



P.O. Box 1749  
Halifax, Nova Scotia  
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**Item No. 13.1.2**  
**Harbour East-Marine Drive Community Council**  
**March 1, 2018**

**TO:** Chair and Members of Harbour East-Marine Drive Community Council

**SUBMITTED BY:** **ORIGINAL SIGNED**  
\_\_\_\_\_  
Kelly Denty, Acting Director, Planning and Development

**DATE:** January 15, 2018

**SUBJECT:** **Case 21438: First Amending Development Agreement for 1095 Cole Harbour Road, Cole Harbour**  
\_\_\_\_\_

**ORIGIN**

Application by Kenting Properties Inc.

**LEGISLATIVE AUTHORITY**

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

**RECOMMENDATION**

It is recommended that Harbour East-Marine Drive Community Council:

1. Approve, by resolution, the proposed first amending development agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
2. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND**

Kenting Properties Inc. is applying for a non-substantive amendment to an existing development agreement to allow for modifications to the exterior commercial building facade.

<b>Subject Site</b>	1095 Cole Harbour Road
<b>Location</b>	Northern side of Cole Harbour Road (Map 1)
<b>Regional Plan Designation</b>	Urban Settlement under the Regional MPS
<b>Community Plan Designation (Map 1)</b>	Community Commercial in the Cole Harbour/Westphal MPS
<b>Zoning (Map 2)</b>	C-2 (General Business) in the Cole Harbour/Westphal LUB
<b>Size of Site</b>	Subject site: 2,467 square metres (26,554 square feet) Total under DA = 10,422 square metres (112,181 square feet)
<b>Street Frontage</b>	Subject site= 30.78 metres (100.98 feet) along Cole Harbour Road Total under DA = 91.44 metres (300 feet) along Cole Harbour Road
<b>Current Land Use(s)</b>	Commercial Building (Subway)
<b>Surrounding Use(s)</b>	The surrounding area is comprised of a mix of residential and commercial uses. Surrounding land uses include: <ul style="list-style-type: none"><li>• South – commercial facing onto Cole Harbour Road backed against semi-detached dwellings on Armbro Lane;</li><li>• West – commercial facing onto Cole Harbour Road with mix of semi-detached and single detached dwellings on Comfort Lane and Beaufort Drive behind them;</li><li>• North - semi-detached dwellings beside the subject site on Silistria Drive; and</li><li>• East - low rise apartments and semi-detached dwellings bound by Leacock Court.</li></ul>

## **Proposal Details**

On September 8, 2016 Community Council approved a development agreement to allow a four storey multi-unit building containing 48 residential units and two commercial buildings (Case 19426). To date, the land has been subdivided into three lots and a construction permit has been issued for one of the two commercial buildings.

The applicant proposes to amend the approved development agreement to allow changes to the commercial building elevation in response to modifications to the corporate design standard for Subway Restaurants. Clause (b) of section 6.1 of the agreement allows changes to the architectural design of the buildings to be considered as non-substantive amendments. No other changes to the development agreement are proposed.

Attachment B shows the required existing building elevations and the proposed revised elevations. Should Community Council elect to proceed as recommended, the development agreement would be amended to incorporate these revised elevations.

This is a non-substantive amendment to the development agreement that does not require a public hearing or broad public consultation prior to Community Council's decision.

## **DISCUSSION**

### **Enabling Policy and LUB Context**

Policies CC-3, CC-4, and CC-6 of the Cole Harbour/Westphal MPS allows consideration of commercial retail and offices uses of more than 10,000 square feet in gross floor area, multiple unit residential uses

and drive-in and take-out restaurants, in accordance with the development agreement provisions of the *Halifax Regional Municipality Charter*.

The existing development agreement and current proposed amendment comply with these policies. Attachment C contains a detailed table outlining the relevant policies and a corresponding staff assessment describing how this proposal adheres to each policy.

### **Proposed Development Agreement**

Attachment A contains the proposed first amending agreement for the subject site which includes changes to the existing schedules to allow the proposed new building elevation.

When considering a commercial use with a drive-in service, MPS Policy CC-6 requires consideration be given to building design, site design, landscaping, exterior finishes, and buffered separation from adjacent residential uses. The controls in place under the existing development agreement for site design, landscaping, and buffered separation will remain unchanged and staff recommend approval of the proposed modifications to the building design and exterior finishes.

### **Conclusion**

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the MPS. The proposed new building elevations combined with the additional unchanged requirements in the development agreement should result in a positive contribution to the streetscape and neighbourhood.

Staff recommend that the Harbour East-Marine Drive Community Council approve the proposed amending development agreement as set out in Attachment A.

### **COMMUNITY ENGAGEMENT**

Community engagement activity relative to this proposal consisted of information sharing through the HRM website and signage posted on the subject site. A public information meeting and public hearing are not required for a non-substantive amendment to a development agreement. The decision on the amendments is made by resolution of Council.

The community engagement process on this file is consistent with the intent of the HRM Community Engagement Strategy.

### **FINANCIAL IMPLICATIONS**

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this proposed development agreement. The administration of the proposed development agreement can be carried out within the approved C310 Urban and Rural Planning Applications 2017-18 budget and with existing resources.

### **RISK CONSIDERATION**

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed amending development agreement are contained within the Discussion section of this report.

## **ENVIRONMENTAL IMPLICATIONS**

There are no material environmental implications associated with the proposed change to the commercial building elevations.

## **ALTERNATIVES**

1. Harbour East-Marine Drive Community Council may choose to approve the proposed first amending agreement subject to modifications. Such modifications may require further negotiation with the applicant and may require a supplementary report or a public hearing. A decision of Council to approve this amending agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Harbour East-Marine Drive Community Council may choose to refuse the proposed development agreement amendment, and in doing so, must provide reasons why the proposed agreement does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

## **ATTACHMENTS**

Map 1:	Generalized Future Land Use
Map 2:	Zoning
Attachment A:	Proposed First Amending Development Agreement
Attachment B:	Existing and Proposed Building Elevations
Attachment C:	Cole Harbour/Westphal Municipal Planning Strategy Policy Evaluation

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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.

Report Prepared by: Dean MacDougall, Planner II, Current Planning, 902-490-4135

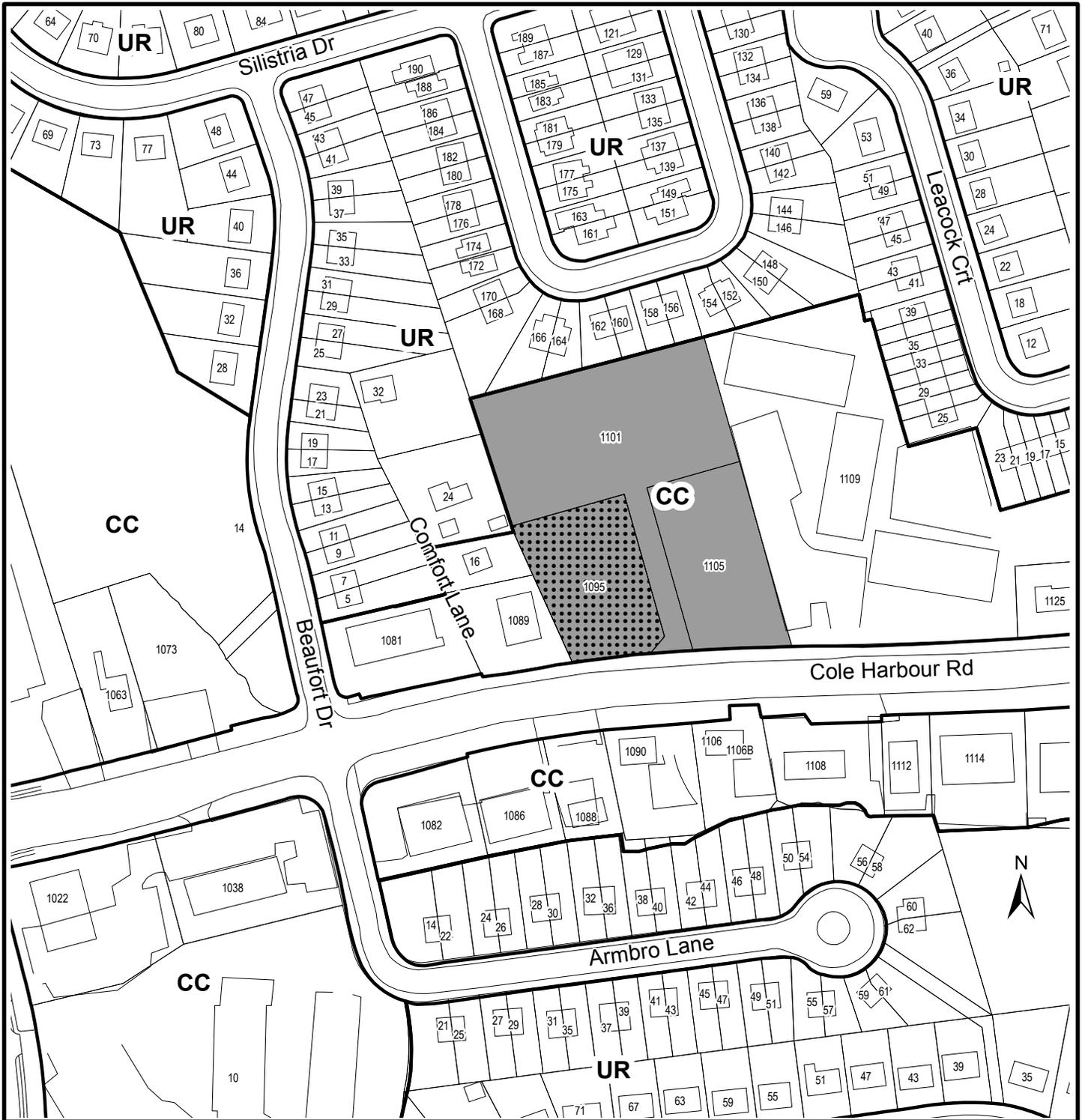
### **ORIGINAL SIGNED**

Report Approved by: \_\_\_\_\_  
Maggie Holm, Principal Planner, Current Planning, 902.293-9496

### **ORIGINAL SIGNED**

Report Approved by: \_\_\_\_\_  
Steve Higgins, Acting Manager, Current Planning, 902.476.8120

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**Map 1 - Generalized Future Land Use**

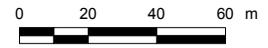


1095 Cole Harbour Rd,  
Cole Harbour

-  Area of proposed amendment
-  Existing Development Agreement

**Designation**

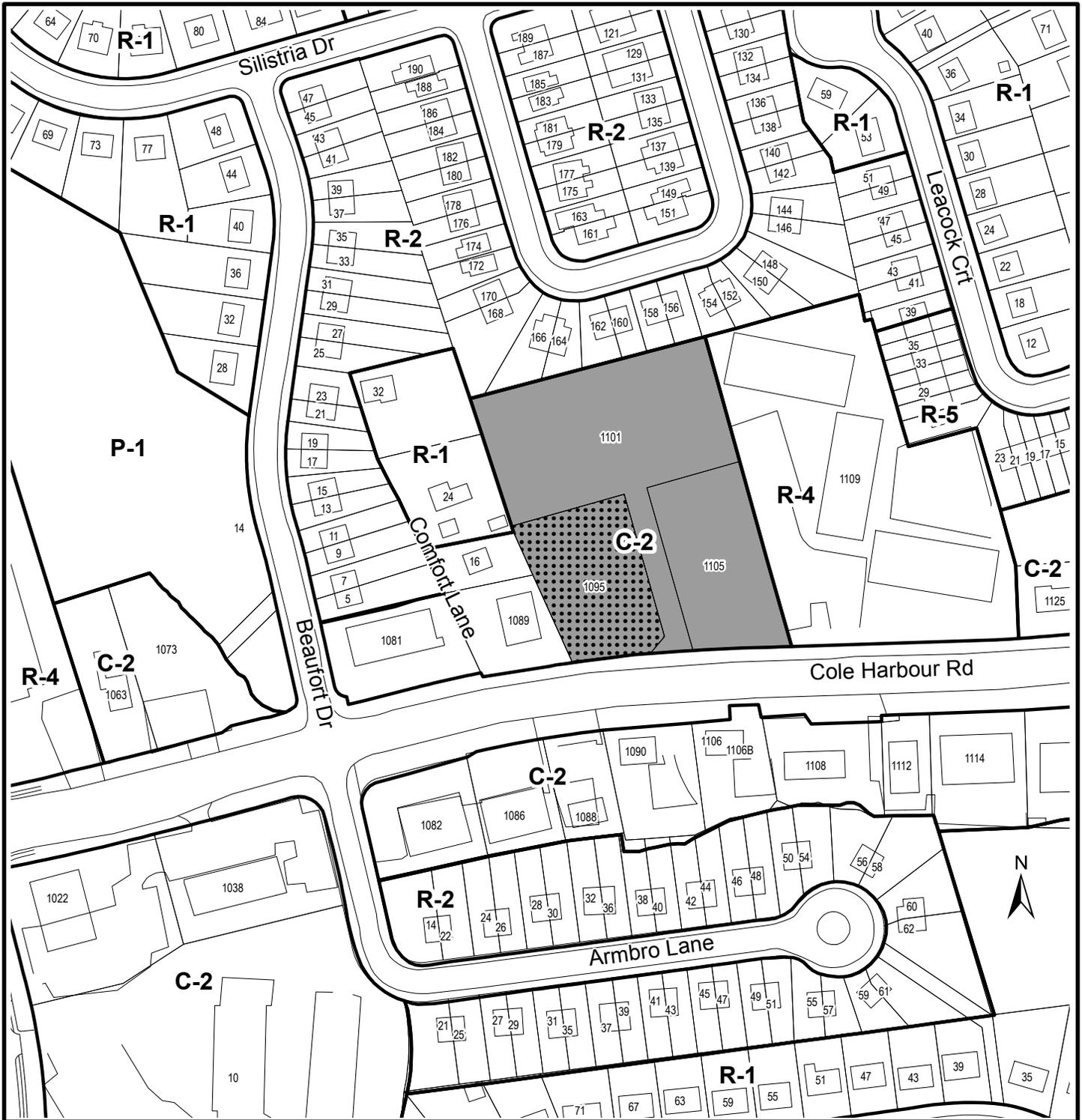
- UR Urban Residential
- CC Community Commercial



Cole Harbour/Westphal  
Plan Area

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.



### Map 2 - Zoning

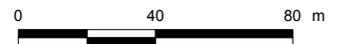
1095 Cole Harbour Rd,  
Cole Harbour

**HALIFAX**

-  Area of proposed amendment
-  Existing Development Agreement

#### Zone

- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- R-4 Multiple Unit Dwelling
- R-5 Rowhouse Dwelling
- C-2 General Business
- P-1 Open Space



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

**Attachment A: Proposed First Amending Development Agreement**

THIS FIRST AMENDING AGREEMENT made this      day of **[Insert Month]**, 20\_\_,

BETWEEN:

**KENTING PROPERTIES INC.**

a body corporate, in the Province of Nova Scotia  
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

**HALIFAX REGIONAL MUNICIPALITY**

a municipal body corporate, in the Province of Nova Scotia  
(hereinafter called the "Municipality")

OF THE SECOND PART

**WHEREAS** the Developer is the registered owner of certain lands located at 1095 and 1101 Cole Harbour Road, Cole Harbour, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

**AND WHEREAS** the Harbour East-Marine Drive Community Council of the Municipality approved an application to enter into a Development Agreement to allow for a residential 4 storey, 48 dwelling unit multiple unit building, and two commercial buildings on the Lands (municipal reference number 19426), which said Development Agreement was registered at the Halifax County Land Registration Office on January 18, 2017 as Document Number 110211142 (hereinafter called the "Existing Agreement");

**AND WHEREAS** the Developer has requested amendments to the Existing Agreement to allow for modifications to the exterior of one commercial building facades on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies CC-3, CC-4, and CC-6 of the Cole Harbour/Westphal Municipal Planning Strategy;

**AND WHEREAS** the Harbour East-Marine Drive Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 21438;

**THEREFORE**, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

- 
1. Except where specifically varied by this First Amending Agreement, all other, conditions and provisions of the Existing Agreement as amended shall remain in effect.
  2. The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this First Amending Agreement, and the Existing Agreement.

3. Section 3.1 of the Existing Agreement shall be amended by inserting the text shown in bold:

The Developer shall develop the Lands in a manner, which in the opinion of the Development Officer, conforms to the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case 19426 **and Case 21438**.

4. Section 3.1 of the Existing Agreement shall be further amended by deleting the Schedules as shown in strikeout and inserting the Schedules shown in bold, as follows:

~~Schedule D Commercial Building 2A Elevations~~

**Schedule D-1 Commercial Building 2A Elevations 1**  
**Schedule D-2 Commercial Building 2A Elevations 2**

5. The Existing Agreement shall be amended by deleting the following Schedules:

Schedule D Commercial Building 2A Elevations

And inserting the following Schedules:

Schedule D-1 Commercial Building 2A Elevations 1 (attached)  
Schedule D-2 Commercial Building 2A Elevations 2 (attached)

6. The Existing Agreement shall be amended by deleting all text references to Schedule D and replacing them with reference to both Schedule D-1 and Schedule D-2.

**IN WITNESS WHEREAS** the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

**SIGNED, SEALED AND DELIVERED** in the presence of:

**(Insert Registered Owner Name)**

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

**HALIFAX REGIONAL MUNICIPALITY**

**SIGNED, DELIVERED AND ATTESTED** to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

**MAYOR**

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

**MUNICIPAL CLERK**

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, personally came and appeared \_\_\_\_\_, the subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that \_\_\_\_\_ of the parties thereto, signed, sealed and delivered the same in his/her presence.

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A Commissioner of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, personally came and appeared \_\_\_\_\_, the subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that Mike Savage, Mayor and Cathy Mellett, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

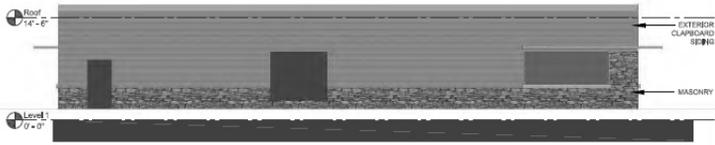
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A Commissioner of the Supreme Court  
of Nova Scotia





### Existing Building Elevations



1 COMMERCIAL BUILDING 2A - LEFT ELEVATION AT DRIVE THRU WINDOW  
1/16" = 1'-0"



2 COMMERCIAL BUILDING 2A - FRONT ELEVATION (ON COLE HARBOUR ROAD)  
1/16" = 1'-0"



3 COMMERCIAL BUILDING 2A - RIGHT SIDE ELEVATION  
1/16" = 1'-0"



4 COMMERCIAL BUILDING 2A - REAR ELEVATION (FROM PARKING LOT)  
1/16" = 1'-0"

### Proposed Building Elevations



## Attachment C: Cole Harbour/Westphal Municipal Planning Strategy Policy Evaluation

Policy CC-3: Notwithstanding Policy CC-2, and with reference to Policy HC-5, within the Community Commercial Designation, Council may consider commercial retail service and office uses in excess of ten thousand (10,000) square feet of gross floor area to a maximum of twenty thousand (20,000) square feet, according to the development agreement provisions of the <u>Planning Act</u> . When considering such an agreement, Council shall have regard to the following:	
(a) access;	Addressed under Case 19426. No change.
(b) the provision and maintenance of buffered separation from abutting residential areas;	Addressed under Case 19426. No change.
(c) site design including landscaping and parking and loading areas;	Addressed under Case 19426. No change.
(d) the exterior finish of buildings; and	Addressed under Case 19426. No change.
(e) the provisions of Policy IM-11	See Policy IM-11 below.

Policy CC-4: Notwithstanding Policy CC-2, Council may consider permitting multiple unit residential uses containing more than twelve dwelling units within the Community Commercial Designation in accordance with the development agreement provisions of the <u>Planning Act</u> . In considering such an agreement, Council shall have regard for the following	
(a) the effects of the proposed development upon the road network;	Addressed under Case 19426. No change.
(b) separation distances from low density residential uses;	Addressed under Case 19426. No change.
(c) the availability of useable open space;	Addressed under Case 19426. No change.
(d) the location of on site amenity areas;	Addressed under Case 19426. No change.
(e) the overall design of the site and structure, including landscaping, parking areas and access;	Addressed under Case 19426. No change.
(f) the design of buildings, including roof pitch and finish materials; and	Addressed under Case 19426. No change.
(g) the provisions of Policy IM-11.	See Policy IM-11 below.

Policy CC-6: Notwithstanding CC-2, within the Community Commercial Designation, it shall be the intention of Council to only consider permitting drive-in and take-out
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restaurants according to the development agreement provisions of the <u>Planning Act</u> . When considering such an agreement, Council shall have regard to the following:	
(a) access;	A Traffic Impact Study was submitted under Case 19426. The 3 proposed access points from Cole Harbour Road did not significantly impact the existing local traffic or the traffic system. No change under this application.
(b) the provision and maintenance of buffered separation from abutting residential properties;	Addressed under the existing Agreement. The surrounding residential area(s) will be buffered by a wooden fence and plantings as determined by required Landscaping Plan. No change.
(c) site design, including drive-through service lanes, parking and loading areas, landscaping, and refuse storage areas;	Addressed under the existing Agreement and no changes are proposed. The proposed site plan delineates the service access to the garbage storage areas. The Agreement requires the 5 stream recycling facility to be located inside the buildings. Parking is located off the centre driveway and access to the drive ins are minimized in the parking aisles; the drive in servicing the commercial building to the east does not interfere with the parking area.
(d) the exterior finish of buildings; and	The proposed commercial buildings are both flat roofed with no overhang and are to be finished in glazing and dryvit tile. The exterior finish of buildings has been determined by the project architect and the Agreement requires the material treatment be applied to all sides of the buildings.
(e) the provisions of Policy IM-11.	See Policy IM-11 below.

Policy IM-11: In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, Cole Harbour/Westphal Community Council shall have appropriate regard to the following matters:	
(a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;	Upon execution of the amending DA and issuance of permits as per the provisions of the Agreement the proposal will be in conformity with the planning strategy and the by-laws and regulations of the municipality.
(b) that the proposal is not premature or inappropriate by reason of:	
(i) the financial capability of the Municipality to absorb any costs relating to the development;	The developer will bear the cost of this development proposal.

(ii) the adequacy of sewer and water services;	Halifax Water have verified under Case 19426 that there is adequate water and sewer capacity for this proposal.
(iii) the adequacy or proximity of school, recreation and other community facilities;	The HRSB must provide, under its mandate, schools for all students in the municipality. There are a number of local schools and recreation facilities in this area.
(iv) the adequacy of road networks leading or adjacent to or within the development; and	See comments in CC-6(a) above. Addressed under Case 19426. No change.
(v) the potential for damage to or destruction of historic buildings and sites;	N/A
(c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:	N/A
(i) type of use;	Addressed under Case 19426. No change. To mitigate any potential conflicts the proposed building is set approximately 60 feet distant from all existing residential use and the subject site will be fenced and landscaped around its perimeter. The commercial uses at Cole Harbour Road are pulled up to the street and are quite distant from existing residential uses to the east and west of the site.
(ii) height, bulk and lot coverage of any proposed building;	Addressed under Case 19426. No change. The four storey multiple unit building is higher than existing multiple unit residential development in the area. The articulated facades reduce the perception of bulk and the existing trees and required landscaping, as it matures, will further diffuse the visual impact of this larger scale building.
(iii) traffic generation, access to and egress from the site, and parking;	See comments in CC-6(a) above. Addressed under Case 19426. No change.
(iv) open storage;	No open storage is permitted on the site.
(v) signs; and	Signage is permitted under the provisions of the existing Agreement.
(vi) any other relevant matter of planning concern.	N/A
(d) that the proposed site is suitable in terms of steepness of grades, soil	The subject site is relatively flat with existing mix of trees from mid to rear

<p>and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding; and</p>	<p>picture plane and a mix of trees and grasses in the foreground. Currently stormwater on site is collected via a 300 mm pipe with the inlet almost centred in the property and discharges it to the stormwater main on Cole Harbour Road. After development stormwater will be managed on site with inlet control devices that will restrict release flows by storing it in underground pipes. There are no wetlands or watercourses located on this site.</p>
<p>(e) any other relevant matter of planning concern.</p>	<p>N/A</p>
<p>(f) Within any designation, where a holding zone has been established pursuant to “Infrastructure Charges - Policy IC-6”, Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the “Infrastructure Charges” Policies of this MPS.</p>	<p>N/A</p>