

**IN THE MATTER OF A DEPOT PERMIT APPLICATION  
FOR CHANGE OF LOCATION  
IN RELATION TO THE COUNTRY HILLS BOTTLE DEPOT LTD.  
SUBMITTED TO THE BCMB NOVEMBER 26, 2020**

**DECISION OF THE BCMB**

**I. INTRODUCTION**

This is the decision of the Beverage Container Management Board (“BCMB”) with respect to a Depot Permit Application for Change of Location (the “Application”) on behalf of Country Hills Bottle Depot Ltd. (the “Applicant”).

For the reasons set out in the decision, the Application is refused.

**II. BACKGROUND**

On November 24, 2020 the BCMB received an application for change of location on behalf of the Applicant. That application was rejected as incomplete and as submitted by a third party. The current application (the “Application”) was received by the BCMB on November 26, 2020.

The Application seeks to move the Country Hills Bottle Depot (the “Country Hills Depot”) from its current location of 11885 - 16 St. NE. to a new location in Calgary at 1350 Country Hills Boulevard.

The Applicant was first issued a Permit for its current location in November of 2009 as part of a Request for Applications (“RFA”) process initiated by the BCMB. The Applicant submitted a previous application to relocate the Depot to 11137 - 11 Street NE Calgary in 2018. This application was rejected as the proposed location did not meet the BCMB’s proximity requirements.

Public notification of this Application (BC-21-011) commenced on February 23, 2021. The BCMB accepted submissions over a 33-day period and received one written response in support of the proposed relocation and written responses from two other parties opposing the Application. All responses were from owners of other Beverage Container Depots. No responses were received from members of the general public.

In the Application, the Applicant indicated that relocation was being requested for the following reasons:

- Our current location is in a heavy industrial area hidden amongst the buildings. When we initially built the bottle depot there was not much development but as the area has developed the building is no longer visible and is in a slow traffic area due to the type of developments around it.
- The new location gives us better visibility and access. As well, it will be more retail oriented which will help bring more customers to the new location as it will be the new regional commercial centre.



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- In recent years a crematorium has been built right next to the bottle depot which causes heavy traffic due to it being able to accommodate up to 1000 attendees and not having adequate parking of their own many cars are parked on the street and many try to use the bottle depot parking which creates issues for us. This can occur multiple times a day on weekends.
- The current location has a large volume of heavy truck traffic with the number of warehouses in the area. A large number of trucks parked on the road often cause (sic) a build-up of traffic on the road due to loading and unloading procedures. By moving the Depot, we can address the issue of the heavy truck traffic as well as the issues created by the crematorium.
- The new location will help us serve the same area our license was approved.
- The new location will allow easier access to customers which will help increase return rates in the area.
- The location is based in a more retail friendly area and is more visible which drive (sic) more customers to the depot.

Support for the relocation was submitted by the owner of the Saddleridge Bottle Depot (“Saddleridge”), another Beverage Container Depot in the immediate vicinity. The letter from Saddleridge advises that the Depot has a good relationship with the Country Hills Depot, understands the Applicant’s reasoning to move to a more visible location within its customer service area and supports the relocation application without further reasons. The BCMB’s understanding is that there is some sort of a familial relationship between the owner of Saddleridge and the owner of the Country Hills Depot.

Opposition to the relocation was expressed by The Bottle Refund Depot (“the BRD”) and by Beddington Heights Bottle Depot (“Beddington”). Some of the reasons expressed in opposition include:

- The Applicant was abusing the RFA process by gaining a licence and then seeking a second change at relocation after the fact.
- It would be unfair to existing depots to allow the relocation as unfairly taxing their investments in marketing and advertising.
- It should be made clear to future RFA participants that they will not be allowed to relocate.
- The intent of relocation was “meant for the legacy depots so that they can equip depots to improve the legacy building outlook and improving public recycling experiences.”
- Distinctions should be drawn between legacy depot relocations and RFA issued licenses.
- The reasons given by the Applicant did not provide sufficient rationale to relocate its existing location.
- When the Permit was granted the area was intended to be zoned industrial and the original application projected a limited service population.
- Any new customers attracted by increased visibility would not be new to the system, but simply redistributed from existing Depots.
- The claims of traffic congestion were unsubstantiated.
- Some of the heavy truck traffic was generated by the use of part of the property for parking tractor-trailers.
- Subdivision at the new location has not yet been completed, and so the proximity measurements should be taken from the boundary of the main parcel which would place the new location within 3 km of the Beddington.



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- There would be significant and detrimental impacts to the business of Beddington if the relocation were allowed and potential impacts on Beddington's services and support to the surrounding communities.
- Country Hills should be required to take steps to mitigate its volume issues before considering a relocation.
- The BCMB should impose a moratorium on depot relocations as it has on new RFAs.
- The relocation is not in the best interests of the industry or the public served by the industry.

Beddington submitted a traffic analysis from WATT Consulting Group in support of its contention that high traffic concerns in the area were unsubstantiated.

The BCMB provided the responses from Beddington and the BRD to the Applicant who provided a further submission in reply. In that submission it was pointed out that the Country Hills Depot had been operating in its current location for 12 years. The suggestion that the Applicant was not acting in good faith was vehemently objected to. The Applicant indicated that the relocated Depot would be servicing the same existing residential areas and perhaps would service future residential developments to the north. The Applicant reiterated the benefits of having greater visibility to the public in the new location, which it submitted would most probably increase return rates particularly from new residents who might not be aware of the existing Country Hills Depot. The Applicant also referenced easier access for its current customers, safer access due to less heavy truck traffic and reduced parking and traffic issues. The Applicant suggested that the matters raised by the other Depots were without merit and that the relocation was in the public interest in that the anticipated increased return rates would benefit the industry as a whole.

Counsel for Beddington requested that before the BCMB made a final decision that it provide Beddington with the proposed decision or particulars of it for its comment as provided for in section 6.8 of the *Depot By-Law*. The BCMB considered this request but has decided to issue a final decision now, as it was satisfied that all parties have had adequate opportunity to address the relevant matters.

### III. THE DEPOT BY-LAW

Consideration of the Application is governed by the *Depot By-law*.<sup>1</sup> The BCMB Board of Directors approved a change to the Depot By-law the day before the Application was received. The Application was submitted using the application form in use prior to the By-law change, which change contemplates an initial screening by the BCMB for various criteria prior to completion of a full application.

In the circumstances the BCMB considered the full application with reference to all of the criteria set out that apply to the initial screening (s. 6.3) as well as the criteria relevant to the determination of whether the Application should be granted (s. 6.5), which criteria are as follows:

- There are special circumstances warranting such an application (s. 6.3.1);
- The proposed Depot location satisfies the proximity requirements contained in Article 3 of this By-law (s. 6.3.2);
- The Permit granted for the existing location was not the result of a recent RFA process and the Depot is not within its first five years of operation at that location (s. 6.3.3);

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<sup>1</sup>[https://www.bcmb.ab.ca/uploads/source/By-laws\\_Current/Depot\\_By-law/2020.11.25.Depot.Bylaw.BOARD.APPROVED.pdf](https://www.bcmb.ab.ca/uploads/source/By-laws_Current/Depot_By-law/2020.11.25.Depot.Bylaw.BOARD.APPROVED.pdf)



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- The proposed location is not within an area which is the subject of an RFA or an area that the BCMB has deemed a future growth RFA area (s. 6.3.4);
- The proposed location is not outside of the municipal boundary within which the Permit was granted by the BCMB. (s. 6.3.5);
- Whether the proposed location is within close proximity of the existing location and members of the public currently served at the existing location could reasonably be expected to continue to do business at the proposed location (s. 6.5.1);
- Whether the relocation is in the best interests of the industry and public (s. 6.5.2)
- Any considerations raised by material received during the notice of application period in Section 6.6 of this By-law (s. 6.5.3); and
- Any other criteria the BCMB considers relevant in maintaining a viable Container recovery system (s. 6.5.4).

As stated in section 6.5 of the By-law, the decision whether to grant a relocation application is in the sole discretion of the BCMB taking these criteria into consideration.

#### **IV. DECISION AND REASONS**

The BCMB's assessment of the criteria in the *Depot By-law* is set out in this section of the Decision.

##### *Special Circumstances*

Section 6.3.1 requires the BCMB to be satisfied that there are special circumstances warranting a relocation application. The requirement for "special circumstances" reflects the fact that for over ten years the process for siting a Depot in a new location in Edmonton or Calgary has only been through an RFA process, and allowing an existing Depot to relocate to a new location operates as an exception to that process. At the same time the special circumstances requirement recognizes that having no process for relocations could create an undue hardship for an existing Depot where circumstances arise beyond its control that threaten its operation at the current location.

There is no definition of "special circumstances" and whether there are special circumstances in any particular case will be largely fact driven.

The special circumstances put forward by the Applicant in this case center around the changes that it says has occurred since the Permit was granted for the location 12 years ago. In particular, the Applicant refers to the industrial development that has occurred in the area since the Depot was built. The Applicant says that this development has rendered the Country Hills Depot less visible to potential customers (presumably from 14<sup>th</sup> St. NE and Country Hills Blvd). The Applicant also says the development has created a slow traffic area with traffic congestion and that the construction of a crematorium next door has caused congestion and parking issues, particularly on weekends. The Applicant's position is that the new location will be more visible, have more customer traffic and provide better access to its customers, and that this will increase the number of beverage containers that are collected which will increase return rates into the container recovery system.

The BCMB accepts that the Applicant may not have appreciated the exact nature of the developments that might occur in the area when it submitted its application over 12 years ago. However, as noted by the parties opposing the application, the area was zoned as an industrial area at the time of the RFA. This is not a situation where the zoning was unexpectedly changed after a Permit was granted. The construction of large industrial buildings is to be expected in an industrial area.

The Applicant also states that the industrial development has impeded access to the Depot because of the presence of heavy truck traffic which creates congestion and poses a safety concern. The Applicant has not provided any objective evidence in support of this statement. In opposition Beddington submitted a report from Watt Consulting Group. The report contains 2018 traffic volume data in support of the contention that the local roads are well under their design capacity so that capacity and congestion should not be a concern. The report also provides anecdotal information that in response to inquiries two neighbouring businesses stated that they had not observed traffic-related issues in the area relating to the crematorium or otherwise. The Applicant points out a number of issues with the report including discrepancies in the volume information, the current limitations on gatherings due to Covid and submits the report should be wholly disregarded.

Taking all of this information into account, the BCMB is not satisfied the nature or amount of traffic is inconsistent with what would have been expected in an industrial area at the time the Permit was granted or now. The BCMB is also not satisfied that the nature or amount of traffic is unreasonably interfering with access to the Depot or poses heightened safety risks to Depot customers. As such, the BCMB does not consider the traffic-related reasons put forward by the Applicant to be special circumstances justifying a relocation.

The Applicant also indicates that the crematorium that has been built nearby has created parking issues during funeral services. This statement is challenged by Beddington, but in any event, the BCMB does not consider the parking challenges that may be created to constitute special circumstances.

The BCMB accepts that the proposed location for the Depot may give it more visibility and better access to residential customers. However, the BCMB does not consider the availability of a more desirable location to constitute special circumstances within the meaning of the *Depot By-law*.

Accordingly, the BCMB is not satisfied that the Applicant has put forward sufficient special circumstances to grant the Application.

Although this determination is sufficient to deny the Application, the other criteria in the Depot By-law were also considered and will be discussed below.

#### *Proximity Requirements*

The *Depot By-law* provides that no new Permit may be issued in a Metro Area (Calgary or Edmonton) within a 3-kilometre radius of an existing operating Depot. These proximity requirements also apply to a relocation.

The BCMB uses Google Maps to measure the distance from the corner of the Depot site of the existing Depot location to the corner of the Depot site of the proposed location for a new or relocated Depot. If the distance is within +/- .3KM then a professional survey is requested. The closest Depots to the proposed location are Beddington and Saddleridge. Because the distance between Beddington and the new location was within +/- .3km, a professional survey was obtained. The professional survey measured the distance between the proposed location and Beddington at 3.14 km which satisfies the proximity requirements.

Beddington submits that the subdivision of the main parcel located at 1350 Country Hills Blvd does not appear to have been completed and that the measurement should have been taken using the boundary of the main parcel, which would bring the proposed location within 3 km of Beddington. The Applicant has advised that it is prepared to accept any permit approval as being conditional on the subdivision completion and accordingly for the purpose of this Decision the BCMB considers the proximity requirements to be satisfied.

*The Permit was not the result of a recent RFA process / Has operated for 5 years*

Beddington has suggested that this is a recent RFA process, having occurred around 10 years ago and some depots having been in operation for considerably longer. The BCMB does not consider a 10 year old RFA to be “recent” for the purpose of this criterion, particularly given the 5 year requirement for operations in the relevant section. As noted by the parties, the reason for excluding Depots that have been sited in accordance with a recent RFA is to prevent a Depot from applying under an RFA for a location simply in order to get a Permit, with the intent of trying to relocate somewhere else shortly thereafter. The BCMB has no concerns in the circumstances of this application that the Applicant is attempting to “game” the RFA system.

*No existing RFA or future growth RFA area*

There is no dispute that this criterion is satisfied.

*The proposed location is not outside of the municipal boundary*

There is no dispute that this criterion is satisfied.

*Close Proximity to Existing Location and Service to same Population*

This criterion reflects the importance of maintaining existing services to Depot customers as much as possible. The proposed location is approximately 700 meters west of the current location and is considered to be in close proximity to the current location. The area serviced by the Depot would remain largely the same. The BCMB considers it reasonable to assume that customers who currently access the Depot would not be negatively impacted by the relocation. This requirement is satisfied.

*Best Interests of the Industry and Public*

The Applicant submits that the relocation is in the best interests of the public and the industry because of the potential for an increase in return rates. The Applicant's position is that greater visibility to the public means that new residents to the area will be more readily aware of the Country Hills Depot and existing residents who might otherwise not be aware of the Country Hills Depot may become aware of it. The Applicant also says that the new location will be easier to access because residents in the area will not have to go out of their way to get to it, and there may be members of the public who are not prepared to go out of their way to access the Depot and presently put their beverage containers into City of Calgary carts.

It seems logical that greater visibility and more direct access could increase the volume of returns to the Country Hills Depot. However, an increased number of returns to one Depot is not necessarily a benefit to industry and public as a whole if the increased returns do not also represent an increase in overall return rates. In the circumstances of this proposed relocation, it is not obvious that customers who do not currently use the beverage container system would begin using it as a result of the relocation. It is Beddington's position that the more likely result is that customers that frequent another Depot in the area would start returning them at this one. This would not result in an increase in overall return rates. The BCMB accepts that this is a distinct possibility.

The BCMB is not satisfied on the material provided that it is sufficiently likely that the relocation will result in additional returns to the system to find that the relocation in the best interests of the industry and the public solely on that basis.

To the extent that it is in the public interest to have visible and accessible Depots, the fact that a Depot can move to improve its own visibility and public access is not, in and of itself, sufficient basis for a relocation since that would justify any relocation to a "better" location.

On balance, the BCMB did not consider the relocation to be in the best interests of the public or the industry.

*Considerations Raised by Received Material / Viability of the Depot System.*

The submissions received during the notice period primarily relate to the *Depot By-law* criteria and have been addressed above. Beddington also took the position in its submissions that it would be negatively impacted by this relocation because of the potential redistribution of customers and containers to Country Hills.

The BCMB accepts that the potential negative impact on existing Depots of the relocation is a relevant matter for the BCMB to consider in its determination, but only to the extent that it relates to the BCMB's goal of maintaining a viable Container recovery system. Accordingly, the BCMB considered both the potential negative impact to the Applicant of refusing the Application and the potential negative impact to existing Depots of allowing the Application, but did so in the overall context of the continued viability of the Beverage Container recovery system as a whole. The BCMB did not consider either outcome as having an appreciable impact on the viability of the system as a whole. The potential negative impact on Beddington was not a determining factor in the outcome of the Application.

**V. CONCLUSION**

Having reviewed the Application and submissions received, the BCMB did not consider the Applicant as having demonstrated special circumstances to warrant granting the Application for Change of Location. The BCMB also did not find that granting the Application was in the best interests of the industry and the public. For the reasons set out in this decision the Application is denied.

Dated this 4<sup>th</sup> day of May 2021.

Sincerely,



Brent Campbell  
Director, Operations  
BCMB