



P.O. Box 1749  
Halifax, Nova Scotia  
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**Item No. 13.1.3**  
**Harbour East - Marine Drive Community Council**  
**September 5, 2019**  
**October 3, 2019**

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

**SUBMITTED BY:** Original Signed by  
Kelly Denty, Director of Planning and Development

**DATE:** June 13, 2019

**SUBJECT:** **Case 22376: Non-substantive amendments to an existing development agreement at Brian Dickie Drive, Musquodoboit Harbour**

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**ORIGIN**

Application by Birkshire Developments 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. Give Notice of Motion to consider the proposed- amending development agreement, as set out in Attachment A of this report, to extend the commencement and completion date of construction for the proposed development at Brian Dickie Drive, Musquodoboit Harbour;
2. Approve, by resolution, the proposed amending development agreement, which shall be substantially of the same form as set out in Attachment A of this report, to extend the commencement and completion date of construction for the proposed development at Brian Dickie Drive, Musquodoboit Harbour; and
3. Require the amending development agreement be signed by the property owners 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**

Birkshire Developments Inc. has applied for a non-substantive amendment to a development agreement to permit extensions to the commencement and completion dates for a 42 unit townhouse project on Brian Dickie Drive, Musquodoboit Harbour.

<b>Subject Site</b>	Brian Dickie Drive, Musquodoboit Harbour (PID# 40714578)
<b>Location</b>	Brian Dickie Drive north of Highway 7 in Musquodoboit Harbour (Maps 1 and 2)
<b>Regional Plan Designation</b>	Rural Commuter ( <i>within a Rural Commuter District Growth Center</i> )
<b>Community Plan Designation (Map 1)</b>	Mixed Use Designation – Eastern Shore (West) Municipal Planning Strategy (MPS)
<b>Zoning (Map 2)</b>	Mixed Use (MU) Eastern Shore (West) Land Use By-law
<b>Size of Site</b>	8.9 hectares (22.2 acres)
<b>Street Frontage</b>	31.5 metres (103.35 ft.) along Hwy #7
<b>Current Land Use(s)</b>	Undeveloped
<b>Surrounding Use(s)</b>	NSTIR Crown Reserve to the north Cobblestone Land to the east MNR Public Trail system to the south NSTIR Crown Reserve to the west

### **Proposal Details**

On October 11, 2016, Harbour East - Marine Drive Community Council approved a development agreement for up to 42 townhouses in 2 phases at (PID# 40714578) Brian Dickie Drive, Musquodoboit Harbour (Case Number 18932). Details of the previously approved application are as follows:

- Up to 42 clustered townhouse dwelling units, 23 in the first phase and 19 in the second (dependent on water quantity and quality);
- Upgrade existing private road to a public road standard to permit private driveway accesses from the proposed development;
- Ownership of the development is proposed to be through condominium corporation;
- Wells and sewage treatment facilities will be shared between dwellings;
- Common open space for passive recreation use; and
- Future access to community trails.

The current commencement date within the approved agreement is referenced as December 22, 2019 while the required completion date for the development is December 22, 2024.

The applicant is requesting to amend their existing development agreement to allow for a time extension to the commencement of construction date for the project by five (5) years and an extension of the development completion date by ten (10) years. Both extensions are from the date of registration of the proposed amending agreement. The reasons for the time extension as provided by the applicant are as follows:

- Fluctuating market conditions have reduced anticipated demand in the local rural area requiring an extension to the commencement and completions for the project.

An extension to the commencement and completion deadlines will allow time to fill local demand for this form of housing and provide for a schedule of construction that has improved potential to satisfy the local market absorption of these dwelling units over time.

### **Enabling Policy Context**

The development was approved in accordance with policies MU-3 and IM-10 of the Eastern Shore (West) MPS. MPS policies set out the criteria by which Council may consider a multiple unit residential

development. Within the Eastern Shore (West) Land Use By-law, Multiple Dwelling Units are defined as only having three or more units. There is currently no definition for Townhouses. Accordingly, multiple dwelling units have been defined as three or more units that are vertically separated under the proposed development agreement. In addition, sections 6.1.1 (b) and (c) of the existing development agreement identify changes to the time frames for commencement and completion of the development as non-substantive amendments.

### **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing, achieved through providing information 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.

### **DISCUSSION**

The proposed change relates only to the extension of time for the date of commencement of construction and the date of completion. The nature of the development as defined in the current agreement will be unchanged. These two extensions can be permitted as a non-substantive amendment pursuant to sections 6.1.1 (b) and (c) of the existing development agreement. It is requested by the applicant and recommended by staff that the date of commencement of construction be extended by five (5) years and the date for completion of the development be extended by ten (10) years as outlined in the proposed amending development agreement (Attachment A).

As noted above, market fluctuations in this rural location delayed the commencement of the construction. The time extension would allow the applicant to continue to establish demand and develop the site over time to ensure adequate market absorption.

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the relevant planning policies are unchanged from the time of original approval and the proposal remains reasonably consistent with the intent of the MPS. Therefore, staff recommend that the Harbour East - Marine Drive Community Council approve the proposed amending development agreement.

### **FINANCIAL IMPLICATIONS**

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred to satisfy the terms of this proposed development agreement. The administration of the proposed amending development agreement can be carried out within the approved 2019-2020 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**

No environmental implications are identified.

## **ALTERNATIVES**

1. Harbour East - Marine Drive Community Council may choose to approve the proposed amending development 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 development 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 amending development agreement, 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 amending 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 Amending Development Agreement
Attachment B:	Originally Approved Concept Plan

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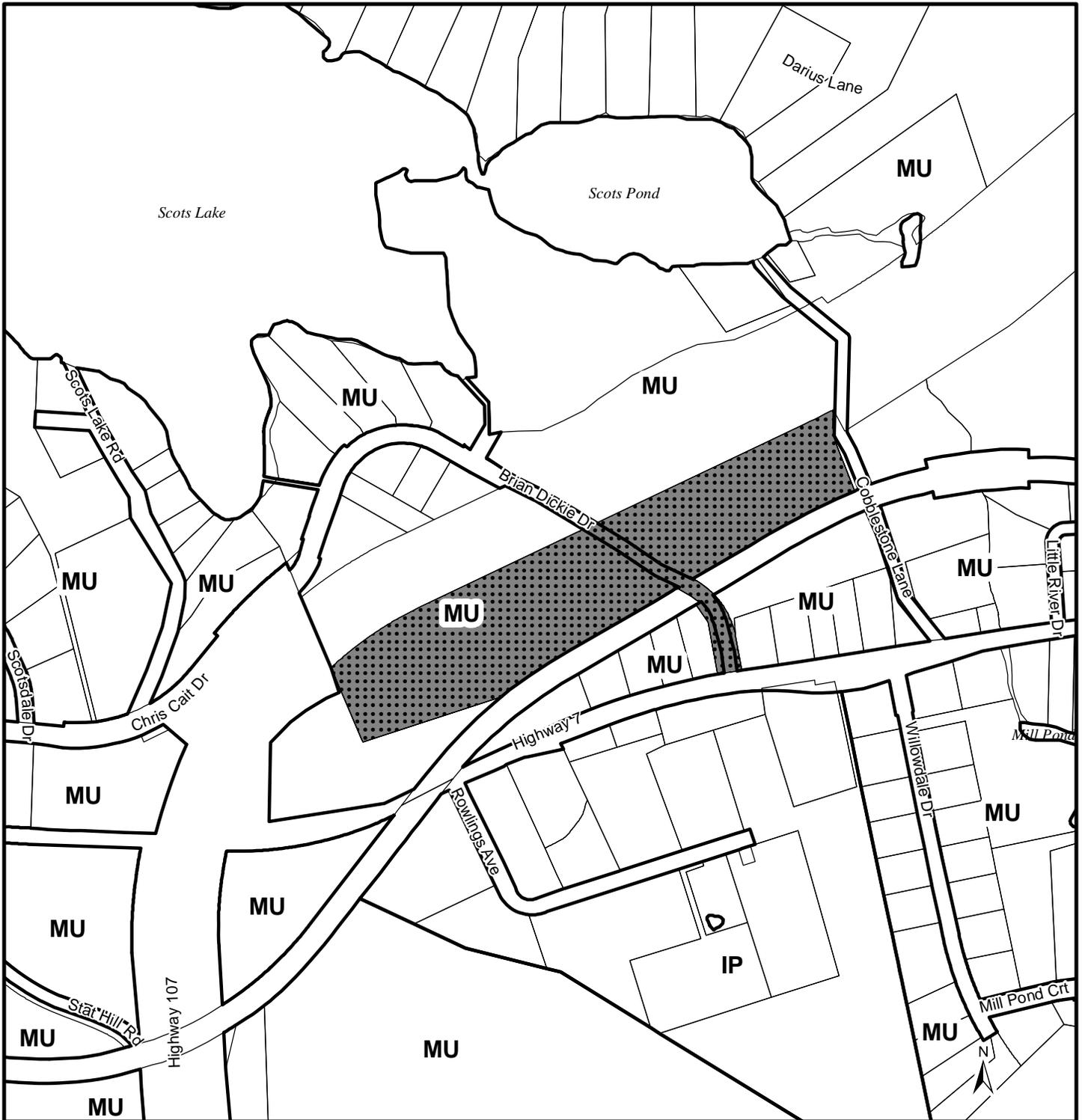
A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Shayne Vipond, Planner III, 902.490.4335

Original Signed by

Report Approved by: Steven Higgins, Manager Current Planning, 902.490.4382

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**Map 1 - Generalized Future Land Use**

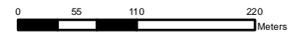
**HALIFAX**

PID 40714578,  
Musquodoboit Harbour

**Designation**

- MU Mixed Use
- IP Industrial Park

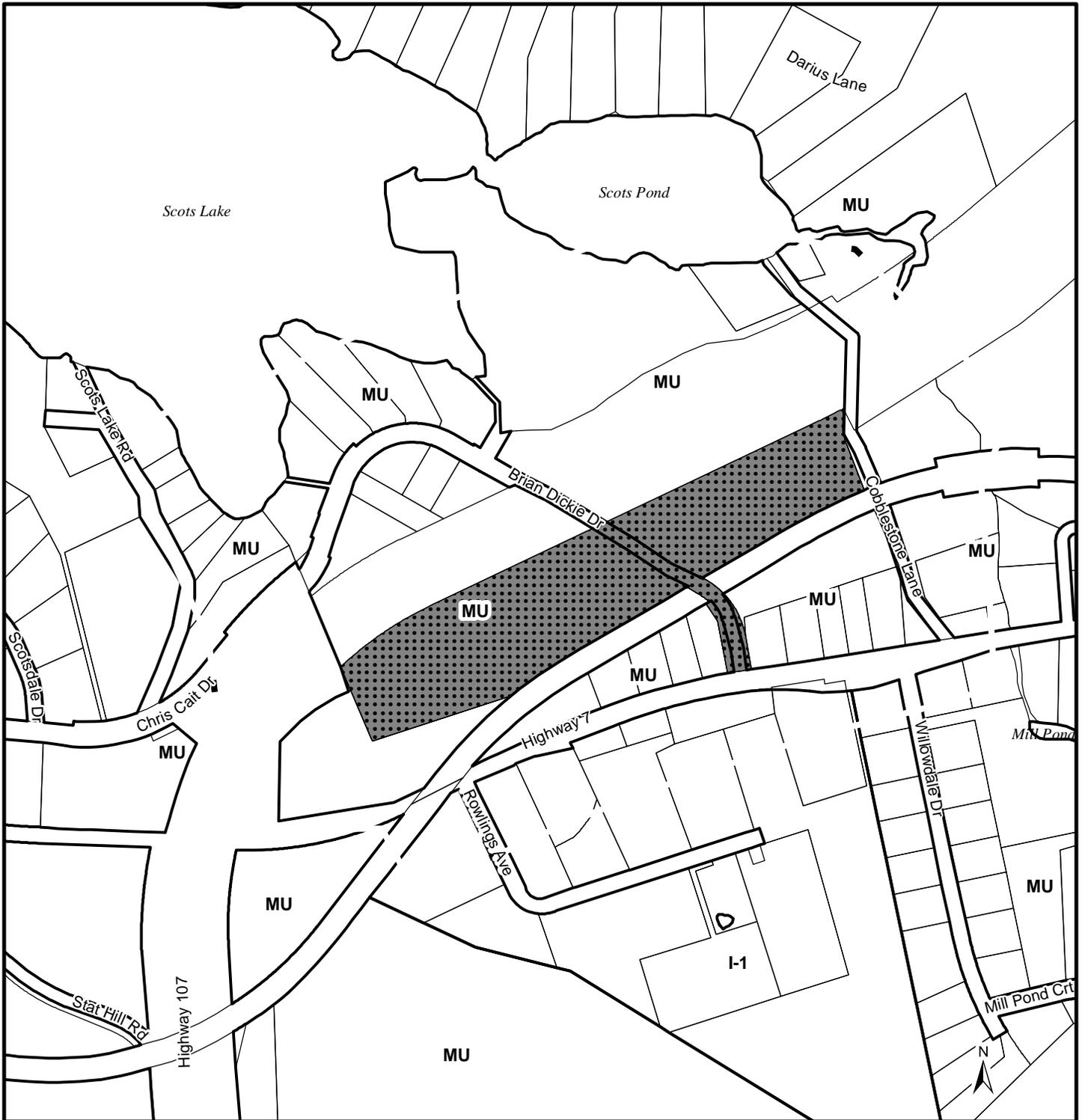
 Subject area



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

HRM does not guarantee the accuracy of any representation on this plan.

Eastern Shore (West)  
Plan Area



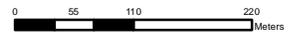
**Map 2 - Zoning**  
 PID 40714578,  
 Musquodoboit Harbour

**HALIFAX**

 Subject Area

**Zone**

MU Mixed Use  
 I-1 Business Industry



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

HRM does not guarantee the accuracy of any representation on this plan.

Eastern Shore (West)  
 Plan Area

**Attachment A**  
**Proposed Amending Development Agreement**

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

BETWEEN:

**[Insert Name]**

A body corporate, in the Halifax Regional Municipality 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 Brian Dickie Drive, Musquodoboit Harbour PID 40714578 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 Halifax Regional Municipality approved an application to enter into a development agreement to allow for up to 42 townhouses on the Lands on October 11, 2016 (Municipal Case Number 18932), and which said development agreement was registered at the Land Registration Office on December 22, 2016 as Document Number 110107886 (hereinafter called the "Original Agreement");

**AND WHEREAS** the Developer has requested to amend the Original Agreement to allow for a five (5) year extension to the Commencement of Development date and a ten (10) year extension to the Completion of Development date for development on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Part 6 of the Original Agreement;

**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 22376;

**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 Development Agreement, all other terms, conditions and provisions of the Original Agreement 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 the Original Agreement, as amended by this First Amending Development Agreement.
3. Subsection 7.3.1 of the Original Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold as follows:
  - 7.3.1 In the event that development on the Lands has not commenced within ~~three (3)~~ **five (5)** years from the date of registration of ~~the this~~ **First Amending Development** Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall

conform with the provisions of the Land Use By-law. For the purpose of this section, commencement of development shall mean Subdivision Design Approval for Phase 1.

4. Subsection 7.4.2 of the Original Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in bold as follows:

7.4.2 In the event that development on the Lands has not been completed within ~~eight (8)~~ **ten (10 years)** from the date of registration of ~~this~~ **the First Amending Development Agreement** at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law

**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 Name]**

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

\_\_\_\_\_  
Witness

**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:

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

MAYOR

\_\_\_\_\_  
Witness

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

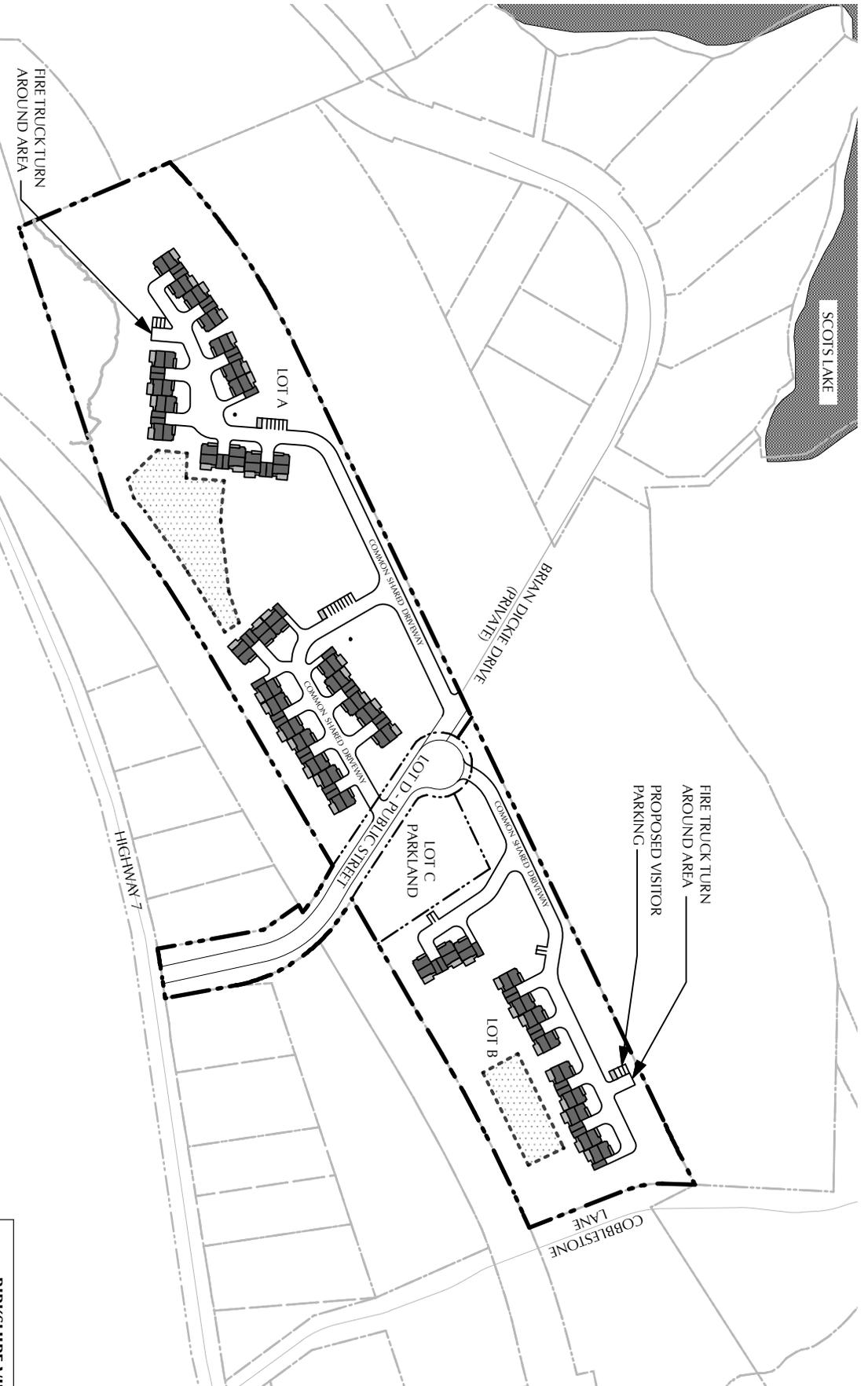
MUNICIPAL CLERK

\_\_\_\_\_  
Witness

# Case 22376 - Attachment B - Concept Plan

**LEGEND**

-  SUBJECT PROPERTY BOUNDARY
-  PROPOSED PROPERTY BOUNDARY
-  PROPOSED DRIVEWAY ACCESS
-  DELINEATED WETLAND
-  DRIP IRRIGATION AREA
-  PHASE 1 WELLS
-  POTENTIAL LOCATION OF DISPOSAL BINS



Date: 15-11-13  
 File name: Birkshire Village\_DA Schedules.vwx

**BIRKSHIRE VILLAGE DEVELOPMENT**

**SCHEDULE B CONCEPT PLAN**

Prepared for: \_\_\_\_\_ Prepared by: **EDM**  
ENVIRONMENTAL DESIGN AND MANAGEMENT LIMITED

Date	15/08/13	Design	MN
Scale	1:5000	Drawn	JH
Revision Date	15/11/13	Approved	AV
Revision	B	Project No.	11-816

