



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Hiemstra v County of Stettler No. 6 (Development Authority), 2025 ABLPRT 520

Date: 2025-08-22

File No. D25/STET/CO-008

Decision No. LPRT2025/MG0520

Municipality: County of Stettler No. 6

In the matter of an appeal from a decision of County of Stettler No. 6 Development Authority (DA) respecting the proposed development of NE ¼ 33-36-21 W4M under Part 17 of the *Municipal Government Act*, Chapter M-26 RSA 2000, (*Act*).

BETWEEN:

K. & K. Hiemstra

Appellant

- and -

County of Stettler No. 6 Development Authority

Respondent Authority

- and -

Fire Technology Corp.

Respondent Permit Applicant

BEFORE: D. Roberts, Presiding Officer
G. Newcombe, Member
G. Sokolan, Member
(Panel)

K. Lau, Case Manager

DECISION

APPEARANCES

See Appendix A

This is an appeal to the Land and Property Rights Tribunal (LPRT or Tribunal). The hearing was held via videoconference, on February 3, 2025, and July 9, 2025, after notifying interested parties.

OVERVIEW

[1] This appeal concerns the DA's conditional approval of a development permit (DP) application for a power generation station (private utility) and data processing centre on an existing 9.74 acre site leased by Ember Resources Inc. (Ember). The DP must be consistent with an Alberta Utilities Commission (AUC) approval issued for the power generators; however, the AUC approval does not extend to the data processing aspect of the project. Power generation is a permitted use under the County of Stettler's (County) Land Use Bylaw (LUB), while the data processing is a discretionary use.

[2] The Applicant for the permit in this case is not the Landowner, and the LUB requires written consent of the Landowner in such cases. The Landowner signed the Agent/Authorization section of the DP application allowing the Applicant to act on his behalf in respect of the application and also signed a Project Letter presented to him by the Land Agent indicating he had no objections to the proposed project. However, he was not notified of subsequent steps in the application and approval process and learned of other affected persons' concerns after the DP was approved and the Appellants filed their appeal.

[3] At the LPRT hearing, the Landowner supported the appeal and requested the development be stopped. The Landowner's counsel argued the signed documents did not amount to properly informed consent to the application, which is a requirement before approval; further, it is clear the Landowner does not consent at the time of the LPRT appeal. The Landowner also disagreed with the Applicant's argument that the surface lease to Ember amounts to written consent for the data processing centre. However, to the extent the LPRT may accept that argument, the project's effect on the subject parcel outside the leased area must be considered, and the conditions should be amended accordingly; in addition, the term of approval should be shortened so impacts can be evaluated more quickly.

[4] The DA's representative explained he considers the DP application to have been submitted in accordance with the LUB, and also that the conditions attached to the DP are appropriate to mitigate the concerns raised by area landowners. He recommended the County's Municipal Planning Commission (MPC) - which acted as the DA - approve the application and does not consider the approval to have been issued in error. However, if the LPRT considers the lease as Landowner consent and the leased land as the "host parcel", then the conditions of approval should be adjusted to take into consideration the effect of the proposal on the balance of the subject parcel belonging to the Landowner.

[5] The Applicant submitted it met all of the DA's requirements throughout the approval process, including obtaining the Landowner's written consent by having him sign the Project Letter and DP Agent Authorization form. In addition, it argued the Ember lease is worded broadly to include the right to operate a data centre and also constitutes written consent for the project.

[6] The Appellant had concerns with the transparency of the application and consultation process and objected to the potential for negative effects from proposed development on the surrounding community – e.g., noise, fire risk, traffic and effects on property value. They requested the DP be revoked or at least amended to allow for further study and more robust conditions to mitigate the impact.

[7] The LPRT determined the Landowner effectively consented to the Applicant proceeding with the application by confirming he had no objection to the project; however, this consent was not irrevocable, and did not waive rights to participate in the process as an affected landowner. Further, it is more likely than not that the Landowner would have objected to the project before its approval by MPC had he been properly informed or notified of further steps and information related to the application process. As such, the DP could be considered as issued under a misapprehension and revoked under provisions in the LUB that contemplate such situations. In any event, the LPRT process is an appeal *de novo*, at which new information not available to the DA can be taken into account. It is clear at the time of the LPRT hearing

that the Landowner was not properly informed during the application process and does not consent to the specific project under appeal. Further, whether or not the lease contemplated operation of a data centre, rights under the lease could not override the LUB's requirement for landowner consent to a specific application; therefore, the LPRT decided the LUB requirements are not met, and the DP should be revoked.

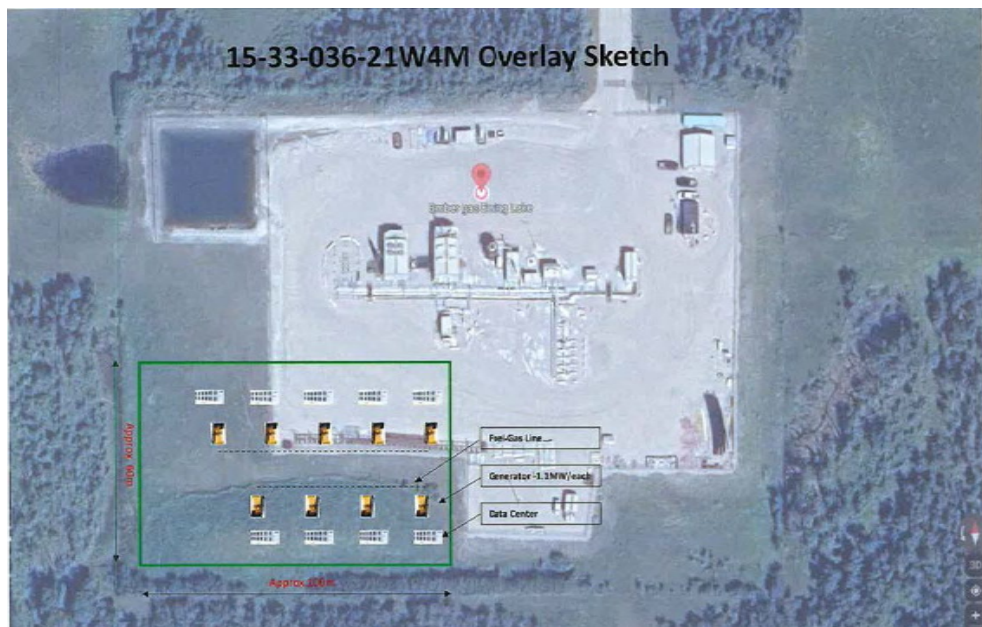
REASON APPEAL HEARD BY LPRT

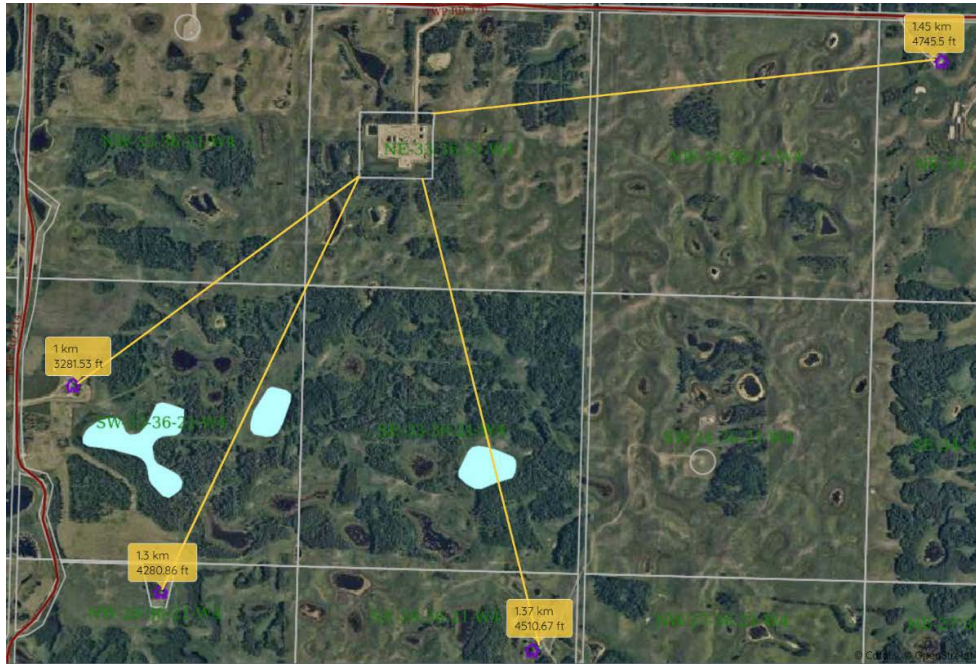
[8] This appeal was filed with the LPRT instead of the local subdivision and development appeal board because s. 685(2.1)(a) of the *Act* and s. 27 of the *Matters Related to Subdivision and Development Appeal Regulation* AR 84/2022 direct development appeals to the LPRT when the land that is the subject of the application is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board, Alberta Utilities Commission, the Minister of Environment and Protected Areas (AEP) or the Minister of Forestry and Parks (AFP).

[9] In this case, the relevant land is the subject of a power plant approval granted by the AUC: Approval 29356-D02-2024.

PROPOSAL

[10] To develop, construct and operate a power generation station (private utility) with a maximum output capacity of 9.9 Megawatt (MW) for the purpose of operating a data processing center within NE 33-36-21 W4M on an existing Ember Resources 9.74 acre surface lease site within the Agricultural District (A) district of the LUB. The lease site is approximately 23 km southwest of Stettler connected by Highway 56 and Township Rd. 370.





BACKGROUND

[11] This appeal concerns an application for a DP for a private utility and a data processing center in the southwest corner of a 9.74 acre compressor station surface lease site within the NE 33-36-21 W4M, in the County of Stettler No. 6 (County). The land is districted as Agricultural District (A) in the LUB, where a private utility (power generation) is a permitted use, and a data processing center is a discretionary use. Lands adjacent to the site are primarily agricultural and three existing dwellings are located within 1.5 km of the middle of the lease site.

[12] Any proposed power plant capable of generating over 1 MW of energy is required to acquire AUC approval. Fire Technology Corp (Fire) was granted AUC approval for the proposed development (Approval 29356-D02-2024) on October 7, 2024, subject to the following terms and conditions:

1. The power plant shall be located in the northeast quarter of Section 33, Township 36, Range 21, west of the Fourth Meridian, as further described in the application.
2. The power plant shall consist of nine 1.1-MW natural gas-fired generating units, with a total capability of 9.9 MW, and as further described in the application.
3. The approval is subject to the following conditions, as described in Decision 29356-D01-2024:
 - a. Fire shall implement the mitigation measures as recommended in the project's noise impact assessment or alternative mitigation measures that meet or exceed the acoustic specifications described in the noise impact assessment, to ensure the power plant complies with Rule 012: *Noise Control*. Within 30 days after the construction completion date, Fire shall file a report with the Commission detailing the mitigation measures it has implemented.

- b. Fire shall conduct a post-construction comprehensive sound level (CSL) survey, including an evaluation of low frequency noise at the most affected receptor, R01. The post-construction CSL survey must be conducted under representative conditions of the project and the Ember Resources compressor station and in accordance with Rule 012: *Noise Control*. Within one year after the project commences operations, Fire shall file a report with the Commission presenting measurements and summarizing results of the post-construction CSL survey.
4. Unless otherwise authorized by the Commission, construction of the power plant shall be completed by December 1, 2025.
5. Fire shall notify the Commission within 30 days of completing the power plant.
6. Fire shall obtain Commission approval prior to making any substantive changes to the power plant or substantially varying the design or specifications of the power plant from what was stated in the application or what the Commission has approved.
7. This approval is not transferable unless approved by the Commission.

[13] The AUC noted:

Fire has provided information respecting the nature, extent, location, ownership and the timing of the power plant. Fire has confirmed that it will fulfil the requirements of all other agencies with jurisdiction over the project. Fire has confirmed that the power plant will comply with Rule 012: Noise Control, no other person is directly and adversely affected by the power plant, and no adverse environmental impact will be caused by the power plant.

[14] Fire submitted the subject development permit application to the DA for the development and operation of a 9.9 MW gas fueled power plant and a data processing centre.

[15] The MPC acted as the DA to approve the application subject to compliance with the following conditions:

1. The proposed development shall be undertaken and completed in accordance with the approved site plan and overlay sketch (see attached).
2. The approval of the data processing center use is subject to a five-year limit and expires on December 18, 2029. No data processing center use is allowed past December 18, 2029.
3. The generators used in conjunction with the data processing center use shall be nine (9) WeiChai WPG1100C76NG-A gas-driven generator sets with a Baudouin 16M33NG, turbocharged, inter-cooled engine rated for 1280 kW @ 1800 RPM per unit, in sound attenuated enclosures with a sound rating of 75 dBA at 7 m from each face of the enclosure.
4. The bitcoin mining equipment for the data processing center use shall consist of self-contained mining containers enclosed in modified 40 ft shipping containers with each container having lengthwise louvered openings along both sides for air intake and exhaust and a noise rating of an average 83 dBA at the face of each unit.

5. The Applicant shall advise the Development Officer once the development has been constructed and has become operational. Within 3 months of the date that the development has become operational, the County shall arrange for a third-party noise assessment to be undertaken by a qualified professional in acoustic assessment. The Applicant is responsible for the cost of the third-party noise assessment and shall compensate the County upon receipt of an invoice for the services of the third-party professional.

The third-party noise assessment shall confirm the cumulative sound levels using actual noise recorded from the site with all equipment operating at maximum output. Those values must meet, within a reasonable measure as determined by the Development Officer, the values estimated in the Noise Impact Assessment Document ID: 007010-NIA-002 Patching Associates Acoustical Engineering Ltd of November 13, 2024. If the cumulative sound levels exceed what was estimated in the Noise Impact Assessment Document ID: 007010-NIA-002 Patching Associates Acoustical Engineering Ltd of November 13, 2024, the Applicant is responsible to add additional noise silencing methods to reduce the sound levels to those identified in the November 13, 2024 report to the satisfaction of the Development Officer.

For every calendar year after the development has been constructed and has become operational, two third-party noise assessments shall be undertaken and paid for by the Applicant. One shall be conducted during cold weather, winter conditions and one shall be conducted during hot weather, summer conditions. If any of these assessments result in noise levels that exceed what was estimated in the Noise Impact Assessment Document ID: 007010-NIA-002 Patching Associates Acoustical Engineering Ltd of November 13, 2024, the Applicant is responsible to add additional noise silencing methods to reduce the sound values to the levels identified in the November 13, 2024 report to the satisfaction of the Development Officer.

6. A copy of any noise assessments submitted by the Applicant to the Alberta Utilities Commission as required by the approval or routine practice of the Alberta Utilities Commission shall be provided to the Development Officer.
7. Prior to construction, a final grading plan confirming that design elevations for the area to be gravelled will direct additional surface water run off to the existing storm water detention pond and confirmation that the existing detention pond has capacity to receive the added volume shall be submitted to the Development Officer. The grading plan and assessment of storm pond capacity must be prepared and/or reviewed by a professional engineer. If the storm pond requires expansion, the design shall be submitted to the Development Officer for review prior to construction.
8. A 15.24 m (50 ft) buffer measured from the outermost mining containers and consisting of zero vegetation and/or routinely mowed grass shall be created and maintained to serve as a fire break.
9. The Applicant shall install and maintain a 6ft chain link security fence around the subject site.
10. All waste material / debris from construction shall be contained to the subject site until such time it is removed and disposed of properly.

11. Prior to construction or movement of equipment to the site, the Applicant shall enter into a road use agreement with the County of Stettler that is satisfactory to the County of Stettler.
12. Prior to construction or movement of equipment to the site, a traffic safety plan shall be submitted to the Development Officer for review and approval. The approved plan shall be implemented. The traffic safety plan shall address the following:
 - a. ban on any movements along Township Road 37-0 west of the site;
 - b. number of trucks allowed to be moving along Township Road 37-0 between Highway 835 and the site at any given time;
 - c. truck staging area(s) at a suitable location(s) before reaching the turn off Highway 835 onto Township Road 37-0;
 - d. requirement for traffic control personnel stationed at each end of Township Road 37-0 between Highway 835 and the site when any truck movements are taking place;
 - e. advance approval of a schedule for truck movements for the County to be delivered by the applicant to each residence in the area that may use the same segment of Township Road 37-0 and to be posted along the route at least two days in advance; and
 - f. any similar consideration that may be deemed necessary by the County.
13. The Applicant shall provide a copy of the Emergency Response Plan for the development to the Stettler Regional Fire Department.
14. Weed and pest control shall be implemented on the site as needed to the satisfaction of the Development Officer.
15. A sign indicating the nature of the development, which shall include the operator's name and contact information is to be posted near the entrance of the site off Township Road 37-0. This sign must be in place prior to any construction of the development. This sign must be maintained and updated as required while the use and development continue.
16. The applicant shall keep on record with the County the name and contact information of one or more persons who can be contacted in the event of an emergency or a security issue at the site. The person(s) identified as contacts must be able to meet on-site with local officials within 24 hours of being contacted and must be able to make commitments on behalf of the Applicant. The name of the person(s) and their contact information must be kept current while the data processing use is present on the site.
17. Prior to construction or movement of equipment to the site, the Applicant must enter into and fully implement a development agreement that is satisfactory to the County of Stettler to address upgrades to Township Road 37-0 that are to be jointly undertaken and cost shared between the Applicant and the County.

[16] The Appellant filed a notice of appeal on the basis that the noise and health consequences resulting from noise generated by the proposed development will be excessive; Township Road 37-0 between the site and Highway 835 is narrow and provides inadequate access to the site, and the development has the potential to increase crime and a potential for fire.

[17] The merit hearing was convened on February 3, 2025, where it heard from the parties, including the owner of 1946079 Alberta Ltd. (the Landowner), who stated he now opposes the development. While recognizing that the Landowner is a numbered company, this decision also refers at times to its principal and owner as the Landowner for the sake of simplicity. The LPRT accepted additional disclosures from the Landowner and circulated them to the other parties for review and comment on February 21, 2025 along with a request for additional submissions from the parties on

- the effect of the agency agreement signed by the Landowner (and submitted by Fire with its application to the DA),
- whether the DP application was made on the Landowner's behalf and if so, does the Landowner have the ability to withdraw the application on appeal,
- when the Landowner received notice of the DA's DP decision and was notice to the Land Agent effective notice to the Landowner?

[18] From the DA, the LPRT requested further comment on its position that they would not have approved the development permit had they known the Landowner does not support the application, and whether LUB s. 32.1 – which addresses conditions where the DA may revoke a permit - is relevant to the appeal.

[19] From Ember, who holds the surface lease for the compressor site, and from Fire Technology Corp./Lexterra Land Ltd. (the Applicant), the LPRT requested comments regarding the ability of Ember to assign rights under the surface lease and for Ember to share a copy of the surface lease, if possible.

[20] The parties were given until March 3, 2025 to provide the requested information and until March 11, 2025 to provide a response to the submissions of the other parties.

[21] In addition to the requested submissions, the LPRT received a letter from the Landowner's legal counsel referring to direction from the Court of King's Bench in *Flowers v Persist Oil & Gas Inc*, 2025 ABKB 142 (*Flowers*). The LPRT circulated *Flowers*, requesting comments from the parties regarding how the decision may relate to the subject appeal. At the same time, the parties were asked to address any issues arising from the DA's submitted comments concerning the noise impact assessment as it relates to the potential impact of noise on sites within the subject quarter. The Landowner submissions were due by April 24, 2025, with comments from other parties due by May 15, 2025.

[22] Due to the volume and complexity of the written submissions received after the LPRT adjourned the merit hearing on February 3, 2025, the LPRT reconvened the hearing by video conference on July 9, 2025 to afford an opportunity for the parties to speak to any information and provide rebuttal, if needed, to the additional written submissions requested above.

ISSUES

[23] In all cases, the legislation requires the LPRT to address whether a proposal complies with the *Act*, the *Regulation*, the LUB, any statutory plans, the Land Use Policies, and any applicable *Alberta Land Stewardship Act (ALSA)* regional plan.

[24] In this case, the parties focused on the following specific issues:

1. Does the Applicant have written consent of the Landowner, as required by LUB s. 9.1?
 - a. If no, how does the lack of consent affect the LPRT's decision on appeal?
 - b. If yes, how does the Landowner's objection to the DP on appeal affect the application?
2. Is the proposed development suitable for this location, given its impact on the surrounding uses and community? If so, do the DA's conditions need to be changed or supplemented to mitigate effects on surrounding uses, including noise, adequacy of access, and the potential for criminal activity and fire at and around the site.

ISSUE 1: Does the Applicant have written consent from the Landowner, as required by LUB s. 9.1?

(a) If no, how should the lack of compliance affect the LPRT's decision on appeal?

(b) If yes, how does the Landowner's objection to the DP on appeal affect the application?

Summary of the DA's Position: Issue 1

[25] The DA's representative explained that the MPC issued the permit after a review of the DP application determined it had been submitted in accordance with the LUB, including documentation showing written consent of the Landowner.

[26] In relation to additional information requested from the LPRT, the DA noted the Landowner has provided a scanned copy of a partially filled in County of Stettler DP Application form (Exhibit 10AP). Item 6 of this form, Applicant/Owner Authorization, has been completed with the certification of the Landowner that he is the registered owner of NE 33-36-21-W4M which is the subject site of this DP application. This item is signed and dated June 27, 2023.

[27] Item 7 of the form, Agent Authorization, has also been completed, where the registered owner has authorized Fire Technology Corp. (Fire) c/o Lexterra Land Ltd. (Lexterra) to act on behalf of the registered owner on matters pertaining to the DP application. This authorization enables Fire to submit an application for development on the subject quarter, including receiving any supporting information and all communication regarding the application. The MPC's decision on the DP was communicated to Fire, as the Applicant, on December 19, 2024. The DA did not directly communicate the decision to the Landowner.

[28] Had the application not been signed by the Landowner, the DA would have deemed the application incomplete and would not have processed the application for a decision. However, once it issued its written decision, the DA became *functus officio*; that is, it has no jurisdiction to revisit its decision on the DP unless s. 32.1 of the LUB applies.

[29] Section 32(1) outlines certain circumstances when the DA may suspend or revoke a DP, as follows:

32. Suspension or Revocation of a Development Permit

32.1 The Development Authority may suspend or revoke a development permit if:

- (a) facts concerning the Application or the development were not disclosed which should have been disclosed at the time the Application was considered and have subsequently become known;

- (b) the development for which the permit has been issued is not being carried out or completed to the extent or in the manner originally approved;
- (c) there is a contravention of any condition under which such permit was issued;
- (d) the permit was issued in error; or
- (e) the Permit Application contained a serious misrepresentation or the permit was otherwise issued on the basis of incorrect information.

[30] The DA does not agree that the Landowner's evidence before the LPRT shows that situations described in subsection 32.1(a) and subsection 32.1(e) apply. The application was deemed complete as of November 26, 2024 and a written decision was issued on December 19, 2024. The Landowner changed his mind regarding authorization for the application after the written decision was made. Subsection 32.1(b) and subsection 32.1(c) are also not applicable since no construction of the development has occurred. Finally, subsection 32.1 (d) is not applicable as the permit was not issued in error. Consequently, the DA is of the opinion that s. 32(1) does not apply in this case to allow it to revoke the DP; it noted, however, that the LPRT has broader jurisdiction on appeal to change or revoke the decision than the DA has under the LUB.

[31] Responding to submissions from the Lease Holder and the Applicant, the DA expressed the view that these two parties wish to exert their ability to obtain DP approval on the basis the Landowner has already given written consent for the development through the lease agreement. The DA notes that accepting an application on that basis (i.e. the application would rely on the terms of the Site Lease Agreement without any express participation or consent to the proposed development by the current landowner of the property) would redefine the subject site as being just the leased area within NE 33-36-21 W4M rather than the full quarter section. That approach would have fundamentally altered the DA's analysis of impacts from the development on the unleased portion of the subject quarter. The balance of the quarter would then be treated as an adjacent property and not as part of the project. In particular, in relation to impacts from noise generated by the development, the DA indicated the balance of the quarter should be assessed with regard to future residential use occurring on it.

Summary of the Applicant's position: Issue 1

[32] The Applicant submitted it met all of the DA's requirements throughout the approval process, including acquiring the Landowner's written consent. The Landowner provided his consent by signing the County DP. In addition to the DP, the Landowner signed the Project Information Letter stating he has no objection to the proposed project.

[33] Fire's position is that in addition to providing written consent through the County's DP application process, the Landowner provided his legal consent for the project through the terms of the surface lease, which are drafted broadly so as to include the right to use the leased land for a bitcoin mining operation. The Leaseholder made similar submissions on this point, as summarized below.

Summary of the Leaseholder's Position: Issue 1

[34] Ember is the lease holder for the compressor station in NE 33-36-21 W4M which is where the private utility and data processing center are proposed to be located (the Facility Lease). In response to the question raised by the LPRT regarding Ember's ability to assign rights under the surface lease, Ember referenced the Facility Lease as follows:

- the “grant” section of the lease states the Leased Premises are to be held by the Lessee “for any and all purposes and uses as may be necessary or useful in connection with its operations.”
- a provision addressing quiet enjoyment of the leased area provides that the Lessee “has the right to quiet enjoyment of the Leased Premises and has the right to occupy and use the Leased Premises without interruption or disturbance from either the Lessor or any other persons claiming by, through or under the Lessor”.
- the assignment provision in the Facility Lease states that “The Lessee or the Lessor may delegate, assign or convey to other persons, corporations or agents all or any of the powers, rights and interests obtained by or conferred upon the Lessee or the Lessor herein, and may enter into all agreements, contracts, and writings and do all necessary acts and things to give effect to the provisions of this clause.”

[35] Ember points out that when another party has an interest in using a portion of the leased area under an existing surface lease, it is customary for Ember to provide access by way of a road use agreement or other lease sharing agreement.

[36] With respect to *Flowers*, Ember noted some differences between the subject case and the one considered there. In *Flowers*, the lease was not in good standing, the relationship between the leaseholder and landowner was antagonistic, and there was no compliance with municipal districting or permits. In addition, the wording of the subject lease contemplates a wide and flexible range of permitted activities, unlike the narrower wording in the *Flowers* lease. While mining operations are not explicitly listed as a permitted use, they are also not prohibited. In reviewing the lease, its Ember’s interpretation, that generating electricity to support data processing activities falls well within the scope of uses allowed under the lease. It is both necessary and useful to maximize the profits and efficiencies from this site.

Issue 1: Summary of Landowner’s Position

[37] The Landowner stated he had signed the DP application with minimal knowledge of the nature of the proposed development, thinking he was agreeing to a site inspection of his property. Subsequently, he became aware of the nature of the opposition to this development, realizing the “outcome of this development would be detrimental to our land, animals and all surrounding farms” (Exhibit 4AP) and he did not wish to cause any problems with his surrounding neighbours. At that time, he indicated his wish to appeal the development and to stop it from proceeding. He felt he was not properly informed of what was being proposed. He had not been made aware of the information that had been provided to the Appellant. He was also not informed of occurrences during the application and approval process.

[38] In response to the LPRT’s request for further submissions, the Landowner’s legal counsel asserted the Landowner had never provided his consent for the development. Key to this argument is the definition of “Applicant” in s. 9.1 which is the Interpretive Definitions section of the LUB and the word consent. In s. 9.1, “Applicant” means “the person, company or corporation that makes an application under this Bylaw or the Municipal Development Plan. **If the applicant is not the landowner the applicant must obtain the written consent of the landowner**” (emphasis added).

[39] However, the word “consent” is not present in either document that the Landowner signed. In the DP application, he acknowledged, in Item 5 of the form, Right of Entry, that he was in favour of an inspection of his property. In Item 6, Applicant/Owner Authorization, he acknowledged he was the registered owner of the property and confirmed that the information given on the application form was full and complete and, to the best of his knowledge, a true statement of the facts relating to this development permit application. In signing the Project Information Letter presented to him by Lexterra

Land Ltd. (Lexterra), the Landowner acknowledged that he had no objections to the proposed project, based on the project description contained in that document.

[40] Counsel submitted that the Landowner's acknowledgement that he had no objections at the time of signing was not written consent, and in any event was neither irrevocable nor fully informed. Further, in signing the above documents, the Landowner did not waive his entitlement to notice of any proceedings related to the DP application, including the public consultation process, conducted via a ZOOM meeting on December 5, 2024, or of the December 18, 2024 MPC meeting, where the application was approved despite two area landowners, who had participated in the ZOOM meeting, expressing concerns about the intended development.

[41] Counsel submitted there is no agency agreement. Rather there is an agency appointment which lacks a description of the rights and responsibilities of the parties or a description of the extent of the agent's authority. Fire c/o Lexterra had no contractual obligation or other legal duty to act in the best interests of the Landowner, nor did they have any authority to bind the Landowner or to make representations to the MPC on his behalf. Rather, Counsel suggested the Applicant was pursuing their own interests in having the development approved and completed. Counsel submitted this hearing is a *de novo* hearing and the Panel should disregard the agency appointment presented in the application.

[42] With respect to rights conferred under the Lease, the Landowner submitted that while its wording is different than the wording of the lease in *Flowers*, its meaning should not be stretched to include operations that could not be reasonably envisaged by the lessor at time of signing; further, it is not likely that a bitcoin operation would have been envisaged as necessary or useful in connection with Ember's operations.

[43] In summary, the Landowner's legal counsel submitted the Landowner never gave his written consent to the development or to the processing of the DP, nor does he consent at the time of the LPRT appeal. Given the definition of Applicant in the LUB, no development application can be approved without the written consent of the Landowner and the LPRT must allow the appeal based on this lack of consent.

[44] In the alternative, if the LPRT decides that the lease represents written consent and that the *de novo* nature of an LPRT development appeal cures the defects in notice to the Landowner during the DP application and approval process, then the Landowner agreed with the DA's position that the "host" parcel is limited to the leasehold and the suitability of the proposed development for the location should be considered bearing in mind its effects on the remainder of the Landowner's land.

[45] **Issue 1: Summary of Appellant's Position**

[46] The Appellant expressed concerns over the transparency and procedural fairness that Fire exhibited in dealing with landowners. The Appellant contends that the Landowner is a primary stakeholder in this process and that he was not dealt with in a transparent manner. He was informed of the DP decision by email from Lexterra on January 21, 2025, one month after the decision was made, creating the circumstance that key documentation was provided after, rather than before, the decision-making process was complete.

Findings – Issue 1

1. The LPRT finds no written landowner consent as required under the LUB.
2. The discretionary use of data processing should be denied.

3. The permitted use of power generation should be upheld.

DECISION

[47] The appeal is granted. The DP is varied and approval of the data processing improvements is revoked. The DP conditions associated with data processing have also been varied or deleted.

[48] The Power Generation aspect of the application is approved, subject to the following conditions

1. **Varied:** The proposed development shall be undertaken and completed in accordance with the AUC Approval 29356-D02-2024.
2. **Deleted**
3. The generators used shall be nine (9) WeiChai WPG1100C76NG-A gas-driven generator sets with a Baudouin 16M33NG, turbocharged, inter-cooled engine rated for 1280 kW @ 1800 RPM per unit, in sound attenuated enclosures with a sound rating of 75 dBA at 7 m from each face of the enclosure.

4. **Deleted**

5. The Applicant shall advise the Development Officer once the development has been constructed and has become operational. Within 3 months of the date that the development has become operational, the County shall arrange for a third-party noise assessment to be undertaken by a qualified professional in acoustic assessment. The Applicant is responsible for the cost of the third-party noise assessment and shall compensate the County upon receipt of an invoice for the services of the third-party professional.

The third-party noise assessment shall confirm the cumulative sound levels using actual noise recorded from the site with all equipment operating at maximum output. Those values must meet, within a reasonable measure as determined by the Development Officer, the values estimated in the Noise Impact Assessment Document ID: 007010-NIA-002 Patching Associates Acoustical Engineering Ltd of November 13, 2024. If the cumulative sound levels exceed what was estimated in the Noise Impact Assessment Document ID: 007010-NIA-002 Patching Associates Acoustical Engineering Ltd of November 13, 2024, the Applicant is responsible to add additional noise silencing methods to reduce the sound levels to those identified in the November 13, 2024 report to the satisfaction of the Development Officer.

For every calendar year after the development has been constructed and has become operational, two third-party noise assessments shall be undertaken and paid for by the Applicant. One shall be conducted during cold weather, winter conditions and one shall be conducted during hot weather, summer conditions. If any of these assessments result in noise levels that exceed what was estimated in the Noise Impact Assessment Document ID: 007010-NIA-002 Patching Associates Acoustical Engineering Ltd of November 13, 2024, the Applicant is responsible to add additional noise silencing methods to reduce the sound values to the levels identified in the November 13, 2024 report to the satisfaction of the Development Officer.

6. A copy of any noise assessments submitted by the Applicant to the Alberta Utilities Commission as required by the approval or routine practice of the Alberta Utilities

Commission shall be provided to the Development Officer.

7. Prior to construction, a final grading plan confirming that design elevations for the area to be gravelled will direct additional surface water run off to the existing storm water detention pond and confirmation that the existing detention pond has capacity to receive the added volume shall be submitted to the Development Officer. The grading plan and assessment of storm pond capacity must be prepared and/or reviewed by a professional engineer. If the storm pond requires expansion, the design shall be submitted to the Development Officer for review prior to construction.
- 8. Deleted**
9. The Applicant shall install and maintain a 6ft chain link security fence around the subject site.
10. All waste material / debris from construction shall be contained to the subject site until such time it is removed and disposed of properly.
11. Prior to construction or movement of equipment to the site, the Applicant shall enter into a road use agreement with the County of Stettler that is satisfactory to the County of Stettler.
12. Prior to construction or movement of equipment to the site, a traffic safety plan shall be submitted to the Development Officer for review and approval. The approved plan shall be implemented. The traffic safety plan shall address the following:
 - a. ban on any movements along Township Road 37-0 west of the site;
 - b. number of trucks allowed to be moving along Township Road 37-0 between Highway 835 and the site at any given time;
 - c. truck staging area(s) at a suitable location(s) before reaching the turn off Highway 835 onto Township Road 37-0;
 - d. requirement for traffic control personnel stationed at each end of Township Road 37-0 between Highway 835 and the site when any truck movements are taking place;
 - e. advance approval of a schedule for truck movements for the County to be delivered by the applicant to each residence in the area that may use the same segment of Township Road 37-0 and to be posted along the route at least two days in advance; and
 - f. any similar consideration that may be deemed necessary by the County.
13. The Applicant shall provide a copy of the Emergency Response Plan for the development to the Stettler Regional Fire Department.
14. Weed and pest control shall be implemented on the site as needed to the satisfaction of the Development Officer.
15. A sign indicating the nature of the development, which shall include the operator's name and

contact information is to be posted near the entrance of the site off Township Road 37-0. This sign must be in place prior to any construction of the development. This sign must be maintained and updated as required while the use and development continue.

16. **Varied:** The applicant shall keep on record with the County the name and contact information of one or more persons who can be contacted in the event of an emergency or a security issue at the site. The person(s) identified as contacts must be able to meet on-site with local officials within 24 hours of being contacted and must be able to make commitments on behalf of the Applicant.
17. Prior to construction or movement of equipment to the site, the Applicant must enter into and fully implement a development agreement that is satisfactory to the County of Stettler to address upgrades to Township Road 37-0 that are to be jointly undertaken and cost shared between the Applicant and the County.

Reasons – Issue 1

[49] The requirement for written consent of the landowner stems from the County’s LUB s. 9.1, “Interpretive Definitions”, which states

For the purposes of this Land Use Bylaw, unless the context requires otherwise, the following general interpretive definitions shall apply. ...

“Applicant” means the person, company or corporation that makes an application under this Bylaw or the Municipal Development Plan. If the applicant is not the landowner the applicant must obtain the written consent of the landowner.

[50] “Landowner” is also a defined term under s. 9.1:

"Landowner" means the person(s) or other parties shown as the owner of land on the County’s Assessment Roll prepared pursuant to the Municipal Government Act or the person(s) registered on the land title under the Land Titles Act as the owner.

[51] In this case, the Applicant listed on the Development Permit Application form is “FIRE TECHNOLOGY CORP. c/o Lexterra Land Ltd. agent”. Fire, then, is the Applicant, while Lexterra acted as Fire’s agent to make the application. The registered owner of NE 33-36-21 W4M is 1946079 Alberta Ltd., making it the Landowner. However, given that Mr. Van Stratten is the owner and principal of the numbered company, he is effectively the Landowner for the present purposes.

[52] The LUB s. 9.1 requirement for Landowner consent is written in mandatory language: “... the applicant *must* obtain the written consent of the landowner”. Further, the LPRT’s ability to vary LUB requirements conferred by s 687(3)(d) of the *Act* is a development standard variance power only (*Thomas v Edmonton (City)*, 2016 ABCA 57 (*Thomas*) at para 31.) As such, it does not allow the LPRT to waive an LUB requirement for the Applicant to obtain the Landowner’s written consent.

[53] Having said this, the LPRT notes the reference at the beginning of s. 9.1 to cases where the “interpretive definitions” do not apply, because “the context requires otherwise”. This reference suggests there may be cases where context renders the requirement for Landowner consent inapplicable. A prominent contextual feature in this case is the AUC approval of the generators and powerplant, coupled with s. 619 of the *Act*. This provision requires municipal planning and development documents and decisions, including those of the DA and LPRT, to be consistent with AUC approvals. Therefore, a DP

must issue at least in respect of the AUC approved facility regardless of any LUB requirement for Landowner consent. However, since the AUC explicitly confined its approval to the powerplant, that approval does not require the DA (or LPRT) to issue a DP for the data processing aspects of the project. Likewise, the AUC approval does not override the LUB requirement for the Applicant to obtain the Landowner's written consent for the data processing aspect of the project - described in the DP application form as including nine data processing containers/skids, each containing approximately 300 computers with multiple fans.

[54] Another contextual feature raised in this case is the lease from the Landowner to Ember, which gives the Lessee and the Lessee's delegates the right to use the leased portion of the land "for any and all purposes and uses as may be necessary or useful in connection with its operations". The Applicant argues its proposed data centre is "necessary or useful" in connection with Ember's operations, as it will provide a profitable market for the gas that Ember produces from its operations. Further, it says since the proposed use is contemplated under the lease, the lease itself is effectively written consent from the Landowner. The Landowner acknowledges the Ember lease is broadly worded compared to the lease in *Flowers*, but does not agree it allows for use as a data centre – a use it says could not reasonably have been foreseen when the lease was signed.

[55] The LPRT finds the lease to Ember does not equate to the Landowner's written consent for purposes of the LUB, nor is it a contextual feature that justifies overlooking this requirement in this case. The LUB requires an applicant who does not own the land proposed for a specific development to obtain the landowner's written consent for the associated DP application – in this case for the proposed data centre. By imposing this obligation on the applicant, the LUB effectively gives the Landowner the right to prevent approval for any specific project for which a permit is required by withholding written consent. Giving landowners this right makes sense from a land use planning perspective as a measure to avoid conflicts between landowners and others operating on their land. Even where a lease has been granted, the specifics of any given project may be difficult to foresee, and the requirement for landowner consent serves something like a safety valve under the LUB to ensure a landowner (where not the applicant) can assess an individual project applied for. This right under the LUB is of a different type than a lessee's right under a private lease to use land for one or more categories of potential uses and developments. Whatever rights the Applicant may hold under the lease, they do not override rights and requirements established in the LUB. Therefore, it is unnecessary in this context for the LPRT to try to adjudicate disputed rights under the Ember lease, which in any case is a task better suited to the Courts than to the DA or LPRT.

[56] Aside from the Ember Lease, two documents were presented as evidence of the Landowner's written consent to the Applicant's DP application: the Project Letter presented to him by Lexterra (Project Letter), and the Right of Entry and Agent Authorization portion of the DP application (signed June 27, 2024). There is no dispute that the Landowner signed the Project Letter on June 19, 2024 indicating he had "no objections to the proposed project". There is also no dispute that the Landowner signed the Right of Entry, Applicant/Owner Authorization, and Agent Authorization portions of the DP application on June 27, 2024, or that the Agent Authorization portion of this form includes a statement that "Fire Corporation c/o Lexterra Ltd." is authorized to "act in my/our behalf on matters pertaining to the development permit application".

[57] The Landowner's position is that these signed documents do not show the Applicant had the Landowner's written consent, or at least his irrevocable consent; thus, to the extent he provided consent, there is nothing to prevent him from withdrawing it. The LPRT understands the Landowner's argument to be, essentially, he was not fully informed of the nature and potential impact of the proposed project when he signed the two documents in question, nor was he made aware that he would not receive notice of future steps to allow meaningful participation in the DP approval process. Had he been properly

informed, he would not have signed the DP application or the Project Letter, and would have objected sooner.

[58] The LPRT notes the Project letter and DP Application signed by the Landowner include brief matching descriptions of the intended project. The Project Letter describes it under the heading “Proposed Onsite Equipment” as follows:

The facility will be located on an existing surface lease of a natural gas facility in order to minimize surface disturbance. The facility will utilize approximately 15% of the area of the existing surface lease and consist of 9 natural gas fueled power generator containers/skids and 9 data processing containers/skids. Each data processing container/skid will contain approximately 300 computers with multiple fans. Additional onsite equipment will consist of interconnecting piping, power cables and a small office with communication equipment.

[59] The letter includes some further information such as a proposed construction schedule and some potential regulatory restrictions. It also states that Fire Technology “stands behind their reputation of constructing and operating high-standard facilities designed to minimize impact to residents and the environment”, and that it “... invites concerns and comments to be brought to its attention regarding construction and/or operation of its facilities to ensure any concerns are responded to promptly to the satisfaction of all parties impacted.” The Landowner’s signature is found at the bottom of the letter, immediately below the statement: “I/we confirm that I/we have no objections to the proposed project”.

[60] Under the circumstances, the LPRT is satisfied that by confirming he had no objections to the proposed project, the Landowner effectively provided the Applicant with his written consent as of July 19, 2024. With this confirmation, the DA understandably felt comfortable accepting the Application to begin its review on July 24, 2024. However, neither the Project Letter nor the DP Application states the Landowner is waiving the ability to participate in or receive notice of additional steps in the application process, including public consultation, the MPC meeting and MPC decision. Similarly, neither document states he is waiving the right to receive information that may come to light during the application process (which as it turned out, included the November 13, 2024 noise study and concerns raised by his neighbours), or to raise future objections to the project as further information emerges.

[61] A troubling circumstance in this case is that the land agent who obtained the Landowner’s signature on the Agent Authorization form is also the agent for the Applicant. In acting for the Applicant, the land agent would not necessarily prioritize Landowner’s interests in the application process; however, the DA relied on the agency form to notify the Agent of further steps in the application process without additional direct notice to the Landowner. Ultimately, it is clear the Landowner did not receive sufficient information to allow for his effective participation in the remainder of the application process, and the net result is that the consultation process envisaged under the usual DP application process was ineffective – at least as it relates to the Landowner.

[62] In light of these points, the LPRT agrees with the Landowner’s position that the consent as provided on July 19 remained revocable – at least pending the DP application and appeal process. Further, the LPRT accepts the Landowner was not properly informed and would have withdrawn his consent by the time of the MPC approval had he been made aware of information concerning the project that emerged during the application process. The DA’s representative also acknowledged that had he been aware that the Landowner did not consent, he would not have proceeded to process the application. Given these circumstances, the LPRT finds the Landowner’s request to have the permit revoked under s. 32(1)(a)(d) and (e) of the LUB is supported.

[63] However, even if s. 32(1) were found not to apply, it is well-established that a development appeal is a hearing *de novo*, which as explained in *Mahal & Sons Inc v Edmonton (City of)*, 2022 ABCA 22 (*Mahal*), means the appeal board must take into consideration new evidence and circumstances that may have changed since the development authority's decision, which in this case was the decision of the MPC.

De novo Hearing

[17] It is well-established that the SDAB decides planning appeals *de novo*: Laux and Stewart-Palmer, *Planning Law and Practice in Alberta* 4th ed (Edmonton: Juriliber, 2019) s 10.4(5)(b); *Stewart v Lac Anne (County Subdivisions and Development Appeal Board)*, 2006 ABCA 264 at paras 10-12.

[18] The SDAB's authority to decide appeals *de novo* means that (a) it is not required to review the development authority's decision for error, (b) it is not constrained to remit a mistaken decision to the development authority because it can make whatever decision is appropriate on the merits, and (c) it can hear evidence and argument that was not before the development authority: Laux and Stewart-Palmer at s 10.4(5)(b); *Pacer Construction Holdings Corporation v Pacer Promec Energy Corporation*, 2018 ABCA 113 at paras 66-67; *Stewart* at para 11. Indeed, the SDAB has a duty to comply with any applicable land use bylaw in effect (s 687(3)(a.3) of the *Municipal Government Act*; RSA 2000, c M-26 (*MGA*) and, to do that, the SDAB must be able to take into account circumstances that may have changed since the development officer's decision.

...

[64] The LPRT notes that in *Thomas*, the Court of Appeal found the DA's failure to consult in accordance with the LUB meant that even though a development appeal is *de novo*, the appeal board was effectively required to revoke the DP and return the matter to the DA to process properly. Arguably, the current circumstances now before the LPRT are distinguishable from *Thomas*, since it is only with respect to the Landowner that the DP consultation process misfired; further, the Landowner has now been apprised of the situation and has made his position clear to the LPRT and affected parties. However, even if *Thomas* is distinguishable on this point, the LPRT still finds the DP must be revoked given the information that is now before the LPRT, as explained further below.

[65] On appeal, the LPRT is to consider the application anew, taking into consideration any additional evidence and potentially new facts that have evolved. The evidence now before the LPRT shows plainly that the Landowner does not consent to the application. This evidence includes a letter received from the Landowner at the outset of the hearing that requests the development be stopped and indicates his support for the appeal. As previously noted, one reason for the LUB s. 9.1 requirement for the Applicant to obtain written consent is to provide assurance that a project has the Landowner's consent before it is approved: otherwise, disputes between the Landowner and the project operator are likely to ensue. Under these circumstances, the Landowner's confirmation that he had no objection to the project as of July 19, 2024 does not satisfy the intent of LUB s. 9.1. For reasons previously explained, the LPRT does not consider the Ember lease to constitute written consent. Accordingly, the LPRT finds the LUB requirements to issue a DP are not met, and the DP must be revoked.

ISSUE 2: Is the proposed development suitable for this location, given its impact on the surrounding uses and community? If so, do the DA's conditions need to be changed or supplemented to mitigate effects on surrounding uses, including noise, adequacy of access, and the potential for criminal activity and fire at and around the site.

Summary of DA's Position: Issue 2

[66] Given the LPRT's determination under Issue 1 that the data processing aspect of the DP should be revoked, it is not necessary to determine whether the proposed development is suitable for the location, or whether the conditions of approval should be revised to mitigate its impact on surrounding uses and community. However, these matters were argued and the LPRT offers the following brief observations.

[67] First, the LPRT agrees with the DA's description of the data processing aspect of the project as a discretionary use under the LUB. However, to the extent that

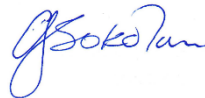
(a) the Landowner continues to withhold consent and

(b) the rights delegated to the Applicant under the Ember lease are equivalent to Landowner consent to the application for the purposes of the leased area (which the LPRT has found is not the case),

the approval should consider the effects of the proposal on the balance of the Landowner's property. As noted by the DA, this approach would affect the conditions of approval, including conditions regarding noise impacts on existing and potential development, on the balance of the subject quarter and the 50 foot fire buffer in Condition 8, which extends beyond the leasehold boundary. It would also require careful consideration of the Landowner and Appellant's arguments that more information is required to assess likely impacts, and that the approval period be shortened from 5 to 2 years so that unanticipated effects on the community could be addressed in a timely fashion.

Dated at the City of Edmonton in the Province of Alberta this 22nd day of August 22, 2025.

LAND AND PROPERTY RIGHTS TRIBUNAL



G. Sokolan, Member

APPENDIX A

PARTIES WHO ATTENDED, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING

NAME	CAPACITY
K. Hiemstra	Appellant
C. Teal	County of Stettler
A. Brysiuk	County of Stettler (observing)
C. Baden	Fire Technology Corp.
M. Lackie	Trimball Energy, consultant to Fire Technology Corp.
C. Caskey	Patching Associates Acoustical Engineering Ltd, consultant to Fire Technology Corp.
R. Dallyn	Lexterra Land Ltd., Consultant to Fire Technology Corp.
T. Lockhart	Lexterra Land Ltd., Consultant to Fire Technology Corp.
S. Dong	Bit Energy, Consultant to Fire Technology Corp.
G. Zhao	Bit Energy, Consultant to Fire Technology Corp.
P. Van Straten	Landowner
M. Keyes	Warren Sinclair LLP, Legal Counsel for the Landowner
R. Van Skiver	Affected Landowner
C. Donick	Observer
T. Norrish	Observer

APPENDIX B

DOCUMENTS RECEIVED PRIOR TO THE HEARING

NO.	ITEM	
1A	Notice of Appeal	3 pages
2R	Information Package	111 pages
3R	Land Use Bylaw	224 pages
4AP	Landowner Appeal Request	2 pages
5D	Fire Technology Ewing Lake NIA Report	64 pages
6D	Ewing Lake Crypto Currency Mining and Natural Gas Power Plant Rev 1	106 pages
7D	Fire Technology Corp. LPRT Hearing	6 pages
8AP	Email Opposed Van Skiver	2 pages
9R	MPC Report December 18, 2024	93 pages

APPENDIX C

DOCUMENTS RECEIVED AFTER THE HEARING

NO.	ITEM	
10AP	Van Straten COUNTY OF STETTLER NO.6	6 pages
11AP	Van Straten Lexterra Land	8pages
12 AP	February 27 2025 Letter MDK	1 page
13AP	Ember Response to LPRT 2025-02-28	1 page

14AP	S11205-20007-03-13 – Site Lease	9 pages
15D	Fire Technology Corp. Letter to Land & Property Rights Tribunal March 3, 2025	2 pages
16R	DA Response to Request for Comments	3 pages
17A	Response	1 page
18AP	LPRT March 05, 2025 Letter (Response to February 21, 2025 Letter)	5 pages
19AP	Van Straten March 17, 2025 Letter	3 pages
20A	Comments in regards to Fire Tech’s Comments and Transparency sent on March 13_25	1 page
21R	DA Response to Additional Exhibits	5 pages
22AP	March 26, 2025 Letter	4 pages
23AP	Van Straten April 21, 2025 Letter	2 pages
24AP	Civil Notice of Appeal [filed April 9, 2025]_ Van Straten	4 pages
25D	Fire Technology Corp. Response to LPRT May 14, 2025	2 pages
26A	Ember Response to LPRT 2025-05-15	2 pages

APPENDIX D

LEGISLATION

The *Act* and associated regulations contain criteria that apply to appeals of planning decisions. While the following list may not be exhaustive, some key provisions are reproduced below.

Municipal Government Act

Purpose of this Part

Section 617 is the main guideline from which all other provincial and municipal planning documents are derived. Therefore, in reviewing development appeals, every proposal must comply with the philosophy expressed in 617.

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

- (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
 - (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,
- without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

Permitted and discretionary uses

Section 642 deals with the authority that a Development Authority has respecting permitted and discretionary uses

642(1) When a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

(2) When a person applies for a development permit in respect of a development that may, in the discretion of a development authority, be permitted pursuant to section 640(2)(b)(ii), the development authority may, if the application is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

(3) A decision of a development authority on an application for a development permit must be in writing, and a copy of the decision, together with a written notice specifying the date on which the written decision was given and containing any other information required by the regulations, must be given or sent to the applicant on the same day the written decision is given.

(4) If a development authority refuses an application for a development permit, the development authority must issue to the applicant a notice, in the form and manner provided for in the land use bylaw, that the application has been refused and provide the reasons for the refusal.

...

Section 683 deals with the responsibilities of a municipality regarding issuance of a development permit.

Permit

683 Except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw.

Development applications

683.1(1) A development authority must, within 20 days after the receipt of an application for a development permit, determine whether the application is complete.

(2) An application is complete if, in the opinion of the development authority, the application contains the documents and other information necessary to review the application.

(3) The time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the development authority or, if applicable, in accordance with a land use bylaw made pursuant to section 640.1(a).

(4) If the development authority does not make a determination referred to in subsection (1) within the time required under subsection (1) or (3), the application is deemed to be complete.

(5) If a development authority determines that the application is complete, the development authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(6) If the development authority determines that the application is incomplete, the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application is incomplete and that any outstanding documents and information referred to in the notice must be submitted by a date set out in the notice or a later date agreed on between the applicant and the development authority in order for the application to be considered complete.

(7) If the development authority determines that the information and documents submitted under subsection (6) are complete, the development authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(8) If the applicant fails to submit all the outstanding information and documents on or before the date referred to in subsection (6), the application is deemed to be refused.

(9) If an application is deemed to be refused under subsection (8), the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application has been refused and the reason for the refusal.

(10) Despite that the development authority has issued an acknowledgment under subsection (5) or (7), in the course of reviewing the application, the development authority may request additional information or documentation from the applicant that the development authority considers necessary to review the application.

Grounds for appeal

Section 685 addresses grounds for appeal by an Applicant of a decision by the Development Authority

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal the decision in accordance with subsection (2.1).

(1.1) A decision of a development authority must state whether an appeal lies to a subdivision and development appeal board or to the Land and Property Rights Tribunal.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

(2.1) An appeal referred to in subsection (1) or (2) may be made

(a) to the Land and Property Rights Tribunal

(i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is the subject of the application

(A) is within the Green Area as classified by the Minister responsible for the Public Lands Act,

(B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,

(C) is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission,

or

(D) is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Parks,

or

(ii) in any other circumstances described in the regulations under section 694(1)(h.2)(ii),

or

(b) in all other cases, to the subdivision and development appeal board.

(3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) is made by a council, there is no appeal to the subdivision and development appeal board, or

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Appeals

Section 686 identifies procedures that a board hearing an appeal must follow

686(1) A development appeal is commenced by filing a notice of the appeal, containing reasons, with the board hearing the appeal

(a) in the case of an appeal made by a person referred to in section 685(1)

(i) with respect to an application for a development permit,

- (A) within 21 days after the date on which the written decision is given under section 642, or
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,
 - or
 - (ii) with respect to an order under section 645, within 21 days after the date on which the order is made,
 - or
 - (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.
- (1.1) Where a person files a notice of appeal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board, if
 - (a) in the case of a person referred to in subsection (1), the person files the notice with the wrong board within 21 days after receipt of the written decision or the deemed refusal, or
 - (b) in the case of a person referred to in subsection (2), the person files the notice with the wrong board within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.
- (2) The board hearing an appeal referred to in subsection (1) must hold an appeal hearing within 30 days after receipt of a notice of appeal.
- (3) The board hearing an appeal referred to in subsection (1) must give at least 5 days' notice in writing of the hearing
 - (a) to the appellant,
 - (b) to the development authority whose order, decision or development permit is the subject of the appeal, and
 - (c) to those owners required to be notified under the land use bylaw and any other person that the subdivision and development appeal board considers to be affected by the appeal and should be notified.
- (4) The board hearing an appeal referred to in subsection (1) must make available for public inspection before the commencement of the hearing all relevant documents and materials respecting the appeal, including
 - (a) the application for the development permit, the decision and the notice of appeal, or
 - (b) the order under section 645.
- (4.1) Subsections (1)(b) and (3)(c) do not apply to an appeal of a deemed refusal under section 683.1(8).
- (5) In subsection (3), "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.

Hearing and Decision

Section 687 identified procedures to be followed at a hearing for a development permit appeal

- 687(1) At a hearing under section 686, the board hearing the appeal must hear
 - (a) the appellant or any person acting on behalf of the appellant,
 - (b) the development authority from whose order, decision or development permit

- the appeal is made, or a person acting on behalf of the development authority,
- (c) any other person who was given notice of the hearing and who wishes to be heard, or a person acting on behalf of that person, and
- (d) any other person who claims to be affected by the order, decision or permit and that the subdivision and development appeal board agrees to hear, or a person acting on behalf of that person.
- (2) The board hearing the appeal referred to in subsection (1) must give its decision in writing together with reasons for the decision within 15 days after concluding the hearing.
- (3) In determining an appeal, the board hearing the appeal referred to in subsection (1)
- (a) repealed 2020 c39 s10(52);
 - (a.1) must comply with any applicable land use policies;
 - (a.2) subject to section 638, must comply with any applicable statutory plans;
 - (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
 - (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
 - (b) must have regard to but is not bound by the subdivision and development regulations;
 - (c) 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;
 - (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw 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 parcels of land,
 and
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.
- (4) In the case of an appeal of the deemed refusal of an application under section 683.1(8), the board must determine whether the documents and information that the applicant provided met the requirements of section 683.1(2).

Matters Related to Subdivision and Development Regulation - Alberta Regulation 84/2022

Appeals removed from list

27(1) The following are removed from the list of circumstances where a notice of appeal of a decision of a development authority may be filed with the Land and Property Rights Tribunal:

- (a) an appeal where the land that is the subject of the application is within the Green Area as classified by the Minister responsible for the [Public Lands Act](#), as referred to in section 685(2.1)(a)(i)(A) of the Act;
- (b) an appeal where the land that is the subject of the application contains, is adjacent to or is within the prescribed distance of a highway, a body of

water, a sewage treatment or waste management facility or a historical site, as referred to in section 685(2.1)(a)(i)(B) of the Act.

(2) Subject to subsections (3) and (4), the appeals referred to in subsection (1) may be commenced by filing a notice of appeal with the subdivision and development appeal board.

(3) If the land that is the subject of an appeal referred to in subsection (1) is subject to a licence, permit, approval or other authorization referred to in section 685(2.1)(a)(i)(C) or (D) of the Act, then, despite subsection (1), the appeal may be commenced by filing a notice of appeal with the Land and Property Rights Tribunal.

(4) Subsection (1) does not apply to an appeal if the notice of appeal was filed with the Land and Property Rights Tribunal before May 12, 2021.

ALBERTA LAND USE POLICIES

Land Use Policies were established by Lieutenant Governor in Council pursuant to section 618.4 of the *Act*.

ALBERTA LAND STEWARDSHIP REGIONAL PLAN

Land use planning decisions must be consistent with any applicable Regional Plans made pursuant to the Alberta Land Stewardship Act

MUNICIPAL BYLAWS AND STATUTORY PLANS

Land Use Bylaw

County of Stettler No.6 LAND USE BYLAW NO. 1443-10, as amended

8. LAND USE AND BUILDING DEFINITIONS

8.1 In this Land Use Bylaw, unless the context requires otherwise the following land use and building definitions shall apply. Where a land use or building is not defined here, the definition shall be found in the County's Municipal Development Plan or, failing that, the general meaning of the land use or building shall apply:

“Data Processing Centre “means a building, dedicated space within a building, or a group of buildings used to house computer systems and associated infrastructure and components for the digital transactions required for processing data. This includes, but is not limited to cryptocurrency, digital currency processing, non-fungible tokens, and blockchain transactions.

“Public or Private Road and Utility” means a development used to provide one or more of the following for public or private consumption, benefit, convenience or use:

- (a) water; waste water or storm water;
- (b) a road, railway line, thoroughfare or bridge for the purpose of transportation, but excluding for storage purposes (e.g. railway yard or terminal facilities);
- (c) television reception through a satellite dish antenna or other means;
- (d) telephone;
- (e) drainage ditch;
- (f) natural gas;
- (g) electric power; or,
- (h) heat.

Public or Private Road and Utility includes electric power and heat utilities generated by wind,

solar or other alternative technologies, as well as the buildings required to operate the Public or Private Road and Utility. A stand-alone solar panel means that it is not attached to the roof of a building. Public or Private Road and Utility does not include a Waste Management Facility.

9 INTERPRETIVE DEFINITIONS

9.1 For the purposes of this Land Use Bylaw, unless the context requires otherwise, the following general interpretive definitions shall apply. Where a word or a term is not defined here, the definition of that word or term shall be found in the County's Municipal Development Plan or, failing that, the general meaning of the word shall apply:

"Applicant" means the person, company or corporation that makes an application under this Bylaw or the Municipal Development Plan. If the applicant is not the landowner the applicant must obtain the written consent of the landowner.

"Landowner" means the person(s) or other parties shown as the owner of land on the County's Assessment Roll prepared pursuant to the Municipal Government Act or the person(s) registered on the land title under the Land Titles Act as the owner.

24. DEVELOPMENT PERMIT CONDITIONS

24.1 The Development Authority may impose conditions it considers appropriate to a development permit for either a permitted or a discretionary use, including but not limited to the following considerations:

- (a) that the Applicant enter into an Agreement with the Municipality, pursuant to the Municipal Government Act, to do all or any of the following:
 - (i) to construct or pay for the construction or the upgrading of any road to give access to the development; County of Stettler No. 6 LAND USE BYLAW No. 1443-10, as amended
 - (ii) to construct, install or pay for the installation of any local improvements or utilities which are needed to serve the development;
 - (iii) to repair or reinstate, to original condition, any ditch, municipal landscaping or vegetation which may be damaged or destroyed or otherwise harmed by development or building operations upon the site;
 - (iv) to give security to ensure that the terms of the Agreement under this Section are carried out or that the conditions of any development permit are complied with;
 - (v) to pay to the Municipality the costs paid by the Municipality to any Engineer or other person for materials testing, inspections, monitoring of construction and review of construction drawings, and legal costs and expenses to which the Municipality is put in connection with the Development Agreement and the Agreement relates; and;
 - (vi) to attend to all other matters the Development Authority considers appropriate;
- (b) landscaping;
- (c) the attenuation or timing of noise, odour, smoke, dust, steam, radio waves or other nuisances;
- (d) conformance to recommendations from any professional studies required as part of the permit application, relating to matters such as slope stability, traffic, etc.;
- (e) the compatibility of proposed traffic patterns and characteristics with those existing in the affected neighbourhood;
- (f) the removal or retention of natural vegetation;
- (g) environmental contamination;
- (h) public safety;
- (i) existing structures;
- (j) the timing of the completion of any part of the proposed development;
- (k) parking;

- (l) the size, location, orientation, appearance and character of a site, a building or other structure;
 - (m) hours of operation;
 - (n) the duration or expiry of a development permit;
 - (o) site grading;
 - (p) the subdivision or consolidation of parcels;
 - (q) completion of detailed plans and construction drawings illustrating access, site layout, landscaping, parking, building elevations, signs, storm water management and/or utility servicing;
 - (r) the posting of a security deposit to ensure that the development is completed in a timely fashion and in accordance with the approval;
 - (s) to ensure that the design, character, and appearance of a building, including its height, are compatible with and complementary to the surrounding area;
 - (t) dust control on County roads due to increased traffic as a result of the proposed development;
 - (u) to ensure that a development does not encroach upon the boundary of a Municipal Reserve, an Environmental Reserve or an Environmental Reserve Easement;
 - (v) to require that any person who applies to the provincial Safety Codes Council or other accredited agency for a Building Permit under the Safety Codes Act in respect of constructing a building on a property pursuant to a Development Permit previously issued by the County must demonstrate to the County that the Building Permit application submitted to and the Building Permit issued by the Safety Codes Council or other accredited agency are consistent with the Development Permit issued by the County. Refer to Section 47;
 - (w) any provision, condition or requirement stated elsewhere in this Bylaw;
 - (x) any other condition to ensure the proposed development is compatible with County of Stettler No. 6 LAND USE BYLAW No. 1443-10, as amended surrounding land uses; and
 - (y) any condition deemed necessary to ensure that the development complies with the Municipal Government Act, any regulation or standard stated in this Bylaw, and any applicable statutory plan.
- 24.2 Where this Bylaw requires a minimum standard, the Development Authority may impose a condition to a development permit requiring a higher standard where it is deemed by the Development Authority that adherence to the minimum standard may result in conditions that unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties or the general appearance of a development from a public road or highway.
- 24.3 Where an application for a development permit involves a consolidation of legal parcels, the Development Authority may withhold a permit until the consolidation of the parcels has been registered.
- 24.4 A development agreement signed pursuant to Section 24.1(a) may be registered in the Land Titles Office in the form of a Caveat against the Certificate of Title for the land that is the subject of the Development Agreement, and shall be discharged upon the completion of all the requirements, conditions and terms of the Agreement.

NOTIFICATION OF DECISION

- 27.1 a decision has been made to approve a Development Permit application, the Development Authority:
- (a) within seven (7) days of a decision being made on any Development Permit shall County of Stettler No. 6 LAND USE BYLAW No. 1443-10, as amended provide a Notice of the decision to the applicant in writing by regular mail and place a Notice of the decision on the bulletin board in the County Office;

- (b) within seven (7) days of a decision being made may, in the case of a Permitted Use, and shall, in the case of a variance or a Discretionary Use, publish a notice in the newspaper circulating in the County stating the legal description, municipal address, the nature of the development, and the right of appeal; and/or
 - (c) within seven (7) days of a decision being made in the case of a variance or a Discretionary Use, may send a notice by regular mail to all adjacent landowners advising of the decision and the right of appeal and may post a Notice of the decision conspicuously on the property for which the Application has been made.
- 27.2 Where an Application for a Development Permit is refused, the Development Authority shall notify the Applicant of the decision in writing by regular mail within seven (7) days of the decision being made, including the reasons for the refusal.
- 27.3 *Deleted*
- 27.4 Any development or part of a development that is started or undertaken prior to the expiration of the appeal period or, if appealed, the outcome of the appeal process shall be entirely at the risk of the Applicant and with the understanding that the Applicant is liable for any costs which may be incurred in returning the parcel of land to the state it was in prior to development.

55.A Data Processing Centre

- (i) The period of time for which a development permit for a Data Processing Centre is valid shall be at the discretion of the Development Authority. Within the Agricultural District (A), this period of time shall not exceed five (5) years.
- (ii) The exterior finish of the building (s) shall be to the satisfaction of the Development Authority.
- (iii) Screening of the development in the form of landscaping, fencing or other suitable screening materials may be required by the Development Authority.
- (iv) A noise impact assessment may be required by the Development Authority. If deemed necessary by the Development Authority, noise mitigation measures including a noise monitoring system may be required as part of the conditions of approval.
- (v) A Data Processing Centre operating in conjunction with an onsite power generation facility (plant) shall provide written notice from the Alberta Utilities Commission (AUC) that the power generation facility meets all AUC requirements. If the facility is deemed exempt from AUC regulations, a written letter of confirmation from AUC indicating that the facility is exempt must be provided by the applicant at the time the application is made.
- (vi) A Data Processing Centre operating in conjunction with an onsite power generation facility (plant) shall be setback a minimum distance of 1,200 m from the exterior wall of any existing dwelling unit(s).
- (vii) Notwithstanding the above, the setback distance may be reduced if a noise impact assessment and/or noise mitigation plan and/or the design of the development is deemed sufficient to mitigate the impact of noise on other lands and uses in proximity to the development to the satisfaction of the Development Authority.

County of Stettler No. 6 LAND USE BYLAW No. 1443-10, as amended

- (viii) A mitigation plan shall be provided at the time of development permit application addressing any potential nuisance factors including excessive noise, odour, traffic, dust, emissions, heat and other impacts to the satisfaction of the Development Authority.

92 AGRICULTURAL DISTRICT (A)

LAND USES

92.2 Permitted Uses

- Public or Private Road and Utility, except windmill and stand-alone solar panel in or adjacent to a hamlet or multi-lot subdivision

- 92.3 Discretionary Uses
- Data Processing Centre