Minutes – Executive Policy Committee – January 19, 2022

REPORTS

Item No. 15 Amendments to City By-laws and Policies resulting from the Airport Vicinity Protection Area Regulation

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and recommended to Council:

1. That an amending by-law be enacted, attached as Schedule A to this report, to meet the mandatory requirements of the Province of Manitoba's Airport Vicinity Protection Area Regulation 66/2021 (the "Regulation"), that would:

    A. Update the *OurWinnipeg* No. 67/2010 ("*OurWinnipeg*") map and policies to conform to the Regulation;

    B. Amend the Winnipeg Zoning By-law No. 200/2006 to conform to the Regulation; and

    C. Amend policies within the Complete Communities Direction Strategy No. 68/2010 in order to ensure continued consistency with *OurWinnipeg*.

2. That the Public Service be directed to schedule a public hearing before the Standing Policy Committee on Property and Development, Heritage and Downtown Development within 180 days to consider the following:

    A. Amending Schedule D of the Winnipeg Zoning By-law to remove any unit density requirements currently imposed on the Airport Vicinity Protection Area; and

    B. Repealing the Airport Vicinity Protection Area Secondary Plan By-law.

3. That consequential amendments be made to Council Policy PD-018: Local Area Plan - North Inkster Industrial Neighbourhood, as set out in Schedule B to this Report, in order to conform to the Winnipeg Zoning By-law, as amended per Recommendation 1.b. above.

4. That consequential amendments be made to Council Policy PD-019: Local Area Plan - Taylor Redevelopment, as set out in Schedule B to this Report, in order to conform to the Winnipeg Zoning By-law, as amended per Recommendation 1.b. above.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION (continued):

5. That the Public Service be directed to report back to the Standing Policy Committee on Property and Development, Heritage and Downtown Development within 180 days with recommendations on updating acoustic insulation requirements in the Airport Vicinity Protection Area in accordance with the Regulation, including by repealing, amending, or replacing the Airport Vicinity Acoustic Insulation By-law No. 6419/94.

6. That the Public Service be directed to report back to the Standing Policy Committee on Property and Development, Heritage and Downtown Development within 180 days with recommendations on how to ensure that *OurWinnipeg 2045* ("OW 2045") and Complete Communities 2.0 are brought into conformity with the Regulation.

7. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

DECISION MAKING HISTORY:

Moved by Councillor Gilroy,

That the recommendation of the Winnipeg Public Service be concurred in and forwarded to Council.

Yea:	Bowman, Allard, Browaty, Gillingham, Gilroy, Mayes, Rollins	7
Nay:		0

Carried

ADMINISTRATIVE REPORT

Title: Amendments to City By-laws and Policies resulting from the Airport Vicinity Protection Area Regulation

Critical Path: Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
C. MacLean (Legal) and R. Kostiuk (Planning, Property, & Development)	D. Brown (Legal) and J. Kiernan (Planning, Property, & Development)	N/A	M. Jack

EXECUTIVE SUMMARY

On August 12th, 2021, the Province of Manitoba adopted the *Airport Vicinity Protection Area Regulation* (the "Regulation") pursuant to section 269 of the *City of Winnipeg Charter*. The Regulation overrides the City by-laws to the extent of any inconsistency.

Sections 3, 8, and 9 of the Regulation require the City to amend its development plan (currently *OurWinnipeg* No. 67/2010*)* and zoning by-laws within six months of the Regulation coming into force and effect (e.g., by no later than February 12th, 2022). For the amendments that are being imposed by the Province, Council may pass amendments to *OurWinnipeg* and the Winnipeg Zoning By-law as "corrections" under section 276 of the Charter, thus allowing Council to bring these amendments into force and effect immediately without the need for a public hearing.

These mandatory amendments to *OurWinnipeg* and the Winnipeg Zoning By-law will also result in consequential amendments. Firstly, the Complete Communities Direction Strategy No. 68/2010 will require amendment: because Complete Communities must be amended to comply with *OurWinnipeg*, this amendment may also proceed as a "correction" without public hearing.

Secondly, the following Council policies will require consequential amendments in order to ensure continued consistency with the Winnipeg Zoning By-law:

- Local Area Plan - North Inkster Industrial Neighbourhood; and
- Local Area Plan - Taylor Redevelopment.

In addition*, OurWinnipeg* 2045 ("OW 2045") and Complete Communities 2.0 will need to be brought into conformity with the Regulation before being enacted by the City. OW 2045 is currently under review by the Province, and Complete Communities 2.0 will not be enacted until OW 2045 receives provincial approval; as a result, any required amendments to these by-laws will be considered at a later date.

There are also a number of amendments that would bolster the City's compliance with the Regulation, but that are not explicitly required in the Regulation itself. Because these are

decisions of the City, and require the City to exercise discretion, these amendments would need to be referred to the Standing Policy Committee on Property and Development, Heritage and Downtown Development for consideration before being referred to Council. These proposed amendments include:

- The repeal of the AVPA Secondary Plan and removal of the density-related provisions of Schedule D to the Winnipeg Zoning By-law, which would need to be considered at a public hearing; and
- New and comprehensive acoustic insulation requirements: the Airport Vicinity Acoustic Insulation By-law No. 6419/94 has been superseded by section 7 of the Regulation, and the City will need to determine how to implement the intent of the Regulation (final recommendations will not have to be brought to a public hearing).

RECOMMENDATIONS

1. That Council enact an amending by-law, attached as Schedule A to this report, to meet the mandatory requirements of the Province of Manitoba's Airport Vicinity Protection Area Regulation 66/2021 (the "Regulation"), that would:
    a. Update the *OurWinnipeg* No. 67/2010 ("*OurWinnipeg*") map and policies to conform to the Regulation;
    b. Amend the Winnipeg Zoning By-law No. 200/2006 to conform to the Regulation; and
    c. Amend policies within the Complete Communities Direction Strategy No. 68/2010 in order to ensure continued consistency with *OurWinnipeg*.

2. That the Public Service be directed to schedule a public hearing before the Standing Policy Committee on Property and Development, Heritage and Downtown Development within 180 days to consider the following:
    a. Amending Schedule D of the Winnipeg Zoning By-law to remove any unit density requirements currently imposed on the Airport Vicinity Protection Area; and
    b. Repealing the Airport Vicinity Protection Area Secondary Plan By-law.

3. That Council make consequential amendments to Council Policy PD-018: Local Area Plan - North Inkster Industrial Neighbourhood, as set out in Schedule B to this Report, in order to conform to the Winnipeg Zoning By-law, as amended per Recommendation 1.b. above.

4. That Council make consequential amendments to Council Policy PD-019: Local Area Plan - Taylor Redevelopment, as set out in Schedule B to this Report, in order to conform to the Winnipeg Zoning By-law, as amended per Recommendation 1.b. above.

5. That the Public Service be directed to report back to the Standing Policy Committee on Property and Development, Heritage and Downtown Development within 180 days with recommendations on updating acoustic insulation requirements in the Airport Vicinity Protection Area in accordance with the Regulation, including by repealing, amending, or replacing the Airport Vicinity Acoustic Insulation By-law No. 6419/94.

6. That the Public Service be directed to report back to the Standing Policy Committee on Property and Development, Heritage and Downtown Development within 180 days with recommendations on how to ensure that OurWinnipeg 2045 ("OW 2045") and Complete Communities 2.0 are brought into conformity with the Regulation.

7. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

On August 12th, 2021, the Province of Manitoba adopted the *Airport Vicinity Protection Area Regulation* (the "Regulation") pursuant to section 269 of the *City of Winnipeg Charter*. The Regulation overrides the City by-laws to the extent of any inconsistency.

Sections 3, 8, and 9 of the Regulation require the City to amend its *OurWinnipeg* and Zoning By-law within six months of the Regulation coming into force and effect (e.g., by no later than February 12th, 2022).

The Public Service has determined that various City by-laws and policies will need to be amended or repealed in order to reflect this new regulatory landscape.

Council approval is required for by-law and policy amendments.

IMPLICATIONS OF THE RECOMMENDATIONS

- The following by-laws and policies will be amended in accordance with the mandatory requirements of the Regulation, or as a direct consequence of those mandatory amendments:
    - *OurWinnipeg*;
    - The Winnipeg Zoning By-law;
    - The Complete Communities Direction Strategy;
    - Local Area Plan - North Inkster Industrial Neighbourhood; and
    - Local Area Plan - Taylor Redevelopment.

- Concurrence with these recommendations also results in the following:
    - A public hearing will be scheduled before the Standing Policy Committee on Property and Development, Heritage and Downtown Development within 180 days to consider an application to repeal the AVPA Secondary Plan and the density-related provisions of Schedule D to the Winnipeg Zoning By-law.
    - The Public Service will report back to the SPCPDHD within 180 days:
        - To provide recommendations on how to appropriately implement the new acoustic insulation requirements within the Airport Vicinity Protection Area, as required by section 7 of the Regulation; and
        - To provide recommendations on updating OW 2045 and Complete Communities 2.0 to conform to the Regulation.

HISTORY/DISCUSSION

Province of Manitoba's Airport Vicinity Protection Area Regulation

On June 21, 2021, the Province announced that a new AVPA Regulation, derived from a provincial report on airport vicinity land-use modernization, was open for consultation. The Regulation, which was enacted pursuant to section 269 of the Charter, would override the City's existing AVPA regulation to the extent of any inconsistency. The Province's consultation window would last for 45 days, from June 21 to August 5, 2021.

Following the close of the consultation window, the Province adopted the proposed Regulation in full on August 12, 2021 with the only change resulting from consultation being a minor change to the boundaries of the AVPA. Prior to the consultation period, the original draft regulation appeared to have been based on the Ultimate-Term Conceptual Conditions provided in the Province's *Noise Exposure Forecast Study – Winnipeg International Airport - Final Report* (January 8, 2021). The outer boundary of Area 1 under the draft regulation had corresponded with the 35 NEF contour boundary, while the outer boundary of Area 2 corresponded with the 25 NEF contour. Following consultation, the Province amended these boundaries in response to comments received – no rationale has been provided for these new boundaries.

The Regulation came into force on August 12, which started the clock on the City's six-month window to make its required amendments to *OurWinnipeg* and the Winnipeg Zoning By-law. In the interim, the City is required to make decisions on applications for development and subdivision "as if" all necessary by-law amendments had already been passed. Therefore, the Regulation has already overridden City By-laws and policies to the extent of any inconsistency. In particular, the Regulation:

- Altered the geographic area of the AVPA (e.g., where AVPA restrictions apply), and ousted the City's jurisdiction over AVPA boundaries;
- Replaced the City's noise mitigation standards under the Acoustic Insulation By-law, rendering that By-law unenforceable; and
- Requires the City to make a series of consequential amendments to various by-laws and policies, including Complete Communities.

As outlined in the *Implications of the Recommendations* section, the Public Service has determined that various City by-laws and policies will need to be amended or repealed in order to reflect this new regulatory landscape.

Mandatory Amendments to OurWinnipeg

Sections 3 and 8 of the Regulation require the City to amend its development plan (*OurWinnipeg).* As discussed above, the Regulation expressly overrides the existing *OurWinnipeg* to the extent of any inconsistency. In the interim period, the City is required to administer the Airport Vicinity Protection Area as if these mandatory amendments had already been made.

Effectively, then, Council's approval of amendments to *OurWinnipeg* are a formality, as Council has no discretion to accept or reject the Regulation or its requirements. As these amendments are being imposed by the Province, Council may pass them as "corrections" under section 276 of the Charter, thus allowing Council to bring these amendments into force and effect immediately, without the need for a public hearing.

The Regulation retains the conceptual distinction between Areas 1 and 2 that exists under *OurWinnipeg* and the City's existing by-laws. Where the Regulation departs from *OurWinnipeg* is in the contours and total area of the Airport Vicinity Protection Area (see Figure 1 below). The draft Regulation put forward by the Province for the consultation period appeared to primarily follow contours developed in the Province's *Noise Exposure Forecast Study – Winnipeg International Airport - Final Report* (January 8, 2021). However, as stated above, the protection area in the final version of the Regulation was amended in response to comments received in order to "reflect a more precise model of predicted noise exposure Area." Under the Regulation, Area 1 of the AVPA will cover 2902.8 acres within the City of Winnipeg, just 36% of the Area 1 that was regulated under the City's previous Area 1 (7971.8 acres). Similarly, the new Area 2 will cover 9100.3 acres, approximately 84% of the City's previous Area 2.

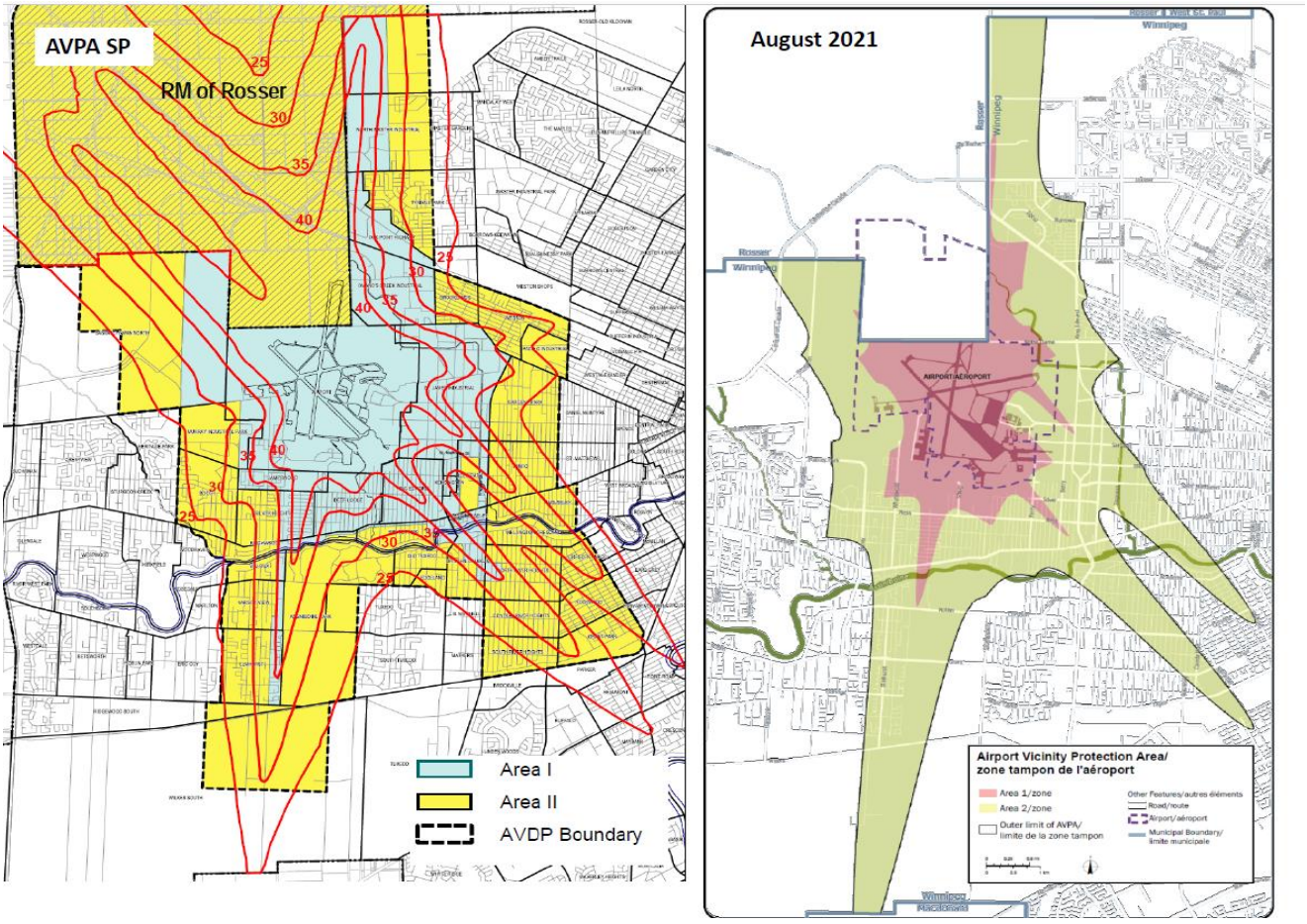


Figure 1: Areas I and II of AVPA Secondary Plan (left), versus Area 1 and 2 of the AVPA Regulation (right)

This new protection area must be established in *OurWinnipeg*. *OurWinnipeg* must also conform with the policies set out under sections 5-7 of the Provincial Regulation, which limit development in Area 1 and impose noise mitigation requirements in Areas 1 and 2. As under the current City regime, the Regulation limits Area 1 development to the replacement of existing dwellings and limited infill development. Replacement dwellings in Area 1 must not have more dwelling units than the dwellings they are replacing, with a narrow exception for instances where existing residential lots have been subdivided into "no more than two lots." In Area 2, which is located

further from the airport, the Province allows for the construction of single or multi-unit dwellings, subject only to the noise mitigation requirements set out under section 7 of the Regulation.

OurWinnipeg includes Airport Vicinity Protection Areas 1 and 2 in *Figure 01a: Urban Structure Map,* but does not outline specific development limits for Areas 1 or 2. Instead, *OurWinnipeg* refers to the AVPA Secondary Plan and Airport Vicinity Protection Area Planned Development Overlay (PDO-1 Airport Vicinity) of the Winnipeg Zoning By-law in order to "maintain compatible land use relationships, regulate land use and building regulations for all those neighbourhoods or portions thereof significantly affected by airport related noise." As a result, the Regulation makes relatively minor changes to *OurWinnipeg*, with the bulk of the required amendments taking place in the Winnipeg Zoning By-law.

Mandatory Amendments to the Winnipeg Zoning By-law
Section 9 of the Regulation requires the City to amend its zoning by-law to conform with policies 5-7 of the Provincial Regulation by February 12, 2022. As these amendments are required, they can be passed as "errors and corrections," similar to the *OurWinnipeg* amendments discussed above.

The Regulation limits development in Area 1 and changed the overall area of the AVPA, both of which had previously been governed by the Zoning By-law.

The PDO-1 Airport Vicinity Overlay of the Winnipeg Zoning By-law is the City's existing mechanism for regulating development in the Airport Vicinity Protection Area (along with the AVPA Secondary Plan). Similar to the Regulation, Area 1 of the Zoning By-law limited new residential development to the replacement of existing dwellings or minor infill. The main change to the Area 1 is that it has become significantly smaller. Area 2 is also significantly smaller than the pre-existing Area 2. As a result, the PDO-1 Airport Vicinity Overlay will need to be amended to reflect the new boundaries of Areas 1 and 2.

Although the limits placed on development in Area 1 are effectively identical under the existing Zoning By-law and the new Regulation, there is one other significant difference - the Regulation does not require a maximum density for multi-family development.

Discretionary Amendments to the Zoning By-law: The Density Requirements
The Zoning By-law currently restricts new multi-family dwellings to a maximum density of 35 units/acre on lots within Area 2, unless approved for a greater density through the conditional use mechanism. However, the Regulation does not impose any density requirement within Area 2. As they are not mandatory under the Regulation, the City has discretion on whether to retain or repeal these density restrictions. In the Public Service's view, there is limited planning rationale to retain the 35 unit/acre maximum as this maximum was established through the planning process for the AVPA Secondary Plan and PDO-1 decades ago. This is reinforced in the Provincial news release for the Proposed Regulation:

> *"Current land-use policies have not been updated in a quarter of a century and are based on outdated forecasts of aircraft noise."*
>
> *The proposed regulation is based on up-to-date scientific data on noise in the vicinity of the airport, which is crucial to help guide decisions on the type and scale of development that can occur safely, while fostering the airport's continued growth and ensuring the city develops in an orderly fashion.*

Clearly, these historical studies are seen as “outdated” by the Province. Furthermore, since the Province did not see fit to continue with AVPA density requirements, it can be assumed that the Province does not see such requirements as a useful tool for protecting airport operations.

Additionally, Transport Canada’s *TP1247 – Land Use in the Vicinity of Aerodromes*, which is intended to provide provincial and municipal authorities guidance on planning in the vicinity of aerodromes, does not include density maximums; it only recommends that certain uses be permitted or prohibited within specific Noise Exposure Forecast (NEF) contours.

In the absence of a clear rationale for maintaining these density requirements, the Public Service recommends repealing them. However, as these are not mandatory repeals under the Regulation, this recommendation would need to be brought to public hearing pursuant to the Charter. As a result, the Public Service recommends that it be given up to 180 days to bring this matter forward for consideration at a public hearing held before the Standing Policy Committee on Property and Development, Heritage and Downtown Development.

Discretionary Amendments: Full Repeal of the AVPA Secondary Plan
As the Regulation now directly governs land use requirements in the AVPA, the AVPA Secondary Plan By-law has become largely redundant. Additionally, the Winnipeg Airport Vicinity Development Plan map (see Figures 1 & 2 of the AVPA Secondary Plan) and many of the policy descriptions set out in the By-law are now inconsistent with the Regulation, requiring amendment or repeal.

Ultimately, the Public Service sees the AVPA Secondary Plan as a candidate for complete repeal. However, because the Regulation does not expressly require the full repeal of the AVPA Secondary Plan, any proposed repeal would require a public hearing. As a result, the Public Service requests up to 180 days to bring an application to repeal the AVPA Secondary Plan forward for consideration at a public hearing held before the Standing Policy Committee on Property and Development, Heritage and Downtown Development. In the meantime, the AVPA Secondary Plan will only be applied to the extent that it is consistent with the Regulation.

Discretionary Amendments: The Airport Vicinity Acoustic Insulation By-law
Although the Regulation does not expressly require the City to repeal this by-law, section 7 of the Regulation renders it completely unenforceable as currently written. Firstly, section 7 requires acoustic insulation standards to be enforced to a set decibel level throughout the AVPA, whereas the Acoustic Insulation By-law had calculated insulation values based on a range of Noise Exposure Forecast (NEF) measures. Unfortunately, the City’s existing NEF measures cannot be translated into decibels, as the NEF calculation considers a wide array of variables, not simply ambient noise level.

Secondly, despite requiring the City to ensure indoor ambient noise levels are consistent throughout the new AVPA, the Province has not provided the site-specific noise exposure data required to enforce these standards at any given location. As a result, it is not possible for builders or developers to assess compliance with the Regulation without undertaking engineering studies. Nor has the Province provided information on what components could be installed in order to reach those indoor ambient noise levels. The Public Service will need to consider and develop an approach to implementation that limits the cost and complexity of development in the new AVPA. In the meantime, our proposed approach would be to simply leave the existing by-law in place, and apply section 7 of the Regulations in accordance with the Province’s evolving directions.

Other Mandatory Amendments

Consequential amendments to the Complete Communities Direction Strategy and two local area plans are also required in order to ensure consistency with the mandatory amendments to *OurWinnipeg* and the Winnipeg Zoning By-law, respectively. Although amendments to Complete Communities would typically require a public hearing, the proposed amendments set out in Schedule A may be passed as a correction and avoiding that requirement. Just as the City is required to amend *OurWinnipeg*, it is similarly required to ensure consistency between *OurWinnipeg* and Complete Communities.

Further, OW 2045, which was given 2nd Reading by Council on July 22, 2021 and submitted to the Minister per the Charter, will also need to be amended to align with the Regulation. Subsequent amendments to the Complete Communities Direction Strategy 2.0 will be necessary to align with those amendments to OW 2045.

As OW 2045 is undergoing ministerial review, and the Complete Communities Direction Strategy 2.0 will need to be aligned not only with the Regulation but with the version of OW 2045 approved by the Minister, the Public Service will report back in 180 days or sooner with any next steps that may be required.

FINANCIAL IMPACT

Financial Impact Statement **Date:** December 20, 2021

Project Name:

Amendments to City By-laws and Policies resulting from the Airport Vicinity Protection Area Regulation

COMMENTS:

There are no direct financial implications associated with the recommendations contained in this report.

C Turman, for
Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with: N/A

OURWINNIPEG POLICY ALIGNMENT

N/A

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

N/A

SUBMITTED BY

Department: Legal Services and Planning, Property & Development
Prepared by: C. MacLean, Solicitor and R. Kostiuk, Senior Planner
Date: January 6, 2022

ATTACHMENTS:

Schedule A – Draft AVPA Amending By-law

Schedule B – Draft Policy Amendments