

ALBERTA'S DIRECT CONTROL DISTRICT:

A CRITICAL EXAMINATION

by

DOUGLAS WILLIAM MACDONALD

A THESIS SUBMITTED IN
PARTIAL FULFILLMENT OF THE
DEGREE OF MASTER OF CITY PLANNING
IN
THE FACULTY OF GRADUATE STUDIES
DEPARTMENT OF CITY PLANNING

UNIVERSITY OF MANITOBA

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A thesis submitted to the Faculty of Graduate Studies of
the University of Manitoba in partial fulfillment of the requirements
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ABSTRACT

In response to the rigidity of zoning, land use regulatory practice in Canada has been moving gradually toward development control, as conceived in Britain. This has led provincial governments to attempt to create a satisfactory legislative framework within their planning statutes which recognizes, accommodates and guides this trend, and deals effectively with the planning and administrative complexities that development control presents.

The Province of Alberta, in its recent Planning Act, has introduced a new legislative concept, termed the direct control district, through which a local council may implement many distinct forms of development control in response to its own unique planning requirements and objectives. While the direct control district has been in existence since 1978, it has not been fully explained or critically appraised by the Province. Questions concerning both its purpose and performance remain unanswered.

This thesis examines the direct control district in the context of the following three research questions: (1) what is the intent of the direct control legislation; (2) are municipalities meeting this intent through their local practice; and (3) how can the legislation be improved? The thesis, first, discusses the theoretical, practical and historical factors underlying the direct control concept, and interprets the relevant provisions of the Planning Act enabling direct control practice in Alberta. Next, the thesis reviews the manner and extent to which municipalities are implementing the direct control district, compares this local practice with the intent of the legislation, and identifies any major problems that exist. Finally, the thesis suggests changes to the direct control concept, which are designed to improve its effectiveness as a planning tool.

The thesis concludes that the direct control legislation is achieving its intended objectives, although some minor problems do exist. These problems can be resolved through amendments to the Alberta planning statute.

ACKNOWLEDGEMENTS

This study of Alberta's direct control legislation was undertaken as part of the requirements for a Master's Degree in City Planning. I am grateful to all those who assisted me in the research and preparation of the numerous draft manuscripts, as well as, my colleagues at the Edmonton Metropolitan Regional Planning Commission for their invaluable discussion and suggestions.

My supervisory committee consisted of Dr. Kent Gereke, who served as advisor, and Professor Basil Rotoff; and Dr. P.J. Smith from the University of Alberta, who served as an external reader.

To all of them, but especially to Dr. Gereke, who supported me in my application for re-admission to the Faculty of Graduate Studies after a lengthy absence, I am indebted for the time and effort given to reading preliminary drafts and offering helpful comments and criticisms.

Finally, my thanks goes out to my family for their continuing encouragement, and in particular my wife, Linda, without whose patience and support this thesis could not have been completed.

CONTENTS

	<u>Page</u>
ABSTRACT	ii
ACKNOWLEDGEMENTS	iii
CONTENTS	iv
TABLES	viii
PLATES	ix
CHAPTER I - THE DIRECT CONTROL LEGISLATION	1
1.0 Introduction: The Movement Toward Development Control	1
1.1 Legislative Context of Land Use Control in Canada	4
1.2 The Alberta Experience	5
1.3 The Direct Control District: A Brief Description	6
1.4 Impetus for the Thesis	9
1.5 Objectives of the Thesis	10
1.6 Scope and Limitations of the Thesis	11
1.7 Definition of Terms	12
1.8 Organization of the Thesis	14
CHAPTER II - RESEARCH DESIGN	19
2.0 Purpose	19
2.1 Question 1	19
2.2 Question 2	23
2.3 Question 3	24
CHAPTER III - THE THEORY AND PRACTICE OF DEVELOPMENT CONTROL	27
3.0 Purpose	27

CONTENTS, continued

	<u>Page</u>
3.1 Theoretical Basis of Land Use Control	27
3.1.1 Theory of Zoning	29
3.1.2 Theory of Development Control	31
3.1.3 Comparison Between Zoning and Development Control	33
3.2 Contemporary Development Control Practice	34
3.2.1 Variable Response to Development Control	35
3.2.2 Selective Role of Development Control in Relation to Zoning	37
3.2.3 Political Responsibility under Development Control	39
3.2.4 Planning Policy and Development Control	41
3.3 Conclusion	42
CHAPTER IV - THE HISTORICAL CONTEXT OF THE DIRECT CONTROL LEGISLATION	 46
4.0 Purpose	46
4.1 Development Control Legislation and Practice in Alberta	46
4.1.1 Status of Development Control	48
4.1.2 Character of Development Control	52
4.1.3 Distinction Between Development Control and Zoning	55
4.2 A Major Problem With the Development Control Legislation	57
4.3 Conclusion	58
CHAPTER V - THE INTENT OF THE DIRECT CONTROL LEGISLATION	62
5.0 Purpose	62
5.1 The Land Use Bylaw	62
5.2 The Direct Control Legislation	66
5.3 The Objectives of the Direct Control Concept	67
5.3.1 Selective Role	69
5.3.2 Individually Designed Regulatory System	74
5.3.3 Direct Political Responsibility	76
5.3.4 Substantive Policy Base	80
5.4 Conclusion	82

CONTENTS, continued

	<u>Page</u>
CHAPTER VI - THE IMPLEMENTATION OF THE DIRECT CONTROL LEGISLATION	
6.0 Purpose	89
6.1 Direct Control Practice in Alberta	89
6.1.1 Character of the Municipal Direct Control Legislation	94
6.2 Selective Role	96
6.2.1 Evaluation	105
6.3 Individually Designed Regulatory System	106
6.3.1 Evaluation	113
6.4 Direct Political Responsibility	114
6.4.1 Evaluation	121
6.5 Substantive Policy Base	123
6.5.1 Evaluation	128
6.6 Conclusion	129
CHAPTER VII - CONCLUSIONS AND RECOMMENDATIONS	
7.0 Purpose	132
7.1 Conclusions of the Study	132
7.2 Recommendations for Change	141
7.3 Contribution	143
7.4 Further Research	145
BIBLIOGRAPHY	

APPENDICES

	<u>Page</u>
Appendix I - Municipal Land Use Bylaws and General Municipal Plans Reviewed.....	I-1
Appendix II - Planning Act (RSA; 1980) Sections 61 to 72 and 81 to 83.....	II-1
Appendix III - Sample of Municipal Direct Control Legislation - City of Edmonton.....	III-1

TABLES

		<u>Page</u>
Table 4.1	Regulatory System in Effect in Alberta Municipalities Preceding the Planning Act, 1977	53
Table 6.1	Implementation of the Direct Control District by Municipalities in Alberta	91
Table 6.2	Number of Direct Control Districts Contained Within Municipal Land Use Bylaw	94
Table 6.3	Comparison Between the Form of Land Use Control Used By Municipalities in Alberta Under the 1963 Planning Act and the New Planning Act	97
Table 6.4	Extent of Application of the Direct Control District by Municipalities	99
Table 6.5	Municipalities Continuing to Practice Resolution Control Through the Authority of the Direct Control Legislation	103
Table 6.6	Form of Direct Control Regulation Implemented by Municipalities	107
Table 6.7	Decision-Making Processes Employed by Municipalities Within the Direct Control District	115
Table 6.8	Specify Policy Reference to the Direct Control District in the General Municipal Plan	124

PLATES

Page

Plate 6.1	Implementation of Direct Control by Municipalities in Alberta.....	93
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To my father, Donald

CHAPTER I
THE DIRECT CONTROL DISTRICT

1.0 INTRODUCTION: THE MOVEMENT TOWARD DEVELOPMENT CONTROL

Zoning can be viewed as existing in an evolutionary continuum, marked in the early stages by questioning, opposition and legal challenge and in the later stages by acceptance and support. The contemporary period, commonly identified as commencing with the post-war building boom of the early 1950's, has been characterized by a proliferation of critical responses to zoning from planning theorists and practitioners, legal reformers, politicians, developers and the general public. The criticisms have been diverse, most frequently centering on zoning's inherent rigidity which is unresponsive to rapid urban change and is unable to cope with the complex and often competing social, economic and environmental issues surrounding land development. The proposed alternatives to zoning have been equally diverse, and include such radical measures as the 'legal euthanasia' of zoning and its replacement by a discretionary regulatory concept¹; a return to the 19th century 'laissez-faire' period in which land use regulation was accomplished through private legal remedies and restrictive covenants²; and the institution of a compensatory system, designed to eliminate the 'windfalls and wipeouts' dilemma created by contemporary zoning practice³. However, with only rare exceptions in North America such as Houston, Texas, zoning has endured. The explanation for this most often expressed is that the tenets upon which zoning is based, namely

certainty and security in the use of property, are highly valued in our society and ensure zoning's continued popularity despite deficiencies in its performance. What has occurred, has been a moderate, yet perceptible, shift of local regulatory practice toward development control, as conceived and practiced in Britain.

The shift has not been uniform or coordinated; nor has it led to a precise translation of the British concept into North American practice. Instead, it can be viewed as having pursued two courses. The first course has seen the extensive use of zoning mechanisms, originally intended to allow a degree of administrative discretion (variance, conditional use) or legislative adjustment (bylaw amendment) in what was to be a purely 'self-administering' process. The result has been a retention of the classical Euclidean zoning framework of the early 1900's, but the substantial modification of local regulatory practice within that framework⁴. Some observers have concluded that modern day zoning is, in fact, a disguised form of development control⁵.

The second course has led to the incremental and innovative combination of characteristics of Euclidean zoning and British development control to create a wide variety of new flexible regulatory systems having a common theme: the granting of development permission through a discretionary review process, as opposed to pre-regulation. In other words, these new systems represent variations on the concept of development control.

The movement toward development control is not strictly a local municipal phenomena. It occurs within a particular legal context which, in Canada, involves the enactment of a planning statute by Pro-

vincial governments that determines in large measure the form that the local municipal regulatory system will take. Rogers, an eminent authority on Canadian planning law, describes the relationship between Provincial statute and the municipal regulatory system as follows:

"What goes into a [municipal land use regulatory] bylaw rests of course with the local council, subject to statutory requirements and limitations imposed. Statutes usually describe in permissive terms what the bylaw may contain, but sometimes there are mandatory requirements as to content. Failure to comply with the mandatory directives as to content will result in the bylaw being voided."⁶

In recent years, legislators and planning experts have faced increasing pressure to develop a satisfactory legislative framework that recognizes, accommodates and guides the growing trend toward development control at the local level. This task has been made more difficult by the political and societal problems, and the administrative and planning complexities that development control practice creates. The result has been, not only the gradual reform of planning legislation by many Provinces, but also the continuous monitoring and adjustment of that development control legislation already in place.

In view of the foregoing discussion, the subject of this thesis is a critical examination of the recently introduced planning legislation enabling the practice of development control by municipalities in the Province of Alberta. Before proceeding with a description of this new legislation, however, it is necessary to review briefly the constitutional basis of land use planning and control in Canada and the early Alberta experience with development control.

1.1 LEGISLATIVE CONTEXT OF LAND USE CONTROL IN CANADA

The power to enact legislation respecting land use planning matters in Canada is vested with the Provinces under the Constitution Act of 1982 (which incorporates, among other things, the former British North America Act of 1867). As a result, Provincial statute constitutes the primary source of planning law in Canada, with each Province enacting its own 'planning act' which delegates powers to control the use of land to municipal corporations. This is not the situation in the United States, where that country's Federal Constitution places restrictions upon the public control of private land to the extent that such control must be justified as a legitimate exercise of 'police power'⁷. This fundamental difference has led in the United States to legal challenges respecting zoning's constitutionality and, today, gives U.S. citizens "the privilege of being able to question the reasonableness of a zoning provision and the right to have each zoning provision justified within the aims of 'police power'"⁸.

Although these constitutional differences exist, the early acceptance of zoning by Canadian municipalities owes much to the strong influence the United States had on Canadian planning theory and practice. Kenniff states:

"Zoning is a typically North American institution. Its widespread acceptance in Canada would appear to be a direct result of the influence of American local government law on Canadian planning law and institutions. The similarity of the legal response to planning problems no doubt also reflects the existence of common social values and goals in both countries: the importance of individual property rights, the search for impartiality, fairness and certainty in the administration of land use controls and perhaps an undue commitment to uniformity and segregation of uses as valid urban development objectives."⁹

The Canadian constitutional framework, however, together with the country's strong cultural and institutional ties with Britain, has led several Provinces to incorporate development control legislation within their respective planning statutes as an alternative to zoning. This has resulted in a strong tradition of development control practice throughout the country. At the forefront of those Provinces which have enacted such legislation is Alberta, whose experience dates back to 1950 and has extended to the present, through its new Planning Act introduced in 1978.

1.2 THE ALBERTA EXPERIENCE

Development control legislation was initially introduced to Alberta in 1950 through an amendment to the Town Planning Act¹⁰. Originally, development control was intended to provide a temporary means of regulating the use of land in a municipality between the period of time when a local council resolved to prepare a general plan and the final adoption of the plan. Zoning was to remain the principal form of regulation at all other times. Through considerable revision and rewriting of the planning statute the original concept was significantly altered, resulting in the widespread application of development control as a permanent replacement for zoning by municipalities in the Province. Significantly, the changes to the legislation led to the emergence of a regulatory system that was development control in name only; in actual fact, the system represented a flexible form of zoning, and this 'new' zoning was extensively applied and strongly supported by

Alberta's rural and urban municipalities. The result was considerable confusion and a frustration of the Province's original intent of allowing municipalities a clear choice between either zoning or development control in regulating the use of land and achieving their planning goals. Several authors have concluded that the numerous changes to the legislation which followed the introduction of development control in 1950 lacked a strong philosophical basis and represented incremental responses to problems of the day. The legislators merely tinkered with the original concept introduced in 1950 but failed to monitor the effect and consequences of their actions.

On April 1, 1978, a new Planning Act was proclaimed in Alberta. A major objective of this Act was to reform the Province's land use control legislation. Elliot submits that this recent Act "demands that municipal government take a whole new look at land use controls and to my knowledge no other piece of legislation [in the Province] has so sweepingly removed the old and demanded something new."¹¹ A significant result of this reformation process was the introduction of a unique legislative concept authorizing the practice of development control by municipalities - termed in the planning statute the 'direct control district'.

1.3 THE DIRECT CONTROL DISTRICT: A BRIEF DESCRIPTION

Part 4, "Implementation of Plans"; Divisions 1 to 4, of the Planning Act (Chapter P-9; Revised Statutes of Alberta; 1980) sets out the means by which municipalities can regulate the use of land in Alberta.

This regulation is accomplished for the most part, through an instrument termed the land use bylaw. Sections 68 and 69(1) of the Planning Act require all municipalities in the Province with a population of 1,000 or more to adopt a land use bylaw within a specified time period (which expired as of April 1, 1981) so that the municipality may "prohibit or regulate and control the use and development of land or buildings" within its boundaries. Section 83(1) prohibits the commencement of any development within a municipality unless a development permit has been issued in accordance with the land use bylaw, or unless such a development is specifically excluded from requiring a development permit under the bylaw. As well, Subsection 1(c) of the Planning Act defines development in such a broad manner as to encompass virtually any change in the use of land. The combined effect of this legislation is to institute throughout the Province a permit system of land use control through a single municipal instrument - the land use bylaw.

The Planning Act requires that the land use bylaw must divide a municipality into separate districts of such number and size as the local council considers necessary. The districts may be of two types: the zoning district (although the word 'zoning' is expressly omitted throughout the planning statute) and the direct control (the term 'direct control' is substituted for the term 'development control' in the planning statute). The technical and procedural aspects of zoning are detailed in various sections of the Act. Generally, the relevant sections are as follows: establishment of the office of an administrative body authorized to make decisions concerning development permit

applications [Section 69(2)(c)]; the procedural requirements governing the permit application process that must be established by a municipality within the land use bylaw [Section 69(d) and (e)]; the designation of zoning districts within the municipality and the prescription of permitted and discretionary uses within each district [Section 69(2)(a) and (b)]; the various categories of development standards that may be applied within a district [Section 69(3)]; the variance power that may be delegated by the local council to the bylaw administrator in deciding upon a development permit application [Section 69(3)]; the legal difference between a permitted use and a discretionary use as applied to land within a zoning district [Section 71(2) and (3)]; the right of appeal with respect to an administrative decision or a development permit application within a zoning district [Section 83(2) and (3) and (4)]; the procedural requirements governing the appeal process [Sections 84 and 85]; the powers of the appeal board [Section 85(3)]; and, the amendment process respecting the land use bylaw [Section 139 to 143].

While certain of these sections apply generally to both zoning and direct control, the principal legislation relating to the direct control district is found in Section 70 of the Planning Act. This section states:

- 70 (1) A council that has adopted a general municipal plan, if it considers it desirable to exercise particular control over the use and development of land or buildings within an area of the municipality, may in its land use bylaw designate that area a direct control district.

- (2) If a direct control district is designated, the council may regulate and control the use or development of land or buildings in the district in any manner it considers necessary.

Two points can be made regarding this section of the Planning Act. The first is that the wording of the legislation is unclear and, therefore, raises several questions. For example, what is the distinction between direct control and zoning? Through what means may land be regulated under direct control? How much of a community's land area may be placed under direct control? Must the local council make all decisions under direct control, or can this authority be subdelegated? What is the difference between the Province's former development control and the present direct control? Section 70, in its brevity, provides no ready answers to such questions.

The second point is that the legislation appears to endow a local council with fairly limitless power to design a regulatory system of its own choosing. In view of the previous questions raised, there exists considerable potential for municipalities to misinterpret, exceed or intentionally ignore the intent of the direct control legislation. As Alberta's past experience with development control has shown, this could lead to problems and outcomes that were not originally intended by the Province.

1.4 IMPETUS FOR THE THESIS

This thesis developed out of the author's experience as a planner employed with the Edmonton Metropolitan Regional Planning Commission, a public agency responsible for providing planning advice and service to

communities situated within a defined planning region in Alberta. Part of the author's responsibilities involved the preparation of land use bylaws for local communities within the metropolitan region; and, in particular, assistance in the design and administration of municipal direct control systems. In the course of this experience, it was observed that considerable difference of opinion existed among those working closely with direct control - specifically lawyers, planners, and municipal officials - in respect to the underlying intent of the enabling legislation and how it should be applied. These differing viewpoints have resulted in considerable diversity in municipal practice throughout the Edmonton Metropolitan Region and the Province as a whole.

The direct control legislation has been in effect for over five years, and the evidence suggests its application is increasing, particularly in the larger urban centres. Moreover, neither the Provincial Government nor its departments or agencies have provided a detailed explanation of the legislation's intent, nor have they attempted to monitor or review local municipal practice. In light of the Province's past experience with development control, the need to understand the direct control concept and to critically appraise its performance assumes obvious importance.

1.5 OBJECTIVES OF THE THESIS

The purpose of this thesis is to examine Alberta's direct control legislation in order to answer the following three research questions:

- (1) What is the intent of the direct control legislation?
- (2) Are municipalities in Alberta meeting this intent through local practice?
- (3) How can the direct control legislation be improved?

The research method used to address these questions is described in the next chapter.

Hopefully, the thesis will be of interest to those concerned with planning and land use control in Alberta, either as participants or observers; and, in addition, will raise some issues which may assist the Provincial Government in its ongoing endeavour to improve the Alberta Planning Act. As well, the thesis has the modest aim of contributing to the small but expanding field of research on development control in Canada.

1.6 SCOPE AND LIMITATIONS OF THE THESIS

The study of the direct control district concentrates on its enabling legislation, specifically Section 70 of the Planning Act. The intent of the legislation, the degree to which municipal practice is consistent with the intent and the problems encountered are addressed.

The Province's past experience with development control is relevant to an exploration of the legislation's intent, as are certain aspects of development control practice in North America. Therefore, the thesis reviews a number of historical and contemporary factors which underlie the direct control concept, but briefly, due to the vastness and complexity of the subject matter.

The Alberta Planning Act specifies a number of broad goals that encompass land use planning and regulation in the Province¹². These goals include the attainment of an orderly, economical and beneficial pattern of human settlement, the balancing of individual rights with the collective interests of the general public in a fair and equitable manner and the enhancement of the physical environment of communities. It is not the purpose of the thesis to examine the direct control concept in the context of these broader goals. Only the specific intent of the legislation enabling the exercise of direct control in Alberta and the extent to which municipal practice is meeting this intent is analyzed.

Finally, the direct control legislation raises many legal questions, the answers to which require a thorough understanding of planning and administrative law. These questions will be left to the Province's legal profession and the courts.

1.7 DEFINITION OF TERMS

Several planning terms are used frequently throughout the thesis and may be subject to misinterpretation. These terms are, therefore, defined to assist the reader.

Definition of Zoning and Development Control

Land use regulatory systems derive from two contrasting theories, zoning theory and development control theory, to be discussed in Chapter III. These two theories have given rise to two respective tradi-

tional regulatory systems, Euclidean zoning and British development control. In turn, characteristics of these two traditional systems have been combined in modern practice to create many different regulatory systems. Today, a 'pure' form of zoning or development control seldom occurs in practice.

The combining of the two traditional systems has created considerable semantic confusion, which is reflected in the legal and planning literature. For example, many authors prefix all modern regulatory systems with 'zoning'; thus the terms contract zoning, performance zoning, impact zoning or incentive zoning are widely used. Similarly, many authors define development control as being exclusively the traditional British model. In contrast, some authors have used the term 'development control' liberally to mean virtually any modern regulatory system excluding Euclidean zoning. Still other authors have avoided the attempt to classify modern regulatory systems as either zoning or development control and have substituted generic terms, such as 'rigid' controls, 'flexible' controls, 'wait-and-see' techniques, 'self-administrating' systems and 'discretionary' systems.

The approach taken here is to broadly classify all modern regulatory systems as being either a form of zoning or development control. Accordingly, the following definitions apply.

Zoning or Zoning System -

means a legislative regulatory system based on the theory of zoning, described in Chapter III, that is rigid in nature and controls the use of property through preregulation by means of either the permitted use or the discretionary use.

Development Control or Development Control System -

means a legislative regulatory system based on the theory of development control, described in Chapter III, that is flexible in nature and controls the use of property by means of a discretionary review process as opposed to preregulation. Typically, development control systems grant development permission in response to an actual proposal based on merit and in accordance with established planning policy. Development control includes such contemporary regulatory concepts as planned unit development, site plan review, transfer of development rights, environmental impact controls, incentive controls, etc.

Other Planning Terms**As-of-right Use or Permitted Use -**

means the precise statement of the use of property through a municipal bylaw; development permission is automatically granted to the property owner upon compliance with the use stated and any corresponding development regulations.

Conditional Use or Discretionary Use -

means the precise statement of the use of property through a municipal bylaw; however, development permission may or may not be granted by an appointed administrative body upon compliance with the use stated and any corresponding development standards depending upon the circumstances.¹³

Resolution Control -

means a method of controlling land use through zoning regulations applied to property by means of a resolution of the municipal council, as opposed to an adopted bylaw. The practice, discussed in Chapter III, was popular in Alberta from 1963 to 1978.

1.8 ORGANIZATION OF THE THESIS

This thesis consists of seven chapters beginning with an overview of development control theory and practice and an examination of Alberta's past experience with development control and progressing to a more detailed analysis of the direct control legislation's intent and translation into practice by municipalities. Specifically, the chapters are:

Chapter I, The Direct Control District, briefly introduces the thesis topic, discusses the impetus for the study and establishes the study's objectives. In addition, it defines the scope and limitations of the study and key terms used throughout the remaining chapters.

Chapter II, Research Design, describes the method used to address the main research questions posed in the first chapter.

Chapter III, The Theory and Practise of Development Control, examines and compares the theories of zoning and development control, and reviews several relevant aspects of development control practise in North America. These aspects are reflected in Alberta's direct control legislation.

Chapter IV, The Historical Context of Direct Control Legislation, traces the evolution of Alberta's past development control legislation and discusses the major problem it created when implemented by municipalities. Development control is the forerunner of the direct control district.

Chapter V, The Intent of the Direct Control Legislation, explains the basic intent of the direct control enabling legislation. This intent is determined through an interpretation of the relevant provisions of the Alberta Planning Act; in addition, the legislation is discussed in the context of the past problems and contemporary factors that it attempts to address.

Chapter VI, The Implementation of the Direct Control Legislation, examines the practical application of the direct control legislation by municipalities in Alberta and evaluates the degree to which municipal practice is meeting the intent of this legislation.

Chapter VII, Conclusions and Recommendations, presents the main conclusions of the study, recommends changes to be made to the direct control legislation to improve its effectiveness, and suggests areas for further research that are beyond the scope of the thesis.

FOOTNOTES

1. John W. Reps, "Requiem for Zoning", in Land Use Controls: Present Problems and Future Reforms, David Listokin, ed. (New Brunswick, N.J.: Rutgers University, 1974).
2. Bernard H. Siegan, Land Use Without Zoning, (Lexington, Massachusetts: DC Heath and Co., 1972)
3. Donald G. Hagman, "Windfalls for Wipeouts", in The Good Earth of America: Planning Our Land Use, Lowell C. Harris, ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1974).
4. Laux indicates that: "The phrase 'Euclidean Zoning' stems from the United States Supreme Court decision of Village of Euclid vs. Ambler Realty Co. (1926) 272 U.S. 365 in which zoning was upheld as being a constitutionally proper exercise of the police power. At that time zoning was and still is looked upon by many as a means of segregating land uses by dividing the community into zones, each with designated use, bulk and open space requirements."
5. Patrick Kenniff, Development Control in Canada: Evolution and Prospects, in Journal of Planning and Environmental Law (July, 1974), p. 394.
6. Ian Mac F. Rodgers, Canadian Law of Planning and Zoning, (Toronto: Caswell Company, 1973).
7. With respect to the constitutionality of zoning in the United States, Laux states:

"In contrast to the United States, the constitutionality of zoning has never been seriously challenged in Canada. In that country the challenge to the constitutionality of zoning regulations was based upon the 'due process' clause of the Federal Constitution and upon similar provisions in many state constitutions . . . Many state courts took the view that zoning ordinances so restricted the use of private lands that they constituted a taking without due process of law. However, the United States Supreme Court in Village of Euclid vs. Ambler Realty Company 272 U.S. 365 (1926) firmly established comprehensive zoning as constitutional on the basis of police power. However, although comprehensive zoning in general was thereoften regarded as valid, specific regulations or their application to particular parcels of land were still subject to and have been declared ultra vires on the basis of either the federal constitution or state constitutions."

8. Leslie Stein, "The Municipal Power to Zone in Canada and the United States: A Comparative Study", in Canadian Bar Review, 49 (1971), p. 540.
9. Patrick Kenniff, "Development Control in Canada: Evolution and Prospects", in Journal of Planning and Environmental Law, (July, 1974), p. 388.
10. Province of Alberta, The Town Planning Act, S.A. 1950, c. 71.
11. Province of Alberta, Proceedings of the Land Use Bylaw Workshop, 1979, (Edmonton: Department of Municipal Affairs, 1979), p. 18.
12. Section 2 of the Alberta Planning Act states as follows:
 - "2. The purpose of this Act and the regulations is to provide means whereby plans and related measures may be prepared and adopted to
 - (a) achieve the orderly, economical and beneficial development and use of land and patterns of human settlements, and
 - (b) 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 except to the extent that is necessary for the greater public interest."
13. Laux describes the basic difference between a permitted use and a discretionary use as follows:

"The philosophy behind the distinction between permitted uses and discretionary uses is simply that, where uses are shown as permitted within a particular district, they are regarded to be of a type that are clearly compatible with one another, and, therefore, unlikely to adversely effect neighbouring properties in the same district. On the other hand, discretionary uses are classed as such because, by their nature and although generally acceptable in a particular district, they may or may not be reasonably compatible with neighbouring properties, depending upon the circumstances. Hence, it is necessary to confer upon the land use administrator a discretion as to whether or not to allow a particular application for such a use."

CHAPTER II
RESEARCH DESIGN

2.0 PURPOSE

The purpose of this chapter is to describe the method used in this thesis to address each of the main research questions posed in Chapter I.

2.1 QUESTION 1: What is the intent of the direct control legislation?

This question is addressed through an interpretation of the direct control legislation and an examination of the theoretical, historical and contemporary factors which have influenced the direct control concept.

Interpretation of the Direct Control Legislation

An interpretation of the legislation enabling the exercise of direct control by municipalities in Alberta is undertaken in Chapter V of the thesis. In this interpretation, assistance was received from the following sources:

(a) Drafts of the New Planning Act

Original drafts (prepared between 1972 and 1977) of the new Planning Act, including the 1975 publicly released working document entitled Towards a New Planning Act for Alberta¹, were obtained from the

Alberta Department of Municipal Affairs. These early drafts gave an insight into the philosophy underlying the direct control legislation, and revealed the progression of changes that the legislation underwent over a five year period.

(b) Interviews

An interview with Mr. Noel Dant, former Provincial Planning Director and one of the principal authors of the new Planning Act, was conducted. This interview assisted in the understanding and appreciation of what the direct control district was intended to accomplish as it was originally conceived. As well, interviews with Mr. D. Elliott, the solicitor responsible for drafting and revising the final version of the Act, and Dr. P. J. Smith, of the Department of Geography, University of Alberta, were of particular benefit in establishing the meaning of certain difficult passages of the direct control legislation.

(c) Published Literature

Although relatively little published literature is available on the subject of direct control, two works were of assistance. The first, Proceedings of the Land Use Bylaw Workshop, 1979 by Alberta Municipal Affairs², discussed regulatory practice in the Province generally, and the direct control district specifically, and proved a useful reference document. The second source, The Planning Act (Alberta), by F. Laux³, provides an explanation, from a legal perspective, of the planning statute. The main value of this work lies in its

comprehensive description of the Alberta planning system of which direct control is an integral part.

Examination of the Theoretical and Contemporary Context of the Direct Control Legislation

Direct control is derived from the theory of development control. Therefore, the intent of the direct control legislation can be better understood by examining this theory and how it has been translated into practice in North America.

Chapter III describes and compares the theories of zoning and development control. In addition, the chapter discusses several aspects of contemporary development control practice which are reflected in the direct control legislation.

The examination of development control entails a review of the legal and planning literature relating to the subject area, and in particular the following sources: The Administration of Flexible Zoning Techniques, by M. Meshenberg⁴; The New Zoning: Legal, Administrative and Economic Concepts and Techniques, edited by N. Marcus and M. Graves⁵; Development Control in Canada: Evolution and Prospects, by P. Kenniff⁶; and The Zoning Game: Alberta Style, by F. Laux⁷; City Zoning, The Once and Future Frontier, by C. Weaver and R. Babcock⁸; Effectiveness of Flexible and Conditional Zoning Techniques, by R. Freilich and M. Quinn⁹; and Canadian Law of Planning and Zoning, by Ian Mac F. Rodgers¹⁰. Numerous secondary sources were also used.

Examination of the Historical Context of the Direct Control Legislation

Direct control represents an extension of Alberta's earlier experience with development control under former Planning Acts.

Chapter IV traces the evolution of the development control legislation in the Province from its inception in 1950 up to the present Act. The chapter also identifies a major problem that this past legislation created, which the new Alberta Planning Act attempts to resolve.

Previous provincial planning statutes are reviewed, as well as, the literature analyzing and discussing the Province's past development control practice. Statutes, commencing with An Act Relating to Town Planning of 1913¹¹ up to the 1963 Planning Act¹², as amended, are examined. The primary sources used include the following: The Zoning Game: Alberta Style, by F. Laux¹³; Development Control in Canada: Evolution and Prospects, by P. Kenniff¹⁴; Urban Affairs in Alberta, by D. Bettison, J. Kennard and L. Taylor¹⁵; and Development Control vs. Zoning: The Emergence of Land Use Controls in Alberta, by J. Munson¹⁶. Secondary works used include: The Development Appeal Board: A Guide, by M. Rutter¹⁷; The Development of Provincial Planning Legislation in Alberta, by L. Taylor¹⁸; and a number of planning articles, related court cases, historical records and special studies such as the Bland Spence-Sales Study¹⁹ of 1949.

2.2 QUESTION 2: Are the municipalities in Alberta meeting the direct control legislation's intent through local practice?

This question is addressed through an examination of municipal practice in Alberta in relation to each of the four main objectives of the direct control legislation identified in the thesis. The extent to which this local practice is meeting the objectives is determined, and any problems encountered with the legislation are discussed.

Each of the ten Regional Planning Commissions in the Province and the Provincial Municipal Affairs department were contacted to determine which municipalities within their respective jurisdictions have implemented the direct control legislation. The municipalities, their status, geographical location and population size are described in Chapter VI. The land use bylaw and general municipal plan of each of these municipalities was obtained and reviewed, together with any other relevant planning documents that would assist in understanding this local direct control practice. The information obtained from these municipalities is considered to be correct as of October 1983.

The research was supplemented by interviews with either planning staff or municipal officials employed by these municipalities. Where the municipality obtained its planning services from a regional planning commission or the Alberta Municipal Affairs department, the staff planner responsible for providing this service was interviewed. The interviews were conducted by the author, either in person or by telephone, and representatives from each of the twenty-six municipalities found to have implemented direct control were contacted.

The purpose of the interviews was to clarify or supplement the information contained in the municipal planning documents and bylaws. The interviews concentrated upon local practice, as it related to the intent of the enabling legislation. They were, also, useful in obtaining opinions on the meaning of the legislation, suggestions on how it could be improved and insights into problems that have occurred.

The results obtained are presented in the form of tables and charts. Verbal description is sometimes used, however, where the information could not be readily placed in a tabulated format.

2.3 QUESTION 3: How can the direct control legislation be improved?

This question is addressed through a review of the major problems with the direct control legislation identified in the research. In turn, changes to the legislation are suggested which are designed to resolve these problems and strengthen the effectiveness of the direct control district as a planning tool. The recommended changes are made in Chapter VII.

FOOTNOTES

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2. Province of Alberta, Proceedings of the Land Use Bylaw Workshop, 1979, (Edmonton: Department of Municipal Affairs, 1979).
3. Frederick Laux, The Planning Act (Alberta), (Vancouver, B.C.: Butterworth and Co., 1979).
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6. Patrick Kenniff, "Development Control in Canada: Evolution and Prospects", in Journal of Planning and Environmental Law, (July, 1974).
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11. Province of Alberta, An Act Relating to Town Planning, S.A. 1913, c. 18.
12. Province of Alberta, The Planning Act, S.A. 1963, c. 43.
13. Frederick Laux, "The Zoning Game: Alberta Style, Parts I and II", in Alberta Law Review, Vol. IX (1971) and Vol. X (1972).
14. Patrick Kenniff, "Development Control in Canada: Evolution and Prospects", in Journal of Planning and Environmental Law, (July, 1974).
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17. Michael F. Rutter, The Development Appeal Board: A Guide, (Edmonton, Alberta: Rutter Crash Course, Ltd. Municipal Law Aid Series, Alberta Planning Law Handbook, 1978).
18. Larrie Taylor, The Development of Provincial Planning Legislation, (unpublished manuscript, March, 1972).
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CHAPTER III

THE THEORY AND PRACTICE OF DEVELOPMENT CONTROL

3.0 PURPOSE

The purpose of this chapter is to examine the theoretical and contemporary factors that have influenced Alberta's direct control legislation.

The chapter consists of two parts. First, the theories of zoning and development control are described and compared. The theory of development control forms the basis of the direct control district concept. Second, several relevant aspects of modern development control practice in North America are discussed. These aspects are reflected in the direct control legislation.

3.1 THEORETICAL BASIS OF LAND USE CONTROL

Two irreconcilable forces are at work in respect to the use of land. One is the idea that a man's home is his castle, and, thus, a landowner is entitled to develop his property to its maximum economic potential. The other is the belief that land is a limited commodity and its use should not detract from the general welfare of society as a whole. The need to balance these competing forces has led to the emergence of public regulatory systems that attempt to restrain the exercise of individual property rights in order to promote harmonious community development¹.

The introduction of land use controls by society did not originate with an ideological or philosophical movement. Instead, controls emerged as a pragmatic response to the problems created by the rapid urbanization of the industrial revolution of the 18th century. Munson submits that the acceptance of land use controls by society required a profound reversal of the historic view of individual property rights.

"Land use controls are not an inherent aspect of society, but rather have evolved as a result of increasing organization in the pattern of human existence. As people began to crowd into villages, town and cities, [the realization occurred that] one's use of his property could lead to serious objectionable or harmful effects on the property of his neighbour. In a radical departure from the traditional view of property rights necessary controls were introduced."²

From this early realization, land use controls progressed from private remedies, such as common law nuisance action and restrictive covenants, to comprehensive legislation systems. These comprehensive systems are derived from two contrasting theories concerning the manner in which private property should be regulated - zoning and development control. Zoning gained wide acceptance in North America, with the early United States experience having considerable influence on Canadian practice. On the other hand, development control, which was conceived in Britain, has made inroads in North America in recent decades as an alternative to zoning. Before proceeding with a brief discussion of contemporary development control practice in this country, it is first necessary to examine and compare both zoning and development control theory.

3.1.1 Theory of Zoning

Zoning theory is based on the premise that the correct allocation of land uses in the community can be accomplished in advance of an actual development submission; that is, at the legislative level through the enactment of a zoning bylaw that rigidly defines the community's future land use pattern. Central to the theory is the 'use-district concept' - the division of the community into predetermined districts or areas for the express purpose of allowing only compatible uses to locate within a specific area. Thus, zoning strives to eliminate land use conflicts by segregating incompatible land uses from each other. Stated in another way, zoning divides the community into defined areas in order to exclude those uses thought to be prejudicial to the desired development of each area, and to achieve the gradual elimination of existing non-conforming uses from each area. Rogers states the theory of zoning as follows:

"The theory of zoning is that each district is an appropriate area for the location of certain uses, which the bylaw designates, and that the existence or entrance of other uses will tend to impair the development and stability of the area for the appropriate uses. The objective of zoning must be considered from the standpoint of the public welfare of all the property within a particular use district."³

The division of the community into use-districts is considered necessary to regulate development in accordance with community planning objectives. The regulation is accomplished through the statement of fixed rules concerning the future use of land within a district.

The rules, in the form of 'as-of-right' uses and corresponding standards relating to height, bulk and setback, require no individual judgement in their administration. Development permission within a district accrues automatically upon proof of compliance with the applicable rules. Thus, zoning creates a self-administering process that is certain and consistent in its outcome⁴.

The early zoning system introduced by most communities in North American was based upon the 1922 Standard State Zoning Enabling Act, a model United States ordinance.⁵ This traditional or Euclidean system required the enactment of a local zoning ordinance or bylaw by a municipal council. The bylaw divided the community into a few large zones, usually described on a map, and applied land use regulations within each zone in the bylaw text. In addition, the bylaw contained administrative procedures for obtaining development permission, granted by means of a permit and with only minimal administrative discretion authorized in reviewing the development submission. An administrative variance could be issued where the regulations, although reasonable, had an unforeseen effect on a particular property. Further, the process usually allowed for an appeal to an appointed municipal board responsible for adjusting the regulations should they cause undue hardship on a given property owner. An amendment to the bylaw was also allowed, but only when a change in conditions rendered the original district boundary or regulations unrealistic. Every attempt was made to create large, stable zones that would rarely, if ever, be changed.

The modern zoning system, although maintaining the rudimentary format of its Euclidean predecessor, has been modified in practice

through the wide use of the variance power, the conditional use and the site specific bylaw amendment. This situation has led at least one critic to assert that the certainty which zoning purports to achieve in theory has become illusory in practice.

"The theory, however, is deeply undercut by a multitude of zoning amendments, improper variances, special exception permits, floating zone approvals, and unenforced violations. What remains is the structure of certainty without the substance - a mere facade of unguided administrative and legislative discretion."⁶

Plainly, zoning practice has been moving toward development control.

3.1.2 Theory of Development Control

Development control theory is based on the concept of land use regulation through administrative discretion. The theory does not subscribe to a predetermined land use pattern for the community, created by the application of precise regulations to property through a bylaw. Instead, it relies on a discretionary review process in which development permission is awarded in response to an actual development submission, on the basis of determined merit and in accordance with established community planning policy. Unlike zoning, development control affords no automatic right in the use of property. Rogers describes development control as follows:

"Development control is the regulation of land use on a permit basis for each proposed use of land. Each proposal for a particular use of a parcel of land is examined on its merits and, if approved by the approving authority may be proceeded with. It is to be distinguished from the traditional method of controlling land use [zoning] through bylaws, which if complied with, entitles the owner to develop his land without the necessity of any governmental sanction . . . Development control is the control of land use by permission rather than regulation."⁷

Ideally, development control provides no intermediate level of land use regulations between the administrative process through which development permission is obtained and the community plan. Depending upon the level of specificity of the governing community plan, the administrative body can exercise varying degrees of discretion in reaching a decision. No matter how detailed the policy contained within the community plan, however, it would not approach the detail of a zoning district.⁸

Modern development control legislation was first introduced in Britain through that country's Town and Country Planning Act of 1947. Although this Act has since been repealed and replaced by more recent acts, the essential development control system has remained intact.⁹ That system is comprised of a hierarchy of development plans (structure plans and local plans), a defined process for obtaining development permission, procedures respecting public notice, input and appeal and special forms of control for different circumstances. The key to the system is the hierarchy of plans guiding the administrative process which may vary considerably in detail and purpose, for example:

"a local development plan for an historic area may be highly detailed and include standards for building materials and architectural design to protect the character of the

area. The development plan of a new community, however, may simply set out the general objectives for the development of housing such as the density and unit mix, community facilities and commercial areas, and leave matters of site layout and detailed design to the developer, subject to an evaluation by professional planners to ensure the development meets specified aims."¹⁰

The British form of development control has not been widely accepted in North America. However, the development control concept has formed the basis of a number of different flexible regulatory systems introduced by municipalities in both Canada and the United States.

3.1.3 Comparison Between Zoning and Development Control

At the theoretical level, obvious differences exist between zoning and development control. These differences result directly from the rigid or flexible regulatory approach of each concept. Firstly, zoning predetermines the final land use pattern of the community, whereby any subsequent development must then conform to that pattern. Thus, zoning provides certainty and protection for the landowner in the use of property, but is unresponsive to changing conditions or variations from the end-state it strives to achieve. Alternatively, development control, through a discretionary review process, grants development permission based on merit, as opposed to pre-regulation. Therefore, development control is flexible and responsive to change and can adjust to unforeseen situations, but provides less assurance to the landowner in the use of property and can lead to 'ad hoc' or arbitrary decision-making.

Secondly, zoning decisions are made at the legislative or political level through the adoption of a bylaw by the municipal council. This bylaw, which applies precise and objective regulations to land, limits the scope of administrative decision-making. Laux explains that ". . . if a prospective developer's property is governed by the usual zoning bylaw he need only leaf through that bylaw, a creature of the local council, to determine where he stands . . . the administrators of the bylaw act as mere conduits [of the wishes of the council] with virtually no discretion . . ."11 In contrast to this, development control shifts decision-making to the administrative level. The absence of regulations within the development control bylaw provides considerable latitude for the exercise of administrative discretion in response to a development submission, subject only to the policies contained within the governing community plan.

3.2 CONTEMPORARY DEVELOPMENT CONTROL PRACTICE

Zoning has been widely supported because of the certainty it provides for the landowner and the political control it exerts over the administrative process. It is natural, therefore, for development control to meet with opposition on the basis that it diminishes these valued qualities of zoning in favour of flexibility and discretion. This perception has influenced the nature of development control as practised in North America.

This section briefly examines four aspects of contemporary development control in North America, namely:

- (a) the variable response to development control;
- (b) the selective role of development control in relation to zoning;
- (c) the desire for political responsibility within the development control system; and
- (d) the increased reliance upon community planning policy under development control.

As will be discussed in Chapter V, these four aspects of development control practice have influenced Alberta's direct control legislation.

3.2.1 Variable Response to Development Control

The planning literature is replete with criticisms of zoning. Critics assert that zoning operates under a number of faulty assumptions: that the 'ideal city' is comprised of a pattern of distinct sectors containing homogenous uses; that development proceeds in a simple and predictable manner; that urban change takes place slowly; and that the externalities produced by a development project cannot be accurately measured in advance. Krasnowiecki, summarizing the basic weakness of zoning, states:

"The theory behind the current [zoning] system is that a community can sit down one fine day and determine not only the general nature of its future development but also every detail . . . The idea that a community can do this rests upon the assumption that it has a clear vision of a future end-state for itself and nothing can happen to mar that vision. The only way to describe the system is that it subscribes to a static end-state concept of land use control. Plainly, that concept is in conflict with reality."¹²

Despite criticism, it is evident that many countervailing factors ensure zoning's existence. These factors include: the protection zoning affords established urban areas from the intrusion of unwanted uses; the certainty it provides for the landowner in the use of property; the restraints it exerts upon administrative discretion; and the propensity for communities to cling to the familiar, despite obvious problems and deficiencies.

Freilich and Quinn submit that the wholesale replacement of the traditional zoning system in North America will not occur; instead, zoning practice will move toward development control through a gradual and protracted modification process.

"In relatively stable republics, politically sensitive methods evolve, and revolutions do not happen. Thus, Americans are 'stuck' with the approach to implementing land use planning which has bulk regulations and use districts at its core. Municipalities may and not doubt will graft new features on to this core. Interestingly, some of these features will be inconsistent with the political values and ideology which accompanied bulk regulation and use districts where they were first used in their classical Euclidean framework, and by such grafting as this, American's urban plan implementation mechanisms will be transformed evolutionarily into something quite different. . ."13

Zoning has not been replaced by a 'model' development control system as has been proposed by Reys¹⁴, Weismantel¹⁵ and others. Rather, the movement of regulatory practice toward development control has occurred through the fusion of characteristics of Euclidean zoning and British development control to create a vast array of new concepts exhibiting characteristics of both of these traditional systems. Moreover, this fusion process is continually yielding many different

'hybrid' development control systems - some innovative, others a variation on a theme. In the final analysis, it is doubtful if any single development control system can or will ever emerge to be all things to all communities. Different systems will be applied throughout a community in response to the "diversity, conflicts and challenges that result from massing people, things and power"¹⁶ in a concentrated urban setting.

3.2.2 Selective Role of Development Control in Relation to Zoning

Although now a much less 'strange' concept than in the past, development control has not been accepted on a community wide basis. Its role has been restricted to selected areas and situations in the community where zoning has been judged to be inadequate. Two reasons for this are apparent. The first relates to the fact that zoning itself has changed, becoming much more discretionary in practice. The need for development control is correspondingly minimized. Laux explains that it is currently possible to implement virtually any development project under today's modern zoning system, albeit in a more cumbersome manner than development control provides.

"Admittedly, it is more difficult, expensive and time consuming to obtain a development permit for a use not provided for in the zoning bylaw than it is if the site in question is regulated by development control. But if the project is worthwhile, having regard to all circumstances, it is still possible to have it come to fruition under zoning. If the variance and conditional use aspects of the zoning bylaw are not appropriate to meet the new need, there is always the last resort of rezoning. . ." ¹⁷

The second reason relates to the urban structure of communities, which are a composite of unique niches, each having highly specialized planning needs. Zoning, for example, has been strongly supported in suburban areas, where it functions as a means of protecting the investment of private landowners' and preserving the socio-economic status quo. In addition, its rigid approach has been suited to the uniform and predictable 'one lot - one development' pattern that occurs within such areas. On the other hand, transitional neighbourhoods and the inner city core have required a more dynamic form of planning in response to the competing political, social and economic factions and innovative and complex building forms normally found there. In such areas development control has been supported as a replacement for zoning.

Babcock and Weaver observe that "the oldest and most traditional [zoning] provisions are generally applicable to the younger areas of the city, while the older areas of the city, both residential and commercial, are the ones where new [development control] systems are most often applied."¹⁸ Thus, most communities' zoning bylaws resemble a 'stew of the old and the new', a mixture of traditional residential, commercial and industrial zones and 'special purpose' zones containing provisions for planned unit development, transfer of development rights or impact assessment controls. These 'special purpose' zones tend to be applied selectively throughout the more dynamic urban sectors of the city as an alternative to the more widely used zoning system.

3.2.3 Political Responsibility under Development Control

Development control shifts decision-making power in land use regulatory matters from the political to the administrative level. This shift has been strongly opposed in North America on the grounds that it can lead to development outcomes that bypass the will of the residents of a community. Kenniff submits that there is strong reluctance in our society, based on an inherent fear of arbitrary administrative action, to relinquish even a measure of political control in local regulatory decision-making. This fear, justified or not, has been a major factor inhibiting the acceptance of development control by communities.¹⁹ Laux, arguing from a philosophical perspective, states that the ultimate responsibility for community planning lies with the people, through their elected representatives, and not planning experts.

"The advocates of development control base their express contentions on the need for flexibility in land use planning. To what extent is the underlying motivation for their efforts a firm opinion that planning is too important to be left in the hands of politicians? . . . The planners may be justified in having little or no confidence in politicians when it comes to taking effective action in this area. No one can dispute that the politicians do not exactly have an unblemished record. They have been known to put personal, economic or political advantage before the public interest in making decisions. But one does not cure the disease by killing the patient. Furthermore, what assurance is there that the experts are not as readily influenced by other than sound planning considerations?

In the final analysis, it is submitted that the people should decide what their physical environment is to be and not the so-called experts. Therefore, the policy aspects of land use planning should be primarily a legislative function with only such administrative refinements as are necessary to meet the day to day exigencies that arise."²⁰

Municipalities have, however, devised means of retaining political responsibility within their development control systems. Firstly, there have evolved a number of flexible regulatory systems, such as site plan review, which derive their flexibility through the politically controlled bylaw amendment process. These systems require that the municipal council become directly involved in the review and approval of a proposed development project, since the implementation of that project is ultimately dependent upon the amendment of the local bylaw, a function performed by the council. A second method of ensuring political responsibility, has been through the appointment of elected representatives to what are normally considered to be administrative positions. Politicians frequently serve on administrative and appeal boards and commissions within the development review process. In this capacity they are able to exert direct influence over development decisions in the community. A third way, has been through the inclusion of statements of intent, performance criteria and qualitative standards within the local development control system. While these measures do not eliminate administrative discretion entirely, they do serve to guide and restrict the scope of administrative action and to ensure that development outcomes fall within acceptable limits.

A final method of maintaining political control is through the adoption of a community plan. As will be discussed in the section which follows, the introduction of a development control system is predicated on the existence of effective community planning policy which guides and directs the administrative process.

3.2.4 Planning Policy and Development Control

The exercise of discretion under development control potentially opens up the regulatory process to abuse and arbitrariness. Considerable opposition to development control has resulted from the perception that it can lead to arbitrary administrative action. This perception has not prompted the rejection of flexibility in local regulatory systems and a return to traditional zoning. However, it has lead toward a greater reliance being placed upon community planning policy to guide and restrain the discretionary decision-making process. Kenniff states:

"At the core of Canadian misgivings over development control lies a certain tendency to confuse discretion with arbitrariness. It would be illusory in the extreme to seek to eliminate discretion from the planning system, nor would it be desirable, as recent criticisms of the zoning system have sufficiently demonstrated. On the other hand no one would contest the need to provide norms (in the form of the community plan) for the exercise of discretionary powers in order to reduce the danger of arbitrary decisions to a minimum."²¹

Meshenberg perceives that the movement toward development control has produced a parallel awareness among planners, legislators and politicians of the need to establish a strong relationship between community policy and the regulatory system. This planning policy functions as a means of achieving a balance between total rigidity in land use control and absolute discretion, both considered to be undesirable extremes. In short, the existence of a community plan has been seen to be a fundamental prerequisite to the practise of development control by society.

"The supposed dichotomy between rigidity and flexibility is a straw man. No one is in favour of rigidity per se, and virtually no one has proposed total flexibility in which the public exercises complete and unfettered discretion in response to proposals . . . we need a balanced system. Not total flexibility with license for ad hoc administrative rule making. And not rigid classifications and specifications that restrain innovation and lead to drabness in community development . . . we need flexibility with restraint. And the restraint will come from a real planning process, supported by legislative action, which offers policy guidance and criteria for decision-making . . ."22

Although there is wide agreement on the need for community planning policy to place constraints on development control regulation, there is little consensus on the form that a plan should take. Because the views expressed in the literature are divergent and, in many cases, irreconcilable, it is accurate to state that no clear-cut formula exists. As every situation is different, the response will also be different. However, most authors agree that a balance should be struck between long term 'vision' and short term 'reality', and that the plan should give direction, provide a degree of certainty, place reasonable limitations on administrative discretion, and be current and relevant in its approach to issues. Given such broad guidelines, most planning statutes in Canada have allowed considerable scope respecting the nature and content of the comprehensive community plan.

3.3 CONCLUSION

Zoning, through the pre-stated land use regulations, creates certainty and security for the property-owner, and affords considerable political control over administrative discretion. In contrast, development control, through an administrative review process, allows flexi-

bility and responsiveness to change. It follows logically from this, that as regulatory practice moves from traditional zoning toward the concept of development control, its nature is dramatically and perceptibly changed.

Four aspects of contemporary development control practice were examined in this chapter. These were: the emergence of, not one, but many different flexible regulatory systems that are based on the development control concept; the selective role that development control has played in relation to zoning; the desire to retain political control over administrative discretion under development control; and, the recognition and support of community planning policy as a basic prerequisite to development control practice.

As will be shown in Chapter V, these four aspects of contemporary development control practice are reflected in Alberta's direct control legislation.

FOOTNOTES

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7. Ian Mac F. Rodgers, Canadian Law of Planning and Zoning, (Toronto: Caswell Company, 1973), p. 144.
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12. Jan Krasnowiecki, "The Basic System of Land Use Control: Legislative Preregulation vs. Administrative Discretion", in The New Zoning: Legal, Administrative and Economic Concepts and Techniques, Norman Marcus and Marilyn W. Groves, Ed. (New York: Praeger Publishing, 1970), p. 70.
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17. Frederick Laux, "The Zoning Game: Alberta Style, Part II", in Alberta Law Review, Vol. X (1972), p. 36.
18. Clifford Weaver and Richard F. Babcock, City Zoning, The Once and Future Frontier, (Chicago, Illinois: Planners Press, American Planning Association, 1979), p. 119.
19. Patrick Kenniff, "Development Control in Canada: Evolution and Prospects", in Journal of Planning and Environmental Law, (July, 1974), p. 392-393.
20. Frederick Laux, "The Zoning Game - Alberta Style, Part II", in Alberta Law Review, Vol. X (1972), p. 36-37.
21. Patrick Kenniff, "Development Control in Canada: Evolution and Prospects", in Journal of Planning and Environmental Law, (July, 1974), p. 393.
22. Michael Meshenberg, The Administration of Flexible Zoning Techniques, (Chicago, Illinois: American Society of Planning Officials, 1976), p. 60.

CHAPTER IV

THE HISTORICAL CONTEXT OF THE DIRECT CONTROL LEGISLATION

4.0 PURPOSE

The purpose of this chapter is to examine the historical factors which have influenced Alberta's direct control legislation.

The chapter consists of two parts. First, the origin, evolution and eventual result of the Province's former development control legislation is reviewed. Second, the major problem that this legislation created in practice is identified. The attempt to resolve this past problem underlies the direct control legislation.

4.1 DEVELOPMENT CONTROL LEGISLATION AND PRACTICE IN ALBERTA

Although a relatively young province, Alberta has had a lengthy and varied experience with land use control. A notable feature of that experience has been the co-existence of zoning and development control legislation within the planning statute. Provincial planning legislation was first introduced in 1913¹, and subsequently consolidated in 1922². Following this a new and completely separate planning statute was introduced in 1928.³ However, zoning did not appear in a recognizable form until The Town Planning Act of 1929.⁴ The zoning system enabled through this Act drew heavily upon the American experience in theory and terminology and allowed municipalities to regulate such matters as use, building height, floor area, lot size and density

through zones applied to land⁵. Unlike the United States Standard State Zoning Enabling Act, the 1929 Act conferred on persons considering themselves to be "aggrieved by the provisions of the zoning bylaw" a right of appeal to a locally appointed commission and then to a Provincially appointed board.⁶ Zoning remained relatively unchanged through the depression years of the 1930's until the introduction of the 1942 Town Planning Act, which was actually a consolidation of amendments to the 1929 Act. This Act expanded the power of zoning to regulate billboards and signs along highways, the building of fences and the construction of chimneys.⁷

Zoning was the single method of regulating land use up until 1950 when amendments to the Town Planning Act⁸ provided a second method, interim development control. Interim development control was introduced through one of a series of revisions to the planning statute which resulted from the Bland-Spence Sales⁹ study of planning problems, commissioned by the City of Edmonton in 1949. The consultants concluded that Edmonton's zoning bylaw was too inflexible during periods of rapid change, such as the City was experiencing at that time and that the bylaw was out of date and required extensive review. A flexible form of regulation was needed during the period when a new zoning bylaw and general plan were being prepared.

Interim development control legislation enabled a local council, upon the passage of a resolution to prepare a general plan, to request the Provincial Minister responsible to issue an order authorizing the municipality to enact a development control bylaw. The order issued by the Minister would suspend the existing zoning bylaw until the adoption

of the general plan, at which time zoning would be reintroduced. The concept underlying interim development control was that each development submission would be assessed on its merits through a formalized administrative process. Section 69(2) of the 1953 Act¹⁰ clearly states this concept.

69(2) Control shall be exercised over the development within the municipality by the Council on the basis of the merits of each individual application for permission to develop, having regard to the proposed development conforming with the general plan being prepared.

The initial introduction of development control to the Province was followed by a series of amendments and one complete rewriting of the statute in 1963. These changes significantly altered development control practice resulting in a regulatory system that closely resembled zoning. Several authors have traced the evolution of development control in the Province from its inception in 1950 to its demise with the introduction of the Planning Act, 1977.¹¹ The intent is not to duplicate this effort but rather to review briefly the more relevant aspects of this evolution as they are seen to have influenced the direct control legislation.

4.1.1 Status of Development Control

As conceived in 1950, development control was considered to be a temporary means of control, to be exercised between the time a municipal council resolved to prepare a general plan and the completion of that plan. The 1963 Planning Act removed the term 'interim' from the phrase 'interim development control', but continued with the concept of

temporary control. Section 99(a) of the 1963 Act clearly required that zoning replace development control upon the adoption of a general plan by a council:

- 99 When a general plan is adopted,
- (a) the council shall proceed with the enactment of a zoning bylaw to regulate the use and development of land in the manner prescribed and within the area or areas referred to in the general plan.

Section 119(2) further provided that where a council adopted a general plan in respect to lands under development control, the council "shall pass a zoning bylaw with respect to those areas and the development control bylaw then ceases to apply to and within those areas."

Following the 1963 Planning Act, a series of amendments occurred which altered development control's temporary status. In 1967, an amendment to Section 99 of the Planning Act allowed specific areas to be regulated under development control, following the adoption of a general plan. This amendment was requested by the City of Calgary in order to allow the exercise of development control during the preparation and implementation stages of the City's downtown development plan.¹² A further amendment to Section 99 in 1970 appeared to allow development control to continue in effect throughout a municipality following the adoption of a general plan, or even to replace an existing zoning bylaw. However, in the case of Bobey vs. City of Edmonton,¹³ the court ruled that lands placed under zoning following the adoption of a general plan could not again be placed under development control at a later date, although the reverse held true. As the judge stated, "that procedure [taking land out of zoning following the adoption of a general plan, then back into development control] it seems

to me is a backward step in a process that contemplates moving forward from development control to zoning and not vice versa."¹⁴

Following another amendment to the Planning Act in 1972, the relevant section respecting the status of development control read as follows:

- 98(1) When a general municipal plan is adopted, the council
- (a) may continue to exercise development control over all or part of the land included in the general plan, and
 - (b) shall as soon as possible thereafter proceed with the enactment of a zoning bylaw to include those areas of land within the general plan in respect of which development control is not exercised.

This section could reasonably be interpreted to mean that following a resolution of the municipal council to prepare a general plan, the council, through an order issued by the Minister, was able to exercise development control continuously from that point on, either as a total replacement for, or in conjunction with zoning. Laux submits that:

"Although the intent of the Act is not clear, common sense would prescribe that a municipal council is authorized to employ development control as a planning tool at any time . . . after the municipal council has passed a resolution to prepare a general plan, but not otherwise. This is in keeping with the general principle that development control is capable of being a sound device for regulating land use only if decisions to permit or reject development are based upon some existing or emerging overall plan."¹⁵

Thus, aside from the rather simple precondition that a municipality resolve to prepare a general plan, two distinct regulatory concepts were available to municipalities. As shown in Table 4.1, prior to the coming into force of the current Planning Act in 1978, three situations

existed: (a) some municipalities exercised only development control [73 municipalities]; (b) some municipalities exercised only zoning [127 municipalities]; and (c) some municipalities exercised zoning and development control together in different areas of their jurisdiction [36 municipalities].

Development control practise was widespread, occurring in nearly half of the urban and rural municipalities in the Province. Ten of Alberta's thirteen cities exercised development control, with the City of Calgary relying exclusively on a development control system (Development Control Bylaw No. 7839 and 8600) from 1970 to 1979 and the City of Edmonton implementing development control in special situations, primarily within it's central business district, along commercial strips and in certain transitional residential neighbourhoods.

Rutter¹⁶ suggests that the shift in Provincial philosophy that occurred between 1950 and 1970, concerning the status of development control, can be attributed to three main factors:

- (a) Municipalities had become familiar with development control and were reluctant to reintroduce zoning, despite the adoption of a general plan.
- (b) The instances of municipalities not adopting zoning bylaws to replace development control bylaws were increasing; legislative changes were necessary to 'legalize' an apparent illegal situation.
- (c) Municipalities perceived the advantages development control had over zoning as a regulatory tool in certain situations and wished to retain its use.

TABLE 4.1
REGULATORY SYSTEM IN EFFECT IN ALBERTA
MUNICIPALITIES PRECEDING THE PLANNING ACT, 1977^a

REGULATORY SYSTEM	NUMBER OF MUNICIPALITIES		
	Urban Municipalities	Rural Municipalities	Total Municipalities
Zoning Bylaw Only	114	13	127
Development Control Bylaw Only	42	31	73
Both Zoning and Develop- ment Control Bylaws Enacted For Different Areas of the Municipality	27	9	36

^a The Planning Act, 1977, was proclaimed in effect on April 1, 1978. The figures represent the existing situation in the year immediately preceding the proclamation of the Act.

The figures contained in this table were compiled from the Zoning Bylaw and Development Control Bylaw Registers of the Alberta Municipal Affairs Department for the period 1970 to 1977. The registers record the passage and amendment of all zoning and development control bylaws in the Province during this time period. Since the registers did not contain cumulative annual totals of the number of municipalities adopting zoning and/or development control bylaws or bylaw amendments, these figures may be subject to slight error and should be viewed as approximate only.

The increase in development control's popularity, however, must be viewed in conjunction with the legislative changes that affected its basic character, and which allowed it to become, in practice, a form of zoning.

4.1.2 Character of Development Control

When first introduced in 1950 through revisions to the Town Planning Act, the development control legislation authorized a regulatory system similar to the British concept. However, its basic character was dramatically altered by the series of amendments that ensued. For example, the 1963 Planning Act created a development control decision-making process that was, structurally and procedurally, identical to that of zoning. Sections 104, 105, 109 and 110 defined the development permit application and issuance procedures, administrative powers and responsibilities, notification and approval processes, appeal rights and procedures and enforcement authority respecting development control. These sections did not differ substantially from comparable sections in the Planning Act relating to those same matters under zoning.

More importantly, the 1963 Act introduced regulatory mechanisms through which municipalities could apply regulations respecting the use of land under development control. The regulations could be applied by a resolution of the municipal council as opposed to a bylaw and could take the form of a land use classification guide, a schedule of permitted uses or a statement of specific development regulations. Subsection 106(1) and Section 107 of this Act, authorizing the application of rules by resolution, stated that:

106(1) A council may by resolution make rules respecting

- (a) the use of land in specific areas, or
- (b) any special aspects of specific kinds of development and the manner of their control by which the municipal planning commission, or development control officer shall be governed in dealing with applications.

107 A land use classification guide and a schedule of permitted land uses may be prepared and adopted by a resolution of a council under Section 106 for the purposes of development control, but such a guide is not part of the development control bylaw.

The regulations, guide and schedule were optional and, since they were applied to land by a resolution of the council and not a bylaw amendment, were not considered to be part of the development control bylaw. They could also be as general or as specific as desired with respect to the statement of land uses and development standards. In practice they tended to be applied by the local council in a detailed manner and to be rigorously adhered to by the administrative officer when reviewing development applications.

The typical development control bylaw from 1963 onward contained a land use classification guide, that was not considered to be part of the bylaw proper. The guide divided the municipality into districts and allocated a classification for each district (e.g. single family residential, apartments, primary commercial, etc.). The schedule, in turn, listed the specific uses allowed in each district and the development standards pertaining to each use. Thus, the development control bylaw came to resemble a zoning bylaw, although certain distinctions between zoning and development control still existed.

4.1.3 Distinction Between Development Control and Zoning

The application of rules to land by a resolution of council under development control generated considerable legal debate and controversy in the Province. Subsection 100(2) of the 1963 Planning Act, a carry-over from the earlier planning legislation, delegated authority under development control to regulate land use "on the basis of the merits of each individual application for permission to carry out a development". This section enabled a pure form of development control with no inherent right to develop property but only the right to make application for development permission. At the same time, Subsection 106(1) appeared to contradict this provision by authorizing a municipality to enact resolutions which were binding upon the administrative body. Kenniff, in commenting upon this apparent conflict in the Act, notes that:

"Such a practise [the statement of rules by resolution] cannot override the well-established rule that where a statute requires the exercise of discretion, a decision may not be made based upon a predetermined policy which precludes the exercise of discretion. In the present context, this would be tantamount to reducing the role of the officer or commission charged with exercising development control under the Alberta Act to one of applying the equivalent of a zoning bylaw."¹⁷

In view of the variety of legal and planning opinions on the subject, the Alberta courts, in the case of Figol vs. Edmonton City Council¹⁸, supported the view that rules applied by resolution under Subsection 106(1) were binding upon the administrative authority. This position was reaffirmed in the subsequent case of Pacific Development Ltd. vs. City of Calgary¹⁹ in which the judge stated that:

"It is open to council to require its development officer and planning commission [both administrative bodies acting pursuant to a development control bylaw] to give effect to the land use classification guide which it has resolved upon 'to facilitate', since these officials exercise only administrative functions. If an application for development is for a use permitted by the guide, the permit must be granted by the officials, if it is not for a permitted use, it must be refused."²⁰

The court determined in this same case that resolutions were not binding on a development appeal board, in the event of an appeal of an administrative decision. While a development appeal board could have regard to any regulations, schedule or guide established by a resolution of the municipal council, the board was under no obligation to abide by those rules. Thus, a development appeal board had the final decision-making authority regarding a development and wide discretion to approve or refuse a proposal. These judgments created a situation in which the regulatory system resembled zoning at the administrative level, and development control at the appeal level. Unlike zoning, however, there were no as-of-right uses under development control. All uses were discretionary and could be appealed to a development appeal board, who could then relax or even disregard the established regulations. Laux submits that although the development appeal board legally had wide discretionary powers, in practise the board tended to carefully follow the prescribed regulations, both in recognition of the wishes of the municipal council and through respect for the considerable professional and public input that had gone into their formulation.

4.2 A MAJOR PROBLEM WITH THE DEVELOPMENT CONTROL LEGISLATION

The development control legislation of the former Alberta Planning Act allowed a wide divergence to occur between theory and practise. In theory, development control represents a flexible and responsive form of land use regulation, achieved by means of a discretionary review process that awards development permission on the basis of merit and in accordance with established community planning policy. Indeed, the 1950 interim development control legislation was closely based on this theory.

Through successive revision and rewriting of the planning statute over the years, and, significantly with the introduction of 'resolution control' in the 1963 Planning Act, the original development control concept was substantially altered. What emerged in practise was a new form of discretionary zoning, zoning without the as-of-right use. This 'new' zoning, although more flexible than its traditional counterpart, still afforded certainty and protection for the landowner and ensured, through zoning regulations applied to land by a resolution of the council, political control over the administrative process. Thus, it was used extensively throughout the Province, often to the exclusion of traditional zoning in some municipalities.

The dual system of zoning and development control led to confusion among the planning and legal professions, developers and the general public, and resulted in some litigation. In addition, it undermined the original intent of the Province of allowing municipalities a clear choice between a flexible or a rigid regulatory system.

On the other hand, the legislation did produce a valid and effective form of zoning that was widely applied and strongly supported throughout the Province. It is within this context that the Province of Alberta introduced the present direct control legislation in its new Planning Act.

4.3 CONCLUSION

From its inception in 1950, Alberta's development control legislation underwent considerable revision, often as an incremental response to problems of the day. What eventually emerged was a form of land use regulation that was development control in name only; in actual fact it represented discretionary zoning. This 'new' zoning offered considerable advantages in certain situations over its conventional counterpart because of its flexibility; but, it did lead to confusion and a frustration of the original intent of the Province.

As the following chapter will show, the present Alberta Planning Act attempts to redefine the previous relationship between zoning and development control, ending the confusion that existed; preserve the option of discretionary zoning for municipalities; and affirm the established Provincial philosophy of allowing municipalities a wide regulatory choice in local land use control.

FOOTNOTES

1. Province of Alberta, An Act Relating to Town Planning, (Edmonton: March 25, 1913), c. 18.
2. Province of Alberta, The Town Planning Act, (Edmonton: 1922), c. 18.
3. Province of Alberta, An Act to Facilitate Town Planning and the Preservation of the Natural Beauty of the Province, (Edmonton: 1928), c. 48.
4. Province of Alberta, The Town Planning Act, 1929, (Edmonton) c. 49, Pt. II, S. 30-37 relating to zoning.
5. Taylor, in an unpublished manuscript entitled, The Development of Provincial Planning Legislation, contends that the forerunner to zoning was introduced in the 1913 An Act Relating to Town Planning in the form of the development scheme. In this original Act, the development scheme provided measures for the public control of land without compensation, the relevant section being Section 6.2.
6. Frederick Laux, "The Zoning Game: Alberta Style, Part II", in Alberta Law Review, Vol. X (1972), p. 1-38.

It is noted that the 1929 Act differed from the American model in two key ways with respect to the right of appeal. First, the initial appeal went not to an independent quasi-judicial board, as under the American system, but to the town planning commission, which would also have prepared the original zoning bylaw. That is what made the clause objectionable. It was also controversial, and the Act was amended in 1931 to authorize municipalities to create separate appeal boards. Second, the ultimate appeal in the American system was to the courts; in the Alberta system it was to another appointed tribunal, the Town and Rural Planning Advisory Board, the forerunner of the present Alberta Planning Board.

7. Province of Alberta, The Town Planning Act, 1942, (Edmonton), c. 169, Sections 22 to 29 relating to zoning.
8. Province of Alberta, An Act to Amend the Town Planning Act, 1950, (Edmonton), c. 71.
9. The Bland Spence-Sales Study, entitled, A Report on the City of Edmonton Concerning the State of Physical Development and Administration Under the Provisions of the Town Planning Act, 1929, presents a number of planning recommendations to the Edmonton City Council. The recommendation respecting interim development control was based on the perceived need by the consultants for

the City to revoke the existing zoning bylaw, since it was considered to be out of date. While preparing a General Plan and new Zoning Bylaw it was recommended that the City exercise development control. The consultants evidently borrowed the idea of interim development control from the British Town and Country Planning Act of 1932.

10. This section remained basically unchanged after its introduction in 1953 despite considerable amendment to the other aspects of the development control legislation between 1953 and 1977.
11. David G. Bettison, John K. Kenward and Larrie Taylor, Urban Affairs in Alberta, (Edmonton, University of Alberta Press, 1975); Frederick Laux, The Zoning Game: Alberta Style, Part II, Alberta Law Review, Vol. X (1972); J. West Munson, Development Control vs. Zoning: The Emergence of Land Use Controls in Alberta, (University of Calgary: Department of Political Science, Unpublished Masters Thesis, 1977).
12. David G. Bettison, John K. Kenward and Larrie Taylor, Urban Affairs in Alberta, (Edmonton: University of Alberta Press, 1975).
13. Bobey vs. City of Edmonton (unreported case no. 69658, April 1, 1971).
14. Bobey vs. City of Edmonton (unreported case no. 69658, April 1, 1971) as cited in Michael F. Futter, The Development Appeal Board: A Guide (Edmonton, Alberta: Rutter Crash Course, Ltd., Municipal Law Aid Series, Alberta Planning Law Handbook, 1978).
15. Frederick Laux, "The Zoning Game: Alberta Style Part II: Development Control, in Alberta Law Review, 10 (1972) p. 15. Laux also interprets Section 70 and 71 of the Planning Act to mean that once a resolution to prepare a regional plan is passed by a regional planning commission having jurisdiction in the area or a preliminary regional plan is prepared a municipal council would be authorized to implement a development control bylaw. These two sections state:
 - 70 Where a commission resolves to prepare and adopt a regional plan, each council having jurisdiction over any part of the regional planning area to which the regional plan is to apply shall
 - (a) exercise control over development in accordance with the terms of any existing development control bylaw enacted under Part 4, or
 - (b) in the absence of such a bylaw, apply to the Minister for authority to exercise development control in the manner provided by Part 4.
 - 71 Where a commission resolves to prepare and adopt a regional plan, and as soon as possible thereafter, the commission

shall prepare and adopt a preliminary regional plan by which development shall be governed in the exercise of development control under Section 70.

16. Michael F. Futter, "The Development Appeal Board: A Guide", (Edmonton, Alberta: Rutter Crash Course, Ltd. Municipal Law Aid Series, Alberta Planning Law Handbook, 1978), p. 289.
17. Patrick Kenniff, "Development Control in Canada: Evolution and Prospects", in Journal of Planning and Environmental Law, (July, 1974), p. 391.
18. Figol vs. Edmonton City Council, Western Weekly Reports, 71 (1970), p. 321.
19. Pacific Developments Ltd. vs. City of Calgary, Western Weekly Reports, 6 (1973), p. 406. Also see Eugene Dais, "Development Control in Calgary: The Case of the Fortuitous Hybrid", in Urban and Regional Planning in a Federal State: The Canadian Experience, William T. Parks and Ira M. Robinson, eds. (New York: McGraw-Hill Company, 1979), p. 269. Dais notes that Pacific Development applied for a 'permitted use' for a motor hotel. Under development control, however, the development appeal board was free to disregard the 'right' to develop and did so in response to community objections.
20. Pacific Developments Ltd. vs. City of Calgary, Western Weekly Reports, 6 (1973), p. 406.

CHAPTER V

THE INTENT OF THE DIRECT CONTROL LEGISLATION

5.0 PURPOSE

The purpose of this chapter is to explain the intent of the direct control legislation. The intent is expressed in the form of several objectives which the Province is attempting to achieve through this legislation. These objectives are derived from an interpretation of the relevant provisions of the planning statute enabling the exercise of direct control by municipalities in Alberta, and in particular from an interpretation of Section 70 of the Planning Act.

The chapter is divided into three parts. First, the land use bylaw is examined. This new regulatory instrument combines the zoning and development control bylaw of the former Act into a unified system of land use regulation. Second, the direct control legislation is described and its interpretative problems briefly discussed. Finally, the objectives of the direct control legislation are reviewed in detail.

5.1 THE LAND USE BYLAW

On April 1, 1978 the new Alberta Planning Act came into force. Its enactment was preceded by about five years of study and public debate, and the authors of the original working document, released in 1975, were instructed that the new Act was "to be the best in North

America . . . a blueprint for the planning and regulation of land use in the Province for the 70's and 80's."¹ One of the primary objectives of this Act was to take a fresh approach to municipal regulation. A rethinking of the zoning and development control concept in the planning statute resulted.

Under the 1963 Planning Act, local councils had two land use control options - the zoning bylaw and the development control bylaw. Either could be implemented exclusively (throughout the entire municipality) or together (in separate areas of the municipality). This dual system generated much confusion, particularly in those municipalities where both bylaws were used, as local councils tended to introduce a form of development control which resembled zoning. Nevertheless, the established Provincial philosophy of allowing municipalities a choice between either a rigid or a flexible form of land use control, to be applied as the situation required, was sound. In view of this, the new Act has combined zoning and development control into a unitary, less confusing system by means of a single instrument - the land use bylaw.

A land use bylaw is to be passed by all municipalities in Alberta having a population of 1,000 or more people in order that a local council "may prohibit or regulate and control the use and development of land and buildings"² throughout the municipality. The bylaw must establish the office of one or more development officers (the body responsible for making decisions and issuing permits in respect to development applications) and define procedures for the making of decisions, in accordance with the regulations in the bylaw. The procedural matters include: the process involved in applying for and deciding

upon development permit applications; the fees to be paid; the conditions of approval that may be applied to a development application; the time periods to be followed in processing development applications; the method of public disclosure and notification concerning a development approval; and similar matters incidental to the administration of the bylaw.³ As well, a council may establish land use regulations in the bylaw, either generally or with respect to a defined area of the municipality. The regulations may pertain to some nineteen different subject areas (e.g. parking, landscaping, density, lot size, architectural design, setback and height, signs, roadway access, etc.), as described in the Act.⁴

The land use bylaw must also divide the municipality into districts of such area and number as the local council considers appropriate.⁵ These districts may be of two types: zoning districts (although the planning statute has specifically avoided the term 'zoning' in reference to such districts) and direct control districts (the statute has replaced the term 'development control' with 'direct control' for reasons that will become apparent later in this chapter). Control within a zoning district is to be achieved by the mechanism of either the permitted or discretionary use. A zoning district, therefore, results in a comparatively rigid form of regulation for those areas of the municipality where it is applied. Conversely, in a direct control district, the local council is authorized to exercise control in any manner it considers necessary. A direct control district would, therefore, lead to a more flexible form of land use control and normally be applied in circumstances where zoning is considered to be less effec-

tive. Thus, through the land use bylaw a local council may implement a full spectrum of regulatory systems, from the most rigid to the most flexible, with each system applied to an area of land through either a zoning or direct control district, as appropriate. Laux, in his description of the inter-relationship between the zoning and the direct control district in the Alberta Act, states the following.

"If a development is proposed that is novel or that is at considerable variance with the existing zoning, the time consuming and expensive process of amendment must be initiated and proceeded with if the development is to be carried out. Often the development would not fit within any of the various [permitted or discretionary] uses or development standards, or both, prescribed in the land use bylaw. In such event, major textual changes may be necessary - changes that might be met with either considerable resistance or with the inertia inherent in governmental bureaucracy. . . . To accommodate a reasonably rapid adjustment to situations as they arise, it was considered appropriate to permit municipal councils to designate areas for special treatment without the need for listing uses or fixing development standards; hence, the concept of the direct control district has been formulated."⁶

The zoning district and the direct control district are not merely a translation and refinement of the zoning and development control powers of the former Act. On the contrary, as further analysis will show, some significant changes have occurred to both zoning and direct control in the new Act. These changes, particularly with respect to the direct control district, are intended to revise the nature of regulatory practice in Alberta.

5.2 THE DIRECT CONTROL LEGISLATION

Although reference to the direct control district occurs in various sections of the Planning Act, the principal legislation authorizing the practice of direct control by municipalities in Alberta, is found in Section 70. This section states:

- 70 (1) A council that has adopted a general municipal plan, if it considers it desirable to exercise particular control over the use and development of land or buildings within an area of the municipality, may in its land use bylaw designate that area as a direct control district.
- (2) If a direct control district is designated, the council may regulate and control the use or development of land or buildings in the district in any manner it considers necessary.

Because this enabling legislation is broad and imprecise in its wording, considerable uncertainty as to what was actually intended by the Province has been created. The lack of clarity has led one legal authority to comment that "it is a matter of pure speculation as to how the direct control legislation is to be exercised and administered."⁷

As discussed in Chapter I, the unclear wording has raised questions concerning the extent to which a direct control district may be applied to the land within a municipality by a local council; the regulatory mechanisms that could be introduced within a direct control district; the distinction between direct control and zoning; the means of administering a direct control system; and the intended relationship between the direct control district and the general municipal plan. As a result of these queries confusion and disagreement have been generated among planning and legal experts in the Province.

In addition to Section 70's lack of clarity in certain instances, a perceived gap exists between the spirit of the direct control concept and the actual wording of the statute. This perception is not one that can be demonstrated conclusively but is gleaned from reading the statute as a whole, from reviewing earlier drafts of the direct control legislation and from discussing the topic of direct control with those involved in the formulation of the original concept in the early 1970's. The situation complicates the interpretative problems that already exist.

Despite such difficulties, an interpretation of the legislation is offered here - an interpretation based upon an examination of the actual wording of the statute, and supported by published legal opinion, where available. Where, because of drafting ambiguities, conflicting viewpoints on the meaning of certain provisions exist, the interpretation given may be inconclusive. As well, the legislation frequently raises a number of fine points of administrative and case law which are not addressed here.

5.3 THE OBJECTIVES OF THE DIRECT CONTROL CONCEPT

An analysis of the direct control legislation, reveals four main objectives which the Province of Alberta is attempting to achieve through this legislation. These objectives are:

Selective Role

The Province intends to establish zoning as the predominant means of regulating land use within the community although direct control is available and may be applied selectively in situations where zoning is determined to be less effective. This is accomplished through the legislation by expanding the zoning power, allowing zoning to become more flexible in practice, and by placing implicit, although not severe, limitations on the extent of application of the direct control district within a municipality.

Individually Designed Regulatory Systems

The Province intends to allow the implementation of a direct control system specifically designed to meet the unique regulatory requirements and administrative capabilities of a community. This is accomplished through the legislation by authorizing a local council to exercise direct control in any manner it considers necessary.

Direct Political Responsibility

The Province intends to ensure that political responsibility is retained within a community's direct control system. This is accomplished through the legislation by requiring that decision-making power within a direct control district be ultimately exercised by the local council, as opposed to being subdelegated to an administrative body appointed by the council, as normally occurs with zoning.

Substantive Policy Base

The Province intends to ensure the existence of established planning policy as a prerequisite to the practice of direct control within the community. This is accomplished through the legislation by requiring a local council to prepare and adopt a general municipal plan prior to the application of a direct control district to an area of land. However, the relationship of the plan to the direct control district is left to the discretion of the local council.

In the remainder of this section the four objectives are examined in detail. This examination involves an interpretation of the planning statute, a review of the objectives in the context of contemporary development control practice (as discussed in Chapter III) and an examination of the problems incurred by the former development control legislation which the new legislation attempts to resolve (as discussed in Chapter IV).

5.3.1 Selective Role

The certainty, security and political control afforded by zoning has ensured its continued predominance within communities. Development control has typically been exercised selectively, in circumstances where flexibility and responsiveness in land use regulation are determined necessary. Thus, local councils have tended to use both rigid and flexible regulatory systems in different circumstances throughout the community.

Alberta's former Planning Act allowed considerable divergence to occur between development control theory and practice. Through the legislation, municipalities were able to evolve a fairly rigid regulatory system that was development control in name only. In actual fact, it was a unique type of zoning - zoning without the 'as-of-right' use. As this new discretionary zoning was used extensively by municipalities in the Province often to the exclusion of conventional zoning, considerable confusion resulted.

In the new Planning Act, the Province attempts to correct this former problem in two ways. Zoning power is redefined to include both traditional zoning and discretionary zoning (as it evolved out of the previous Act's development control legislation) and certain implicit limitations are placed on the extent to which a local council can exercise direct control within a municipality. The underlying purpose of these two measures, although not expressly stated in the Act, is to allow local councils to continue to practice either traditional or discretionary zoning, as they did in the past, while providing municipalities with a flexible regulatory alternative that can be used selectively in circumstances where zoning is determined to be less effective.

Legislative Basis

This objective is derived from an interpretation of Sections 69(2)(b) and 70 of the Planning Act. These two sections are examined respectively under the following headings: (a) broadening of the zoning power and (b) limitation on the application of direct control.

(a) Broadening the Zoning Power

Section 69(2)(b) of the Act states:

69(2) A land use bylaw shall

(b) unless the district is designated a direct control district pursuant to Section 70, prescribe with respect to each [zoning] district, in accordance with Section 71 and with or without conditions,

(i) the permitted uses of land or buildings, or

(ii) the discretionary uses of land or buildings,

or both;

This section requires that a zoning district, applied to an area of land within the municipality through the land use bylaw, must contain either a permitted use (as-of-right use) or a discretionary use (conditional use), or both.⁸ The prefix clause "unless the district is designated a direct control district" specifically excludes a direct control district from having to designate a permitted or discretionary use of land.

The word 'or' of Section 69(2)(b) indicates that a zoning district need not state a permitted use, only one or more discretionary uses. It is possible, therefore, for a council to apply to an area of land within the municipality a zoning district that does not contain an 'as-of-right' use. This represents a substantial departure from the former Act's approach, whereby every zoning district was required to contain at least one permitted use. Describing the difference between the present and former Act, in respect to the designation of uses under zoning, Laux states:

"The 1963 Act required that every zone established in a zoning bylaw list at least some permitted uses. By contrast, Sections 69(2) and 71(1) of the 1977 Act authorize a municipal council to designate the permitted uses or the discretionary uses or both, that may be allowed in a particular district. In other words, it would seem possible that some or all districts in a municipality need have only discretionary uses listed. Having regard to the nature of discretionary uses, the consequences are obvious."⁹

Essentially, a zoning district containing only discretionary uses would represent the practical equivalent of the new discretionary zoning that was introduced through the previous development control legislation; that is, zoning without the 'as-of-right' use as achieved through 'resolution control'. Municipalities could continue to practice this form of zoning under the new Act if they so desired. Thus, the zoning power, under the current Act, has been broadened by the Province so that it now encompasses both traditional zoning and discretionary zoning.

Although the statute is not clear on the point, the broadening of the zoning power in this way, would presumably be aimed at ending the former practice of 'resolution control'. Indeed, a zoning district containing only discretionary uses would appear the practical equivalent of zoning regulations applied to land by a resolution of the local council, as opposed to a bylaw, although legal differences may still exist. While the Act does not expressly prohibit 'resolution control', the intent of the Province can be reasonably presumed.¹⁰

(b) Limitation on the Application of Direct Control

In conjunction with the broadening of the zoning power, the Act has placed implied limitations on the extent to which a direct control district may be applied to land by a local council. The clause in Section 70(2) "within an area of the municipality" infers that a direct control district must be applied to a defined area in the community, and could not be used on a community-wide scale to the exclusion of zoning. At least some areas of the municipality must remain under zoning, although the choice as to which areas is left to the local council. This contrast with the former Act, which allowed development control to be exercised throughout an entire municipality at the discretion of the council.

In addition to the foregoing, the clause "if [the council] considers it desirable to exercise particular control" in Section 70(2) infers that direct control is to be used not as an indiscriminate replacement for zoning but only in selected circumstances, although the basis for its selection is not specified in the Act. It is up to a council to decide if direct control is appropriate, apparently using whatever criteria for selection it considers necessary. Thus, the statute is obscure concerning the circumstances in which direct control may replace zoning.

Laux comments as follows concerning the application of the direct control district within a community.

"How much of a municipality's area may be put within a direct control district or districts? Development control [1963 Planning Act] was exercised by the City of Edmonton with respect to about ten percent of

its total area. Other municipalities, including the City of Calgary, have at one time or another used development control as the exclusive means of regulating development within their boundaries. The [current] Act, although not clear on the point, seems to imply that [zoning] districts are to be the norm and direct control districts are to be created in exceptional circumstances where a council considers "it desirable to exercise particular control over the use and development of land" within a particular area."¹¹

5.3.2 Individually Designed Regulatory System

The movement of modern regulatory practice toward the concept of development control has not proceeded in a uniform, coordinated manner. Instead, communities have combined elements of traditional zoning and development control in various ways to create a wide spectrum of regulatory systems. Moreover, new systems are continually being modified and refined by communities to meet their own special planning needs.

The previous Act, by defining a certain development control system, implicitly prohibited other modern forms of development control not specifically mentioned. As a result, municipalities sometimes introduced regulatory systems that were not expressly sanctioned by this Act¹². This created a fertile ground for legal challenge in the courts. The present Act is much broader in its scope, delegating authority to a local council to design a flexible regulatory system which is 'tailor-made' to the unique planning and control requirements and capabilities of that community.

Conceivably, through a direct control district, a council could implement, as an alternative to a zoning district, an entirely original regulatory system (of the council's own design), any one of a number of

the more sophisticated regulatory concepts in use today (e.g. planned unit development, environmental impact assessment, bonus or incentive controls, a land use intensity system, etc.) or even a 'pure' form of development control (i.e. a discretionary review process in which development permission is granted on the basis of merit). As well, a council could apply these different regulatory systems to different areas of the community through the direct control district.

Legislative Basis

This objective is derived from an interpretation of Section 70(2) of the Planning Act. The clause "the council may regulate and control the use and development of land or buildings in any manner it considers necessary" enables a municipal council to design and implement a regulatory system of its choosing through the mechanism of the direct control district. Furthermore, a council could apparently design more than one direct control system and apply these various systems throughout a municipality as considered necessary. The Province has intentionally avoided the more prescriptive approach, of detailing a particular regulatory system in the statute, in favour of delegating wider responsibility in this regard to the local municipal level.

Elder observes that the direct control legislation is considerably broader in scope than its counterpart in the 1963 Planning Act, development control, which did not enable a council to practice the many contemporary forms of development control that exist. He indicates that through the more recent legislation, it would be possible to introduce a considerable variety of flexible regulatory systems including possibly, a transfer of development rights system.¹³

Thus, the zoning and the direct control district, taken together, allow a council to implement a fairly limitless number of regulatory systems. If the more rigid permitted and discretionary use mechanism of zoning is considered inappropriate, a council is able to invoke the powers of Section 70 and implement an alternative system of its own choice.¹⁴

5.3.3 Direct Political Responsibility

Development control shifts decision-making power from the political to the administrative level. This shift has been opposed on the basis that it can lead to arbitrary administrative action by non-elected decision-making bodies.

Under the former Act, local councils were able to retain political responsibility for development decisions within a development control system, through detailed regulations (uses and development standards) applied to land by a resolution of the council. The regulations were viewed as binding by the appointed administrative body and were usually adhered to. Thus, Alberta's development control became rigid, in practice, much like zoning.

Through the direct control legislation, the Province is attempting to allow a council to retain political responsibility within the decision-making process, without compromising flexibility. This is achieved by delegating exclusive decision-making power within a direct control district to the local council. Such power cannot, in turn, be subdelegated to an appointed administrative body as normally occurs

with zoning except in narrow and specific circumstances. Thus, the council is involved 'directly' in development decisions affecting the community.

Legislative Basis

This objective is derived from an interpretation of Section 70(2) of the Planning Act. The clause in Section 70(2), "The council may regulate and control" seems to delegate decision-making authority respecting development matters within a direct control district exclusively to a local council. This contrasts with the zoning district where the decision-making authority is clearly to be exercised by an appointed administrative body, namely the development officer or municipal planning commission. As far as the meaning of Section 70(2) is concerned, Laux states:

"must a municipal council itself pass upon any and all development proposals in such a district as they are advanced, or can it delegate the authority to either a development officer or a municipal planning commission, as it does in respect to a [zoning] district? The use of the phrase 'direct control district' and the wording of Section 70 would seem to suggest that the Legislature intended that a council have exclusive authority to exercise all of the decision-making powers relative to a development in such a district. On the other hand, it would seem somewhat impractical to compel a council to effect the day-to-day administration of development in direct control districts. Hence, although the power to subdelegate is not expressed, it may be explicit due to necessitous circumstance."¹⁵

Elliot, in discussing the ability of a local council to subdelegate decision-making powers to an appointed administrative body within a direct control district, cites the following rule:

"The general rule is, and this has been propounded with increasing frequency by Canadian courts, that in the absence of express statutory authority, a power that is 'quasi-judicial' or 'discretionary' may not be subdelegated.

What I mean by subdelegation is that the Act says that a council must do something - that is delegation of authority. If the council then delegates again to someone else, that is subdelegation. Subdelegation is not permitted, unless there is express statutory authority for it".¹⁶

Elliot maintains that the Act intended that the local council should make all decisions in respect to direct control districts and should not subdelegate such authority to appointed administrators. However, he allows that subdelegation may occur where the ultimate decision-making authority is retained by the council in some manner.¹⁷

"The key to this question [of subdelegation under direct control] is whether the council retains ultimate control and exercises that control. There has been some question as to how that works and the decision would depend upon the facts of each case. The courts have merely said that as long as the council retains the ultimate decision respecting the granting or withholding of a permit, then the bylaw cannot be successfully attacked even if the administrative work is delegated to an officer. . . . As long as there is clearly within the organisation a right to get to council and it is clear that they not only have, but exercise, the ultimate decision-making power. But if you just left the direct control district in the hands of the development officer, I think that could be easily challenged."¹⁸

Therefore, it appears that while no specific reference to a development officer's authority in a direct control district is found in the Act, subdelegation was contemplated, but in a narrow and defined sense. In this context, it should be noted that subdelegation cannot result in the transfer of real decision-making power from the political to the administrative level.

The question also arises as to whether there is a right of appeal from a decision made by a municipal council to a quasi-judicial development appeal board. Section 83(3), which authorizes the right of appeal on a development matter, states:

83(3) If a development officer

(a) refuses or fails to issue a development permit to a person,

(b) issues a development permit subject to conditions,

or,

(c) issues an order under Section 81,

the person applying for the permit or affected by the order under Section 81, as the case may be, may appeal to a development appeal board according to this division.

The clause "if a development officer" appears to limit the right of appeal under the Act to only those decisions made by a development officer. The right of appeal from a decision made by a local council is not specifically authorized in this section, or elsewhere in the Act. Elliot submits that where a council makes a decision on a development application in a direct control district, no appeal was intended by the Province.

"Section 83(3) of the Act gives anyone affected by a decision of a development officer a right of appeal to a development appeal board. There is no explicit right of appeal given in respect to a direct control district and so technically there is no statutory right of appeal.

The intention was to provide for particular control designed to meet the circumstances of each case. It was not intended that there should be anything from which to appeal."¹⁹

In spite of this view, the right of appeal under direct control remains unclear at this time. Certain legal opinion in the Province holds that this right is implicit through the wording of Section 83 on any development decision made pursuant to a land use bylaw, for either a zoning or direct control district. Furthermore, if subdelegation of

decision-making power to a development officer occurs within a direct control district (even though the council retains ultimate decision-making authority in some manner) the right of appeal may well exist, based on a strict interpretation of Section 83.

The two issues of subdelegation and appeal within a direct control district are difficult and confusing, and raise a number of fine points of law. At this time, there is uncertainty - first, about the intention of the statute and, second, about the interpretation the courts would place upon it. The differing opinions that now exist may eventually only be resolved by the courts.

5.3.4 Substantive Policy Base

The exercise of development control is predicated on the existence of established community planning policy to guide and direct the discretionary decision-making process, and to ensure that decisions are not made in an arbitrary or 'ad hoc' manner.

The previous Planning Act allowed municipalities to practice development control prior to adopting a community plan, provided such a plan was under preparation. This created the anomaly of a discretionary regulatory system being introduced at precisely the time when no established planning policy was in existence. On the other hand, the new Act requires that a local council prepare and adopt a general municipal plan as a precondition to applying a direct control district to land within the municipality. This measure is imposed by the Province, presumably, to ensure the existence of some level of planning

policy to guide the direct control process. However, the Act does not prescribe the manner in which the general municipal plan must deal with the direct control district; nor does it require that the general municipal plan and the land use bylaw conform.²⁰ These matters are left to the judgement of the local council.

The Act further enables a council to adopt more detailed plans (termed area structure plans and area redevelopment plans) for defined areas of the municipality. These detailed plans are not required as prerequisites to the implementation of the direct control district, but may be implemented at the option of a local council.

Legislative Basis

This objective is derived from an interpretation of Section 70(1) of the Planning Act. The clause "a council that has adopted a general municipal plan" requires the local council to prepare and adopt a general municipal plan prior to implementing a direct control district.

Section 63 describes the contents of a general municipal plan as follows:

- 63 A general municipal plan shall
 - (a) describe
 - (i) the land uses proposed for a municipality;
and
 - (ii) the manner of and the proposals for future development in the municipality;
 - (b) designate or describe the areas of the municipality that would, in the opinion of the council, be suitable for an area structure plan or area redevelopment plan or both;
 - (c) contain any other matters that the council considers necessary.

This section places no mandatory requirements on a local council to deal with direct control in a particular manner within a general municipal plan. Elliot indicates that although the Province has chose to leave the relationship between the general municipal plan and direct control up to the municipality, some policy statement in the plan respecting direct control was implied.

"As you know, a direct control district can be designated . . . if there is in effect in the municipality a general municipal plan. The scenario that was envisioned in drafting the Act was that the general municipal plan rather than designating a particular area as being a direct control district would indicate:

- (a) the types of areas where a direct control district might be imposed, and
- (b) describe, at least in general policy terms, the types of development control that would or might be applied in a direct control district.

I don't think that the description in the general municipal plan need or should be specific but I think some mention of the type of control envisioned in a direct control district would be worthwhile in the plan."²¹

5.4 CONCLUSION

The new Alberta Planning Act has combined the zoning and development control bylaw of the previous Act into a unified system through the land use bylaw. This bylaw allows a council the choice of a wide range of regulatory systems (from the most rigid to the most flexible), to be applied in separate areas of the community by means of either a zoning or a direct control district. However, direct control is not to be viewed as the equivalent of its forerunner, development control. On

the contrary, basic changes to the planning legislation have been made which are intended to revise the nature of 'development control' practice in Alberta.

In analysing the direct control legislation, the four main objectives of this legislation are identified. These objectives are as follows: selective role; individually designed regulatory system; direct political responsibility; and, substantive policy base. The objectives reflect both an attempt to resolve the historical problems that originated with the Province's previous development control legislation and a recognition of certain aspects of contemporary development control practice in North America.

The following chapter evaluates the extent to which municipal practice in Alberta has met these four objectives of the direct control legislation.

FOOTNOTES

1. Province of Alberta, Towards a New Planning Act for Alberta, (Edmonton: Municipal Affairs, 1974), p.1
2. Province of Alberta, Section 69(2), Planning Act, C. P-9, R.S.A. 1980.
3. Province of Alberta, Section 69(2)(c), (d) and (e), Planning Act, C. P-9, R.S.A. 1980.
4. Province of Alberta, Section 69(3), Planning Act, C. P-9, R.S.A. 1980.
5. Province of Alberta, Section 69(2)(a), Planning Act, C. P-9, R.S.A. 1980.
6. Frederick Laux, "The Planning Act (Alberta)", (Vancouver, B.C.: Butterworth and Co., 1979), p. 38.
7. Ibid, p.38.
8. Section 71(1), (2) and (3) of the Planning Act requires that a zoning district designate permitted and discretionary uses and defines the authority of the development officer in relation to these uses. The Section states:
 - 70(1) Subject to Section 70, on the establishment of [zoning] districts under a land use bylaw, the Council shall prescribe in the bylaw
 - (a) the one or more uses of land or buildings that are permitted in each district, with or without conditions, or
 - (b) the one or more uses of land or buildings that may be permitted in each district in the discretion of the development officer, with or without conditions,
 or both,
 - (2) When a person applies for a development permit in respect of a development permitted by a land use bylaw pursuant to Subsection 1(a), a development officer shall, if the application otherwise conforms to the land use bylaw, issue a development permit.
 - (3) When a person applies for a development permit in respect of a development that may, in the discretion of the development officer, be permitted pursuant to

Subsection 1(b), the development officer may issue a development permit.

Section 71(2) imposes an obligation on a development officer to issue a permit where a development is for a permitted use and otherwise conforms to the bylaw. The permitted use under the Alberta Act, therefore, is the equivalent of the 'as-of-right' use of the traditional zoning concept.

Section 71(3) allows a development officer to issue a permit subject to his discretion where the development is for a discretionary use. Thus, the officer is able to exercise individual judgment, in granting of development permission, although he is still constrained by the uses stated and any corresponding development standards. The discretionary use, therefore, is the equivalent of the 'special' or 'conditional' use of the traditional zoning concept, whereby development permission is not granted automatically upon compliance with the regulations but may be withheld for valid planning reasons.

9. Frederick Laux, "The Planning Act (Alberta)", (Vancouver, B.C.: Butterworth and Co., 1979), p. 37.
10. Section 99(2) of the Alberta Municipal Government Act deals with the exercise of the powers and duties of a local council by means of either resolution or bylaw. The section states:

99(2) Except as provided in this or any other Act, a council may exercise and perform the powers and duties imposed or conferred on it either by resolution or by bylaw.

Since the Alberta Planning Act does not prohibit the regulation of land use in a municipality by resolution, a council could apparently exercise control in this manner within a direct control district (i.e. resolution control).

It is submitted, however, that this form of regulation was not intended to continue under the new Act for the following major reasons.

- (a) In contrast to the 1963 Planning Act, the Province makes no reference to 'resolution control' anywhere in the new Act. Matters respecting the application of regulations to land by resolution, their effect on the administrative and appeal process under the land use bylaw and the procedure to be followed in the amendment of a resolution (public disclosure, notification, hearing) are absent.
- (b) The broadening of the zoning power to encompass discretionary zoning would appear to make 'resolution control' a duplication of zoning's practical capabilities under the

new Act. The benefits or advantages to be gained by applying zoning regulations to land by means of a resolution within a direct control district, therefore, are not apparent and may not exist.

11. Frederick Laux, "The Planning Act (Alberta)", (Vancouver, B.C.: Butterworth and Co., 1979), p. 39.
12. For example, the City of Edmonton through its Comprehensive Development Zone (Zoning Bylaw No. 2135) practiced 'contract zoning', a flexible regulatory technique not authorized within the 1963 Planning Act.
13. P.S. Elder, "The Alberta Planning Act", (Alberta Law Review, Vol. XVIII, No. 2; 1980), p. 440-446.
14. The Act is ambiguous as far as the distinction between the zoning power and direct control power in a land use bylaw is concerned. In other words, the Act does not explicitly define the point where zoning ends and direct control begins. Laux maintains that zoning, through the permitted and discretionary use concept, relies on fixed and objective regulation (precisely defined uses and development standards) whereas direct control implies subjective regulation (through performance standards or a discretionary review process).

"The Planning Act contemplates that where a permitted use is listed, the development regulations pertaining to that use must contain fixed and objective standards with little or no discretion in the development officer. It is implied that where the development regulations in respect of permitted uses afford substantial discretion to the development officer, there is a basic inconsistency with the spirit and intent of the Planning Act vis-a-vis permitted uses and, therefore, there is a measure of illegality. This view has much merit. Indeed, a strong argument can be raised that development regulations in a land use bylaw are to have fixed and objective standards for both permitted and discretionary uses. . . . its is arguable that the Legislature intended that for those areas of the community for which fixed and objective development regulations could not be adequately prescribed, the council is to resort to employing the direct control powers of Section 70 and not to resort to conferring broad discretion on the development officer relative to development regulations in [zoning] districts."

Although this general distinction between zoning and direct control is drawn, no sharp division is expressed in the Act. Section 69(2)(b) requires a zoning district to state a permitted or discretionary use of land, but exempts a direct control district from having to do so. However, the wording of this section does

not preclude a direct control district from regulating land by means of a permitted or discretionary use. Presumably, a local council could introduce a direct control system that contains a permitted or discretionary use, provided such a system employs a measure of subjective regulation not available through the zoning power. For example, a direct control district may allow single family dwellings 'as-of-right' but require more complex housing projects to be assessed on their merit, based on subjective criteria or performance standards.

Despite the fact that the Act creates no explicit division point between zoning and direct control, one may exist. It seems logical to argue that a direct control system cannot merely duplicate the zoning power by containing only objective regulations in the form of permitted or discretionary uses. Such a system would, by definition, be a zoning system. A direct control system must employ some regulatory mechanism or level of discretion that cannot be employed under zoning.

15. Frederick Laux, "The Planning Act (Alberta)", (Vancouver, B.C.: Butterworth and Co., 1979), p. 37.
16. Province of Alberta, Proceedings of the Land Use Bylaw Workshop, 1979, (Edmonton: Department of Municipal Affairs, 1979), p. 51.
17. Ibid, p. 51.
18. Ibid, p. 51.
19. Ibid, p. 52
20. In regard to the absence of any express requirement in the Act that the land use bylaw conform to the general municipal plan, Laux, in The Planning Act (Alberta), states:

"What is the purpose of having a general municipal plan if a land use bylaw need not conform to the plan? In other words, if a municipality is entitled to prepare and adopt a general municipal plan and then proceed to ignore it in the planning document that really counts, the land use bylaw, it is obvious that the whole purpose and intent of the general municipal plan would be defeated. It follows from that logic that the Legislature must have intended that there be at least substantial, if not complete, conformity between the two documents. Hence, if certain land use designations found in a land use bylaw, either on the first passing of the bylaw or later by amendment, are at complete variance with the spirit and intent of the general municipal plan, it would seem arguable that such designations would be 'ultra vires'. This result, it is suggested, is necessary to

ensure that a municipal council, after having so carefully laid out the scheme of things to come in the plan, does not proceed to regulate land use in an ad hoc and narrow fashion without regard to general planning."

21. Province of Alberta, Proceedings of the Land Use Bylaw Workshop, 1979, (Edmonton: Department of Municipal Affairs, 1979), p. 50.

CHAPTER VI

THE IMPLEMENTATION OF THE DIRECT CONTROL LEGISLATION

6.0 PURPOSE

The purpose of this chapter is to determine if local municipal practice in Alberta is meeting the intent of the direct control legislation.

The chapter is divided into two parts. First, the number, status and regional location of municipalities in the Province exercising direct control are identified. Second, municipal practice is examined in relation to each of the four objectives of the direct control legislation identified in Chapter V, and the extent to which these objectives have been met is evaluated.

6.1 DIRECT CONTROL PRACTICE IN ALBERTA

The research suggests that municipalities in Alberta have not made extensive use of direct control as its implementation is limited primarily to the larger urban centres in the Province, and a few rural centres. In total, twenty-six municipalities in the Province, twenty-one urban and five rural, were found to have implemented Section 70 by applying a direct control district to lands within their jurisdiction. These figures do not include a number of municipalities that have placed direct control legislation within their local land use bylaw but have not applied the district to land. In these situations, the muni-

cipality was assumed to be holding direct control in abeyance and would be prepared to apply it to land in the future, should the need arise. These municipalities were not included in the research.

Table 6.1 indicates that although the implementation of direct control varies with the status and population of the municipality, its use is generally associated with major urban centres and those municipalities facing the greatest growth pressures. Of the twenty-one urban municipalities implementing direct control, eleven (44%) are cities, nine (36%) are towns and one (4%) is a village. Four (16%) of the five rural municipalities implementing direct control are counties and one (4%) is a municipal district. All but two of Alberta's thirteen cities have implemented direct control, the exceptions being Leduc and Lloydminster. Leduc has only recently become a city (September 1, 1983) while Lloydminster, situated partly within the Province of Saskatchewan, applies zoning uniformly throughout its jurisdiction.

The small urban centres which have implemented direct control tend to be either larger in population, relative to most other towns and villages in the Province, or situated within the commutershed of major cities that are facing significant development pressures. The majority of towns and villages in the Province have not implemented direct control; nor have any summer villages, improvement districts or special planning areas.

The five rural municipalities which have implemented direct control are all situated adjacent to large urban centres. Those rural municipalities in the Province that have a small population, are clearly rural in character or are not close to large urban centres, have not implemented direct control.

TABLE 6.1
IMPLEMENTATION OF THE DIRECT CONTROL DISTRICT
BY MUNICIPALITIES IN ALBERTA

MUNICIPALITY	STATUS	POPULATION ^a	PROVINCIAL PLANNING REGION
<u>Urban Municipalities</u>			
Calgary	City	620,692	Calgary
Edmonton	City	560,085	Edmonton Metropolitan
Lethbridge	City	58,086	Oldman
Red Deer	City	50,257	Red Deer
Medicine Hat	City	41,167	Southeast
St. Albert	City	35,032	Edmonton Metropolitan
Fort McMurray	City	34,494	Municipal Affairs Region
Grande Prairie	City	24,076	South Peace
Camrose	City	12,809	Battle River
Wetaskiwin	City	10,022	Battle River
Drumheller	City	6,671	Palliser
Spruce Grove	Town	11,307	Edmonton Metropolitan
Brooks	Town	9,421	Southeast
Innisfail	Town	5,444	Red Deer
Stony Plain	Town	5,291	Edmonton Metropolitan
Morinville	Town	5,109	Edmonton Metropolitan
Devon	Town	3,931	Edmonton Metropolitan
Sylvan Lake	Town	3,779	Red Deer
Beaumont	Town	3,202	Edmonton Metropolitan
Calmar	Town	1,118	Edmonton Metropolitan
Delbourne	Village	555	Red Deer
<u>Rural Municipalities</u>			
Parkland	County	23,626	Edmonton Metropolitan
Leduc	County	13,296	Edmonton Metropolitan/ Battle River
Camrose	County	7,564	Battle River
Ponoka	County	7,536	Battle River
Sturgeon	Municipal District	13,682	Edmonton Metropolitan

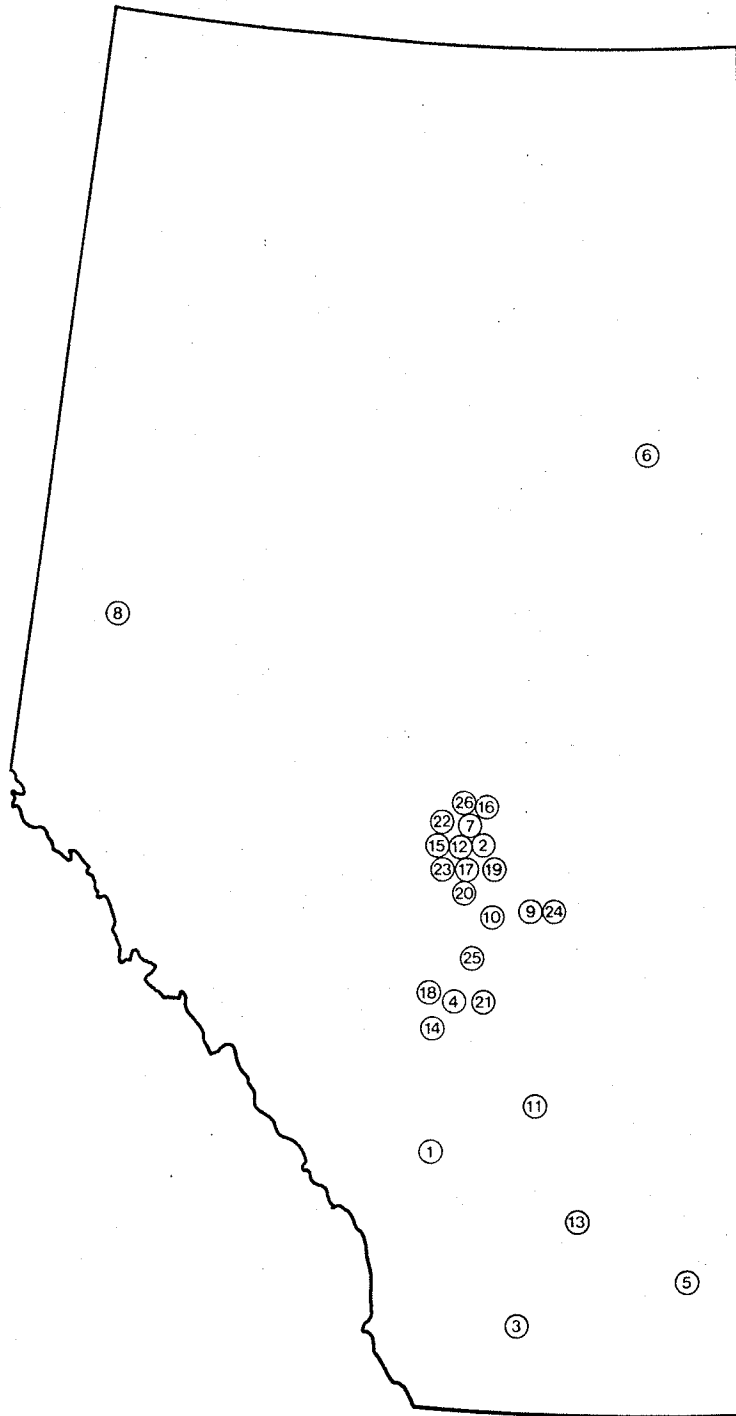
^a 1983 Population Figures obtained from Alberta Municipal Affairs.

As shown on Plate 6.1 the level of implementation also varies with the location of municipalities. Central Alberta, which is comprised of the planning regions of Red Deer, Battle River, Edmonton Metropolitan and Calgary, has experienced the highest level of implementation (20 municipalities). This can be explained by the rapid rate of growth occurring within the Edmonton-Calgary corridor and the 'urban shadow' effect of the cities of Red Deer and Edmonton. The lowest incidence of implementation occurs in the northern and southern portion of the Province, specifically the Southeast, Oldman, Palliser, Yellowhead and South Peace planning regions. The relatively small population within these areas and their predominantly rural function could explain their limited use of direct control. No municipalities in the newly created McKenzie Planning Region, located in the extreme north of the Province, have implemented direct control.

The timing of the implementation of direct control by municipalities usually corresponds with the adoption of the land use bylaw. All of the land use bylaws were adopted prior to 1982, although the County of Leduc and the City of Fort McMurray have both undertaken a comprehensive rewriting of their land use bylaws since their initial adoption. All the municipalities cited their experience with direct control as being less than five years. However, regulatory systems resembling direct control were in effect in Edmonton and Calgary prior to the introduction of the new Act in 1978.

PLATE 6.1

IMPLEMENTATION OF DIRECT CONTROL IN ALBERTA



URBAN MUNICIPALITIES

- ① Calgary
- ② Edmonton
- ③ Lethbridge
- ④ Red Deer
- ⑤ Medicine Hat
- ⑥ Fort McMurray
- ⑦ St. Albert
- ⑧ Grande Prairie
- ⑨ Camrose
- ⑩ Wetaskiwin
- ⑪ Drumheller
- ⑫ Spruce Grove
- ⑬ Brooks
- ⑭ Innisfail
- ⑮ Stony Plain
- ⑯ Morinville
- ⑰ Devon
- ⑱ Sylvan Lake
- ⑲ Beaumont
- ⑳ Calmar
- ㉑ Delbourne

RURAL MUNICIPALITIES

- ㉒ Parkland
- ㉓ Leduc
- ㉔ Camrose
- ㉕ Ponoka
- ㉖ Sturgeon

6.1.1 Character of the Municipal Direct Control Legislation

An examination of the municipalities' land use bylaws reveals considerable variation in the character of their direct control legislation. This variation can be explained by the general wording of Section 70, which imposes no requirements with respect to the content of the local legislation. The legislation of six (24%) of the municipalities examined is completely lacking in detail, with the direct control legislation either repeating or paraphrasing the wording of Section 70 but providing no additional details in the text of the land use bylaw. In some of the remaining twenty municipalities (80%) the legislation is highly descriptive, defining in detail the intent, purpose and components of the direct control system, while in others the degrees of detail vary, with certain components of the direct control system cited but others omitted.

As shown in Table 6.2, seventeen municipalities (68%) have enacted only one type of direct control district through their land use bylaws. In contrast, nine municipalities (36%) have enacted two or more, to a maximum of five, direct control districts through their land use bylaws.

TABLE 6.2
NUMBER OF DIRECT CONTROL DISTRICTS CONTAINED
WITHIN MUNICIPAL LAND USE BYLAW

NUMBER OF MUNICIPALITIES	NUMBER OF DIRECT CONTROL DISTRICTS CONTAINED WITHIN LAND USE BYLAW
17	1
5	2
1	3
1	4
2	5
<hr/>	
TOTAL NUMBER OF MUNICIPALITIES: 26	

Where municipalities have two or more direct control districts, the land use bylaw tends to be explicit and detailed, describing the objectives of each district, the regulatory technique employed and, in a few cases, the decision-making process. For example, the City of Edmonton has enacted five direct control districts through its land use bylaw. Each of the City's direct control districts is described in detail in the land use bylaw with respect to the intent of the district, the circumstances when it would be applied to land, the method used to regulate lands situated within the district and the decision-making process and procedures to be followed when reviewing development applications. Samples of the City's direct control legislation are found in Appendix III.

Five urban municipalities (Spruce Grove, Morinville, Devon, Beaumont, Calmar), all situated within the Edmonton Metropolitan planning region, have adopted direct control legislation modelled, in part, on the City of Edmonton's. Discussions with planning commission staff indicated that the Edmonton land use bylaw served as a general model for the smaller urban municipalities in the region and, consequently, the direct control legislation of these municipalities tends to be similar to the City's. Aside from this situation, the municipal direct control legislation appears to differ for each municipality in the Province, although the differences may not be substantial.

The remainder of this chapter examines the specific manner in which municipalities are implementing Section 70 of the Planning Act in relation to the four main objectives of this legislation, namely: selective role; individually designed regulatory system; direct politi-

cal responsibility; and substantive policy base. The extent to which local practice is meeting these objectives and the problems encountered are determined.

6.2 SELECTIVE ROLE

This section examines local practice to determine if municipalities are meeting the selective role objective of the planning legislation by applying direct control, not as an exclusive or indiscriminate replacement for zoning, but in specific circumstances where zoning is considered to be less effective.

The Effect of the Broadening of the Zoning Power

The research indicates that the broadening of the zoning power under the new Alberta Planning Act has been understood and accepted by municipalities, and has redefined local regulatory practice in the Province. Table 6.3 compares the form of land use control employed by municipalities under the former and the present Planning Acts.

Under the 1963 Planning Act, one hundred twenty-seven municipalities exercised zoning exclusively throughout their jurisdiction, seventy-three municipalities exercised development control exclusively and thirty-six municipalities exercised both zoning and development control together, in separate areas. A total of one hundred and nine municipalities, therefore, exercised development control either exclusively or in conjunction with zoning within their respective jurisdictions.

TABLE 6.3

COMPARISON BETWEEN THE FORM OF LAND USE CONTROL USED BY MUNICIPALITIES
IN ALBERTA UNDER THE 1963 PLANNING ACT AND THE NEW PLANNING ACT

PLANNING ACT	FORM OF LAND USE CONTROL		
PLANNING ACT 1963	Zoning Bylaw Only	Development Control Bylaw Only	Both Zoning and Development Control Bylaw ^b
Number of Muni- cipalities Engaged in Practice ^a	127	73	36
NEW PLANNING ACT	Zoning District Only ^c	Direct Control District Only	Both Zoning District and Direct Control District ^d
Number of Muni- cipalities Engaged in Practice ^e	334	0	26

^a Figures obtained from Table 4.1 of the study.

^b The zoning bylaw and the development control bylaw could be adopted by a local council for separate areas of the same municipality in accordance with the 1963 Planning Act.

^c All municipalities in the Province that have adopted a land use bylaw use the zoning district.

^d The zoning district and the direct control district may be applied in separate areas of the same municipality through a land use bylaw in accordance with the new Alberta Planning Act.

^e This figure assumes that all municipalities in Alberta have a land use bylaw in 1983. It is acknowledged, however, that this figure may be subject to slight error as a few villages and summer villages with populations of less than 1,000 population have not adopted a land use bylaw, although they are likely to do so in the future.

These figures changed substantially after 1978. Specifically, all municipalities in the Province currently regulate land use within their jurisdiction through the zoning district; conversely, no municipalities rely exclusively on the direct control district. Twenty-six municipalities were found to regulate land use by means of the direct control district, applied in conjunction with the zoning district.

This transformation in regulatory practice under the new Alberta Act can be attributed not to a radical shift in municipal preference, but to the Act's broadening of the zoning power by merging traditional zoning and discretionary zoning (as achieved through the development control legislation of the previous Act) into a single regulatory mechanism - the zoning district. The zoning district allows municipalities to practice either the more conventional 'as-of-right' method of regulation, a discretionary method of regulation that is a practical equivalent of resolution control, or some combination of the two. As a result, the direct control district has been applied to land by a relatively few municipalities in circumstances where a degree of regulatory flexibility that cannot be achieved through the zoning district is required.

Selective Application of the Direct Control District

Table 6.4 shows the extent of application of the direct control district by municipalities in Alberta.

TABLE 6.4

EXTENT OF APPLICATION OF THE DIRECT CONTROL DISTRICT BY MUNICIPALITIES

EXTENT OF APPLICATION	NUMBER OF MUNICIPALITIES ^a	PERCENTAGE OF TOTAL NUMBER OF MUNICIPALITIES
LIMITED APPLICATION (sites less than ten acres in size on a selective basis)	19	76.0
EXTENSIVE APPLICATION (sites greater than ten acres in size on a selective basis)	23	92.0
EXTENSIVE NON-SELECTIVE APPLICATION (sites greater than ten acres in size on a non-selective basis)	1	4.0
TOTAL NUMBER OF MUNICIPALITIES: 26		

^a Because some municipalities apply the direct control district in both a limited manner and over extensive areas of land depending upon the situation, a municipality may be recorded in more than one category.

As shown in the table, nineteen municipalities (76%) have applied the direct control district to limited areas of land (sites less than ten acres in size) within their jurisdiction. The purpose of applying direct control in these circumstances varies widely but, generally, the concept was used to achieve 'special' control over major, comprehensively planned development projects (shopping centres, innovative housing projects), environmentally sensitive areas (river valleys), lands governed by superior Federal or Provincial legislation (airports, railways, universities, National Defence properties), historical sites (architecturally or historically significant buildings or areas),

municipally-owned lands (parks and open space), transitional use parcels (in older residential neighbourhoods or adjacent to the central business district) and sites whose future development cannot be readily predetermined. In these situations, the direct control district allowed a local council to review and respond to a development proposal at the time of its submission, instead of through preregulation as is the case with zoning.

The direct control district was also applied to extensive areas of land (sites greater than ten acres in size) by twenty-three municipalities (92%). Thirteen of these municipalities (62%) exercised direct control extensively to achieve special control in a particular situation. For example, five urban municipalities have applied a direct control district to large tracts of land governed by legislation superior to the local land use bylaw. Such areas include: river valleys controlled by the Provincial Restricted Development Area Regulation; Federal Department of National Defence Properties; Canadian National or Canadian Pacific Railway lands under the Railways Act; university land under the University Act; and other Provincially and Federally regulated areas. Direct control, applied in such circumstances, acknowledges limited municipal jurisdiction in land use regulation, while permitting some degree of local control over planning matters.

Ten municipalities (40%) applied direct control extensively to achieve temporary control either (a) pending the preparation and adoption of a secondary plan in a defined area of the community (e.g. an area redevelopment plan for the downtown) or (b) as a 'holding dis-

trict' for large tracts of raw land on the periphery of an urbanized area. In the first situation, four municipalities (Edmonton, Spruce Grove, Beaumont, Stony Plain) have exercised direct control on an interim basis in parts of or throughout their central business district or in transitional residential neighbourhoods. The purpose of 'interim' direct control is to ensure that development taking place within these defined planning areas does not prejudice the objectives of a secondary plan under preparation for the area. Upon adoption of the plan, the direct control system would be removed and replaced by zoning. The Town of Spruce Grove, in fact, completed a downtown area redevelopment plan in late 1982 and has recently replaced its 'interim' direct control district with several zoning districts.

Perhaps the most unforeseen extensive application of direct control is for the purpose of 'holding' raw urban land pending its future subdivision and development. Six municipalities - one rural (County of Leduc) and five urban (Fort McMurray, Devon, St. Albert, Brooks, Grande Prairie) - apply direct control in this manner to peripheral agricultural areas considered for future higher density urban expansion. In each case, it is intended that the subject areas would be placed under zoning when urban expansion is imminent. Planning staff for these municipalities indicate that zoning would be equally effective as a holding district; and that the use of the direct control district in these situations results from an individual preference of the local council, as no obvious advantage to the practice appears to exist. Direct control applied to raw land as a temporary holding district can best be explained as an anomaly in the Province.

One municipality, the County of Parkland, has exercised direct control non-selectively. Although the zoning district is still used by the County, the direct control district is applied to large tracts of commercial, industrial, agricultural and residential land. No other municipality was found to have applied the direct control district in such an extensive and indiscriminate manner as an alternative to zoning. However, as the next section will show, this wide application of direct control is not based on the perceived need for regulatory flexibility. Rather, it results from the nature of the County's system which is in fact a form of zoning, achieved by applying fixed and objective regulations to land through a resolution of the local council, as opposed to through the land use bylaw. The County's direct control system represents a continuation of 'resolution control' which the County employed exclusively under the 1963 Planning Act.

The Continuation of Resolution Control

While the broadening of the zoning power through the new Act has generally ended the controversial practice of resolution control in the Province, three municipalities have continued to practice this form of regulation within their direct control districts (see Table 6.5). Another eight have placed provisions in their land use bylaw authorizing resolution control, but have not as yet applied regulations to land by resolution. In two of the three municipalities involved in the practice, resolution control is exercised in respect to only a few select sites in the community as an alternative to zoning. The exception is the County of Parkland, which exercises resolution control extensively throughout large areas of its jurisdiction.

TABLE 6.5

**MUNICIPALITIES CONTINUING TO PRACTICE RESOLUTION CONTROL^a
THROUGH THE AUTHORITY OF THE DIRECT CONTROL LEGISLATION**

City of Red Deer
 City of Medicine Hat
 City of Lethbridge*
 City of Fort McMurray*
 City of Grande Prairie*
 Town of Innisfail*
 Town of Sylvan Lake*
 Village of Delbourne*
 County of Leduc*
 County of Parkland
 Municipal District of Sturgeon*

* Indicates the municipalities which have authorized 'resolution control' within their direct control district in the local land use bylaw but have not passed resolutions to regulate land in this manner.

^a Resolution control, as defined in Chapter 1, means the application of land use regulations to property by means of a resolution passed by the local council, as opposed to through the land use bylaw proper. The regulations, which often resemble zoning regulations in appearance, may not be legally binding, although this remains in question in view of the recent decision in the case of County of Parkland No. 31 vs. Helenslea Farms Ltd. and Alberta Planning Board.¹ Despite the uncertainty concerning the legal validity of such regulations, they are normally treated as binding in practice by municipal administrative bodies and development appeal boards, resulting in a 'de facto' zoning system.

The authority for the practice of resolution control is found in Section 70(2) of the Act, which enables local councils to regulate land use within a direct control district in any manner considered necessary. Through this authority municipalities are creating a direct control system that is virtually identical to development control, as previously practiced under the 1963 Act. Specifically, land use regulations (uses and corresponding development standards) are applied to properties designated direct control by means of a resolution passed by the local council. The resolutions are not part of the land use bylaw proper but are meant to serve as a guide in reviewing development applications. However, planners in the three municipalities involved indicated that the resolutions are normally treated as binding by appointed administrative bodies responsible for making decisions. The result is a 'de facto' zoning system operating through a direct control district, and the system closely approximates discretionary zoning (i.e. a zoning district containing only discretionary uses).

Although resolution control would seem to be the practical equivalent of a zoning district containing only discretionary uses, a fundamental difference does appear to exist. The amendment of a zoning district requires a local council to adhere to the land use bylaw amendment process prescribed in the planning statute. Procedures respecting public input (notification, disclosure, hearing) must be followed, and can make the process somewhat lengthy and cumbersome, depending upon the level of public opposition that is generated by the amendment. However, the statute makes no specific reference to the amendment of council resolutions. Therefore, councils apparently are

able to amend the regulations applied to land in an expeditious manner, by avoiding the lengthier land use bylaw amendment process. The efficiency is achieved at the expense of public input into the amendment process, a questionable advantage from a planning perspective and one which creates a situation that may be vulnerable to successful legal challenge. The County of Parkland views the ability of a council to quickly change by resolution the land use regulations applied to property as a positive advantage of direct control.

6.2.1 Evaluation

The research suggests that the selective role objective of the planning legislation is being met by municipalities. The broadening of the zoning power under the land use bylaw, through the merger of traditional and discretionary zoning, has been understood and accepted at the local level and has had the following effects: zoning has become the predominant form of regulation in municipalities throughout the Province, thus ending the confusion caused by the dual system of zoning and development control that previously existed; the problematical practice of 'resolution control' popularized under the 1963 Planning Act has largely ended; and the direct control power has been exercised selectively, in circumstances considered appropriate by local councils, as an alternative to zoning.

The present Alberta Planning Act has not entirely eliminated the practice of 'resolution control'. Through the permissive wording of Section 70, which enables a council to regulate land in any manner it considers necessary, a few municipalities, and one fairly extensively, have continued with the practice. The regulatory system that results is, in fact, a practical equivalent of discretionary zoning, albeit a notable difference between resolution control and conventional zoning appears to exist. Resolution control allows a local council to circumvent the land use bylaw amendment process prescribed in the planning statute. As a result, the resolutions can be amended in an efficient manner in response to changing conditions. The efficiency, however, is achieved at the cost of public input (notification, disclosure, hearing, etc.) which must be allowed when conventional zoning regulations are amended. This bypassing of the normal public input requirements when changing the land use regulations effecting a given property can be questioned from a legal and planning perspective.

6.3 INDIVIDUALLY DESIGNED REGULATORY SYSTEM

This section examines local practice to determine if municipalities are meeting the individually designed regulatory system objective by implementing a direct control system designed to meet their own specific planning goals and requirements.

Forms of Direct Control Regulation Introduced by Municipalities

The five basic forms of direct control regulation found to have been implemented by municipalities in Alberta are identified in Table 6.6. These forms are: direct control (with no standards); direct control (with standards); direct control (through contractual agreement); direct control (based on resolution control); and direct control (through specific use zoning).

TABLE 6.6
FORM OF DIRECT CONTROL REGULATION IMPLEMENTED BY MUNICIPALITIES

FORM OF REGULATION	NUMBER OF MUNICIPALITIES ^a	PERCENTAGE OF TOTAL NUMBER OF MUNICIPALITIES
DIRECT CONTROL (with no standards)	5	20.0
DIRECT CONTROL (with standards)	17	68.0
DIRECT CONTROL (through contractual agreement)	1	4.0
DIRECT CONTROL (based on resolution control)	3	12.0
DIRECT CONTROL (through specific use zoning) ^b	2	8.0

TOTAL NUMBER OF MUNICIPALITIES: 26

^a Because some municipalities are implementing more than one form of regulation within separate direct control districts, a municipality may be recorded in more than one category.

^b As discussed in this section, direct control (through specific use zoning) is not considered a valid exercise of the direct control power. It actually represents a distinct form of zoning, as zoning is defined in the Alberta Planning Act.

Five municipalities (20%) regulate land use through their direct control district by means of a discretionary review process in which development proposals are assessed on their merit. The review process is not governed by standards or criteria stipulated in the land use bylaw, but allows decision-makers to respond to development submissions as they occur and to grant development permission based upon a specific review of the proposal.

Seventeen municipalities (80%) regulate land use through their direct control district by means of a discretionary review process governed by standards. The standards are intended to: (a) limit the discretion of the administrative officer; (b) provide a degree of assurance to the property owner in the use of land; and (c) indicate to the public the probable future land use of a given site. As these standards are applied in various forms and degrees depending upon the situation most direct control systems appear to be different, but the differences are frequently minor. Examples of these standards include the following:

(a) Designator

The attachment of a designator to the direct control district title to indicate acceptable land uses or to signify the intent of the district.

Example: DC/IND - DIRECT CONTROL-INDUSTRIAL (County of Leduc)
DC-1 - DIRECT CONTROL - Temporary Holding district (Town of Stony Plain)

(b) Statement of Intent

The provision of a broad philosophical statement indicating the purpose of the district.

Example: The purpose of the Direct Control District is to provide Council with ultimate authority over the use of a particular property. The property in question presently accommodates the railway station and adjoining parking area. It is envisaged that an integrated transportation facility will eventually be required in Wetaskiwin, which would be best developed at this particular location. By placing this property under direct control of Council, land use flexibility and control is thereby assured.

(City of Wetaskiwin)

(c) Limitations on Application of the District

The inclusion of regulations restricting the application of the direct control district to a specific area or situation within the municipality.

Example: This district shall only be applied:

- (a) where specified by an Area Structure Plan or Area Redevelopment Plan,
- (b) to those historical resources which have been designated by the Minister [of Culture] or Council in accordance with the Alberta Historical Resources Act (1973), as amended.

(City of Edmonton)

(d) Regulations

The inclusion of the requirement that a decision-making authority have regard for certain planning policy or regulations when making a decision within the direct control district.

Example: In evaluating a development in a Direct Control-1 or Direct Control-2 District Council shall have regard to, but not be bound by:

- (i) the uses specified in the [zoning] district superseded by the direct control district;
- (iv) the land use regulations of abutting [zoning] districts.

(Town of Spruce Grove)

(e) Information Requirements

The requirement that an applicant submit considerable background information, special studies and design plans, implying major development of the site on a 'planned unit' basis.

Example: Scale models, narrative statement of intent, traffic impact analysis, sun and wind impact report, detailed site plans, internal pedestrian and vehicular circulation system designs, landscaping and open space concept plans, community impact report, servicing and transportation design agreements, school generation and population statistics, etc.

(City of Edmonton)

(f) General Statement of Use

A generalized statement of anticipated or acceptable use of a site contained within the direct control district in a form other than the 'permitted' or 'discretionary' use of zoning.

Example: Uses
 Solar Residential Development
 Cluster Residential Development
 Planned Unit Development
 Other Innovative and Unique Housing Developments

(City of Grande Prairie)

A third form of regulation under direct control involves the contractual agreement. Only one municipality in the Province, the City of Edmonton, employs this form of regulation within a direct control district. In this situation, the direct control district functions as a 'floating district', to be applied to a site through a bylaw amendment at the request of a developer, to implement complex, comprehensively planned projects that cannot be reasonably be implemented by any other district in the City's land use bylaw. As a condition of the bylaw amendment proceeding, the developer and the City enter into a contract binding both parties to a detailed site plan, as submitted to and approved by the City council.

The City of Edmonton has also implemented four other direct control systems through four separate types of direct control districts. Each system serves a different planning function in the City and is applied on an ongoing basis as the need arises. In addition, the City is currently investigating the legal, administrative and political implications of introducing a 'transfer of development rights' system through Section 70. This investigation is in its formative stages.

The fourth form of regulation, resolution control, was discussed in detail in the previous section. It represents the continuation of a popular and unique form of regulation that evolved out of the development control legislation of the 1963 Planning Act. It is currently being implemented by three municipalities in Alberta and represents a practical equivalent of discretionary zoning, although differences between the amendment process of zoning and resolution control were found to exist.

The final form of direct control regulation is termed specific use zoning. As this form of regulation is complex, and arguably is not direct control but zoning, it is discussed separately in the following section.

Specific Use Zoning

Two municipalities in Alberta, the City of Calgary and the City of Edmonton, engage in a form of direct control regulation that can more accurately be described as specific use zoning. This regulatory system involves the application of a district to a site by council that is 'tailor-made' for a specific development project. A developer seeking a reclassification to such a district would submit a detailed prospectus of the proposal to the council for review. If accepted, a new district would be drawn up by the City planning and legal departments, and applied to the subject site through an amendment to the land use bylaw. The district contains provisions for a discretionary use or uses of land and detailed regulations specifying such requirements as height, density, setback and parking. As the uses and regulations are tailor-made to the project proposed, a one-of-a-kind district, not found elsewhere in the land use bylaw, is applied to the site. The practice has resulted in several hundred such districts being applied to specific sites throughout Calgary, but considerably fewer such districts in Edmonton, which only introduced this form of regulation in late 1982.

Although the application of a tailor-made district to a defined area of land represents a valid and effective form of regulation, and is supported by the development industry and council of both cities, it is not, properly speaking, direct control. The application of discretionary uses and fixed development standards to an area of land through a land use bylaw amendment is clearly 'zoning', as defined in the Alberta Planning Act.²

6.3.1 Evaluation

The research suggests that municipalities are meeting the individually designed regulatory system objective of the planning legislation. Municipalities have implemented five basic forms of regulation in their direct control districts: direct control (with no standards); direct control (with standards); direct control (based on contractual agreement); direct control (through resolution control); and direct control (through specific use zoning). However, the last two forms of regulation are not considered a valid exercise of the direct control power. In the first instance, Calgary and Edmonton's specific use zoning is, in fact, 'zoning' not direct control. In the second instance, resolution control duplicates the present zoning power of the land use bylaw. These two situations indicate that some confusion exists among municipalities concerning the distinction between the zoning and direct control powers, as defined in the Planning Act.

Municipalities have tended not to introduce highly innovative or complex forms of regulation through Section 70. Typically, the local

direct control system is comprised of a discretionary review process in which development projects are assessed on their relative merit at the time of submission; or, a development review process governed by standards prescribed in the land use bylaw. These standards are designed to guide and direct the administrative process, provide a level of assurance in the use of property to landowners or indicate to the public the probable future use of a site in the municipality. Thus, although most direct control systems in the Province are different, these differences are marginal and relate to the manner and extent to which standards are stated in the land use bylaw. This situation was to be expected, since most municipalities in Alberta have limited planning resources and little previous experience with sophisticated regulatory concepts. Accordingly, the direct control legislation has led to more simpler forms of flexible regulation being introduced.

The exception is the City of Edmonton. Edmonton has introduced a complex direct control system comprised of five 'special purpose' districts. Each district, which is to be applied in different circumstances, regulates land in a distinct manner and is administered through its own process. It can be expected that with increasing familiarity and success, Edmonton's direct control systems will be adopted and modified by other municipalities in the Province.

6.4 DIRECT POLITICAL RESPONSIBILITY

This section examines municipal practice to determine if municipalities are meeting the direct political responsibility objective by

retaining decision-making power with the local council in a direct control district, and not transferring such power to non-elected administrative bodies.

Dual Decision-Making Processes

As described in Table 6.7, municipalities in Alberta are employing two separate decision-making processes within their direct control districts: a direct process and a subdelegated process.

TABLE 6.7
DECISION-MAKING PROCESSES EMPLOYED BY MUNICIPALITIES
WITHIN THE DIRECT CONTROL DISTRICT

DECISION-MAKING PROCESS	NUMBER OF MUNICIPALITIES	PERCENTAGE OF TOTAL NUMBER OF MUNICIPALITIES
DIRECT PROCESS Decisions made exclusively by the municipal council; no subdelegation of decision-making power to an appointed administrative body; no appeal of a decision of the council authorized to a quasi-judicial development appeal board.	17	68.0
SUBDELEGATED PROCESS Subdelegation of decision-making power by the municipal council to an appointed administrative body; appeal of administrative decisions to a quasi-judicial development appeal board allowed, as authorized in the Planning Act.	9	36.0
TOTAL NUMBER OF MUNICIPALITIES: 26		

Seventeen municipalities (68%) employ a direct process in which decisions on development permit applications are made exclusively by the local council as opposed to an administrative officer appointed by the council. Furthermore, no appeal of a decision of the local council to a quasi-judicial development appeal board is allowed. The decision of the local council is final and binding, subject only to review by the courts. Thus, these municipalities have two separate decision-making processes in the land use bylaw. One for zoning districts, involving the administrative officer(s) and with the automatic right-of-appeal of a decision of the officer to a development appeal board, in the event of a dispute arising; another for direct control districts, involving the local council only, with no right-of-appeal.

In contrast, nine municipalities (36%), notably the cities of Edmonton³ and Calgary, subdelegate decision-making powers in their direct control districts to an administrative officer appointed by the council. In these situations, decisions on development permit applications are made by the officer in accordance with the rules and procedures established in the land use bylaw. A decision of the officer can be appealed to a development appeal board by the general public (usually when a dispute arises over an approved development permit) or the developer (usually in the case of a permit refusal or conditional approval). Thus, the decision-making process of these municipalities is identical for both their zoning and direct control districts.

Direct Decision-Making Process

The seventeen municipalities which require the local council to make all decisions in a direct control district, each employ a similar process.

Development permit applications are referred to the planning commission staff in the smaller municipalities or a 'technical planning committee' in the larger centres, and a recommendation is formulated through negotiation and discussions between planning staff and the developer. Next, a formal public hearing is scheduled and advertised in the local newspaper, while surrounding landowners are usually informed through registered letter and site posting. At the public hearing, concerns are heard by the Council and a decision rendered. The decision is final and binding on all parties with no right of appeal allowed to the development appeal board. Municipalities, also, include provisions in their land use bylaw to prevent, in the case of refusal, a reapplication by a developer for a prescribed period of time (e.g. one year). Repeated applications for the same development proposal on a given property are thus avoided.

Planning staff reported in all cases that the development officer or a municipal official would issue the development permit, but only in accordance with the council's directive (usually in the form of a council resolution). Minor revisions to a site plan could be made by a development officer or the planning staff where unforeseen problems arose between the approval and construction phase of a project. However, any substantive changes to the original approval would have to be referred back to the council for reconsideration.

One major problem with the direct control process was repeatedly cited by planning staff. Under direct control, the municipal council is often faced with reviewing and deciding upon minor or simple development proposals under direct control (e.g. fences, signs, renovations, etc.). Indeed, the majority of development that occurs throughout a community is of this type. This situation, which has resulted in a highly inefficient, time consuming and costly process, has tended to confuse the role of the municipal council as policy maker with the duties of the municipal administrative staff who oversee day-to-day planning matters. In at least one case, this inefficiency was a major factor in the municipal council replacing direct control with zoning in the downtown area.

Subdelegation and the Retention of Political Control

As mentioned, those nine municipalities delegating decision-making powers in their direct control districts to an administrative officer employ virtually identical decision-making processes under both zoning and direct control. The initial decision is made by the development officer(s) with the right-of-appeal in the event of dispute being to a development appeal board. In examining the process of these municipalities it is apparent that despite subdelegation of powers, from the local council to the administrative level, political responsibility in their direct control districts was retained in one or more of the following ways:

- (a) by designing a direct control system that is based upon the politically controlled bylaw amendment process and involves

contractual agreements between the council and the developer which, in turn, bind the actions of the administrative officer;

- (b) by placing regulatory standards in the land use bylaw to limit the scope of administrative discretion in the review of a development proposal;
- (c) by applying fixed and objective regulations to land by means of a resolution of the local council, which the administrative officer would normally follow in deciding upon a development proposal;
- (d) by appointing elected members of the local council to the development appeal board.

In the first situation, the City of Edmonton has introduced a direct control system which is based on the land use amendment process and involves a contractual agreement between the City and a developer. Where a developer submits a project that cannot reasonably comply with any of the City's conventional zoning districts, he may request the City council to apply a direct control district to the subject site through a land use bylaw amendment. If the project is acceptable to the City, the council would commence the bylaw amendment process with the intention of applying a direct control district to the site. Prior to passage of the amending bylaw the council and developer would negotiate a contract binding both parties to an agreed site plan for the project. Application of the direct control district to the site by the council indicates, therefore, that the city and the developer have essentially reached final agreement on a development project. On the

other hand, if the City council is not satisfied with the project in every respect, the proposed bylaw amendment would not be passed, and the project would be refused on that basis.

When the developer is prepared to begin the construction phase of the project, he would apply to the administrative officer for a development permit. The officer, however, would be bound by the contract previously negotiated between the City and the developer, and would have to issue the permit in accordance with the terms and conditions of that contract. Although in approving the project, the officer could vary the terms of that contract to a minor extent any substantive changes would require the matter to be referred back to the city council for renegotiation. Thus, the powers of the administrative officer are clearly limited under this form of direct control and the permit application process is largely 'self-administering'. Similarly, in the event of an appeal of a development permit approval, the City considers the development appeal board to be bound to a large extent by the contract, although legal debate has occurred on this point.

In the second case, four municipalities subdelegating decision-making powers under direct control have included, in their land use bylaws, standards designed to limit the discretion of the administrative officer. The standards, as previously discussed, take many different forms (e.g. statements of intent, general use classifications, performance criteria, etc.). Although these standards do not eliminate administrative discretion entirely, as to do so would be to revert to a system of zoning, they do ensure that potential developments in a direct control district could not undermine the broader planning objectives of the council for a given area or the community as a whole.

In the third case, three municipalities delegate decision-making power by applying zoning regulations to land by means of an adopted council resolution for their direct control districts. As previously discussed, the resolutions in theory serve as a guide and are probably not legally binding, but in practice are closely followed by the administrative officer, thereby creating 'de facto' zoning. The direct control system that results allows a local council to retain considerable control over administrative action, in much the same way as occurs with zoning.

Finally, eight municipalities delegating decision-making powers under direct control have appointed members of council to the local development appeal board. In five of these municipalities, the development appeal board is comprised entirely of the members of the council. As major or controversial development projects in the community often result in an appeal of the original administrative decision, the ultimate decision on such projects would rest with members of the council acting through the development appeal board. The advantage of this system is that it allows the administrative officer to decide on those minor development applications which have no perceived adverse impact on the community, whereas major or controversial projects would typically end up being dealt with by the local development appeal board as a result of an appeal being made.

6.4.1 Evaluation

The research suggests that municipalities have generally met the direct political responsibility objective, although perhaps not through

the same decision-making process contemplated by the planning statute. Because complex legal questions remain unanswered respecting the right-of-appeal and the subdelegation of decision-making powers within a direct control district, it is difficult to evaluate the decision-making processes used by municipalities in terms of their legal validity. However, an examination of local practice reveals that the spirit of the legislation is being complied with, as municipalities are retaining political control over administrative discretion within their direct control districts in many different ways.

Municipalities employ two basic decision-making processes in respect to direct control. In about two-thirds of the municipalities decisions on development matters are made by the local council directly. As no right-of-appeal to a quasi-judicial board is allowed from a decision of the council, a 'one-tier' process unique to the direct control district is created. Alternatively, about one-third of the municipalities subdelegate decision-making power to an administrative officer, with the right-of-appeal to a quasi-judicial board from a decision of the officer provided by the Act. The process that results is 'two-tiered', and is virtually identical to zoning.

Significantly, municipalities that subdelegate decision-making power, have evolved other means of retaining political responsibility in their direct control districts. Such means include: devising regulatory systems based on the politically controlled amendment process; applying standards through the land use bylaw that limit the scope of administrative discretion; introducing a direct control system based on resolution control; and appointing elected representatives to the

development appeal board to adjudicate on disputes arising from an administrative decision. Despite the apparent transfer of power from the council to the administrative level, the concept of 'direct control' does not seem to have been violated in these municipalities. As will be discussed in the next section, a final mechanism to direct and limit administrative discretion used by local councils, is the community plan.

6.5 SUBSTANTIVE POLICY BASE

This section examines local practice to determine if municipalities are meeting the substantive policy base objective by adopting a general municipal plan as a prerequisite to the exercise of direct control in the community.

Adoption of a General Municipal Plan

In accordance with Section 70, all municipalities, in Alberta, with the exception of the Village of Delbourne, have adopted a general municipal plan prior to implementing a direct control district through their land use bylaws. In the case of Delbourne, regional planning commission staff were aware of the contravention of the Act and anticipated the completion of the Village's general municipal plan in the near future.

The Relationship Between the General Municipal Plan and Direct Control

Although most municipalities have complied with the literal meaning of the legislation, by adopting a general municipal plan prior to exercising direct control, the implied intent of the legislation, to create a substantive policy base for decision-making through the plan, has not been met in every situation. A review of the general municipal plans indicates that considerable variation exists, both in the philosophical approach taken by the plan (e.g. end state vs. policy plans, long range vs. shorter range plans, map based vs. policy plans, etc.) and the manner which the plans address the local system of direct control.

TABLE 6.8

SPECIFIC POLICY REFERENCE TO THE DIRECT CONTROL DISTRICT IN THE GENERAL MUNICIPAL PLAN

POLICY REFERENCE	NUMBER OF MUNICIPALITIES ^a	PERCENTAGE OF TOTAL NUMBER OF MUNICIPALITIES
No Explicit Policy Reference in the General Municipal Plan To the Direct Control District	11	44.0
Explicit Policy Reference in the General Municipal Plan To the Direct Control District	14	56.0
<hr/>		
TOTAL NUMBER OF MUNICIPALITIES:	25	

^a The Village of Delbourne has not adopted a General Municipal Plan and, therefore, has been excluded from this table.

As shown in Table 6.8, eleven municipalities (44%) have made no explicit reference to the direct control district within their general municipal plan. Matters respecting the areas or situations where direct control is to be applied, the community objectives to be achieved under direct control or land use and design considerations to be taken into account by decision-makers are not addressed anywhere in the plans.

On the other hand, fourteen (56%) municipalities have made explicit reference to the direct control district within their general municipal plan. This reference, however, varies widely in its level of detail from rather imprecise 'goal-oriented' policy statements to detailed 'prescriptive' policy statements aimed at achieving a definite planning end through the direct control concept.

For example, the Town of Sylvan Lake General Municipal Plan contains the following 'broadly worded' policy statement:

"The Town will exercise careful and considered direct control over the use, design and planning of development within the downtown and Lakeshore Drive areas in order to facilitate and assure the effective and efficient multiple use of the area for commercial, recreational and residential development and the creation of an improved physical environment."

The plan contains a further statement that a secondary plan (i.e. area redevelopment plan) should be prepared for certain parts of the Town presently situated within a direct control district in order to "guide the improvement and development of those areas".

The City of Wetaskiwin, however, deals with direct control in a highly detailed and specific manner within its plan, designating areas on a map to be placed under direct control and clearly stating planning

objectives and policy for each area. Direct control was implemented by the City specifically to control the direction and rate of expansion in the central business district. A typical policy statement in the plan reads as follows:

"Once council feels that properties inside the downtown core have been substantially occupied, and before there is excessive pressure on land prices, further commercial development should be encouraged in the direct control districts fronting the downtown core (Direct Control Districts #1 and #2)."

Ten municipalities have adopted secondary plans (i.e. area redevelopment plans), to govern areas under direct control. These secondary plans provide an added level of detailed planning policy to supplement that of the general municipal plans. As with the general municipal plans, however, references to direct control do not always occur and, where they are present, a marked variation in detail exists. For example, the City of Edmonton, within its Downtown Area Redevelopment Plan, designates sites in the central business district to be regulated by direct control and stipulates general land uses and design criteria to which future development occurring within these sites must comply. This level of detail contrasts with the City's General Municipal Plan which contains only broad, general statements respecting direct control.

Interim Direct Control

A situation was encountered where policy to guide planning decisions for areas placed under direct control appears to be completely absent. General municipal plans normally designate on a map areas in

the municipality where area redevelopment plans are to be prepared in the future. In many instances, the general municipal plan transfers its policy function within these areas to the still to be completed area redevelopment plan with the idea that the area redevelopment plan will eventually provide highly detailed policy for that area. As a result there is often no planning policy for these areas, usually downtowns or older residential neighbourhoods, prior to the adoption of the area redevelopment plan. This does not often present a problem as the area redevelopment plan is quickly completed while planning direction is temporarily left to the zoning control in place.

As discussed in a previous section, six municipalities exercise interim direct control by applying a direct control district throughout a defined secondary planning area preceding the preparation and adoption of the area redevelopment plan. The intent is to exercise a highly discretionary form of land use control for a short period of time to ensure that ongoing development does not prejudice the objectives of the plan under preparation.

Two municipalities (Town of Beaumont, Town of Stony Plain) introduced interim direct control to a defined secondary planning area designated in a general municipal plan, but did not proceed immediately with the preparation of the area redevelopment plan. Thus, large areas of land undergoing redevelopment pressures are being regulated under direct control over an extended period of time without any established planning policy in existence, either in the general municipal plan or an area redevelopment plan, to guide the development review process. This situation runs counter to the concept of development control

which requires that community planning policy be present to direct the discretionary review process.

6.5.1 Evaluation

The research indicates that the municipalities have generally met the substantive policy base objective of the planning legislation, although qualifications to this assessment are made. Municipalities are complying with the literal meaning of Section 70 by preparing and adopting a general municipal plan prior to exercising direct control. However, a significant number of these municipalities have not made any express reference in their plans to the local direct control system.

A majority of municipalities (56%) in the Province have made reference to direct control in their statutory planning documents (i.e. general municipal plan, area redevelopment plan, area structure plan). In these situations substantive policy statements relating to the exercise of direct control exist to varying degrees (e.g. delineation of areas in the plan where a direct control district would be applied, provisions respecting land use allowed in such area; design criteria to be followed in the review of developments in the areas, etc.). Alternatively, a minority of municipalities (44%) have made no reference within their general municipal plan to direct control. Although this does not necessarily mean that the plan provides no guidance or direction for local decision-makers, it does seem to indicate that land-owners, developers, planners, administrators and others involved in the development process can derive no specific direction from the plan in

this regard. The likelihood of the plan being ignored and the potential for the direct control system to operate in an 'ad hoc' or arbitrary manner is greater as a result.

6.6 CONCLUSION

Municipalities in Alberta are not making extensive use of the powers conferred by Section 70 of the Planning Act. In total, direct control is being practiced by twenty-six municipalities, twenty-one urban and five rural, most of which are larger centres undergoing growth pressures. Predictably, few of the smaller centres in the Province, or those with a distinctive rural character, exercise direct control.

Generally, the municipalities involved are implementing the enabling legislation in much the manner intended by the Province, viz. to regulate land use in a responsive, direct and specialized manner in accordance with established community planning policy. The direct control concept has redefined the relationship and role of zoning and development control practice in Alberta; has allowed municipalities to introduce a form of flexible regulation tailored to their unique planning needs; has resulted in political control being retained over the administrative process; and, has encouraged communities to establish policy through the comprehensive plan prior to exercising direct control.

Some problems were encountered in respect to the direct control legislation, although these problems are not widespread and do not seriously challenge the original concept. However, certain changes to the legislation could improve the effectiveness of the direct control district, and these will be discussed in the following chapter.

FOOTNOTES

1. This court case, County of Parkland No. 31 vs. Helenslea Farms Ltd. and Alberta Planning Board (unreported), 14211, 1982, centred on the question of the legal effect of 'resolution control' on the subdivision process in Alberta. The court ruled that land use regulations, applied by a resolution of the local council to lands within a direct control district, were legally binding on the Alberta Planning Board in the event of a subdivision appeal, to the same extent as regulations contained in a conventional zoning district.

This decision creates some uncertainty concerning the legal effect of 'resolution control' on the administrative and appeal processes under the land use bylaw.

2. The implication of Calgary's direct control system being 'zoning' as defined in the Alberta Act, is that the City regulates land use entirely through the zoning power, and does not practice direct control.
3. The City of Edmonton planning staff indicated that one of the major reasons for the subdelegation of decision-making powers to administrative bodies within the City's direct control districts was to counter the inherent inefficiency resulting from the involvement of City Council directly in the development review process.

CHAPTER VII
CONCLUSIONS AND RECOMMENDATIONS

7.0 PURPOSE

The purpose of this chapter is to present the main conclusions of the thesis in relation to the research questions posed in Chapter I. These questions were aimed at determining the intent of the direct control legislation; establishing the extent to which municipalities in Alberta are meeting this intent; and, suggesting changes to the legislation designed to improve its effectiveness. The chapter also summarizes the contribution of the thesis to the field of planning and identifies directions for further research.

7.1 CONCLUSIONS OF THE STUDY

While all the points made in the preceding chapters are not restated here, the main conclusions of the research are summarized.

1. The research has determined that the Alberta Planning Act has integrated the zoning bylaw and development control bylaw of the previous Act through a new instrument - the land use bylaw. This bylaw allows a local council to implement a full spectrum of regulatory systems, from the most rigid to the most flexible, through either the zoning or direct control district, as appropriate. However, the zoning district and the direct control

district are not merely a translation and refinement of the zoning and development powers of the 1963 Planning Act. On the contrary, some significant changes have occurred, particularly in the case of direct control, and these changes are intended to redefine regulatory practice in Alberta.

2. The research has identified the four main objectives of the direct control district concept, through an interpretation of the enabling legislation. These objectives reflect an attempt to alleviate the problems and confusion created by the development control legislation of the former Act and a recognition of a number of relevant aspects of contemporary development control practice in North America. The objectives are:

- (1) Selective Role - The legislation intends to establish zoning as the principal form of land use control in the Province. Accordingly, direct control is to be exercised in those specific circumstances where zoning is considered to be a less effective alternative. This objective is to be accomplished by broadening the zoning power, through a merger of traditional as-of-right zoning and discretionary zoning (as it evolved from the development control legislation of the previous Act), into a single mechanism - the zoning district; and the placement of implied limitations on the extent to which the direct control district can be applied to land within a community.

- (2) Individually Designed Regulatory System - The legislation intends to allow a local council to design and implement a flexible regulatory system that is 'tailor-made' to meet the planning requirements and administrative capabilities of that municipality. Accordingly, the legislation delegates fairly limitless authority to a local council to regulate land within a direct control district in any manner it chooses.
- (3) Direct Political Responsibility - The legislation intends to provide municipalities with a high degree of political responsibility within their direct control system by delegating decision-making power exclusively to the local council. This power cannot be subdelegated by the council to appointed administrative officers, except perhaps in narrow and defined circumstances, where the council clearly retains the ultimate decision-making authority respecting development matters.
- (4) Substantive Policy Base - The legislation intends to ensure the existence of a comprehensive community plan as a prerequisite to the exercise of direct control. Furthermore, the Act, although not explicit on the matter, intends that a policy link between community planning and the local direct control system be established through the plan.

3. The research has examined municipal practice in relation to each of the four main objectives of the direct control legislation to determine the extent to which these objectives have been met. The examination leads to the following conclusions:

(1) The legislation has resulted in a redefinition of regulatory practice in Alberta, while continuing with the long-standing Provincial philosophy of allowing a municipality a choice between a rigid and flexible form of land use regulation. Specifically, the legislation has had the following effects:

- (a) The broadening of the zoning power has led to the extensive application of zoning by municipalities throughout Alberta. The predominance of zoning can be illustrated by the fact that Calgary, the largest city in the Province, relies exclusively on the zoning power to control land use within its jurisdiction.
- (b) In contrast, direct control is being practised by a relatively few municipalities in the Province, primarily the larger urban and rural centres, on a discriminate and selective basis. This selective application of direct control is not attributed to a dramatic shift in municipal preference, following the introduction of the new Act in 1978, but on the broadening of the zoning power which has become exceedingly flexible in its potential application.

- (c) The controversial, yet popular, practice of resolution control (the application of zoning regulations to land by a resolution passed by the local council, instead of through the land use bylaw) has largely ended. However, municipalities have been able to continue to practice a reasonable facsimile of resolution control through discretionary zoning under the land use bylaw.

The legislation has not entirely eliminated resolution control, as a few municipalities have continued with the practice within their direct control districts. However, the regulatory system that results from this practice is not substantially different from discretionary zoning. The only apparent advantage of resolution control, and a questionable advantage at best, is that it allows a local council to amend the resolutions, and thereby change the rules respecting the use of a given property, in an efficient manner. The efficiency is achieved by circumventing the public input procedures (notification, disclosure, hearing) of the bylaw amendment process prescribed in the Act, procedures which are normally followed when amending conventional zoning districts contained within a land use bylaw.

- (2) The legislation has resulted in municipalities introducing a variety of different regulatory systems through their direct control districts, with each system being specifically designed to meet the special planning needs and administrative capabilities of that community. The majority of municipalities have avoided highly innovative or technically or procedurally complex regulatory systems. Typically, the direct control system introduced by municipalities consists of a development review process, in which development proposals are assessed on their merits as they are proposed; or, a development review process tailored to a particular situation by standards (e.g. statements of intent, general land use classifications, subjective performance criteria, etc.) stipulated in the land use bylaw. Thus, while every direct control system in the Province appears different, the differences are usually marginal. This could be expected in that most municipalities in Alberta, aside from a few major cities, have only limited planning resources and little prior experience with sophisticated regulatory concepts.

The exception to this situation is the City of Edmonton which has introduced a complex and integrated direct control system comprised of five separate 'special purpose' districts. Edmonton also is the only municipality in Alberta to regulate major development projects within a direct control district, by means of a contractual agreement, a com-

plex form of regulation requiring considerable legal and planning expertise. The City's direct control systems, when compared to the simpler systems of other centres in the Province, demonstrates the versatility of the direct control concept.

- (3) The legislation has allowed municipalities to retain political responsibility in their direct control districts, although perhaps not exactly in the manner intended. The research indicates that a dual decision-making process has evolved in respect to direct control. A majority of municipalities require the local council to make all decision on development submissions in a direct control district, with no appeal of a council decision to a quasi-judicial appeal board provided. In contrast, a minority of municipalities have subdelegated decision-making powers to an appointed administrative officer in a direct control district, with the right of appeal from a decision of the officer, conferred by the Act, to a development appeal board. The former process is unique to the direct control district, whereas the latter process is identical to that of the zoning district.

Two main reasons for subdelegation under direct control were apparent from the research:

- (a) The involvement of the local council directly in all development matters creates operational inefficiencies

that cannot be readily overcome, particularly where minor development, having no significant impact on the municipality, is concerned. In the larger cities such inefficiency is great enough that subdelegation is necessary, if not essential.

- (b) Municipalities have devised means of ensuring political control, despite subdelegation, that avoids the direct involvement of the council in the decision-making process. These include: the appointment of elected representatives to the development appeal board; the provision of standards within the local land use bylaw that limit the scope of administrative action; the design of a regulatory system based upon the politically controlled amendment process; and, the application of regulations to land by a resolution of the municipal council. These regulations are usually treated as binding by administrative officers and appeal boards.

The research did not attempt to address the complex legal questions respecting subdelegation and the right of appeal within a direct control district. These questions may only eventually be resolved by the Alberta courts.

(4) The legislation has resulted in municipalities preparing and adopting a comprehensive community plan prior to exercising direct control. Although the literal wording of the statute has been complied with by the adoption of such a plan, municipalities have tended to not comply with its underlying intent by establishing an express policy link between community planning and regulation through the plan. A large number of municipalities do not address direct control specifically in their local planning documents.

This does not necessarily mean that direct control is exercised in an irrational and arbitrary manner in such cases. It does suggest that planning within these municipalities does not occur on a rational, comprehensive basis through the community plan, as the legislation implies it should.

4. The research has concluded that the objectives of the legislation are generally being met. Municipalities are using the powers conferred by Section 70 to create direct, responsive and specialized regulatory systems, to meet their unique planning needs. Some problems were identified, but these problems are limited to a few cases and do not challenge the original direct control concept. However, improvements to the enabling legislation can be made.

7.2 RECOMMENDATIONS FOR CHANGE

The imprecise wording of Section 70 creates uncertainty about its intention. This lack of clarity will continue to create problems for planners, developers and municipal administrators, and others involved in the development process. The legislation needs to be redrafted, to precisely convey its meaning and eliminate existing ambiguities.

In addition to this general change, a few specific changes are suggested. These changes are:

1. Elimination of Land Use Regulation by Council Resolution

The method of controlling land use through zoning regulations applied to an area of land by a resolution of the local council, instead of a bylaw, is still supported by a few municipalities in Alberta. The practice is apparently authorized under the permissive wording of Section 70(2) of the Planning Act and Section 99 of the Municipal Government Act.

Resolution control played a key role in the evolution of Alberta's planning system and the formulation of the new zoning concept in the land use bylaw. Today, however, it is outdated because a practical equivalent of resolution control can be achieved through the present zoning powers. Furthermore, resolution control seems to allow local councils to circumvent important public input procedures when amending the resolutions. Such procedures are integral to the bylaw amendment process since they insure at least a modicum of community input and awareness on

development issues. In light of the foregoing, it can be strongly suggested that the planning statute be changed to prohibit this method of regulation within a direct control district.

2. Subdelegation of Decision-Making Under Direct Control

The approach of requiring a local council to become directly involved in the development process introduces several problems and questions. Specifically, it has created a dual decision-making process in local direct control districts, as discussed in Chapter VI; it has proven unworkable in larger centres, where the demands on a local council's time are often extreme and preclude its direct involvement in development matters; it tends to confuse the legislative, administrative and quasi-judicial roles of municipal government, by involving elected representatives of the community in day-to-day planning and administration activities; it raises a number of complex legal questions concerning subdelegation and the right-of-appeal; and, it ignores the fact that municipalities have evolved effective measures to ensure political control over administrative action in the development process without the direct involvement of the local council. Despite such difficulties, however, the concept has been successfully applied in practice, and appears to be working well in certain situations, particularly in the smaller centres where growth pressures are not great.

The best way to resolve the issues surrounding this approach is unclear at this time. It is acknowledged that several solu-

tions are possible and could be readily instituted through changes to the planning statute. One such solution may lie in amending the statute to clearly allow subdelegation to an administrative officer, with the automatic right-of-appeal from a decision of the officer to a development appeal board being granted by the Act. The onus would then lie with the local council to ensure political control over administrative action in some manner within its direct control district. In conjunction, municipalities could be offered the option of allowing the local council to administer the direct control system, again with the right-of-appeal being automatic from a council decision. In other words, the council would be allowed to function as a group of administrative officers under direct control at the option of the municipality.

3. Strengthened Relationship Between Planning and Direct Control

The exercise of development control is predicated on the existence of community planning policy prepared through careful study and consultation. Although municipalities are required to adopt a general municipal plan in advance of implementing a direct control system, many municipalities have not established a clear policy link through the plan to guide the direct control decision-making process. Although the relationship between planning and regulation is ultimately a municipal responsibility, the imposition of certain mandatory provisions in the Act designed to strengthen this relationship would not necessarily undermine

local autonomy. Therefore, it is suggested that the planning statute be amended to require the general municipal plan to contain explicit policy statements respecting the exercise of direct control. These requirements could include: that the plan identify the areas or situations where a direct control district would be applied; that the plan contain explicit land use policy relating to these areas or situations; that the plan provide development guidelines for these areas or situation; and, that the plan describe, generally the form of direct control that would be implemented in these areas or situations. These measures would ensure the presence of a basic level of policy in the plan, while allowing municipalities considerable flexibility in how they address direct control through their planning documents.

7.3 CONTRIBUTION

At the beginning of the thesis, the movement of regulatory practise toward the concept of development control was noted. While this trend has generated considerable literature on the subject of flexible and discretionary land use controls, comparative research on the relationship between Provincial statute and municipal practice has been limited. Planning practitioners and theorists have exhibited a reluctance to delve into a field felt to be the purview of law and other professions. Such research is necessary, however, as planning legislation is not merely an abstract phenomenon. Ultimately, it must be translated into the processes, systems and instruments of community

planning and its relevance and effectiveness reflects, in large measure, the success of community planning endeavours. The planner, who often operates at the interface of Provincial statute and municipal government, has an important role to play in understanding, explaining and critically appraising the legislative framework within which he must work on behalf of the community and the general public.

This thesis has attempted to contribute to the understanding and improvement of a new legislative framework for the practice of direct control in the Province of Alberta. The approach taken was to (a) review the theoretical, practical and historical factors underlying the legislation; (b) determine, through interpretation, the basic intent of the legislation; (c) examine municipal practice in relation to this intent; (d) evaluate the extent to which the intent is being met through local practice; and (e) identify problems and propose changes designed to strengthen and improve the direct control concept as a local planning tool. Hopefully, the thesis has raised some issues that will lead to improvements in the direct control legislation. As well, the thesis has the modest aim of contributing to the small but expanding field of research on development control in Canada.

7.4 FURTHER RESEARCH

The research concentrated on the relationship between the planning legislation authorizing 'development control' and municipal practice in Alberta. In doing so, a number of broader issues were raised that are beyond the scope of the study to adequately address, but warrant further investigation.

One of these issues relates to the impact of development control on the local decision-making process. Does development control promote incremental, as opposed to comprehensive community planning, and, does development control in reality shift decision-making power to the administrative level, or is this shift illusory in practice?

A second issue raised, relates to the role of development control in communities. In view of zoning reforms, does development control have a necessary role to play in community planning; and, what advantages over modern zoning practise does development control offer?

A third issue relates to the political effect of development control. Does development control create controversy in the community; or, does it result in unnecessary appeals to the local development appeal board or Provincial Planning Board?

Finally, the research did not examine the planning statutes of other Provinces, in order to compare Alberta's approach to the provision of development control legislation with that of these other jurisdictions. Such a comparison could reveal generally applicable solutions to common problems, and would assist in the determination of the future direction and prospects of development control practice in Canada.

APPENDICES

APPENDIX I

**MUNICIPAL LAND USE BYLAWS AND
GENERAL MUNICIPAL PLANS REVIEWED**

APPENDIX I

MUNICIPAL LAND USE BYLAWS AND GENERAL MUNICIPAL PLANS REVIEWED

1.0 URBAN MUNICIPALITIES

1.1 Cities

Calgary

Edmonton

Lethbridge

Red Deer

Medicine Hat

Fort McMurray

St. Albert

Grande Prairie

Camrose

Wetaskiwin

Drumheller

1.2 Towns

Spruce Grove

Brooks

Innisfail

Stony Plain

Morinville

Devon

Sylvan Lake

1.2 Towns, continued

Beaumont

Calmar

1.3 Villages

Delbourne*

2.0 RURAL MUNICIPALITIES

2.1 Counties

Parkland

Leduc

Camrose

Ponoka

2.2 Municipal District

Sturgeon

*No Adopted General Municipal Plan

APPENDIX II

PLANNING ACT (R.S.A. 1980)

SECTIONS 61 TO 72 AND 83 to 85

DIVISION 2

STATUTORY PLANS

General Municipal Plans

Preparation of General Municipal Plans

61 (1) Subject to subsection (3), a council of

(a) a city, town, new town, village or summer village having a population of 1000 or more, and

(b) a county or municipal district having a population of 10,000 or more

shall, by bylaw passed in accordance with Part 6, adopt a plan for the municipality to be known as the "(name of municipality) General Municipal Plan".

(2) A council to which subsection (1) does not apply may, by bylaw passed in accordance with Part 6, adopt a plan for the municipality to be known as the "(name of municipality) General Municipal Plan".

(3) The councils of 2 or more municipalities may, be each passing a bylaw in accordance with Part 6, adopt a joint general municipal plan to include those areas of land lying within the boundaries of the municipalities that the councils consider necessary and on its adoption the joint general municipal plan shall be considered to be a general municipal plan for all purposes.

1977 c89 s59

Public Participation in General Municipal Plans

62 A council shall, during the preparation of a general municipal plan, provide an opportunity to those persons affected by it of making suggestions and representations.

1977 c89 60

Contents of General Municipal Plan

63 A general municipal plan shall

(a) describe

(i) the land uses proposed for the municipality, and

- (ii) the manner of and the proposals for future development in the municipality;
- (b) designate or describe the areas of the municipality that would, in the opinion of the council, be suitable for an area structure plan or an area redevelopment plan or both;
- (c) contain any other matters that the council considers necessary.

1977 c89 s61; 1979 c61 s12

Area Structure Plans

- 64** (1) For the purpose of providing a framework for subsequent subdivision and development of an area of land in a municipality, a council may, by bylaw passed in accordance with Part 6, adopt a plan to be known as the "(name) Area Structure Plan".
- (2) An area structure plan shall
- (a) conform to any general municipal plan in existence and affecting the area that is the subject of the area structure plan;
 - (b) describe
 - (i) the sequence of development proposed for the area,
 - (ii) the land uses proposed for the area, either generally or with respect to specific parts of the area,
 - (iii) the density of population proposed for the area either generally or with respect to specific parts of the area, and
 - (iv) the general location of major transportation routes and public utilities;
 - (c) contain any other matters the council considers necessary.

1977 c89 s62

Area Redevelopment Plans

- 65 A council may, by bylaw passed in accordance with Part 6,
- (a) designate an area of the municipality as a redevelopment area for the purpose of all or any of the following:
 - (i) preserving or improving land and buildings in the area;
 - (ii) rehabilitating buildings in the area;
 - (iii) removing buildings from the area;
 - (iv) constructing or replacing buildings in the area;
 - (v) establishing, improving or relocating public roadways, public utilities or other services in the area;
 - (vi) any other development in the area,
- and
- (b) adopt a plan for that aea to be known as the "(name) Area Redevelopment Plan".

1977 c89 s63

Adoption of Area Redevelopment Plan

- 66 A bylaw adopting an area redevelopment plan may,
- (a) in accordance with this section and section 75, provide for the imposition and collection of a levy to be known as a redevelopment levy, and
 - (b) authorize a development officer, with or without conditions, to perform any function with respect to the imposition and collection of the levy that is specified in the bylaw.

1977 c89 s64

Contents of Area Redevelopment Plan

- 67 An area redevelopment plan shall
- (a) conform with any land use bylaw and any other statutory plan affecting the area that is the subject of the plan;
 - (b) describe

- (i) the objectives of the plan and how they are proposed to be achieved,
 - (ii) the proposed land uses for the redevelopment area,
 - (iii) the proposed public roadways, public utilities and other services,
 - (iv) the location of reserve land, and
 - (v) the recreational and school facilities likely to be required;
- (c) if a redevelopment levy is to be imposed
- (i) state the one or more purposes for which it is imposed, and
 - (ii) specify the proportion of the levy collected that will be paid to a school authority, if any;
- (d) describe proposals for the acquisition of land for any public municipal use, school facilities, parks and recreation facilities or any other purposes the council considers necessary;
- (e) contain any other proposals the council considers necessary.

1977 c89 s65

PART 4
IMPLEMENTATION OF PLANS
Division 1
Land Use Bylaw

Mandatory Land Use Bylaw

- 68 (1) A council of a municipality with a population of 1000 or more shall pass a bylaw in accordance with Part 6, to be known as the "(name of municipality) Land Use Bylaw".
- (2) A council of a municipality with a population of less than 1000 may pass a bylaw in accordance with Part 6, to be known as the "(name of municipality) Land Use Bylaw".

1977 c89 s66

Land Use Bylaw

- 69 (1) A land use bylaw may prohibit or regulate and control the use and development of land and buildings within a municipality.
- (2) A land use bylaw shall
- (a) divide the municipality into districts of the number and area the council considers appropriate;
 - (b) unless the district is designated as a direct control district pursuant to section 70, prescribe with respect to each district, in accordance with section 71 and with or without conditions,
 - (i) the permitted uses of land or buildings, or
 - (ii) the discretionary uses of land or buildings,or both;
 - (c) establish the office of one or more development officers unless a municipal planning commission is authorized to make decisions on applications for development permits, in which case the land use bylaw may establish the office of, and when necessary provide for the manner in which persons are to be appointed as, development officers;
 - (d) establish a method of making decisions on applications for development permits and issuing development permits to persons for any development including provisions for
 - (i) the types of development permits that may be issued,
 - (ii) the procedure for applying for a development permit,
 - (iii) the procedure for processing an application for, or issuing, cancelling, suspending or refusing to issue, a development permit,
 - (iv) the conditions that are to be attached, or that the development officer is empowered to attach, to a development permit either generally or with respect to a specific type of permit,
 - (v) the period of time that any type of development permit remains in effect,

- (vi) the discretion that a development officer is permitted to exercise with respect to development permits, and
 - (vii) any other matters necessary to regulate and control the issue of development permits that to the council appear necessary;
- (e) provide the manner in which notice of the issuance of a development permit is to be given.
- (3) Without restricting the generality of subsection (1), a land use bylaw may provide for any or all of the following matters, either generally or with respect to any district or part of a district established pursuant to subsection (2)(a);
- (a) subject to the subdivision regulations, the minimum and maximum area of lots;
 - (b) the ground area, floor area, height, size and location of buildings;
 - (c) the amount of land to be provided around or between buildings;
 - (d) the landscaping of land or buildings;
 - (e) the location, height and maintenance of fences and walls;
 - (f) the establishment and maintenance of
 - (i) off-street or other parking facilities, and
 - (ii) loading and unloading facilities,and any other areas that in the opinion of the council may be necessary;
 - (g) the design, character and appearance of buildings;
 - (h) the location and amount of access to lots from public roadways and ensuring that there is at least one means of access from each lot to a public roadway;
 - (i) the lighting of land, buildings or other things;
 - (j) the enlargement, alteration, repair, removal or relocation of buildings;
 - (k) the excavation or filling in of land;

- (1) the development of buildings
 - (i) on land subject to flooding or subsidence or that is lowlying, marshy or unstable,
 - (ii) on land adjacent to or within a specified distance of the bed and shore of any lake, river, stream or other body of water, or
 - (iii) subject to regulations made under section 147, within a specified area around an airport;
 - (m) the construction, placement or use of billboards, signboards or other advertising devices of any kind and if they are permitted at all, governing their height, size and character;
 - (n) the removal, repair or renovation of billboards, signboards or other advertising devices of any kind by resolution of the council;
 - (o) the density of population in any district or part of it;
 - (p) the designation of a district as a direct control district subject to and in accordance with section 70;
 - (q) the establishment of any agreements, forms, fees and procedural matters the council considers necessary;
 - (r) the issue of orders requiring an application for subdivision approval pursuant to section 79;
 - (s) the issue of orders pursuant to section 81.
- (4) A land use bylaw may provide that when an application for a development permit is refused another application for a permit for a development
- (a) on the same lot, and
 - (b) for the same or similar use,
- may not be made by the same or any other applicant until the time stated in the land use bylaw has expired.
- (5) A land use bylaw may authorize a development officer to decide on an application for a development permit notwithstanding that the proposed development does not comply with the land use bylaw if, in the opinion of the development officer,
- (a) the proposed development would not

- (i) unduly interfere with the amenities of the neighbourhood, or
- (ii) materially interfere with or affect the use, enjoyment or value of neighbouring properties,

and

- (b) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

1977 c89 s67; 1979 c61 s13

Designation of Direct Control Districts

- 70 (1) A council that has adopted a general municipal plan, if it considers it desirable to exercise particular control over the use and development of land or buildings within an area of the municipality, may in its land use bylaw designate that area as a direct control district.
- (2) If a direct control district is designated, the council may regulate and control the use or development of land or buildings in the district in any manner it considers necessary.

1977 c89 s68

Permitted and Discretionary Uses

- 71 (1) Subject to section 70, on the establishment of districts under a land use bylaw, the council shall prescribe in the bylaw
 - (a) the one or more uses of land or buildings that are permitted in each district, with or without conditions, or
 - (b) the one or more uses of land or buildings that may be permitted in each district in the discretion of a development officer with or without conditions,
 or both.
- (2) When a person applies for a development permit in respect of a development permitted by a land use bylaw pursuant to subsection (1)(a), the development officer shall, if the application otherwise conforms to the land use bylaw, issue a development permit.
- (3) When a person applies for a development permit in respect of a development that may, in the discretion of a development officer, be permitted pursuant to subsection (1)(b), the development officer may issue a development permit.

- (4) A decision of a development officer on an application for a development permit shall be given in writing and a copy of it sent to the applicant.
- (5) If a development officer refuses an application for a development permit, the decision shall contain reasons for the refusal.

1977 c89 s69

Division 4

Development Appeals

Development Prohibited Without Permit

- 83 (1) Except as otherwise provided in a land use bylaw or the land use regulations, no person shall commence any development unless he has been issued a development permit in respect of it.
- (2) An application for a development permit shall, at the option of the applicant, be deemed to be refused when the decision of a development officer is not made within 40 days of receipt of the application.
- (3) If a development officer
- (a) refuses or fails to issue a development permit to a person,
 - (b) issues a development permit subject to conditions, or
 - (c) issues an order under section 81,
- the person applying for the permit or affected by the order under section 81, as the case may be, may appeal to a development appeal board in accordance with this Division.
- (4) A person affected by an order, decision or development permit made or issued by a development officer, other than a person having a right of appeal under subsection (3), may appeal to a development appeal board in accordance with this Division.

1977 c89 s81; 1979 c61 s18

Appeals

- 84 (1) An appeal to a development appeal board shall be commenced by serving a written notice of the appeal on the development appeal board within 14 days after,
- (a) in the case of an appeal made by a person referred to in section 83(3), the date on which
 - (i) the person is notified of the order or decision or the issuance of the development permit, or
 - (ii) if no decision is made with respect to the application for a development permit, the 40-day period referred to in section 83(2) expired,
- or
- (b) in the case of an appeal made by a person referred to in section 83(4), the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw or land use regulations.
- (2) Within 30 days of receipt of a notice of appeal, the development appeal board shall hold a public hearing respecting the appeal.
- (3) The development appeal board shall give at least 5 days' notice in writing of the public hearing
- (a) to the appellant,
 - (b) to the development officer from whose order, decision or development permit the appeal is made,
 - (c) if the commission is not the development officer, to
 - (i) the municipal planning commission of the municipality, or
 - (ii) a joint municipal planning commission established under an agreement pursuant to section 28(2) to which the municipality is a party,
- and
- (d) to those owners required to be notified under the land use bylaw and any other person that the development appeal board considers to be affected by the appeal and should be notified.

- (4) The development appeal board shall make available for public inspection before the commencement of the public hearing all relevant documents and materials respecting the appeal including
- (a) the application for the development permit, its refusal and the appeal therefrom, or
 - (b) the order of the development officer under section 81,
- as the case may be.

1977, c89 s82; 1979 c61 s19; 1980 c82 s9

Hearing and Decision

- 85 (1) At the public hearing referred to in section 84, the development appeal board shall hear
- (a) the appellant or any person acting on his behalf,
 - (b) the development officer from whose order, decision or development permit the appeal is made, or if a person is designated to act on behalf of the development officer, that person,
 - (c) any other person who served with notice of the hearing and who wishes to be heard or a person acting on his behalf, and
 - (d) any other person who claims to be affected by the order, decision or permit and that the development appeal board agrees to hear or a person acting on his behalf.
- (2) The development appeal board shall
- (a) make and keep a written record of its proceedings, which may be in the form of a summary of the evidence presented to it at the hearing, and
 - (b) give its decision in writing together with reasons for the decision within 15 days of the conclusion of the hearing.
- (3) In determining an appeal, the development appeal board
- (a) shall comply with any regional plan, ministerial regional plan, statutory plan and, subject to clause (c), any land use bylaw or land use regulations in effect;

- (b) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (c) may make an order or decision or issue or confirm the issue of a development permit notwithstanding that the proposed development does not comply with the land use bylaw or land use regulations if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring properties,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw or land use regulations, as the case may be.

1977 c89 s83; 1979 c61 ss20, 43(1)

APPENDIX III

SAMPLE OF MUNICIPAL DIRECT CONTROL LEGISLATION

CITY OF EDMONTON

SECTION DC1
710 DIRECT DEVELOPMENT CONTROL DISTRICT

710.1 General Purpose

To provide a direct control district for detailed, sensitive control of the use, development, siting and design of buildings and disturbance of land where this is necessary to establish, preserve or enhance:

- a) areas of unique character or special environmental concern, as identified and specified in an Area Structure Plan or Area Redevelopment Plan, or
- b) areas or sites of special historic, cultural, palaeontological, archaeological, prehistoric, natural, scientific or aesthetic interest as designated under the Alberta Historical Resources Act (1973).

710.2 Application

1) This district shall only be applied:

- a) where specified by an Area Structure Plan or Area Redevelopment Plan, or
- b) to those historical resources which have been designated by the Minister or Council in accordance with the Alberta Historic Resources Act (1973).

710.3 Uses

A permit may be issued for those uses prescribed for the land in an approved Area Redevelopment Plan or Area Structure Plan, or those uses consistent with its designation under the Alberta Historical Resources Act (1973).

710.4 Development Criteria

- 1) All developments shall comply with the development criteria contained in an Area Structure Plan or Area Redevelopment Plan, except that any criteria or conditions applying as a result of designation of a historical resource under the Historical Resources Act (1973) shall take precedence.
- 2) In the case of designated historical resources, any application to demolish, alter, restore, or repair a building or structure, or to excavate or otherwise disturb land shall require prior written authority in accordance with the Historical Resources Act (1973).
- 3) A development may also be evaluated with respect to its compliance with:
 - a) the objectives and policies of an applicable Statutory Plan;
 - b) the General Regulations and Special Land Use Provisions of this Bylaw;
 - c) the regulations of abutting land use Districts.

710.5 Information Requirements

- 1) In addition to the information normally required for a development application under this Bylaw, the applicant shall submit all information specified in an applicable Area Redevelopment Plan or Area Structure Plan and a narrative explaining how the proposed use or development would be consistent with the intent of the District.

SECTION DC1
710 DIRECT DEVELOPMENT CONTROL DISTRICT

- 2) With respect to Section 710.5(1), if the development application concerns an historic resource designated under Section 18(1) or Section 19.3(2) of the Alberta Historical Resources Act (1973), a copy of the Minister's written approval with respect to Section 18(9) of said Act or Council's approval with respect to Section 19.3(b) of said Act shall be submitted with the application.
- 3) The Development Officer may require any additional information he deems appropriate in order to determine whether the proposed use or development is consistent with an approved Statutory Plan.

SECTION DC2
720 COMPREHENSIVELY PLANNED DEVELOPMENT DISTRICT

720.1 General Purpose

To provide a direct control district to enable major, comprehensively planned and designed development creating a unique, integrated and high quality urban environment, which is compatible with surrounding development and complies with applicable Statutory Plans but which could not be accommodated under any other land use District in this Bylaw.

720.2 Application

- 1) This District shall only be applied to a site which is entirely owned, leased or controlled by a single person, agent or corporation at the time the initial development proposal and application for redistricting is submitted.
- 2) This District shall only be designated if the following conditions are met:
 - a) the development proposed adheres to the General Purpose of this District;
 - b) the development proposed or its component parts, in terms of essential features, could not be enabled through any other land use District;
 - c) the development proposed complies with any approved Statutory Plan;
 - d) the development proposed complies with the Uses and Development Criteria specified in this District.
- 3) Prior to considering support or approval of any application for the use of this District, the Municipal Planning Commission or Council respectively, may require that the applicant prepare or obtain an amendment to a Statutory Plan for the area where the application of this District is sought.
- 4) Where this District is applied, Council shall regulate and control the use and development of land or buildings through a development agreement between the applicant and the City. The development agreement for the entire site must be executed prior to the issuance of any development permit, and it shall detail all regulations and conditions imposed by Council upon the development and use of land at the time of redistricting.
- 5) If the development proposal upon which the designation of this District is based involves subdivision, a proposed plan of subdivision shall be included in the development agreement as the basis for future subdivision. The Municipal Planning Commission shall not approve any subdivision under this District which does not generally conform with the provisions of the agreement, except for the purpose of effecting the staging or financing of the development proposal and provided that its form and integrity are not affected.
- 6) After this District is applied, the Development Officer shall only issue a development permit for an application which conforms to the provisions of the development agreement and, when there is nothing in the agreement which supersedes them, the General Development Regulations and Special Land Use Provisions of this Bylaw.
- 7) If a development application does not conform to the requirements of Clause (6), above, and in the Development Officer's opinion it would alter the nature of the uses, intensity or form of the development proposal upon which this designation is based, he shall refuse the application.
- 8) The application of this District to land and the development agreement pursuant to it shall be in force until changed by an amendment to the Land Use Bylaw provided that development permits for the entire development agreed to

SECTION DC2
720 COMPREHENSIVELY PLANNED DEVELOPMENT DISTRICT

under this District are issued:

- a) within one year of the date of third reading of the passage of the Bylaw amendment applying this District; or,
 - b) for sites in excess of 2 ha (4.96 acres) within such greater time period as may be agreed to by Council and specified in the development agreement.
- 9) In establishing a greater time period for the issuance of development permits pursuant to Clause (8) above, Council shall consider the following criteria:
- a) A reasonable time period should be allowed for the applicant to complete financing arrangements and the detailed design of the development, and to permit resolution of impediments to development which may exist or arise because of factors beyond his control.
 - b) Depending upon the scale and complexity of the development involved, the time period may allow for staging the components of the development provided that reasonably continuous development activity is maintained. Time periods for the issuance of development permits for individual stages of the development may be established in the development agreement.
 - c) The total time period should be limited to maintain the certainty and visibility of development under this District and to avoid potentially speculative development proposals. This period should rarely exceed five years, even for very large developments. In some cases it may be desirable to postpone application of this District for all or part of the site, in lieu of granting an extended period of time for the issuance of development permits.
- 10) If development permits are not issued within the time periods specified or if the permits issued within the specified periods subsequently lapse because a building permit is not issued, is cancelled or construction activity is not maintained, the agreement between the applicant and the City shall be null and void for that portion of the site without a valid development permit, and the land use designation for that portion shall automatically revert to the land use designation in place prior to the application of this District, unless:
- a) Council, by Bylaw, extends the application of this District for that part of the site for a specified further period.
 - b) Council substitutes another land use District for that part of the site.
- 11) Development Information signs shall be erected in accordance with Section 72 of this Bylaw.

720.3 Uses

Council may, through the development agreement required in this District, allow any use which complies with any Statutory Plan for the area and which, in its opinion, meets the general purpose of this District and is compatible with the character, form and integrity of existing surrounding uses and Permitted Uses in surrounding land use Districts.

720.4 Development Criteria

- 1) Council may, through the development agreement required in this District, specify any development regulation, criteria or condition necessary to ensure

SECTION DC2
720 COMPREHENSIVELY PLANNED DEVELOPMENT DISTRICT

development conforms to the development proposal upon which this designation is based.

- 2) In determining the acceptability of a development proposal under this District, Council may consider, among other matters, the following:
- a) its relationship and compliance with the General Municipal Plan and other applicable Statutory Plans;
 - b) its relationship to Statutory Plans or Replotting Schemes, in preparation for the area;
 - c) its compliance with or conformity to the regulations of surrounding land use Districts and the General Development Regulations and Special Land Use Provisions of this Bylaw;
 - d) its compatibility with surrounding existing land uses, scale of development, and potential effect on stability, retention and rehabilitation of desirable existing uses and/or buildings in the area;
 - e) its traffic impact;
 - f) the location, function and design of roadways, parking facilities, pedestrian circulation and transit systems serving the whole proposed development, or each phase of the proposed development and the provision of transit facilities and enclosed parking;
 - g) its impact on services such as water and sewage systems, public transit, and other utilities;
 - h) its impact on community services including student generation and school capacities;
 - i) its relationship to municipal land, right-of-way or easement requirements;
 - j) its design responsiveness to its urban environmental context and urban design considerations, including microclimatic impacts;
 - k) its impact on natural drainage patterns, vegetative cover, air and water quality, energy conservation and efficiency;
 - l) the provision and quality of landscaped open space and recreational amenities; including children's play space or other communal recreational space;
 - m) its provision of defensible space and impact on policing, public safety and security;
 - n) its responsiveness to the documented concerns and opinions of area residents and owners;
 - o) the arrangements for the ongoing maintenance of communal open spaces, recreational facilities and lands which are not to be conveyed to the City;
 - p) the need for restrictive covenants or development agreement provisions to maintain the design integrity of the project and control any future additions, accessory buildings or renovations.

SECTION DC2
720 COMPREHENSIVELY PLANNED DEVELOPMENT DISTRICT

- 3) In addition, all proposals for large-scale developments involving subdivision within this District shall comply with the City of Edmonton Standard Servicing Manual and Standard Servicing Agreement, except where the applicant is able to demonstrate that by departing from the established local standards, the viability and objectives of the development are enhanced and adequate service is maintained.

720.5 Information Requirements

*Bylaw 6626
1981 11 10*

- 1) The applicant shall submit the following information at the time of his application for designation of this District in addition to the information requirements for a development permit for a Class D development as described in the General Administrative Clauses of this Bylaw:
- a) a written statement of why the application of this District is necessary and an impact assessment outlining:
 - i) relationship and compliance to the General Municipal Plan;
 - ii) relationship to relevant Statutory Plans or Replotting Schemes in preparation;
 - iii) compatibility with surrounding existing land uses and scale of development;
 - iv) traffic and public transit impacts in terms of daily and peak hour trip generation and assignments;
 - v) impacts on and service requirements for water, sewage, and other utilities;
 - vi) relationship to any known municipal land, right-of-way or easement requirements;
 - vii) potential effect on stability, retention and rehabilitation of desirable existing uses and buildings in the area;
 - viii) an assessment of impacts on community services including student generation and school capacities.
 - b) the staging or interim use (if any), implementation schedule, and duration of construction for the proposal;
 - c) certificates of title for all lands to be placed under this designation and the written consent of all owners involved;
 - d) a site plan, or plans, which clearly show the functional and physical relationships of the development, and the functional and physical relationship to surrounding development. The site plan(s) shall be a minimum scale of 1:200 (metric), unless the project is of such size that this would not be practical. In this event, the scale may be reduced to 1:500 (metric), with detailed plan(s) highlighting more complex aspects of the proposal at 1:200 (metric). The site plan(s) shall illustrate:
 - i) existing and final topography of the site with a map showing minimum contour intervals of 2 metres as well as an indication of the occurrence, if any, of the areas of the site with unstable or unusual soil conditions such as sloughs, organic soils or refuse sites;

SECTION DC2
720 COMPREHENSIVELY PLANNED DEVELOPMENT DISTRICT

- ii) a soil study delineating the "top-of-bank line" and development setbacks where the plan includes, or is adjacent to, a river valley or a ravine;
 - iii) other physical or natural conditions or features which may influence or constrain development;
 - iv) the intended floor area ratio, density, height and number of units for each of the uses and the horizontal and vertical distribution of those uses;
 - v) automobile, transit, and service vehicle movement and circulation patterns, access and egress points to and from the site and all existing rights-of-way and easements, whether public or private, within the development area;
 - vi) parking/loading, transit stops/zones and light rail transit facilities;
 - vii) inside or outside recreational amenities, open spaces and other common facilities which may be dedicated to the City or maintained in common;
 - viii) principal linkages to surrounding uses with respect to pedestrian movement, private transportation, transit, delivery and collection services;
 - ix) method of water supply, sewage disposal, electric power, telephone, natural gas, cable and other utility services;
 - x) points of major pedestrian access to buildings which are to be located on the development site and the security arrangements and the proposed opening/closing times for such access;
 - xi) location and size of all signs;
 - xii) location and design of outdoor lighting, street furniture and other amenities;
 - xiii) landscaping details and specifications for all open spaces, including planting, trees and other vegetation to be retained and their location;
- e) an urban design context plan at a minimum scale of 1:500 (metric) showing the proposed development and its relationship to on-site and surrounding natural physical features and development in terms of design factors, opportunities and influences, and, a statement describing how the design of the development has responded to the following:
- i) the uses and amenities of surrounding properties within 100 metres (328.08 ft.) of the boundaries of the project site;
 - ii) the physical characteristics and human activity patterns characteristic of the site and surrounding land uses and development;
 - iii) the urban design statements of any Statutory Plan which are applicable to the site;
 - iv) the context of the development in relation to the structure types, architectural detailing, and finishing materials prevalent in surrounding development.

SECTION DC2
720 COMPREHENSIVELY PLANNED DEVELOPMENT DISTRICT

- f) elevations and sections at a minimum scale of 1:100 (metric) and a description of finishing materials, illustrating the proposed treatment of all building facades, roofs, and other design details which are to be representative of all buildings and structures comprising the development.
- g) either of the following:
 - i) a detailed scale model, or
 - ii) a massing scale model and renderings,either of which shall provide an accurate representation of the entire development when it is completed.
- 2) For developments involving subdivision, a proposed plan of subdivision for the whole site.
- 3) Information submitted in accordance with the requirements of this District shall be certified as follows:
 - a) all site boundaries, land parcels, subdivision description and ownership shall be certified by an Alberta Land Surveyor;
 - b) all architectural and urban design components shall be prepared by a qualified professional Architect, registered in Alberta.
 - c) all site planning and/or subdivision layout design shall be prepared by a professional Planner or Architect.
 - d) all landscape work shall be designed by a professionally qualified Landscape Architect.

SECTION DC3
730 TEMPORARY HOLDING DISTRICT

730.1 General Purpose

To provide a direct control district to temporarily control the development of land for which Council has authorized the preparation of an Area Redevelopment Plan or a Replotting Scheme when circumstances or changes in policy indicate that the present land use designation may be inappropriate.

730.2 Application

- 1) This District may only be applied to land for which Council has authorized the preparation of an Area Redevelopment Plan or Replotting Schemes.
- 2) This District shall not apply for a period greater than one year except Council may, by bylaw, extend its application for one additional period of six months. At the end of this time period this District shall no longer apply, and if no other land use District is substituted, the land shall revert to its previous land use designation.

730.3 Uses

A development permit may be issued for those uses specified in the land use designation superseded by this District except those which, in the opinion of the Development Officer, conflict with, or infringe upon, the achievement of any objectives specified in a schedule to this District, adopted through an amendment to the Bylaw.

730.4 Development Criteria

- 1) All development shall adhere to the development regulations or criteria specified in the land use designation superseded by this District, except where such regulations or criteria, in the opinion of the Development Officer, would conflict with or infringe upon, the achievement of any objectives specified by Council pursuant to Section 730.3.
- 2) The Development Officer may impose any conditions which he deems necessary in order to ensure that development is consistent with any objectives specified by Council.

730.5 Information Requirements

In addition to the information normally required for a development application under this Bylaw, the applicant shall submit a narrative explaining how the proposed use or development would be consistent with objectives specified by Council.

SECTION DC4
740 SPECIAL PUBLIC SERVICE DISTRICT

740.1 General Purpose

To provide a direct control district to regulate and control uses and development on lands which are presently governed by superior legislation in the event that such uses or developments do not conform to the intent of superior legislation and therefore fall within the realm of municipal jurisdiction; or, in the event that the land is sold or leased for private use, to provide interim control until a more appropriate land use District is applied.

740.2 Application

- 1) This District may be applied by Council to any lands, the use and development of which is, or may be subject to, superior legislation, including, but not limited to:
 - a) lands and property held by a university and used for university purposes in accordance with the Universities Act;
 - b) lands and property held by the Government of Canada in Right of Her Majesty;
 - c) lands and property held by the Province of Alberta in Right of Her Majesty;
 - d) lands and property held by railway companies and used for railway operations in accordance with the Railways Act.
- 2) If, in the opinion of the Development Officer, the land involved has entirely ceased to be governed by superior legislation, a more appropriate land use District may be required prior to the issuance of any development permit.

740.3 Uses

- 1) A development permit is not required for any use in this District which is consistent with those uses, activities and operations prescribed in the appropriate superior legislation.
- 2) The Development Officer may permit any other use in this District which, in his opinion, complies with any Statutory Plan for the area and which is compatible with the character form and integrity of existing surrounding uses and Permitted Uses in surrounding land use Districts.

740.4 Development Criteria

A development permit for a development which is not governed by superior legislation may be evaluated with respect to its compliance with:

- a) the objectives and policies of an applicable approved Statutory Plan;
- b) the General Regulations and Special Land Use Provisions of this Bylaw;
- c) the regulations of abutting land use Districts.

740.5 Information Requirements

In addition to the information normally required for a development application under this Bylaw, the applicant shall submit a narrative explaining how the proposed use or development would be consistent with the General Plan any other applicable Statutory Plan, existing surrounding development and abutting land use Districts.

SECTION DC5
750 SITE SPECIFIC DEVELOPMENT CONTROL DISTRICT

Bylaw 7049
1982 10 12

750.1 General Purpose

To provide a Direct Control District for the creation of site specific land use regulations in respect of specific sites within the City where the circumstances relating to the development of a specific site are such that regulation and control by means of the other land use districts provided for in this Bylaw would be inappropriate or inadequate, having regard to existing or future surrounding developments and to the interest of the applicant and the public, generally.

750.2 Application

- 1) This district shall only be applied where all of the following conditions are met:
 - a) the proposed development is, in the opinion of Council, considered appropriate for the site having regard for the land use policies of the General Municipal Plan, the objectives of any applicable Area Structure or Area Redevelopment Plan, and compatibility with the scale and character of surrounding development;
 - b) that the use of any other land use district of this Bylaw to accommodate the proposed development would, in the opinion of Council, result in potential conflicts with existing or future surrounding developments, should the full development potential of such land use district be utilized; and
 - c) the proposed development is not of a scale or complexity requiring a comprehensive planning and implementation approach that, in the opinion of Council, would be more appropriately regulated through the DC2 - Comprehensively Planned Development district.
- 2) The application of this district may be initiated through the bylaw amendment procedures of Section 26 of this Bylaw: or Council may, after the public hearing on any proposed redistricting bylaw, amend the proposed bylaw to a site specific Development Control District - DC5, and pass the proposed bylaw, where Council is of the opinion that the development circumstances of the proposed bylaw warrant the use of a site specific district.

750.3 Uses

A development permit shall be issued for those uses prescribed in the bylaw applying this district to the site provided that, in the opinion of the Development Officer, the development application complies with this bylaw and the development regulations prescribed in the bylaw applying this district to the site.

750.4 Development Regulations

Where this district is applied, the development regulations shall be prescribed in the bylaw applying this district to the site and such development regulations shall be limited to those matters provided for in the Land Use Bylaw and Development Conditions provisions of Division 1 and Division 2, Part 4, of the Planning Act.

750.5 Information Requirements

- 1) In addition to the information required in Section 26.2(1) of this Bylaw for redistricting applications, the applicant shall submit the following information:
 - a) a narrative explaining why site specific development control is desirable for the site having regard for the conditions of application set out in Section 750.2(1);

SECTION DC5
750 SITE SPECIFIC DEVELOPMENT CONTROL DISTRICT

- b) a narrative documenting the opinions and concerns of surrounding property owners and residents and how the proposed development responds to those concerns, together with a summary of the methods used to obtain public input; and
- c) the applicant may, at his option, submit other information including, but not limited to, conceptual site plans and building elevations that would help to substantiate the need for a site specific Development Control District.

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