaw could be amended to refer to the TIA. After the negotiation sessions occurred this was the only area where the parties did not agree. While the Landowner and Kneehill have maintained that they will follow the TIA, Wheatland required its inclusion in the DC4 Bylaw.

[42] If the DC4 Bylaw is not amended, Wheatland stated that a number of outcomes could occur: the developer could change; council could change; or other changes could trigger a new TIA. Without specific reference to the Watt TIA, there are no assurances there will be upgrades to the Option 1 route. Wheatland has no mechanism under the Act to allocate road upgrade costs to Kneehill or to the Landowner, and there is no cost sharing agreement in place between the two municipalities. While Kneehill argued that Wheatland had changed its position, Wheatland maintained that they required assurances about the access road. Although all parties participated in a negotiation process and many issues were resolved, Wheatland wanted the DC4 Bylaw amended. Wheatland's letter of June 13, 2014 to the MGB and all parties stated this position. After a year of talking, there are no agreements in place, and resolution is needed.

[43] Kneehill and the Landowner refused to amend the DC4 Bylaw, arguing that it was unnecessary because the TIA will be followed. Wheatland understood that Kneehill did not want to amend either the ASP or the DC4 bylaw as both bylaws had been the subject of applications to the Court of Queen's Bench by a number of area ratepayers and landowners. While the position held by Kneehill and the Landowner was that Option 1 would be the primary access, Wheatland remains concerned that there will be significant detriment if the TIA is not referenced or included within a bylaw. Kneehill, in its questioning, did not believe there was any detriment and questioned why Wheatland was requiring the amendment to the DC4 Bylaw. Wheatland also requires development agreements in direct control districts. The practice of using a development agreement for infrastructure required for a development or a subdivision is widely accepted.

AMEC letter

[44] The AMEC letter describes TR272 as dipping down into the Valley of Rosebud River, with a steep embankment on the north side of the roadway, and no guardrail on the south side of the road as the embankment drops sharply into the river. Several pictures in Appendix B of the AMEC letter, which Mr. Parkin drew the panel's attention to, show the switchbacks in the roadway leading down into the valley. The letter also described the 2011 washout as covering approximately 150-200 metres of the embankment with a 9% slope. The washout area cost $271,000 to clean and reconstruct, requiring the placement of rip-rap and gravel. If TR272 were to receive more traffic, the AMEC letter recommended widening the road. To widen the road, either the embankment would have to be cut, or fill added to the downslope side of the road, impacting the Rosebud River.

[45] The AMEC letter included an estimate for the road upgrades, and the amounts are cumulative. While the written submission was more detailed, Mr. Parkin explained that, depending on the route, the increase in traffic volume from the current 50vpd for the RLU standard to 200vpd for the widened, paved CR 60 standard would cost from 8.5 to 11.8 million.

[46] For ease of explanation, Wheatland's submission was summarized into this table:

Road Standard	**Traffic Volume (in vehicles per day and number of dwellings accessing roadways)**	**Cost to Upgrade TR280/280A**	**Cost to Upgrade TR271A/272**
RLU (gravel)	Less than 100vpd (Less than 4 dwellings)	Current: road width 8 metres Recommended: 20.12 metres	Current: road width 6.5 to 8.0 metres Recommended: 20.12 metres
CR 50 (grading and dust control)	Greater than 100 vpd (10 dwellings or less)	3.1 million	4.1 million
CR 60 (widening and paving)	Greater than 200 vpd (Greater than 10 dwellings)	5.4 million	7.7 million
Estimated Cost to improve route from RLU to CR 60		8.5 million	11.8 million

Table 1: Cost for upgrading TR 280/280A and TR 272/271A based on Wheatland Policy 9.4.1.1 and the AMEC letter.

Kneehill's Submission

[47] In its written submission, Kneehill stated that the majority of the BMR site traffic would use the paved Option 1 route. The Watt TIA estimated that if any additional traffic is generated, the amount was estimated to be an additional 2 vpd with much of that occurring in the peak hours. Adding the design and construction of the Option 1 route to a development agreement as a condition of a development permit or a subdivision approval is a practice used by most municipalities to ensure that the required infrastructure is built by the developer to serve developments or subdivisions. Kneehill did not address the AMEC letter in its submission.

[48] Kneehill asserted that in a major development like BMR, the procedure and practice is to ensure the development or subdivision is consistent with plans, bylaws and reports. An amendment to the DC4 Bylaw referring specifically to the Watt TIA was not required, since the TIA was ordered in the ASP. When an application for a development permit or a subdivision is submitted, Kneehill will be required, under the Act, to approve only those applications which conform to statutory plans (MDP, ASP), and the land use bylaw.

[49] Kneehill noted that the Landowner is responsible for the preparation of a TIA and any necessary cost and upgrading of the paved access including land acquisition. In Kneehill's view, amending the DC4 Bylaw is unnecessary because the upgrade, construction and paving of the roadway are required under the ASP. Kneehill has maintained that, like any other developer, the Landowner would pay for any required upgrades as a result of the development.

Landowner's Submission

[50] In its written submission, the Landowner stated that they were fully prepared to proceed with the recommendations of the Watt TIA including the paving of the Option 1 route and signage. Kneehill has advised them that if an application for a development permit or subdivision were made for the BMR site, a requirement of the approval would be that the primary access route be constructed to the standard in the TIA. Whether this is achieved by a development agreement or by direction from the MGB under a determination of detriment, the Landowner is prepared to undertake the work.

Area Ratepayers' Submission

[51] The Area Ratepayers understand that, under the TIA, once the Option 1 route is upgraded and paved most of the traffic will choose to access the BMR site from the paved roadway. As a result little additional traffic would be using the Wheatland's roadways. The Area Ratepayers support the position taken by Wheatland, to have the access route to the site paved, as was recommended in the TIA, and to add this requirement to the DC4 Bylaw.

Findings

1. Both the Watt TIA and the AMEC letter demonstrated that there would be impacts on the use of Wheatland's roads.
2. Premature roadway upgrading will be required on Wheatland's roads to provide access for the existing and non-local traffic, as the volumes projected for Badlands Motorsports Resort would not be safe for the existing TR272/TR280.
3. These impacts will be detrimental to the users of Wheatland's roads: both local and visiting users.

Reasons

[52] Wheatland has demonstrated that, with the introduction of a large development into this area that there will be concerns about road usage, required improvements and the payment for these improvements. Both municipalities accepted the Watt TIA. The AMEC letter expanded upon the TIA by analysing the routes within Wheatland and providing cost estimates based on traffic generation from the BMR site. The AMEC letter provided the cost of upgrading of roadways within Wheatland due to this development. The suggested amendment to the DC4 bylaw, which appears to be acceptable to the parties, would address this issue.

[53] Currently, it appears that Wheatland's roadways are adequate for the existing local users of the roadways. With a development of the scale of BMR, the Watt TIA and the AMEC letter both demonstrated that traffic would be generated, but the amount and volume were expressed in one document as vehicles per day and the other by vehicles per hour, leaving the MGB with the impression that upgrades will be required, the type and amount of traffic is uncertain, and the time lines for construction phasing are uncertain. The Watt TIA did not analyse any upgrades that would be required to Range Road 212 south over the Rosebud River to TR 272/271A or west along TR280A/280 if these were to be used as alternate access routes. There remains in each document, the overlying assumption that the construction, upgrading, paving and signage of the Option 1 route will address most of the traffic to the BMR site.

[54] The AMEC letter estimated that that amount of traffic utilizing RR212 and TR271A (from a route that accommodates 50 vph) to one that could accommodate the additional traffic from BMR (estimated in the AMEC letter as 15% of the traffic from BMR - 125vpd) is estimated to be a minimum of $4.1 million dollars. The TR280 route upgrading would require $3.1 million dollars.

[55] Neither document discussed the use of the RR212 either south to TR272 or north to TR280A as secondary accesses for emergency purposes, or in the case of many users leaving BMR at a specific time, as a different route to avoid traffic, or as an alternative after the driver looked at a map, consulted their GPS, or got lost. The addition of BMR will require the

premature upgrading of the TR272 and RR212 across the Rosebud River, as these roads are not included in the 20-year time horizon of Wheatland's capital improvement plan.

[56] The MGB considered Kneehill's submission that amending the DC4 Bylaw is unnecessary, however, there is no remedy available to Wheatland should the development agreement be unsatisfactory.

PART D: DECISION

Consolidated Findings of Issue 1 and 2

1. The impacts on the roadways are specific, probable, and linked to Badlands Motorsports Resort, a single land use with a variety of users.
2. A remedy in the form of an amendment to the DC4 Bylaw is available and required.

Decision

[57] Detriment to Wheatland County's roadways and the users of the roadways is highly probable when the BMR site is developed. Traffic will use both the recommended access, Option 1, but will also use two other public roadways, TR280 and TR 272 in Wheatland County.

Remedy Ordered

[58] Under Section 690(5)(b), the MGB orders Kneehill County to amend the DC4 Bylaw to include specific reference to the Watt TIA. All parties had discussed the necessary road upgrades and agreed with the findings of the Watt TIA and the AMEC letter. The MGB orders the immediate insertion of the following provision into Bylaw 1657:

(4) Condition of Subdivision or Development

The County shall not endorse a Plan of Survey for Subdivision of the Lands or Approve a Development Permit for the Lands until the Developer has first:

….

4. Executed a development agreement (s) with the Municipality in form and substance satisfactory to the County of its sole discretion to ensure all subdivision and development of the lands conform to the principles upon which this and other pertinent bylaws are based and shall require construction or payment for the construction or a road or roads required to give access to the subdivision or development in accordance with the May 30, 2014, Watt Consulting Group Transportation Impact Assessment, inclusive of signage and advertising.

The amended DC4 Bylaw, as well as this order, will be published on both municipalities' websites.

Reason

[59] In the Provincial Land Use Policies, the goal of Section 3.0 Planning Cooperation is "to foster cooperation and coordination between neighbouring municipalities….in addressing planning issues and implementing plans and strategies". Particularly relevant to this issue is Policy 2, which states:

> "Adjoining municipalities are encouraged to cooperate in the planning of future land uses in vicinity of their adjoining municipal boundaries (fringe areas) respecting the interests of both municipalities in a manner which does not inhibit or preclude the appropriate long term use or unduly interfere with the continuation of existing uses…"

[60] While the municipalities and the Landowner have cooperated to develop a terms of reference for the TIA, and have agreed on its recommendations, there is no agreement on the implementation of the TIA nor how future issues along the roadway will be addressed. The MGB accepts the amendment proposed by Wheatland to the DC4 Bylaw as necessary to ensure that the Watt TIA is followed prior to BMR's site development.

PART E: PROCEDURAL AND PRELIMINARY MATTERS

<u>Procedural Matter: Does MGB 031/14 Allow the Area Ratepayers to Ask Questions?</u>

[61] The MGB previously addressed to what extent the Area Ratepayers would participate in these proceedings in MGB 031/14. However, a question arose during the hearing as to whether the Area Ratepayers should be permitted to ask questions. Kneehill was concerned that questions posed by the Area Ratepayers would be used as evidence in the two pending cases to the Court of Queen's Bench for the adoption of bylaws for the Badlands Motorsports Resort (BMR) Area Structure Plan (ASP) and this direct control bylaw.

Findings, Decision and Reasons

[62] The MGB clarified that MGB 031/14 did not prevent the Area Ratepayers from asking questions; however, it did limit the scope of the questions they could ask. Under 9(1)(f) of the MGB's Intermunicipal Dispute Procedure Rules, a panel may determine whether a person is affected by an intermunicipal dispute and the extent to which they may participate in proceedings. The effect of the ruling was to limit the scope of questioning to matters appealed by Wheatland, and not to remove the Area Ratepayers' ability to ask questions about the evidence provided. Further, the panel observed that to remove the ability to ask questions or make

submissions at the Merit Hearing would be unfair and inconsistent with the findings and decision in MGB 031/14.

Preliminary Matter: Application of the South Saskatchewan Regional Plan and the Area Ratepayers Submission of a Biophysical Report

[63] The South Saskatchewan Regional Plan (SSRP) was proclaimed on September 1, 2014. Although this dispute is over a site located in Kneehill, which is not within the SSRP, the access routes that form the subject of this dispute are within Wheatland, which is within the SSRP area. Therefore, the MGB requested all parties to address the applicability of the SSRP to this dispute.

Area Ratepayer's Position

[64] The *Alberta Land Stewardship Act* (ALSA) takes precedence over the Act, and requires MGB decisions to conform to regional plans. Since the BMR lands are located just north of the Rosebud River, the anticipated development will affect the entire adjacent river valley and riparian area, as shown by a biodiversity report provided by the Area Ratepayers (Exhibit 17R, Tab 2 of the Area Ratepayers written submission). These areas are partially within the region covered by the SSRP. Therefore, the MGB must consider the BMR site and DC4 Bylaw in conjunction with SSRP goal of biodiversity.

[65] In *Sturgeon*, the MGB considered pollution from neighbouring sites as potential sources of detriment. The adoption of the SSRP with its goal of biological diversity means the MGB must now consider evidence about such sources of detriment, despite the MGB's decision in MGB 031/14 that the issue of detriment was limited to matters affecting transportation as raised by Wheatland.

Party Positions –Wheatland, Kneehill and Landowner

[66] Kneehill, Wheatland, and the Landowner argued that the SSRP does not apply in this case. The BMR site and preferred access route are located within Kneehill County, which is in a different Regional Plan area -- the Red Deer Regional Plan.

[67] Counsel for the Landowner also drew the panel's attention to other policies for tourism and recreation contained within the Regulatory Details portion of the SSRP that could also apply to the DC4 Bylaw. If the biophysical report were accepted, the MGB would also have to allow the Landowner to submit documentation supporting the recreation and tourism potential of Badlands Motorsports Park.

Findings and Decision – Application of SSRP in this Matter

1. The Badlands Motorsports Site is not located within the boundary of the SSRP.
2. The Land Use Policies (OC 522/96) apply to the Badlands Motorsports Site and DC4 Bylaw.
3. Access routes, located in Wheatland County, are subject to the SSRP.
4. The biophysical report, included in Tab 2A of the Area Ratepayers submission, will not be considered by the MGB.

Reasons

[68] Since the site area is not located within the SSRP, the Land Use Policies apply to the DC4 Bylaw at this time. If the primary access route is to follow the Option 1 route north to Highway 9, then the traffic to the site will be through an area not included within the SSRP – although the access routes through to Wheatland would be in an area subject to the SSRP.

[69] The Area Landowners argue that passage of the SSRP inevitably widens the scope of this appeal from a narrow class of transportation-related sources of "detriment" associated with provisions appealed by Wheatland to a wider class of sources connected with broader SSRP goals such as bio-diversity. The MGB does not accept this argument.

[70] Section 690(1) states that the MGB must "subject to any applicable ALSA regional plan, decide whether the provision of the statutory plan … is detrimental." Similarly, ALSA section 15(1) state that regional plans are binding on decision makers. The MGB cannot accept that the intent of these provisions is to broaden an appeal about the specific effect of a given bylaw or provision to something approaching a review of the bylaw for compliance with all the various goals of an ALSA plan. Instead, the MGB understands these sections to imply that when evaluating a municipality's claim that a certain consequence of a provision is detrimental, the MGB must recognize the legitimacy of planning goals identified under applicable ALSA plans. This interpretation avoids the absurd consequence of intermunicipal disputes potentially blossoming into much wider reviews that could undercut the results of mediation required under section 690 and second guess a municipality's own general review required by *ALSA* section 20. In addition, under section 61 of *ALSA,* the Land Use Secretariat, not the MGB has the ability to review bylaws for compliance with regional plans.

[71] In this case, it is the upkeep and adequacy of access routes - not environmental matters - that is the alleged source of detriment from the provisions under appeal. To include the biophysical report in the appeal would subvert the intermunicipal dispute process. The issues of detriment should be limited to those identified by Wheatland in its statement of appeal. Expanding the scope of the hearing to include the biophysical report would unnecessarily lengthen the proceedings and in effect require Wheatland, Kneehill, and the Landowner to review the report or have it reviewed, comment on it, and question or examine the consultant in the hearing. That kind of enquiry was not requested by any party; in particular, Wheatland did

not request that their statement of detriment be altered to include the Area Ratepayer's report. Nor does Wheatland believe that the SSRP applies in this case.

[72] With respect to the Provincial Land Use Policies, it is the DC4 Bylaw that is under appeal. While there may be details about protecting the environment or a biophysical report contained or required as a result of the ASP, that document was not the subject of this appeal. Major developments such as the BMR site require numerous reports and studies. The studies are prepared at different times, and requirements or plans may change prior to the first shovel hitting the ground for site preparation. Further studies could be referenced within an amended DC bylaw to ensure that the development proceeds in a manner that is consistent with Kneehill's statutory plans and considerate of the surrounding uses. Amendments to the DC4 Bylaw will follow the process for review and adoption under sections 230, 606 and 692 of the Act, allowing for input and submissions from Wheatland, Area Ratepayers and other interested parties.

Post Hearing Matter: Request for the Panel to Consider Additional Evidence

[73] On March 5, 2015, the Area Ratepayers submitted a written request that the MGB consider additional evidence. The request stated that on March 3, 2015, Kneehill held a public consultation session for a new draft land use bylaw (draft LUB). The draft LUB contained the DC4 district which is the subject of this appeal, with some wording changes. And, given the issuance of two recent Court of Appeal cases (*Altus Group v Calgary(City)* and *Edmonton East (Capilano) Shopping Centre v Edmonton(City)*) the standard of review that the MGB must apply in determining this dispute is correctness rather than reasonableness. The Area Ratepayers' argued that these decisions required the MGB to determine the dispute by reviewing it under the SSRP. Under ALSA, the impact of the increased traffic and upgraded roadway requirements would be detrimental to the environment. And, in order for the MGB to comply with the SSRP, that it ought to strike down the DC4 bylaw.

[74] Under Section 504, the MGB may rehear any matter before making its decision and under Rule 24 of the MGB's Intermunicipal Dispute Procedure Rules. In response to the request, the panel requested written submissions by March 13, 2015 from the Area Ratepayers, Kneehill, Wheatland, and the Landowner.

Written Submissions: Kneehill, Wheatland and the Landowner

[75] Written submissions by Kneehill, Wheatland and the Landowner all stated that the draft LUB that was available at the open house is a draft document. In their view, the advertising was part of a public consultation process to develop a new land use bylaw. In the process of developing a new land use bylaw, changes will occur before it is adopted. And, if, the draft LUB is adopted and an issue of detriment exists, it can be raised by Wheatland as an adjacent municipality in a separate dispute filed under section 690.

Written Submission: Area Ratepayers

[76] The Area Ratepayers submitted that draft land use bylaw (LUB) available at the open house contained an altered DC4 Bylaw. The DC4 Bylaw includes the discretionary use of Private Recreational Facility, but no definition of this use. However, later on in the LUB, in the Definition section in the draft Land Use Bylaw, Private Recreation Facility is not defined, but the reader is referred to Recreational, Major. The definition for Recreational, Major states “a use for high intensity commercial recreation, sports or amusement where there may be many spectators”. Since the ASP characterized the users of the site as “private members of a racing enthusiast club”, the change in users would alter the traffic in the area, requiring further upgrades to the Option 1 route, rendering the Watt TIA useless, and causing further detriment to Wheatland’s roadways.

[77] With the issuance of *Altus Group v Calgary* and *Edmonton East (Capilano) Shopping Centre v Edmonton*, the Area Ratepayers argued that since the additional traffic and the potential for alterations to the roadways are environmental matters fall under the purview of ALSA and the SSRP, and that the MGB should strike the bylaw as it does not comply with ALSA due to the more intensive use of the roadway. In the draft LUB, the reworded DC4 Bylaw changes the intensity of use at the site affecting the riparian area of the Rosebud River.

Findings: Post Hearing Matter

1. This dispute was in respect of the adopted Kneehill Bylaw 1657.
2. Kneehill’s current land use bylaw is Bylaw 1564.
3. This is a draft land use bylaw which is not the subject of this dispute.
4. The MGB had previously determined that the Land Use Policies (OC 522/96) apply to the lands within Kneehill.

Decision and Reasons

[78] After reviewing the written submissions, the MGB panel has determined that the request for new evidence is not relevant to this dispute about the Bylaw 1657, the DC4 Bylaw for the Badlands Motorsports Resort.

[79] All written submissions, including those of the Area Ratepayers, state that this is a draft land use bylaw which is currently in development. Section 690 states that disputes may be filed within 30 days of the adoption of the bylaw or amendment. The DC4 Bylaw under appeal was adopted under the current land use bylaw. Both are considered “law of the day” and the DC4 Bylaw is currently under appeal.

[80] At the November hearing, the MGB determined that the matter under appeal was established in MGB 031/14 and that the evidence provided by the Area Ratepayers in tab 2 of their submission was excluded from the hearing. Environmental issues were not raised in the initial statement of detriment and the MGB cannot increase the scope of issues. The issue of detriment is solely established by the notice of appeal. While the mediation process may narrow or better define the matters deemed detrimental, the MGB is not given the ability to expand the scope of the hearing. As noted in paragraph 76, the MGB has a limited task under section 690: to hear and determine if there is detriment on an intermunicipal dispute raised by the appellant municipality (or municipalities).

[81] The two cases cited by counsel for the Area Landowners are known to the MGB. These cases pertain to assessment review board decisions in Edmonton and Calgary. Assessment has a number of regulations and guidelines under the Act. The assessment review boards operate with their own procedure rules. In the case of an intermunicipal dispute, the MGB is assigned the task of hearing and deciding a dispute based on a very small part of the Act, taking into consideration its previous decisions and its Procedure Rules. There are very few defined terms in an intermunicipal dispute and the MGB carefully reviews the issues prior to making a decision on detriment and ordering a remedy.

<u>Post Hearing Matter: March 27 Submission of the Landowner</u>

[82] When the request for written submissions responding to the Area Ratepayers request was sent by the MGB on March 5, 2015, and the response date set as March 13, 2015, the Landowners' Counsel revealed a scheduling conflict, but did not request an extension. On March 27, 2015, a second written submission was sent to MGB administration by the Landowner. This was not considered by the MGB panel on April 13, 2015, as it was beyond the requested deadline, and the panel had not requested rebuttal or additional written submissions.

DATED at the City of Edmonton, in the Province of Alberta, this 12th day of May 2015.

MUNICIPAL GOVERNMENT BOARD

H. Kim, Presiding Officer

APPENDIX "A"

PERSONS WHO WERE IN ATTENDANCE OR MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

NAME	CAPACITY
J. Klauer	Counsel, Wheatland County
A. Parkin	CAO, Wheatland County
W. Barclay	Counsel, Kneehill County
A. Hoggan	CAO, Kneehill County
C. Davis	Counsel, Badlands Motorsports Resort
J. Zelazo	Representative, Badlands Motorsports Resort
H. Ham	Counsel, Area Ratepayers
S. Trylinski	Counsel, Area Ratepayers
G. Koester	Wheatland County
L. Koester	Wheatland County
P. Sanden	Observer, Hussar Lions Club
H. Kostrosky	Observer, Kneehill County
D. Vyas	Observer, Kneehill County
R. Clark	Observer, Area Ratepayer
W. Clark	Observer, Area Ratepayer
J. Clark	Observer, Area Ratepayer
L. Skibsted	Observer, Area Ratepayer
R. Skibsted	Observer, Area Ratepayer
S. Miller	Observer, Area Ratepayer
B. Pallesen	Observer, Area Ratepayer
V. Andersen	Observer, Area Ratepayer
D. Poulsen	Observer, Area Ratepayer
A. Andersen	Observer, Area Ratepayer
S. Andersen	Observer, Area Ratepayer

APPENDIX "B"

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

NO.	ITEM
1A	Wheatland County's February 12, 2014 Dispute Filing
2	March 26, 2014 Information Package (39 pages) (excerpts from Wheatland submission)
3	June 25, 2014 Information Package (194 pages including appendices) which included the TIA
4L	Transportation Impact Assessment (TIA) (separate exhibit)
5	Map of Endorsed Access Routes

6L	Landowner, Badlands Motorsports Resort Submission of June 24
7T	Ratepayers' Submission of June 23
8T	Aerial Photo showing location of Area Ratepayers' lands and the area of the DC4 Bylaw
9T	Submission by Area Ratepayers re: Court Cases and agent authorization forms
10L	Badlands Motorsports Resort's response to Wheatland Road Closure Bylaws
11	Correspondence from MGB requesting parties to refer to SSRP.
12A	AMEC review of Watt TIA prepared for Wheatland
13A	Wheatland Evidence Summary and Materials
14A	Wheatland Legal Argument and Authorities
15R	Kneehill County Submission
16L	Landowner Submission
17T (excluding Tab 2)	Area Ratepayer Submission
18	Agreed Statement of Facts (Wheatland, Kneehill, and Landowner)
19L	Letter from Landowner to MGB
20L	Letter from Landowner to Wheatland

APPENDIX "C"
DOCUMENTS RECEIVED AT THE HEARING.

NO.	ITEM
21A	Excerpts of Sullivan's Construction of Statutes

APPENDIX "D"
DOCUMENTS RECEIVED AFTER THE HEARING.

NO.	ITEM
22T	March 5, 2015 Area Ratepayers Request to consider new evidence
23	Email from MGB requesting written submissions
24T	March 11, 2015 Written Submission from Area Ratepayers (51 pages with appendices)
25A	March 12, 2015 Written Submission from Wheatland (7 pages including appendices)
25R	March 13, 2015 Written Submission from Kneehill (11 pages with appendices)
26L	March 12, 2015 Written Submission from Landowner (6 pages with appendix)
<u>Not included</u>	
27L	March 27, 2015 written submission from Landowner

APPENDIX "E" LEGISLATION

Municipal Government Act

The Act contains criteria that intermunicipal disputes filed under section 690. While the following list may not be exhaustive, some key provisions are reproduced below.

Part 12 Municipal Government Board

Section 488(1)(j) Jurisdiction of the Board

The MGB has the jurisdiction … (j)to decide intermunicipal disputes pursuant to Section 690.

Section 488.01 ALSA regional plans

In carrying out its functions and in exercising its jurisdiction under this Act and any other enactments, the Board must act in accordance with any applicable ALSA regional plan.

Section 504 Rehearings

The Board may rehear any matter before making its decision, and may review. Rescind or vary any decision made by it.

Section 523 allows that the MGB "may make rules regulating its procedures."

Part 17 Planning and Development

Section 617 is the main guideline from which all other provincial and municipal planning documents are derived. Each and every plan must comply with the philosophy expressed in 617.

617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

(a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and

(b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

Section 690 and 691 set out the process for filing an intermunicipal dispute, and the actions that must be undertaken by the MGB and the municipalities in dispute.

690(1) If a municipality is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it and if it

has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, it may, if it is attempting or has attempted to use mediation to resolve the matter, appeal the matter to the Municipal Government Board by

(a) filing a notice of appeal and statutory declaration described in subsection (2) with the Board, and

(b) giving a copy of the notice of appeal and statutory declaration described in subsection (2) to the adjacent municipality

within 30 days after the passing of the bylaw to adopt or amend a statutory plan or land use bylaw.

(2) When appealing a matter to the Municipal Government Board, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and provide a statutory declaration stating

(a) the reasons why mediation was not possible,

(b) that mediation was undertaken and the reasons why it was not successful, or

(c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal.

(3) A municipality, on receipt of a notice of appeal and statutory declaration under subsection (1)(b), must, within 30 days, submit to the Municipal Government Board and the municipality that filed the notice of appeal a statutory declaration stating

(a) the reasons why mediation was not possible, or

(b) that mediation was undertaken and the reasons why it was not successful.

(4) When the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the Board receives the notice of appeal and statutory declaration under subsection (1)(a) until the date it makes a decision under subsection (5).

(5) If the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), it must, subject to any applicable ALSA regional plan, decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

(a) dismiss the appeal if it decides that the provision is not detrimental, or

(b) order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.

(6) A provision with respect to which the Municipal Government Board has made a decision under subsection (5) is,

(a) if the Board has decided that the provision is to be amended, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date of the decision until the date on which the plan or bylaw is amended in accordance with the decision, and

(b) if the Board has decided that the provision is to be repealed, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from and after the date of the decision.

(6.1) Any decision made by the Municipal Government Board under this section in respect of a statutory plan or amendment or a land use bylaw or amendment adopted by a municipality must be consistent with any growth plan approved under Part 17.1 pertaining to that municipality.

(7) Section 692 does not apply when a statutory plan or a land use bylaw is amended or repealed according to a decision of the Board under this section.

(8) The Municipal Government Board's decision under this section is binding, subject to the rights of either municipality to appeal under section 688.

691 (1) The Municipal Government Board, on receiving a notice of appeal and statutory declaration under section 690(1)(a), must
(a) commence a hearing within 60 days after receiving the notice of appeal or a later time to which all parties agree, and
(b) give a written decision within 30 days after concluding the hearing.
(2) The Municipal Government Board is not required to give notice to or hear from any person other than the municipality making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal.

INTERMUNICIPAL DISPUTE PROCEDURE RULES

Under Section 523, the MGB established the Intermunicipal Dispute Procedure Rules (2013) to establish administrative actions for processing, hearing and determining intermunicipal disputes:

Part B: Communication with and Representation before the Board
5. Representation
5.1 Persons who participate in Board proceedings may represent themselves or be represented by another person.

5.2 Upon the Board's or the Board administration's request, a person who acts for another person must provide
a) Proof authorization to act for the other person, and
b) An address for service by the date requested by the Board or the Board administration.

Part D: Case Management and Preliminary Hearings
9. Preliminary Hearings
9.1 At a preliminary hearing, the Board may do one or more of the following:
f) Determine whether a person is affected by intermunicipal dispute and the extent to which that person is entitled to participate in the proceeding.

Part J: Post Hearing Procedures
24. Rehearings/Reviews
24.1 A request may be submitted to the Board in writing to rehear review vary or rescind any matter under the discretionary power granted by Section 504.
….
24.5 The Board may, exercise its power under Section 504 of the Act in the following circumstances:
(a) New facts, evidence or case law that was not reasonably available at the time of hearing and that could have reasonably have affected the decision's outcome had it been available.