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**Item No. 2**  
**Halifax Regional Council**  
**December 12, 2017**

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

**SUBMITTED BY:** Original Signed by Director

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Kelly Denty, Acting Director, Planning and Development

**DATE:** October 13, 2017

**SUBJECT:** Existing Industrial Uses - Cole Harbour / Westphal Land Use By-law

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### **INFORMATION REPORT**

#### **ORIGIN**

At the July 19, 2016 meeting of Regional Council, regarding Item 14.7.3, the following motion was put and passed:

*MOVED by Councillor Nicoll, seconded by Councillor McCluskey that Halifax Regional Council request a staff report regarding possible amendments to the Cole Harbour/Westphal Municipal Planning Strategy and Land Use By-Law to prohibit the continuation of certain light industrial uses identified in Appendix "B" of the Land Use By-Law.*

#### **LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning and Development*

## **BACKGROUND**

On May 19<sup>th</sup>, 2016, Harbour East-Marine Drive Community Council held a public hearing to allow the existing general contracting business at 422 & 424 Caldwell Road, Cole Harbour to expand. The application was approved on June 30, 2016 under Case #19536. The expansion of the existing use was considered under Policy UR-20 of the Cole Harbour/ Westphal Municipal Planning Strategy (MPS) (Attachment A) which enables industrial uses listed in Appendix B of the Cole Harbour/Westphal Land Use By-law (LUB) (Attachment B) to expand through the development agreement process.

This application raised questions regarding the existing industrial uses listed in Appendix B of the LUB. The intent of this report is to provide information regarding the history and purpose of these uses as well as the means by which planning policy and land use requirements may be amended.

### **History and Purpose**

In 1982, when the first Cole Harbour/ Westphal MPS and LUB came into effect, it addressed existing industrial uses in two ways. Firstly, in locations where the uses were concentrated, the light industrial (I-1) Zone was applied. Secondly, where industrial uses were interspersed, and generally established in conjunction with residential development, they were recognized within Appendix B of the LUB.

By recognizing uses within an appendix a few outcomes are achieved:

- Stricter zone provisions apply as the properties carry the same zone as their abutting residential neighbours and are subject to the same zone requirements for height, lot coverage, setbacks etc.;
- Spot zoning is avoided; and,
- The listed uses do not become subject to the non-conforming use provisions of *Halifax Regional Municipality Charter because they are permitted uses within the zone*. Avoiding non-conforming use status allows these uses to recommence if discontinued for longer than six months, change to a similar industrial use, and/or expand (albeit the MPS and LUB only enabled expansion through the discretionary approval of a development agreement).

Seven existing industrial uses were recognized during the implementation of the 1982 MPS and LUB. In 1988, an additional three uses were identified and added to the appendix through an LUB amendment. Of the total ten uses listed in Appendix B, only two have expanded to date:

1. "A. R. Hemming Building Systems Limited" - In 1984, the former Halifax County approved a development agreement for the property on the south-west corner of Highway 7 and Broom Road, Westphal under case number DA-CHW-04-84-21 to allow a building supplier and contractor in addition to R-1 (Single Unit Dwelling) and C-4 (Highway Commercial) zone uses. Currently, an active planning application under case #19910 is on file to permit an automotive repair use at this location; and
2. "Tartan Drywall Limited" - The planning case discussed at the May and June 2016 meetings of Harbour East-Marine Drive Community Council, Case #19536 to allow a general contracting business (Metro Premier Properties Inc.) located at 422 & 424 Caldwell Road, Cole Harbour to expand by the construction of a new storage building and office space.

## **DISCUSSION**

Appendix B identifies uses by business name, civic address and property identification number. This information can, and has, changed over time. It appears from preliminary investigation that most of the properties listed are no longer occupied by industrial uses. However, as these properties remain recognized through Appendix B, they retain the right to establish new industrial uses provided they are similar in nature to, and do not exceed the size of, the use occurring on those lands in 1992 (the approval date of the current MPS and LUB).

Council may consider amending Appendix B to remove the properties where industrial uses are no longer in existence through a LUB amendment process without any amendments to the MPS. However, further investigation, including consultation with the property owners, to definitively establish which of these properties have in fact abandoned their businesses would be necessary. To remove Appendix B in its entirety would require an MPS amendment as the MPS makes specific provision for the continued use of existing industrial operations.

Non-conforming uses would result for any use still in existence and the enabling policy for those properties that have expanded through development agreement would no longer exist. For clarification, while any use still in operation cannot be prohibited outright, it can be removed from Appendix B and regulated under the non-conforming use provisions of the *HRM Charter*. Generally, non-conforming uses may not be (a) extended beyond the limits that the use legally occupies; (b) changed to any other use except a use permitted in the zone; or (c) recommenced, if discontinued for a continuous period of six months.

A related issue with respect to the undertaking of amending Appendix B is that this provision is by no means unique. The Cole Harbour / Westphal LUB also contains an Appendix C (Existing Salvage Yards), an Appendix D (Existing Primary Industries) and an Appendix E (P-3 Existing Uses). Together, these appendices recognize 27 uses. In addition, a cursory review of other HRM LUBs indicates there are over 300 uses recognized in this manner throughout its various land use by-laws.

It is the intention of the Planning and Development business unit to review all LUBs as part of the Land Use By-law Simplification project, for which Council approved a phase 1 background study on December 1, 2015. To ensure consistency and equity between land owners across HRM, it is anticipated that a unified strategy to address matters such as this throughout all LUBs will be identified through the simplification project. As per the December 1, 2015 Council motion, staff will provide to the Community Planning and Economic Development Standing Committee an informed By-law Simplification Plan that will include recommendations and timelines, necessary to implement the project. As there is no apparent urgency to the matter and it is one that is common to a number of HRM's LUBs, staff advise that a unified approach, to be determined and addressed through the LUB Simplification project, is the appropriate course of action.

### **FINANCIAL IMPLICATIONS**

There are no financial implications.

### **COMMUNITY ENGAGEMENT**

No community engagement is necessary for the purposes of this report.

### **ATTACHMENTS**

Attachment A	Excerpt from the Cole Harbour/ Westphal Municipal Planning Strategy
Attachment B	Excerpt from the Cole Harbour/Westphal Land Use By-law

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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

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Report Approved by: Carl Purvis, Planning Applications Program Manager, 902.490.4797

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**Attachment A**  
**Excerpt from the Cole Harbour/ Westphal Municipal Planning Strategy**

Industrial Uses

Although the principal intent of the planning strategy is to provide protection and direction for continued suburban residential and commercial growth, existing industrial uses can for the most part, be supported within the Plan Area. A number of these uses are located on contiguous lots along Ross Road, and essentially constitute a small industrial area apart from the major residential community. Another area containing industrial uses is located on Highway No. 7 near Salmon River Drive. Other uses are found in residential neighbourhoods and relate primarily to warehousing and small industrial service uses. The high standard at which these properties have been maintained has resulted in their being accepted in their neighbourhoods and, although such uses are not seen as generally appropriate to continuing development, provisions can be made for existing operations.

In keeping with the intention of this planning strategy to give priority to residential development, industrial zoning will not be extended where existing industrial operations are to be increased in area. In the event that an existing industrial operation is proposed to be expanded beyond its zoned area, it is reasonable to evaluate such requests on a case-by-case basis through the development agreement process.

UR-19 In support of existing light industrial uses within the Urban Residential Designation, particularly in the vicinity of the Ross Road, it shall be the intention of Council to establish a light industry zone. The zone shall permit the continued operation and expansion of existing uses and permit changes of use within appropriate limits. It shall be the intention of Council that this light industry zone shall not be extended to additional properties by amendment to the land use by-law.

Council may, however, consider any proposed expansion of such uses onto adjacent, non-industrially zoned properties in accordance with the development agreement provisions of the Planning Act. In considering such agreements, Council shall have regard to the following:

- (a) that the proposed use is related to an existing industrial use;
- (b) the extent and location of open storage and outdoor display with respect to abutting properties;
- (c) the adequacy of separation distances, landscaping and screening from adjacent residential and community facility uses;
- (d) the adequacy of transportation facilities serving the use, including entrance to and access from the site;
- (e) an assessment of environmental concerns related to the proposed expansion and in particular, potential effects on watercourses;
- (f) the compatibility of the proposed expansion with surrounding land uses by virtue of its nature, scale and hours of operation; and
- (g) the provisions of Policy IM-11.

UR-20 Notwithstanding that industrial uses are not permitted within the Urban Residential Designation, it shall be the intention of Council to provide for the continuation of certain light industrial uses identified in Appendix "B" of the land use by-law, to the extent to which they were in existence at the time of adoption of this strategy. Council may consider the expansion of such uses in accordance with the development agreement provisions of the Planning Act. In considering such agreements, Council shall have regards to the following:

- (a) that any expansion will not involve structural alterations or new buildings which will detract from the character of the surrounding residential neighbourhood by reason of the architectural design and exterior material used in their construction;
- (b) that any use will not be obnoxious or result in excessive noise, dust or traffic concerns;
- (c) that adequate provision is made for buffering and screening from adjacent residential properties; and
- (d) the provisions of Policy IM-11.

**Attachment B**  
**Excerpt from the Cole Harbour/Westphal Land Use By-law**

APPENDIX "B": EXISTING INDUSTRIAL USES

Notwithstanding anything else in this By-law, the following uses shall be permitted uses to the extent to which they are in existence on the effective date of this By-law, and any expansion or alteration may be considered in accordance with the Municipal Planning Strategy for Cole Harbour/ Westphal and with the development agreement provisions of the Planning Act.

	<u>CIVIC ADDRESS</u>	<u>LRIS INDEX NUMBER</u>
Tartan Drywall Limited	Caldwell Road	403634
Robert Jordan Wholesale Outlet	12 Barbara Drive	622464
Jessie C. Beck Welding Shop	263 Astral Drive	405092
Sutherland's Home Improvements	1284 Highway No. 7	40166373
Ednah Conrod Consumer Glass Services	Montague Mines Road	462481
Eagles & Radcliffe Printing	32 Bissett Road	402578 402560
A.R. Hemming Building Systems Limited	Highway No. 7	650689
Handy Builders Limited General Contracting	154 Salmon River Drive	40187361
Harold S. Cooper Wood Fuel	134 Richardson Drive	40335846
J & D Repair Auto Repair	37 Chris Evan Drive	40144610