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# Municipal Councils and Part 17 of the MGA: Limits on the Exercise of Discretion

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## Overview

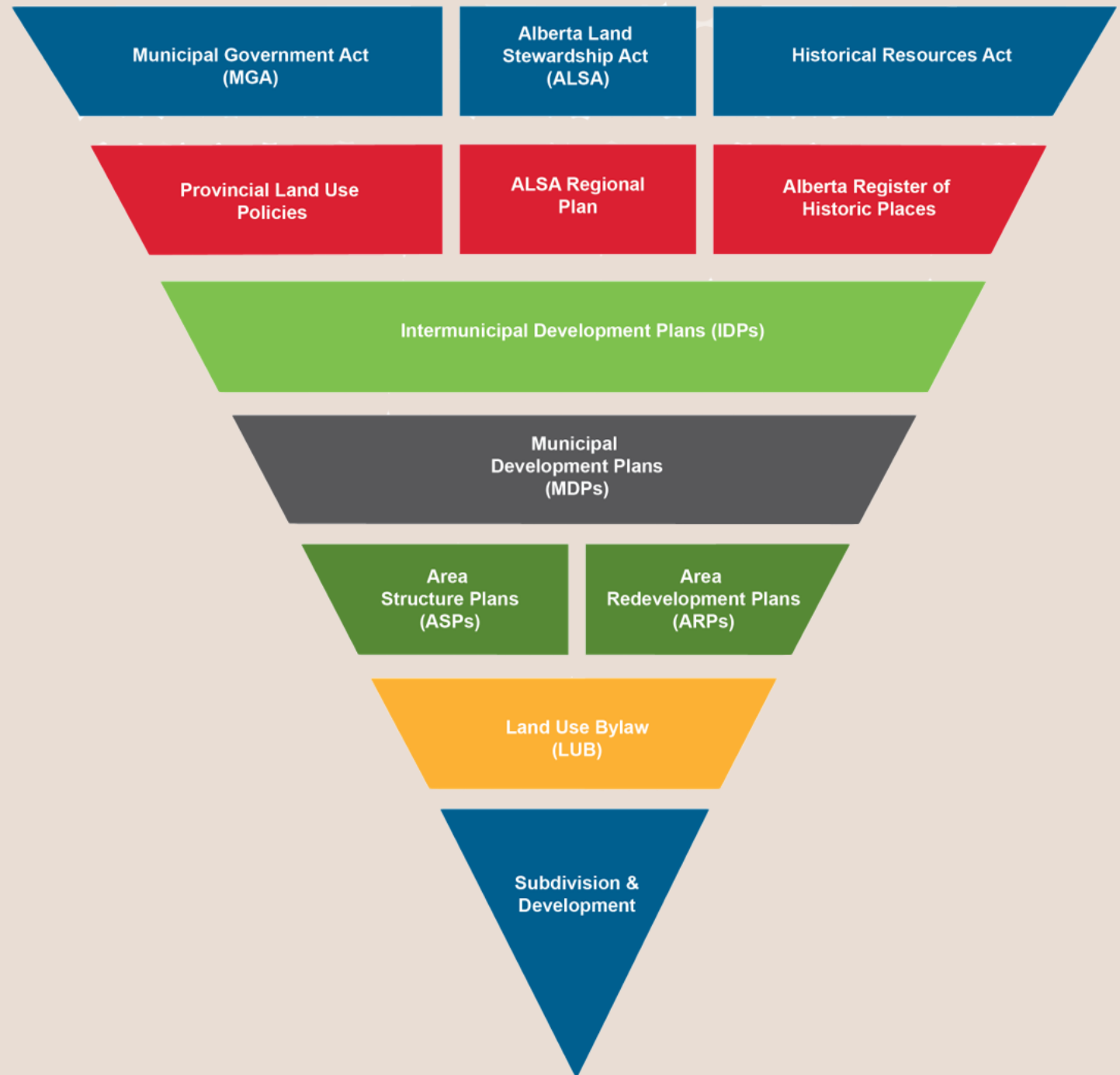
- Council has a broad discretion under Part 17 of the MGA, but it is not unlimited
- Session will address:
  - Council's role in planning and development
  - Requirements for valid Council action
  - Challenges to planning and development decisions

# Council's Role in Planning and Development



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# Planning and Development Hierarchy





## Council's Role in Planning and Development

- Council's primary role in the planning and development process is to enact statutory plans and a land use bylaw (planning bylaws) following a public hearing (MGA s. 692).





## Council's Role in Planning and Development

- Council may be the subdivision or development authority, or make decisions in direct control districts (MGA ss. 623 and 641(3)).
- Individual councillors may sit on a Municipal Planning Commission (MGA s. 625) or a SDAB or ISDAB.

# Requirements for Valid Council Action



## Requirements for Valid Council Action

- Council may only act by resolution or bylaw (MGA s. 180)
- General requirements for valid bylaw or resolution set out in s. 181 of MGA
- MGA may also require a public hearing
- Additional requirements for statutory plans and land use bylaw (planning bylaws) set out in Part 17 of MGA





## Requirements for Valid Council Action

### **Statutory Plan Preparation (MGA s. 636)**

- Council must provide notification and means for suggestions and representations to be made
  - Members of public who may be affected;
  - School boards in the area;
- Additional requirements for the MDP and ASPs
- Does not apply to amendments to statutory plans



## Requirements for Valid Council Action

- Public hearing required prior to adopting or amending planning bylaws
- General advertising requirements set out in s. 606 of the MGA
- Additional advertising requirements for planning bylaws set out in s. 692

## Requirement for Valid Council Action

- Courts may impose additional notice requirements
- See, for example, *Airport Self Storage and RV Centre Ltd v Leduc (City)* (2008 Alberta Court of Queen's Bench)





## Requirements for Valid Council Action

- Notice of public hearing must be advertised at least 5 days before the public hearing (MGA ss. 606(5))
- Notice must contain (MGA ss. 606(6)):
  - Statement of general purpose;
  - Address where documents relating to public hearing may be inspected;
  - Date, time and place of public hearing.
- Additional requirements for amendment to a land use bylaw to change the district designation of a parcel of land (MGA ss. 692(4))



## Requirements for Valid Council Action

- Council may establish procedures by bylaw (MGA ss. 216.4(3))
  - Council:
    - (a) must hear any person, group of persons or person representing them who claims to be affected by the proposed bylaw or resolution and who has complied with the procedures outlined by the council, and
    - (b) may hear any other person who wishes to make representations and who the council agrees to hear.
- (MGA, ss. 216.4(4))



## Requirements for Valid Council Action

### Hearing Procedures

- (5) After considering the representations made to it about a proposed bylaw or resolution at the public hearing and after considering any other matter it considers appropriate, the council may
    - (a) pass the bylaw or resolution,
    - (b) make any amendment to the bylaw or resolution it considers necessary and proceed to pass it without further advertisement or hearing, or
    - (c) defeat the bylaw or resolution.
- (MGA, s. 216.4)



## Requirements for Valid Council Action

### **Abstention from voting on matter discussed at public hearing**

- 184 When a public hearing on a proposed bylaw or resolution is held, a councillor
  - (a) must abstain from voting on the bylaw or resolution if the councillor was absent from all of the public hearing, and
  - (b) may abstain from voting on the bylaw or resolution if the councillor was only absent from a part of the public hearing.

# Challenges to Planning and Development Decisions





## Challenges to Planning and Development Decisions

- If Council is acting as the subdivision or development authority, there may be a right of appeal to the SDAB or LPRT (not for permitted uses) (MGA ss. 685 and 687)
- If Council made a decision in a direct control district, there is no right of appeal (s. 685)
- Limited grounds for challenges to other Council decisions (including planning bylaws and amendments)



## Challenges to Planning and Development Decisions

### **Application to the Court of Queen's Bench**

**536(1)** A person may apply to the Court of Queen's Bench for

- (a) a declaration that a bylaw or resolution is invalid, or
- (b) an order requiring a council to amend or repeal a bylaw as a result of a vote by the electors on the amendment or repeal.



## Challenges to Planning and Development Decisions

- Section 539 of the MGA indicates that “no bylaw or resolution may be challenged on the ground that it is unreasonable”
- Challenges to planning bylaws often framed as breach of statutory requirements or breach of duty of procedural fairness



## Challenges to Planning and Development Decisions

### ***Keefe v. Edmonton (City)* (2005 Alberta Court of Appeal)**

- Redistricting amendment to land use bylaw
- Residents opposed to redistricting were not given the opportunity to respond to attacks on credibility of residents' experts
- Residents were advised they would be permitted to respond at the continuation of the hearing, but were not due to Council's misunderstanding of its policy



## Challenges to Planning and Development Decisions

### ***Robertson v. Edmonton (City)* (1990 Alberta Court of Queen's Bench)**

- City failed to provide notice of place at which documents could be inspected
- Members of organization advised that there were no limitations on submissions, and no time limitation was advertised
- At the public hearing, Council imposed a 5-minute limit on submissions from the spokesperson for the organization



## Challenges to Planning and Development Decisions

### ***Waste Management of Canada Corporation v. Thorhild (County)* (2008 Alberta Court of Queen's Bench)**

- Prior to election councilor was active participate in concerned citizens group, attended before Council at public hearing regarding proposed redistricting of lands (re: proposed landfill)
- Following election, participated in continuation of same public hearing and vote on redistricting bylaw
- Developer challenge council decision on basis of councilor's alleged bias



## Challenges to Planning and Development Decisions

- *Gruman v. Canmore (Town)* (2018 Court of Queen's Bench)
- Applicant alleged Council failed to follow its own policies







## Challenges to Planning and Development Decisions

### ***Ponoka Right to Farm Society v Ponoka (County) (2020 Alberta Court of Queen's Bench)***

- Society applied to review County bylaw adopting the Ponoka North-West Area Structure Plan (ASP)
- Society argued council failed to consider the mandatory requirements for ASP under s 633(2), and therefore the decision was patently unreasonable.
- Society argued council failed to consider consistency with County Municipal Development plan, as required under s 633(3)





## Challenges to Planning and Development Decisions

### ***Koebisch v Rocky View (County) (2021 Alberta Court of Appeal)***

- Court of Queen's Bench set aside four bylaws which redesignated land from "Ranch and Farm District" to "Natural Resource Industrial District" to facilitate the development of gravel extraction
- Two landowners in the area opposed the bylaws and sought judicial review
- Court of Queen's bench found Council had jurisdiction to pass bylaws, but had not done so properly



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