

# HALIFAX

P.O. Box 1749  
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**Item No. 9.1**  
**Halifax Regional Council**  
**March 21, 2017**

**TO:** Mayor Savage and Members of Halifax Regional Council

Original Signed by 

**SUBMITTED BY:**

\_\_\_\_\_  
John Traves, Acting Chief Administrative Officer

Original Signed by 

\_\_\_\_\_  
Jane Fraser, Acting Deputy Chief Administrative Officer

**DATE:** February 10, 2017

**SUBJECT:** **Case 19626: MPS and LUB Amendments – Development Agreement for Multiple Unit Residential and Commercial Development at 836 and 842 Portland Street, Dartmouth**

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## SUPPLEMENTARY REPORT

### ORIGIN

- Application by W.M. Fares Architects to amend the Dartmouth Municipal Planning Strategy and Land Use By-law to enable the development of a mixed use residential/commercial project at 836 and 842 Portland St., Dartmouth;
- August 16, 2016 staff report regarding December 6, 2016 Regional Council Item 11.1; and
- December 6, 2016 motion of Regional Council deferring decision on the matter and requesting a staff supplementary report responding to questions of Council regarding item 11.1.

### LEGISLATIVE AUTHORITY

Refer to Attachment D.

### RECOMMENDATION

It is recommended that Halifax Regional Council approve the proposed amendments to the Dartmouth Municipal Planning Strategy and the Dartmouth Land Use By-law as set out in Attachments A and B of the August 16, 2016 staff report.

## **BACKGROUND**

This supplementary report relates to the proposed amendments to the Dartmouth Municipal Planning Strategy (MPS) and Land Use By-law (LUB) to allow a mixed use residential/commercial development at 836 and 842 Portland Street, Dartmouth. The August 16, 2016 staff report<sup>1</sup> provides background and discussion on this item. On December 6, 2016, Regional Council held a public hearing to consider proposed amendments to the Dartmouth MPS and LUB related to this property.

At the December 6, 2016 meeting, Regional Council passed the following motions:

***MOVED by Councillor Karsten, seconded by Councillor Whitman:  
THAT Halifax Regional Council approve the proposed amendments to the Dartmouth Municipal Planning Strategy and the Dartmouth Land Use By-law as set out in Attachments A and B of the report dated August 16, 2016.***

***MOVED by Councillor Karsten, seconded by Councillor Nicoll:  
THAT the motion be deferred pending a supplementary report based on questions of Council. MOTION TO DEFER PUT AND PASSED.***

### **Questions of Council**

Following closure of the public hearing, Councillor Karsten submitted a document containing a number of questions for staff's consideration. A copy of the subject document is provided as Attachment A. Council also requested clarity on the following:

- 1) Whether or not there is a de facto moratorium on development in the area surrounding Portland Street and Caldwell Road; and
- 2) Whether there is a method used by staff to determine when there is enough commercial space in an urban growth area.

## **DISCUSSION**

Included in this report are staff's responses to the questions posed by Regional Council following closure of the public hearing. These questions are referenced in the December 6, 2017 meeting minutes, an excerpt of which is provided in Attachment B.

### **Response to Questions of Council**

Attachment C contains staff's responses to the various questions contained in the document submitted to Council by Councillor Karsten. These questions represent submissions provided by members of the public prior to and during the public hearing. The two matters specifically raised by Council are addressed below:

#### **1) Development constraints in the Portland Street and Caldwell Road area**

In 2012, Regional Council requested a full traffic study for Caldwell Road, given the pressures of development. Limited traffic capacity on Caldwell Road and Portland Street had been cited for many years as a concern of the public in the face of new development within the subject areas. Various plans, including the Morris-Russell Lake Secondary Planning Strategy, anticipated future extension and development of Mount Hope Avenue from Highway 111 to Caldwell Road (also referred to as the Shearwater Connector) as a means accommodating development once anticipated in the area, however, subsequent positions taken by the Department of National Defense regarding the development of the Shearwater Base lands brought the need for this connection into question.

The traffic study requested in 2012 was undertaken by HRM to evaluate the traffic management implications of developing vacant parcels of land along Caldwell Road, assuming that a connection from

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<sup>1</sup> See report at: <http://www.halifax.ca/council/agendasc/documents/161206ca111.pdf>

the east end of Caldwell Road to Highway 111 via the Shearwater Lands was unavailable. The study concluded that the Portland/Caldwell and the Portland/Baker/Woodlawn intersections had traffic loading higher than what was anticipated in their original design and that this would be significantly worsened with additional growth. Other intersections in the study area were noted as operating adequately with current traffic loading, however, it was noted these areas may marginally exceed the levels of traffic originally anticipated at the time of their conception with additional development.

Since the completion of the study in 2012, modifications and infrastructure improvements at the intersections of Caldwell Road/Portland Street and Portland/Baker/Woodlawn have been completed. The study anticipated that these modifications would help to better manage existing traffic loading and a limited amount of background traffic growth. The study further estimated that these modifications would be inadequate to handle additional development along Caldwell Road. The study concluded that until alternative route options or improvements to the road network could be created, measures to limit additional development from adding traffic loading to Caldwell Road and Portland Street would be justified.

There is no specific Council direction or policy establishing a moratorium to prohibit development in the traffic study area. The Dartmouth and Cole Harbour/Westphal MPS documents require discretionary development applications to consider the impact on traffic circulation and, in particular, the suitability of access to and from a proposed site. If a proposed development cannot be adequately supported by the existing street network, then the application may be determined to be inconsistent with MPS policy. The traffic impact study for the subject proposal indicates that the proposed development can be accommodated within the existing street network and is seen as being consistent with MPS policy.

## **2) Commercial space in an urban growth area**

In assessing discretionary development applications, staff must advise Council as to whether proposals are reasonably consistent with existing Municipal Planning Strategy policy. In this case, policies do not indicate that the amount or availability of existing commercial space within the surrounding community should be a consideration for Council in assessing the appropriateness of a development. Instead, policy directs Council to ensure that the nature of commercial uses is such that they would serve the local community. In the case of the subject application, staff advise that the proportion and form of commercial space to be appropriate for the context

## **Conclusion**

Staff have reviewed and provided response to the questions raised by Regional Council and members of the public. Staff recommend that Council approve the proposed amendments to the Dartmouth MPS and the Dartmouth LUB as set out in Attachments A and B of the staff report dated August 16, 2016.

## **FINANCIAL IMPLICATIONS**

The HRM costs associated with this planning application can be accommodated within the approved 2017 operating budget for C310 Urban & Rural Planning Applications.

## **RISK CONSIDERATION**

There are no significant risks associated with the recommendations contained within this report. This application involves proposed amendments to a Municipal Planning Strategy. Such amendments are at the discretion of Regional Council and are not subject to appeal to the Nova Scotia Utility and Review Board. Other information about the risks and other implications of adopting any amendments are contained within the Discussion section of the staff report dated August 16, 2016.

## **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement

Strategy, the *HRM Charter*, and the Public Participation Program approved by Council on February 25, 1997.

A public hearing was held by Regional Council on December 6, 2016. Residents will be notified, by email and through information provided on the HRM planning website, regarding the date in which the supplementary report is to be tabled with Regional Council.

### **ENVIRONMENTAL IMPLICATIONS**

No additional concerns were identified beyond those raised in the August 16, 2016 staff report.

### **ALTERNATIVES**

1. Regional Council may choose to modify the proposed amendments to the Dartmouth MPS and LUB, as set out in Attachments A and B of this report. If this alternative is chosen, specific direction regarding the requested modifications is required. Substantive amendments may require another public hearing to be held before approval is granted. A decision of Council to approve or refuse the proposed amendments is not appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Regional Council may choose to refuse the proposed amendments to the Dartmouth MPS and LUB. A decision of Council to approve or refuse the proposed amendments is not appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*

### **ATTACHMENTS**

Attachment A Questions for Staff's Consideration  
Attachment B December 6, 2016 Minutes of Regional Council – Excerpt of Item 11.1  
Attachment C Staff Response to Questions for Staff's Consideration  
Attachment D Legislative Authority

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Tyson Simms, Planner II, 902.490.6983

Report Approved by: \_\_\_\_\_  
Kelly Denty, Manager, Current Planning, 902.490.4800

Report Approved by: \_\_\_\_\_  
Bob Bjerke, Chief Planner & Director, Planning and Development, 902.490.1627

## Questions from Residents Regarding Case 19626

- Was the notification of the Public Information Meeting distributed to the entire notification area?
- Was the appropriate process followed for engaging with the public on the proposed development through the PIM process?
- Does the proposed development conflict with the master plan developed by the Russell-Morris Lake Public Participation Committee? e.g. the Master Development Agreement in ML-3 stated *with respect to the transportation network to service the Morris Russell Lake area it shall be the intention of Council to restrict development of all lands zoned CDD unless it can be demonstrated that vehicular traffic to be generated by the proposed development can be satisfactorily accommodated on Portland Street and its feeder streets*
- Why is this application not considered in conjunction with the Comprehensive Development Districts?
- Does the traffic study that was conducted sufficiently address the internal and off-site traffic impacts of the proposed development?
- Why is the method for providing municipal sewage, water, and storm services not addressed in the proposed MPS?
- Why isn't the gross residential density of the whole development in each of its phases addressed?
- Why are the established Master Plan policies being ignored for the purpose of spot zoning?
- Why is a proposal that is not primarily residential being considered for this area?
- Will the total number of units exceed 40% of the total number of units within the Comprehensive Development Districts?
- Why is a proposal that violates the 8 units per gross acre guideline being considered?
- Is this a much higher density than anywhere else in Portland Hills?
- What measures will be taken to minimize the disruption of existing terrain, vegetation, watercourses and other physical features against the potential effects of disruption?
- What will the effect of the driveways be on pedestrian and driver safety?
- Does the type of commercial use intended for the proposed development serve the needs of the residents?
- Does the proposed development adhere to the Morris Lake Watershed Management policy?
- What will happen to the wildlife that uses this green space?
- What will the effect of noise and light pollution be on the neighbouring properties?
- How will the proposed development impact the safety of school children in this area? Portland Hills Dr. is already too busy.
- How will the allowable hours of operation for the proposed development impact the surrounding residents?
- Will the access to Portland Street be a right-in or right-out movement?
- How many storeys will the proposed commercial building have?
- What is the lighting plan for the proposed development?
- Will the project really take seven years to complete?

- How will Morris lake be protected from becoming eutrophic?
- What will the Erosion and Sediment Minimization Plan entail?
- How will the construction project be phased to minimize the extent and length of soil exposure?
- What erosion and sediment controls will be used, where will they be located and what would be the timing of their installation?
- Where are the impact studies for the Water and Sewer services?
- What is the remaining capacity?
- Does the proposal conform with all applicable provisions adopted under the secondary planning strategy and any general provisions applicable under the municipal planning strategy?
- Will the proposed development increase the frequency of illegal right hand turns onto Alpine Drive in a residential zone?
- Why is development being considered within the Morris-Russel Lake Secondary Plan Area before the Caldwell Road Connector has been constructed to Caldwell Road?
- Was the Traffic Impact Study based on current data?
- Is it a conflict of interest that the Traffic Impact Study was paid for by the developer?
- What type of guarantee will be provided in terms of water flow?
- Will this development put a stress on the local school system?
- Is Halifax Transit planning to use the unused land across the street in this area for parking, and if so, how will this development affect parking?
- Why doesn't the City buy this lot for green space?
- Is this lot now considered 2 building lots?
- Amendments to an MPS are not generally considered unless it can be shown that circumstances have changed and require significant justification. Why is this being considered?

• Is there any cash in lieu of park land?

• → We were told that there would be ~~the~~ another Public Information meeting!

Why was that not held?

• Why is the developer allowed to pick a traffic impact study.

- full environment study?

- 20 units per acre or 40 units

- moratorium?

1. **Award Tender No. 16-095 to Construct Two Passenger Ferries to the lowest bidder meeting specifications, A.F. Theriault & Son Ltd., for Total Tender Price of \$9,802,884 (net HST included); and**
2. **In accordance with the Sole Source Policy (Administrative Order 35, Section 8(11A) subsections (a) and (b) attached – Appendix A), award the sole source procurement for construction and inspection services to EYE Marine Consultants for an estimated amount of \$98,926 (net HST included) with funding from Project No. CM000001, as outlined in the Financial Implications section of the staff report dated November 4, 2016.**

**MOTION PUT AND PASSED UNANIMOUSLY.**

**14.1.2 Request for Permanent Encroachment at 6061 University Avenue, Halifax**

The following was before Council:

- A staff recommendation report dated November 15, 2016

MOVED by Councillor Mason, seconded by Councillor Nicoll,

**THAT Halifax Regional Council approve the attached Encroachment License Agreement (Attachment A of the staff report dated November 15, 2016), subject to non-substantive amendments, if any, allowing Dalhousie University to install the proposed protective barrier around an existing utility pole.**

**MOTION PUT AND PASSED UNANIMOUSLY.**

Council recessed at 5:03 p.m.

Council reconvened at 6:00 p.m.

The Mayor suggested that a number of items be deferred to the next meeting due to time restrictions.

MOVED by Councillor Mason, seconded by Councillor Whitman

**THAT items 14.1.3, 14.2.1 and 14.2.2 be deferred to the next meeting of Regional Council.**

**MOTION PUT AND PASSED.**

**11.1 Case 19626 – Dartmouth Municipal Planning Strategy and Land Use By-Law Amendments – Development Agreement for Multiple Use Dwelling and Commercial Development at 836 and 842 Portland Street, Dartmouth (Joint Public Hearing with Harbour East - Marine Drive Community Council)**

The following was before Council:

- A recommendation report submitted by the Chair of the Harbour East - Marine Drive Community Council dated September 23, 2016, with attached staff report dated August 16, 2016
- A copy of the staff presentation dated December 6, 2016
- A memorandum from Tyson Simms, Planner II dated December 6, 2016 re: Recommendation and Revised Council Motion
- A copy of the applicant presentation dated December 6, 2016
- An extract of minutes from the Regional Council meeting held on October 4, 2016
- Correspondence from Nikki Peck, David and Barbara Kulka, Tim Sampson, Mike Casey, Blair and Shannon Richardson, Leo D. McKenna, Elizabeth A. and Gerald E. Mennie, Beatrice Wilkins, Murdock and Connie Morrison, Phil Elliott, Teresa Stephenson, Bill Mader, Owen and Rita LaPierre, Virginia Cameron, Tom Gerard, Michael Potvin, Alicia Potvin, and Blair Richardson

- A handout submitted by Councillor Karsten entitled "Questions from Residents Regarding Case 19626"

Mr. Tyson Simms, Planner II provided the staff presentation on Case 19626 as outlined in the staff report dated August 16, 2016. Mr. Simms advised that staff has prepared a memorandum with a revised motion to provide greater clarity, and this was circulated to all members of Regional Council. A brief discussion ensued with Mr. Simms responding to questions of clarification, noting:

- The proposed development is consistent with the intent and objectives of the Morris-Russell Lake Master Plan Area.
- Staff has reviewed the traffic impact study and addendums, and they concur that there is sufficient latitude to accommodate this development within the existing road network.

Mayor Savage invited the applicant to come forward and address Council.

**Mr. Jacob JeBailey, Principal Architect**, presented on behalf of applicant W.M. Fares Architects. Mr. JeBailey provided additional context regarding the existing site and proposed development. A copy of the applicant presentation was provided.

Mayor Savage reviewed the rules of procedure for public hearings and opened the public hearing for anyone wishing to speak on the matter.

**Mr. Michael Potvin, Dartmouth** spoke to the traffic on Portland Street and the growth of the area, making reference to the Transit-Oriented Development Case Study produced by the Canada Mortgage and Housing Corporation which he had provided to Council through correspondence. Mr. Potvin commented that the neighbourhood is not conducive to increased pedestrian traffic, as it was designed around vehicular access. He raised concerns with the conclusions of the traffic impact study and suggested that a traffic mitigation strategy be developed.

**Mr. Blair Richardson, Dartmouth** spoke to the dangers of increased traffic on residential side streets, specifically Alpine Drive, as traffic increases in the Portland Street area, which he noted was already over-capacity. He requested that the amendments be rejected at this time, and that the municipality conduct its own traffic and environmental impact studies before considering the matter further.

**Mr. Murdock Morrison, Dartmouth** expressed concern with the level of public consultation on the proposed development and shared community concerns that were raised at the Public Information Meeting in 2015. He shared his view that the proposed development was not in keeping with the character of the area. Mr. Morrison advised that the site was part of the Morris Lake Watershed and urged Council to undertake a water quality monitoring program and consider stormwater management.

**Ms. Alicia Potvin, Dartmouth** spoke to the environmental sensitivity of the parcel and requested Council protect residents in the existing neighbourhood from negative impacts to their quality of life, safety, and the environment. She commented that the proposal was too dense for the community and would reduce the safety of children walking to school. Ms. Potvin provided commentary with respect to the hydrology, vegetation, underground springs, and erosion prone silty soils in the area and indicated that consideration should be given to non-permeable surfaces and how to minimize the extent of soil exposure.

**Mr. Tom Patterson, Dartmouth** provided commentary with respect to the history of the parcel as part of his parents' dairy farm that operated until the mid-1950s. He advised that he supports the development proposal because it would attract tenants desiring proximity to the transit terminal, thus not requiring cars. He considered it unlikely that the commercial aspects of the proposal would result in an increase to local traffic as the customer base would be mostly local residents.

**Mr. Leo McKenna, Dartmouth** shared his apprehension regarding the traffic impact and potential for illegal right hand turns and shortcutting. He advised that density is appropriate in the municipality, but it should be proportional to the community. Mr. McKenna spoke in favour of eliminating or reducing the commercial uses, citing empty commercial space and vacant lots in the area.

**Mr. Darren Doucette, Dartmouth** asked Council to pay close attention to the entrance to Building C on the proposed development site plan. He advised that the entrance is directly across from the entrance to the Metro Transit lot, which could result in the need for signalization at the intersection.

**Ms. Jeannette Gordon, Dartmouth** echoed concerns expressed by previous speakers regarding the potential impact to traffic and safety in the neighbourhood.

**Mr. David Kulka, Dartmouth**, indicated that residents he has spoken to in the neighbourhood and not in favour of the proposed development because they find it to be out of proportion to the existing neighbourhood and they believe overall traffic will increase significantly.

The Mayor called three times for any other members of the public wishing to speak on the matter. There being none, the Mayor invited the applicant to respond to comments provided by the public.

**Mr. Cesar Saleh, Vice-President Planning & Design, W.M. Fares Group**, provided several comments in response to the concerns raised by residents:

- The traffic impact study was completed by a qualified professional according to the methodology set out in HRM guidelines. Furthermore, attention has been paid to traffic generation and circulation, site distances, site access and egress, pedestrian circulation, and safety issues.
- Regarding site grading and stormwater management, the plan will be designed by professional engineers following HRM guidelines and industry standards.
- The plan exceeds typical buffer requirements, is based on good planning and design principles, and is consistent with the planning policy for a growth area that encourages enhanced pedestrian linkages and pedestrian-oriented facades.

MOVED by Councillor Walker, seconded by Councillor Mancini

**THAT the public hearing close.**

**MOTION PUT AND PASSED.**

Mr. Simms responded to questions of clarification, noting the following:

- Council is being asked to consider amendments to the Dartmouth Municipal Planning Strategy (MPS) to add Policy ML-36. Mr. Simms indicated that there has been some confusion amongst the public regarding the applicability of other 35 policies in the MPS to the proposed development, as a large number of said policies speak specifically to lands with the "Comprehensive Development District" (CDD) designation and are thus not germane to the discussion.
- Density is calculated by dividing the number of units by the total acreage, so at 81 units on 4 acres the proposal would have a density of 20.25 units per acre.

MOVED by Councillor Karsten, seconded by Councillor Whitman

**THAT Halifax Regional Council approve the proposed amendments to the Dartmouth Municipal Planning Strategy and the Dartmouth Land Use By-law as set out in Attachments A and B of the report dated August 16, 2016.**

MOVED by Councillor Karsten, seconded by Councillor Nicoll

**THAT the motion be deferred pending a supplementary report based on questions of Council.**

Councillor Karsten submitted a handout containing a number of questions for staff's consideration. Councillors also requested clarity on whether or not there is a de facto moratorium on development in the

area surrounding Portland Street and Caldwell Road, and whether there is a method used by staff to determine when there is enough commercial space in an urban growth area.

Mr. John Traves, Municipal Solicitor, advised that because the public hearing was duly held and closed, Council must make its decision with no further communication or discussion aside from the debate to be held in Council when the supplemental report comes forward.

**MOTION TO DEFER PUT AND PASSED.** (16 in favour, 1 against)

In favour: Mayor Savage, Deputy Mayor Craig, Councillors Streach, Hendsbee, Karsten, Nicoll, Austin, Mancini, Mason, Smith, Walker, Adams, Zurawski, Whitman, Blackburn and Outhit

Against: Councillor Cleary

Council agreed to consider item 14.4.1 next on the agenda as Councillor Adams had to leave the meeting.

#### **14.4 MEMBERS OF COUNCIL**

##### **14.4.1 Councillor Adams – Herring Cove Servicing**

The following was before Council:

- A Request for Council's Consideration form submitted by Councillor Adams
- A copy of the staff recommendation report dated November 10, 2016

MOVED by Councillor Adams, seconded by Councillor Walker

- 1. That Halifax Regional Council Waive the Rules of Order to suspend the notice provisions associated with 63(3) regarding motions of recession regarding a motion passed November 22, 2016 regarding Herring Cove Water Servicing, and;**
- 2. That the following motion passed by Regional Council with respect to Herring Cove Water Servicing be Rescinded:**

**It is recommended that Halifax Regional Council:**

- 1. Waive the Rules of Order to suspend the rules that the Audit and Finance Standing Committee approve the staff report dated November 10, 2016 and make a recommendation to Regional Council, as the Audit and Finance Standing Committee is not scheduled to meet until December 2016;**
- 2. Increase the 2016/17 gross capital budget in the amount of \$75,000 for a preliminary design for the Herring Cove Water Servicing Project Phase 2B, with funding as a withdrawal from General Contingency Reserve, Q421; and**
- 3. Authorize a sole source award and reimbursement to the Halifax Regional Water Commission in the amount of \$75,000 for the preliminary design of a revised scope of work for the Herring Cove Water Servicing Project Phase 2B.**

Councillor Adams advised that the purpose of the motion of recession was to bring forward a new motion to cost out the entire project.

**MOTION TO RESCIND PUT AND PASSED UNANIMOUSLY.**

Two-third majority vote required.

Not present: Deputy Mayor Craig and Councillor Streach

MOVED by Councillor Adams, seconded by Councillor Walker

**THAT Halifax Regional Council:**

**Attachment C**  
**Response to Questions Submitted to Council**

Question	Staff Comment
1) Was the appropriate process followed for engaging with the public on the proposed development through the Public Information Meeting (PIM) process?	Yes, the process followed for engaging the public was consistent with the HRM Community Engagement Strategy, the HRM Charter, and the Public Participation Program approved by Council on February 25, 1997. The public information meeting (PIM) held on June 23, 2015 was conducted in a manner consistent with other PIM exercises held for other planning applications.
2) Does the proposed development conflict with the master plan developed by the Russell-Morris Lake Public Participation Committee? e.g. the Master Development Agreement in ML-3 stated <i>with respect to the transportation network to service the Morris Russell Lake area it shall be the intention of Council to restrict development of all lands zoned CDD unless it can be demonstrated that vehicular traffic to be generated by the proposed development can be satisfactorily accommodated on Portland Street and its feeder streets.</i>	No, the proposed development does not conflict with the policies of the Morris-Russell Lake Secondary Planning Strategy. With respect to satisfying Policy ML-3, the proponent has demonstrated, through submission and review of a traffic impact study (TIS), that the proposed development can be satisfactorily accommodated on Portland Street and the supporting street network.
3) Why is this application not considered in conjunction with the Comprehensive Development Districts?	This application has not been considered in conjunction with Comprehensive Development District (CDD) policies as only a small portion (0.17 acres) of the site (4 acres) is zoned CDD. The intent of the CDD zone is to allow for consideration of comprehensive residential development of larger vacant parcels located within the development boundary.
4) Does the traffic study that was conducted sufficiently address the internal and off-site traffic impacts of the proposed development?	The traffic impact study (TIS) and subsequent addendums qualify that the proposed development can be accommodated within nearby intersections and the adjacent street network. Internal site design has been subject to review by HRM staff as part of the detailed review segment of the planning process.
5) Why is the method for providing municipal sewage, water, and storm services not addressed in the proposed MPS?	As part of the planning process, the subject application has been reviewed to ensure the proposed development can be adequately serviced with municipal services. The proposed MPS policy (Attachment A of the Report dated August 16, 2016), subject to Policy IP-1(c), requires that consideration be given to the proposal and that it is not premature or inappropriate by reason of the adequacy of sewer and water services and public utilities.
6) Why isn't the gross residential density of the	An analysis of the gross residential density in each of

**Attachment C**  
**Response to Questions Submitted to Council**

<p>whole development in each of its phases addressed?</p>	<p>its phases is a requirement of Policy H-3A of the Dartmouth MPS and a requirement for submission of a concept plan as part of a CDD development agreement application. As noted in the response to question 3, this application is not subject to consideration of CDD policies and therefore is not considered as part of this application.</p>
<p>7) Why are the established Master Plan policies being ignored for the purpose of spot zoning?</p>	<p>Applicable policies of the Morris-Russell Lake Master Plan have been considered as part of this application. The proposed mechanism for consideration of this proposal is not rezoning, rather a development agreement. The development agreement is subject to consideration of proposed site specific Municipal Planning Strategy policy as outlined in Attachment A of the Staff Report dated August 16, 2016.</p>
<p>8) Why is a proposal that is not primarily residential being considered for this area?</p>	<p>This application represents a proposed mixed use residential and commercial development which is consistent with the intent of Regional Plan Policy which identifies the subject area as an Urban Local Growth Centre.</p>
<p>9) Will the total number of units exceed 40% of the total number of units within the Comprehensive Development Districts?</p>	<p>Not applicable. This application is not subject to consideration of policy that applies to the consideration of CDD development agreement applications.</p>
<p>10) Why is a proposal that violates the 8 unit per gross acre guideline being considered?</p>	<p>Not applicable. This application is not subject to consideration of policy that applies to CDD development agreement applications in this area.</p>
<p>11) Is this a much higher density than anywhere else in Portland Hills?</p>	<p>No. There are developments located within Portland Hills that contain a higher density than 20.5 units per acre, which is the proposed density of this application.</p>
<p>12) What measures will be taken to minimize the disruption of existing terrain, vegetation, watercourses and other physical features against the potential effects of disruption?</p>	<p>As per requirements of the proposed development agreement, the applicant is required to submit plans to manage grading, drainage and erosion and sedimentation control. There is a requirement to manage stormwater so that pre and post development flows remain equal.</p>
<p>13) What will the effect of the driveways be on pedestrian and driver safety?</p>	<p>Pedestrian safety has been contemplated at all access points and determined to be acceptable.</p>
<p>14) Does the type of commercial use intended for the proposed development serve the</p>	<p>Commercial uses assigned in the proposed development agreement are: 1) limited; 2) intended</p>

**Attachment C**  
**Response to Questions Submitted to Council**

needs of residents?	to remain relatively compact and 3) intended to service local residents.
15) Does the proposed development adhere to the Morris Lake Watershed Management Policy?	Yes, the proposed development is consistent with all applicable provisions of the Morris-Russell Lake Master Plan.
16) What will happen to the wildlife that uses this green space?	The area is not within a protected wilderness area where habitat must be preserved. Wildlife in the area will typically move to other areas as construction begins to stage on site. The proposed development agreement requires the retention of a non-disturbance area which may serve to accommodate wildlife on the property.
17) What will the effect of noise and light pollution be on the neighbouring property?	The mature vegetative buffers that are proposed to remain in place are adequate to mitigate impact associated with noise of light.
18) How will the proposed development impact the safety of school children in this area? Portland Hills Drive is already too busy.	Staff anticipates that pedestrian safety will be minimally impacted by the proposed development as access points will be clearly marked and building setbacks will provide sufficient line of sight.
19) How will the allowable hours of operation for the proposed development impact the surrounding residents?	Hours of operation have been established in the development agreement to limit nighttime operations and to mitigate impacts on surrounding residents.
20) Will the access to Portland Street be a right-in or right out movement?	Proposed access to Portland Street is a right-out only movement.
21) How many storeys will the proposed commercial building have?	As proposed, the commercial building will be 2 storeys in height.
22) What is the lighting plan for the proposed development?	A lighting plan is required to be submitted as part of the development agreement. The development agreement requires that lighting shall be directed away from residential uses and streets.
23) Will the project really take 7 years to complete?	The proposed development agreement requires that the development be completed within 7 years. However, the project may be completed before the 7 year completion deadline.
24) How will Morris Lake be protected from becoming eutrophic?	The applicant is required to manage stormwater on the site through grading and drainage plans, and through the undertaking of erosion and sedimentation control plans. Further, the applicant is required to retain mature existing vegetation. These efforts will serve to mitigate impacts on Morris Lake.
25) What will the Erosion and Sediment	Submission of an erosion and sedimentation control

**Attachment C**  
**Response to Questions Submitted to Council**

Minimization Plan entail?	plan is required under the development agreement. The plan must be prepared by a professional engineer in accordance with the provincial <i>Erosion and Sedimentation Control Handbook for Construction Sites</i> <sup>1</sup> . The erosion and sedimentation control plan will indicate the sequence of construction, all proposed detailed erosion and sedimentation control measures and interim stormwater management measures to be put in place prior to and during construction.
26) How will the construction project be phased to minimize the extent and length of soil exposure?	There is no phasing proposed as part of this project. With respect to minimizing the extent and length of soil exposure please see responses to questions 24 and 25.
27) What erosion and sediment controls will be used, where will they be located and what would be the timing of their installation?	Please see responses to questions 24 and 25.
28) Where are the impact studies for the Water and Sewer services?	The proposed development will be connected to municipal central services. Halifax Water has reviewed the proposal and deemed it acceptable to be connected into the existing infrastructure.
29) What is the remaining capacity?	Please see response to question 28.
30) Does the proposal conform with all applicable provisions adopted under the secondary planning strategy and any general provisions applicable under the municipal planning strategy?	Yes, as it applies to the proposed development.
31) Will the proposed development increase the frequency of illegal right hand turns onto Alpine Drive in a residential zone?	Illegal right hand turns onto Alpine Drive are not anticipated as a result of the proposed development.
32) Why is development being considered within the Morris-Russell Lake Secondary Plan Area before the Caldwell Road Connector has been constructed to Caldwell Road?	MPS Policy ML-8 provides an exemption clause which allows for consideration of development subject to submission and review of a traffic analysis. A comprehensive traffic analysis has been completed and accepted for this application satisfying the conditions set out in Policy ML-8.
33) Was the Traffic Impact Study based on current data?	The Traffic Impact Study used data that has been deemed acceptable by HRM's Transportation and Public Works Department.

<sup>1</sup> See full text of document at:

<https://novascotia.ca/nse/surface.water/docs/ErosionSedimentControlHandbook.Construction.pdf>

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34) Is it a conflict of interest that the Traffic Impact Study was paid for by the developer?	No. Traffic impact studies (TIS) are required to be submitted as part of a planning application such as this and are paid for by the developer. The studies, which are to be prepared in keeping with HRM's <i>Guidelines for the Preparation of Traffic Impact Studies</i> <sup>2</sup> , are prepared by professional engineers who must adhere to a professional code of conduct and ethics. These studies are then submitted to and reviewed by HRM's engineers.
35) What type of guarantee will be provided in terms of water flow?	With respect to stormwater, please see responses to questions 24 and 25.  With reference to potable water, Halifax Water has reviewed the application and deemed there to be sufficient potable water to service the proposed development.
36) Will this development put a stress on the local school system?	This proposal is not anticipated to have a significant impact on the local school system. As part of the planning process, this application was circulated to the Halifax Regional School Board (HRSB) for review and comment. No comment or concerns were provided as part of HRSB's review. However, HRSB is required to find placement for student populations where required.
37) Is Halifax Transit planning to use the unused land across the street in this area for parking, and if so, how will this development affect parking?	At this time, it is uncertain as to where Halifax Transit plans to utilize off-site parking. The parking allocation on the proposed site has been reviewed. The parking space allocated through the proposed development agreement has been deemed sufficient to service the use.
38) Why doesn't the City buy this lot for green space?	This site has not been deemed a priority for park land acquisition.
39) Is this lot now considered 2 building lots?	The lands are proposed to be consolidated into one lot. If the proposal is approved, future subdivision may occur, creating two lots.
40) Amendments to an MPS are not generally considered unless it can be shown that circumstances have changed and require significant justification. Why is this being considered?	Municipal Planning Strategy policies can often be dated (for example the CDD for Portland Hills was established in 2000). With the adoption of the 2006 Regional Plan and the identification of Growth Centres, further refined through the 2014 Regional

<sup>2</sup> See full text of HRM's TIS Guidelines at: <http://www.halifax.ca/traffic/documents/TISGUIDE8.pdf>

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	Plan, mixed use transit oriented development that is compact, and that utilizes land efficiently is considered desirable in this area.
41) Is there any cash in lieu of parkland?	No. Cash in lieu is only applicable in the case of subdivision of more than three lots. Cash in lieu is not applicable in this case.
42) We were told that there would be another Public Information Meeting! Why was that not held?	The Public Information Meeting was very well attended and a broad range of community feedback was obtained that covered a wide spectrum of concerns and issues. These issues are documented within the meeting minutes provided to Council as part of the August 16, 2016 staff report .Please also see response to question 1.
43) Why is the developer allowed to pick a traffic impact study?	The developer is required to submit a traffic study in order for their application to be deemed complete. It is HRM's responsibility to review the traffic study and request more information as required.
44) Full environment study?	The environmental aspects of the development as they pertain to applicable MPS policy have been reviewed. Please see responses to questions 24 and 25.
45) 20 units per acre or 40 units?	The residential density for this application is 20.5 units per acre. Commercial gross floor area does not apply when calculating residential density.
46) Moratorium?	The traffic study submitted as part of this application was based on the subject property and its relationship to Portland Street and Portland Hills Drive. One factor considered as part of the analysis consisted of an upgrade to the Caldwell Road/Portland Street intersection. However, the impact of this development on Caldwell Road was deemed to be negligible. Therefore, issues pertaining to Caldwell Road traffic restrictions were considered less prevalent in determining the traffic suitability for this development. For further information, please see the Discussion section of the February 10 <sup>th</sup> supplementary report.

## **Attachment D – Legislative Authority**

### **Municipal Planning Strategy and Land Use By-law Amendments**

*Halifax Regional Municipality Charter*, Part VIII, Planning and Development, including:

#### **Planning documents reasonably consistent**

214 (1) Planning documents adopted after the adoption of a statement of provincial interest that applies within the Municipality must be reasonably consistent with the statement.

#### **Planning advisory committee**

215 (1) The Municipality may, by policy, establish a planning advisory committee and may establish different planning advisory committees for different parts of the Municipality.

(4) The purpose of a planning advisory committee or a joint planning advisory committee is to advise respecting the preparation or amendment of planning documents and respecting planning matters generally.

#### **Public participation program**

219 (1) The Council shall adopt, by policy, a public participation program concerning the preparation of planning documents.

(2) The Council may adopt different public participation programs for different types of planning documents.

(3) The content of a public participation program is at the discretion of the Council, but it must identify opportunities and establish ways and means of seeking the opinions of the public concerning the proposed planning documents.

220 (1) The Council shall adopt, by by-law, planning documents.

(4) The Council shall complete the public participation program before placing the first notice for a public hearing in a newspaper circulating in the Municipality.

#### **Purpose of municipal planning strategy**

228 The purpose of a municipal planning strategy is to provide statements of policy to guide the development and management of the Municipality and, to further this purpose, to establish

(a) policies that address problems and opportunities concerning the development of land and the effects of the development;

(b) policies to provide a framework for the environmental, social and economic development within the Municipality;

(c) policies that are reasonably consistent with the intent of statements of provincial interest; and

(d) specify programs and actions necessary for implementing the municipal planning strategy.

#### **Statements of policy in planning strategy**

229 (1) A municipal planning strategy may include statements of policy with respect to any or all of the following:

(a) the goals and objectives of the Municipality for its future;

(b) the physical, economic and social environment of the Municipality;

## Attachment D – Legislative Authority

- (c) the protection, use and development of lands within the Municipality, including the identification, protection, use and development of lands subject to flooding, steep slopes, lands susceptible to subsidence, erosion or other geological hazards, swamps, marshes or other environmentally sensitive areas;
- (d) stormwater management and erosion control;
- (e) in connection with a development, the excavation or filling in of land, the placement of fill or the removal of soil, unless these matters are subject to another enactment of the Province;
- (f) in connection with a development, retention of trees and vegetation for the purposes of landscaping, buffering, sedimentation or erosion control;
- (g) studies to be carried out prior to undertaking specified developments or developments in specified areas;
- (h) the staging of development;
- (i) the provision of municipal services and facilities;
- (j) municipal investment for public and private development and the coordination of public programs relating to the economic, social and physical development of the Municipality;
- (k) non-conforming uses and structures;
- (l) the subdivision of land;
- (m) the use and conservation of energy, including the height and siting of developments;
- (n) measures for informing, or securing, the views of the public regarding contemplated planning policies and actions or bylaws arising from such policies;
- (o) policies governing
  - (i) land-use by-law matters,
  - (ii) amendment of the land-use by-law,
  - (iii) the acceptance and use of cash-in-lieu of required parking,
  - (iv) the use of development agreements,
  - (v) the establishment of comprehensive development districts,
  - (vi) the use of site-plan approval areas, including whether notice must be given to owners and tenants of property that is thirty metres or more from the applicant's property,
  - (vii) the establishment of transportation reserves,
  - (viii) the use of infrastructure charges,
  - (ix) the eligibility criteria for the establishment of a commercial development district including, without limiting the generality of the foregoing, the percentage increase in the taxable assessed value of the eligible properties, as defined in subsection 92C(1), within the proposed commercial development district and the period over which the increase in the taxable assessed value of the properties occurs;

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(p) the regulation or prohibition of development in areas near airports with a noise exposure forecast or noise exposure projections in excess of thirty, as set out on maps produced by an airport authority, as revised from time to time, and reviewed by the Department of Transport (Canada);

(q) any other matter relating to the physical, social or economic environment of the Municipality.

(2) The Council shall include policies in the municipal planning strategy on how it intends to review the municipal planning strategy and land-use by-law.

### **No action inconsistent with planning strategy**

232 (1) The Municipality may not act in a manner that is inconsistent with a municipal planning strategy.

### **Adoption of land-use by-law or amendment**

234 (1) Where the Council adopts a municipal planning strategy or a municipal planning strategy amendment that contains policies about regulating land use and development, the Council shall, at the same time, adopt a land-use by-law or land-use by-law amendment that enables the policies to be carried out.

### **Content of land-use by-law**

235 (1) A land-use by-law must include maps that divide the planning area into zones.

(2) A land-use by-law must

(a) list permitted or prohibited uses for each zone; and

(b) include provisions that are authorized pursuant to this Act and that are needed to implement the municipal planning strategy.

(3) A land-use by-law may regulate or prohibit development, but development may not be totally prohibited, unless prohibition is permitted pursuant to this Part.

(4) A land-use by-law may

(a) regulate the dimensions for frontage and lot area for any class of use and size of structure;

(b) regulate the maximum floor area of each use to be placed upon a lot, where more than one use is permitted upon a lot;

(c) regulate the maximum area of the ground that a structure may cover;

(d) regulate the location of a structure on a lot;

(e) regulate the height of structures;

(f) regulate the percentage of land that may be built upon;

(g) regulate the size, or other requirements, relating to yards;

(h) regulate the density of dwelling units;

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- (i) require and regulate the establishment and location of off-street parking and loading facilities;
  - (j) regulate the location of developments adjacent to pits and quarries;
  - (k) regulate the period of time for which temporary developments may be permitted;
  - (l) prescribe the form of an application for a development permit, the content of a development permit, the period of time for which the permit is valid and any provisions for revoking or renewing the permit;
  - (m) regulate the floor area ratio of a building;
  - (n) prescribe the fees for an application to amend a land-use by-law or for entering into a development agreement, site plan or variance.
- (5) Where a municipal planning strategy so provides, a land-use by-law may
- (a) subject to the *Public Highways Act*, regulate or restrict the location, size and number of accesses from a lot to the abutting streets, as long as a lot has access to at least one street;
  - (b) regulate or prohibit the type, number, size and location of signs and sign structures;
  - (c) regulate, require or prohibit fences, walks, outdoor lighting and landscaping;
  - (d) in connection with a development, regulate, or require the planting or retention of, trees and vegetation for the purposes of landscaping, buffering, sedimentation or erosion control;
  - (e) regulate or prohibit the outdoor storage of goods, machinery, vehicles, building materials, waste materials, aggregates and other items and require outdoor storage sites to be screened by landscaping or structures;
  - (f) regulate the location of disposal sites for any waste material;
  - (g) in relation to a development, regulate or prohibit the altering of land levels, the excavation or filling in of land, the placement of fill or the removal of soil unless these matters are regulated by another enactment of the Province;
  - (h) regulate or prohibit the removal of topsoil;
  - (i) regulate the external appearance of structures;
  - (j) set out conditions, including performance standards, to be met by a development before a development permit may be issued;
  - (k) provide for incentive or bonus zoning in the HRM by Design Downtown Plan Area and the Centre Plan Area, including requirements for incentive or bonus zoning;
  - (l) prescribe methods for controlling erosion and sedimentation during the construction of a development;
  - (m) regulate or prohibit excavation, filling in, placement of fill or reclamation of land on floodplains identified in the land-use by-law;
  - (n) prohibit development or certain classes of development where, in the opinion of the Council, the

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- (i) cost of providing municipal wastewater facilities, stormwater systems or water systems would be prohibitive,
- (ii) provision of municipal wastewater facilities, stormwater systems or water systems would be premature, or
- (iii) cost of maintaining municipal streets would be prohibitive;
- (o) regulate or prohibit development within a specified distance of a watercourse or a municipal water-supply wellhead;
- (p) prohibit development on land that
  - (i) is subject to flooding or subsidence,
  - (ii) has steep slopes,
  - (iii) is low-lying, marshy, or unstable,
  - (iv) is otherwise hazardous for development because of its soil conditions, geological conditions, undermining or topography,
  - (v) is known to be contaminated within the meaning of the *Environment Act*, or
  - (vi) is located in an area where development is prohibited by a statement of provincial interest or by an enactment of the Province;
- (q) regulate or prohibit development in areas near airports with a noise exposure forecast or noise exposure projections in excess of thirty, as set out on maps produced by an airport authority, as revised from time to time, and reviewed by the Department of Transport (Canada);
- (r) permit the development officer to grant variances in parking and loading spaces, ground area and height, floor area occupied by a home-based business and the height and area of a sign.

(6) Where the land-use by-law provides for incentive or bonus zoning within the Centre Plan Area, the land-use by-law must require the inclusion of affordable housing in a development in addition to any other requirements adopted by the Council, as the contribution for any incentive or bonus zoning applicable to the development.

### **No appeal permitted**

263 The following are not subject to an appeal:

- (d) an amendment to a land-use by-law that is required to carry out a concurrent amendment to a municipal planning strategy.