



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 7.1.2
Halifax and West Community Council
February 16, 2021

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: *Original Signed*

Kelly Denty, Director of Planning and Development

DATE: February 3, 2021

SUBJECT: **Case # 22051: Development Agreement for a service station at 1656 Prospect Road, Hatchet Lake**

SUPPLEMENTARY REPORT

ORIGIN

- Application by Sunrose Land Use Consulting;
- Planning Application Case 22051;
- On September 24, 2020, Halifax & West Community Council refused the proposed Development Agreement for a service station at 1656 Prospect Road, Hatchet Lake;
- On October 5, 2020 Hatchet Lake Plaza Ltd filed an appeal of Council's decision to refuse the Development Agreement to the Nova Scotia Utility and Review Board;
- On December 2-3, 2020, the Nova Scotia Utility and Review Board held a Hearing to consider the appeal of Council's decision; and
- On January 29, 2021, the Nova Scotia Utility and Review Board directed that Halifax and West Community Council approve the Development Agreement to allow service station at 1656 Prospect Road, Hatchet Lake.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A, to enable a service station with an accessory convenience store and drive-through restaurant at 1656 Prospect Road, Hatchet Lake; and
2. Require the development agreement be signed by the property owner within 240 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 / DISCUSSION

On September 24, 2020, Halifax and West Community Council held a virtual public hearing to consider a development agreement to permit a service station (with an associated convenience store and take-out/drive-through restaurant) at 1656 Prospect Road, Hatchet Lake (Map 1). A service station is not permitted within the existing Light Industry (I-1) Zone, however it can be considered under policies RB-10 and IM-11 of the Municipal Planning Strategy (MPS) for Planning District 4 (Prospect) by means of a development agreement. The proposed development includes the subdivision of the existing lot to create a separate lot for the proposed service station.

Halifax and West Community Council refused to approve the development agreement and stated the reasons for finding that the proposed development agreement does not reasonably carry out the intent of the Municipal Planning Strategy were:

- the potential environmental implications and effect on the water table;
- the proximity of the proposed development to residential properties; and
- the lack of adequate buffering between the proposed development and residential properties, wells and wetland.

Proposal Details

The development agreement permits a service station which includes a convenience store, take-out and drive-through restaurant. Map 2 shows the proposed site plan for the development. The major aspects of the proposal are as follows:

- A four (4) fuel pump gas bar and canopy located at the front of the site; and
- A single storey, main building divided into two leasehold spaces totalling 301 square metres (3,240 square feet) including a convenience store and a take-out/drive-through restaurant.

Other features of the proposed development include:

- A single vehicle access point to the site;
- A fuel truck turning lane;
- A vehicle queuing area for the drive-through restaurant;
- Parking areas and provision for on-site pedestrian circulation;
- Landscaping along the street frontage; and
- A 4.6 metre (15 foot) vegetated buffer to the adjacent vacant residential and large wetland.

For more information, please see the staff report (Attachment A) which was tabled at Halifax and West Community Council on September 24, 2020.

Appeal and UARB Decision

The refusal of the development agreement was subsequently appealed to the Nova Scotia Utility and Review Board (the Board). The Board heard the appeal on December 2-3, 2020 (2021 NSUARB 11-M09875) and the appeal was allowed. Consequently, Community Council has been directed to approve the development agreement by the Order of the Board.

The Board must not interfere with the decision of Council unless it determines that Council's decision does not reasonably carry out the intent of the MPS. If the appellant can show, on the balance of probabilities, that Council's decision does not reasonably carry out the intent of the MPS, the Board must reverse Council's decision to refuse to approve the development agreement. If, however, the appellant fails to meet this standard of proof, the Board must defer to the decision of Council

In this instance, the Board found that Council's refusal did not reasonably carry out the intent of the MPS and ordered the development agreement be approved by Council (Attachment B). Details of the Board's decision can be found in Attachment C of this supplementary report.

FINANCIAL IMPLICATIONS

There are no further financial 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 development agreement. The administration of the development agreement can be carried out within the approved 2020-2021 budget with existing resources.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This report is as a result of the Order of the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed development agreement are contained within the Discussion section of the previous reports provided to Halifax and West Community Council as Halifax Regional Council linked above.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, signage posted on the subject site, letters mailed to property owners within the notification area, a public information meeting held on February 27, 2019, and a public hearing held on September 24, 2020. No further engagement has been performed subsequent to the Utility a Review Board Order. An action order provided by the Board is not appealable to the Utility and Review Board.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

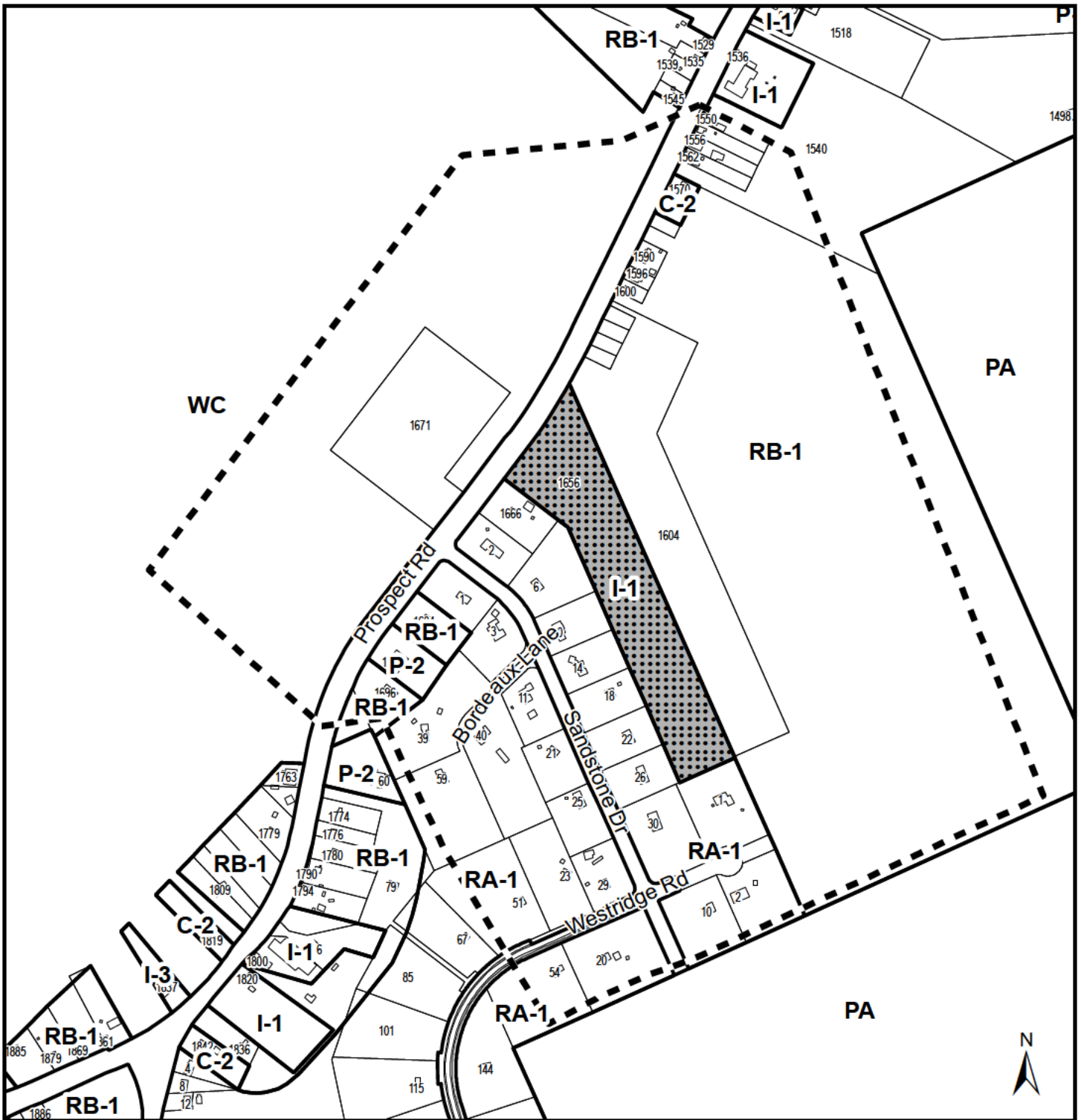
None. The Board has ordered that the Council approve the development agreement as prescribed by their Order and as such there are no alternatives in this case.

ATTACHMENTS

Map 1:	Zoning and Notification Area
Map 2:	Site Plan
Attachment A:	Staff Report and Development Agreement
Attachment B:	Nova Scotia Utility and Review Board Order of January 29, 2021
Attachment C:	Nova Scotia Utility and Review Board Decision of January 29, 2021

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.


Report Prepared by: Thea Langille, Principal Planner – Planning and Development, 902-476-0671




Map 1 - Zoning and Notification

1656 Prospect Road,
Hatchet Lake

HALIFAX

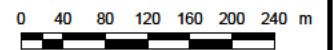
 Subject Property

 Area of Notification

Planning District 4
(Prospect) Plan Area

Zone

- RA-1 Residential A-1
- RB-1 Residential B-1
- C-2 General Business
- I-1 Light Industry
- I-3 Local Service
- P-2 Community Facility
- PA Protected Area
- WC Western Common



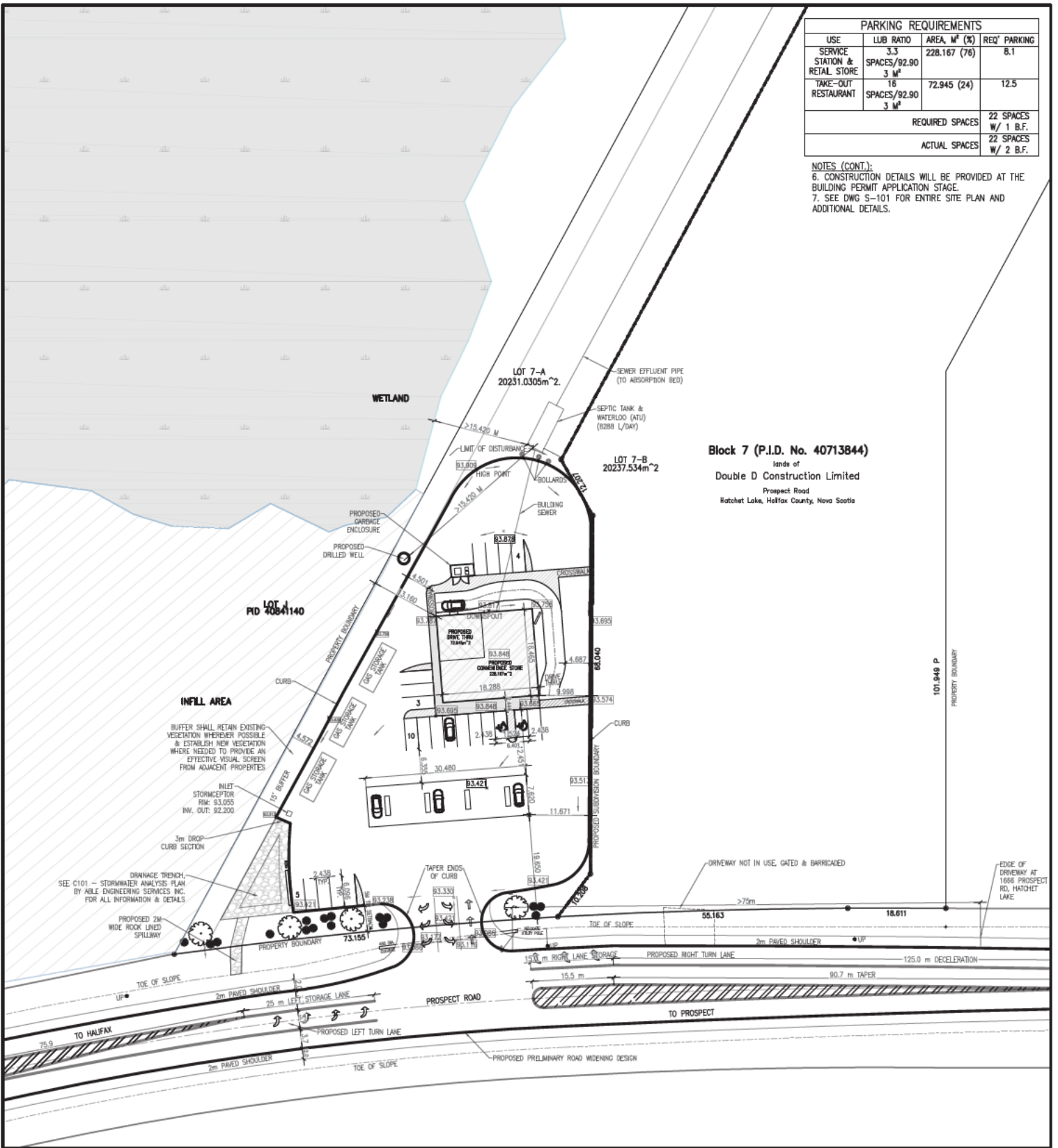
This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

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

Map 2: Site Plan

PARKING REQUIREMENTS			
USE	LUB RATIO	AREA, M ² (%)	REQ' PARKING
SERVICE STATION & RETAIL STORE	3.3	228.167 (76)	8.1
	SPACES/92.90		
TAKE-OUT RESTAURANT	16	72.945 (24)	12.5
	SPACES/92.90		
REQUIRED SPACES			22 SPACES
ACTUAL SPACES			W/ 1 B.F. 22 SPACES W/ 2 B.F.

NOTES (CONT.):
 6. CONSTRUCTION DETAILS WILL BE PROVIDED AT THE BUILDING PERMIT APPLICATION STAGE.
 7. SEE DWG S-101 FOR ENTIRE SITE PLAN AND ADDITIONAL DETAILS.



Block 7 (P.I.D. No. 40713844)
 lands of
Double D Construction Limited
 Prospect Road
 Hatcher Lake, Halifax County, Nova Scotia

NOTES:
 1. DRAWING IS FOR DEVELOPMENT AGREEMENT ONLY. DRAWINGS ISSUED FOR CONSTRUCTION MUST BE PROVIDED AND APPROVED TO ALL REQUIRED DEPARTMENTS PRIOR TO CONSTRUCTION.
 2. ALL WORK/CONSTRUCTION TO BE IN ACCORDANCE WITH CURRENT FEDERAL, PROVINCIAL & MUNICIPAL BYLAWS, CODES & REGULATIONS.
 2. ALL SITE CONDITIONS & DIMENSIONS TO BE CONFIRMED ONSITE BY CONTRACTOR. ANY DISCREPANCIES TO BE REPORTED TO ENGINEER & RECTIFIED PRIOR TO PROCEEDING.
 3. GRADES TO BE DETERMINED ONSITE BY PROJECT MANAGER & IN COMPLIANCE WITH CURRENT LOT GRADING BYLAWS, CODES & REGULATIONS.
 4. DRAWINGS ARE THE INTELLECTUAL PROPERTY OF SHERWOOD ENTERPRISES AND MAY NOT BE REPRODUCED IN PART OR IN WHOLE WITHOUT THE WRITTEN CONSENT FROM OWNER.
 5. DRAWINGS INVALID FOR DEVELOPMENT AGREEMENT UNLESS STAMPED & SIGNED BY ENGINEER.

OWNER:
CYGNET PROPERTIES LIMITED

CONSULTANT:
 Sherwood Enterprises Inc.
 38 Dillon Cres
 Halifax, NS B3M 4A8
 (902) 443-3020
 sherwoodinc@eastlink.ca

STAMP:

REVISIONS		
NO	DESCRIPTION	BY DATE
1	ISSUED FOR REVIEW	
2	ISSUED FOR DEV. PERMIT	JW JUNE 19/20
3	REVISED	
4	REVISED	
5	ISSUED FOR BUILDING PERMIT	
6	ISSUED FOR CONSTRUCTION	

TITLE:
**PROPOSED GAS STATION
 1656 PROSPECT RD, HATCHET LAKE, NS**

DRAWING:
MAP 3 SITE PLAN

DRAWING NO.:
S-102

DRAWN BY:
 J. WHITE

SCALE:
 1:1000 METRIC

DATE:
 2020-06-19

ATTACHMENT A
Staff Report and Development Agreement



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 7.1.2
Halifax and West Community Council
August 26, 2020

TO: Chair and Members of Halifax and West Community Council

Original Signed

SUBMITTED BY: _____
Steve Higgins, A/Director of Planning and Development

DATE: August 19, 2020

SUBJECT: **Case # 22051: Development Agreement for a service station at 1656 Prospect Road, Hatchet Lake**

ORIGIN

Application by Sunrose Land Use Consulting

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Give Notice of Motion to consider the proposed development agreement, as set out in Attachment A of this report, to enable a service station with an accessory convenience store and drive-through restaurant at 1656 Prospect Road, Hatchet Lake, and schedule a public hearing;
2. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
3. Require the development agreement be signed by the property owner within 240 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

Sunrose Land Use Consulting, on behalf of Hatchet Lake Plaza Ltd., has applied for a development agreement to permit a service station (with an associated convenience store and take-out/drive-through restaurant) at 1656 Prospect Road, Hatchet Lake. A service station is not permitted within the existing Light Industry (I-1) Zone, however it can be considered by development agreement under policies RB-10 and IM-11 of the Municipal Planning Strategy (MPS) for Planning District 4 (Prospect). The proposed development includes the subdivision of the existing lot to create a separate lot for the proposed service station.

Subject Site	1656 Prospect Road (a portion of PID 40713844 on Highway 333)
Location	East side of Prospect Road, between the communities of Goodwood and Hatchet Lake
Regional Plan Designation	Rural Commuter
Community Plan Designation (Map 1)	Residential B under the Municipal Planning Strategy for Planning District 4 (Prospect)
Zoning (Map 2)	I-1 (Light Industry) Zone under the Land Use By-law (LUB) for Planning District 4 (Prospect)
Size of Site	<i>Existing lot size:</i> 4.05 hectares (10 acres) <i>Proposed lot size:</i> 2.02 hectares (5 acres)
Street Frontage	<i>Existing lot frontage:</i> 147 meters (482 ft) along Prospect Road <i>Proposed lot frontage:</i> 73 meters (240 feet) along Prospect Road
Current Land Use(s)	Vacant land except for a small vacant building
Surrounding Use(s)	Residential uses to the southwest (70 meters) and northeast (360 metres) Adjacent northeastern parcel: vacant with large wetland Adjacent southwestern parcel: vacant

Proposal Details

The applicant proposes to enter into a development agreement to permit a service station which includes a convenience store, and take-out / drive-through restaurant. Map 3 shows the proposed site plan for the development. The major aspects of the proposal are as follows:

- A four (4) fuel pump gas bar and canopy located at the front of the site; and
- A single storey, main building divided into two leasehold spaces totalling 301 square metres (3,240 square feet) including a convenience store and a take-out/drive-through restaurant.

Other features of the proposed development include:

- A single vehicle access point to the site;
- A fuel truck turning lane;
- A vehicle queuing area for the drive-through restaurant;
- Parking areas and provision for on-site pedestrian circulation;
- Landscaping along the street frontage; and
- A 4.6 metre (15 foot) vegetated buffer to the adjacent vacant residential and large wetland.

Enabling Policy and LUB Context

The subject site is situated within the Planning District 4 (Prospect) Plan Area and designated Residential B. Within this designation, the MPS recognizes that general commercial uses and service stations may be suitably located along Prospect Road with minimal impact on the surrounding community. The MPS acknowledges that these uses provide a necessary service to the existing community, as well as support the tourist industry, but may have a greater impact on the surrounding community in terms of traffic, groundwater draw, noise, litter and aesthetics. To ensure proper integration with the community, the MPS enables the consideration of service stations through the development agreement process.

The subject site is zoned I-1 (Light Industry) Zone which permits a range of industrial uses such as manufacturing, warehouse, research, recycling, transportation depots, contracting storage yards and, in addition, commercial C-2 (General Business) uses such as retail stores, restaurants, medical, financial institutions, and automotive repair outlets. The proposed convenience store and restaurant uses are permitted within the applied I-1 Zone, however, service stations may only be considered in accordance with Policy RB-10 through the development agreement process. In addition to Policy RB-10, the application is subject to the general policy evaluation criteria as contained in Policy IM-11, which is applicable to all discretionary planning approvals under the MPS. Attachment B of this report contains the policies and criteria by which Council may consider this proposal.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comment through the HRM website, signage posted on the subject site, letters mailed to property owners within the notification area (Map 2) and a public information meeting held on February 27, 2019. The public meeting was attended by 22 residents and Attachment C contains a copy of the minutes from the meeting. The public comments received include the following topics:

- the number of service stations (existing and proposed) along Prospect Road;
- runoff and environmental impact on wetland and on existing wells;
- traffic impact; and
- light pollution.

A public hearing must be held by Halifax and West Community Council before they can consider approval of the proposed development agreement. Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail.

The proposal will potentially impact the following stakeholders: residents, property owners, and nearby business owners.

DISCUSSION

Staff has reviewed the proposal relative to all relevant policies and advise that it is reasonably consistent with the intent of the MPS. Attachment B provides an evaluation of the proposed development agreement in relation to the relevant MPS policies.

Proposed Development Agreement

The proposed development agreement, Attachment A, addresses the following matters:

- The placement, gross floor area, and height of the proposed building, in addition to its permitted uses;
- Vehicle access, parking, and circulation;
- Landscaping and buffering;
- Lighting and signage; and
- Non-substantive amendments including:
 - the granting of an extension to the date of commencement of development; and
 - the length of time for the completion of the development.

Staff has reviewed the proposal relative to all relevant policies and have drafted a proposed development agreement consistent with the MPS. While the proposed development agreement is consistent with the

intent of the MPS, staff has highlighted the following for specific discussion:

Compatibility with Nearby Residential Development

MPS policy calls for the consideration of the compatibility of architectural design and scale of new buildings relative to nearby land uses. MPS policy also directs consideration be given to maintenance of an adequate separation distance from low density residential development. There are vacant lots adjacent to the subject site however, there are residential units beyond these vacant lots. The nearest residential building to the southwest is located approximately 70 metres away, and the residential building to the northeast is approximately 360 metres away. Given the proximity of these residential uses, the proposed development agreement (Attachment A) requires several measures to limit the impact of the development on these residential areas:

- a pitched roof,
- detailing in the façade;
- equipment screening;
- landscaping along Prospect Road and along the northeast property line; and
- specifications around lighting requirements.

Architecture

Although the subject property is located in a mostly undeveloped stretch of Prospect Road, structures with pitched roof forms and roof articulation are commonly found along Prospect Road. To recognize this common design approach, the proposed development agreement requires the commercial building to be constructed with pitched roof form and roof articulation. With respect to building scale, the proposed development agreement requires development to be distributed within one main building with a limited overall gross floor area of 418 m² (4500 ft²).

Visual and Light Intrusion

Lighting will be directed to driveways, parking areas, loading areas, building entrances and walkways, and away from streets, adjacent lots and buildings. In addition, no portion of pump island canopy will have backlighting, but the canopy may be used as an anchor to direct light immediately beneath the canopy.

Impact on Natural Environment

Wetland Protection

Policy requires consideration be given to the potential impact of the proposed development on the natural environment, and in particular the impact on wetlands. The applicant has provided a Wetland Delineation Report with an update submitted on June 25, 2019. The report identified a large wetland on the adjacent property northeast of the subject property. The report also acknowledges no observation of a wetland within the project footprint. Since there is no identified contiguous watercourse within this wetland, a 20 metre (65.6 feet) buffer from the adjacent wetland is not required.

As stated in the Wetland Report, the wetland northeast of the proposed development is extensive and well established. As a result, plants within the wetland have had ample time to adjust, enhancing their ability to degrade any contaminants leaching from the roadway (metals, petroleum hydrocarbons, PAHs, etc.). Section 26.4 of the Land Use Bylaw requires a 15 foot (4.6 meter) landscaped barrier along the side yard of commercial uses abutting residential uses or a vacant lot. This landscaped buffer can provide a visual barrier, but it can also reduce the potential indirect impacts to the wetland. The site plan attached to the proposed development agreement (Schedule B of Attachment A) shows the 15-foot (4.6 m) buffer along the northeastern property boundary. This vegetated buffer will not only provide a visual barrier but allow for capture of site run-off and general filtering capacity prior to any potential release into the adjacent wetland habitat.

Traffic Generation and Pedestrian Circulation

Site Access

A Traffic Impact Study (TIS) was submitted in support of this application due to the specific uses being proposed and the traffic volumes along Prospect Road (Route 333). The TIS asserts that the majority of traffic using the proposed development will be traffic already using the Prospect Road (pass-by trips) and that the proposed development is not expected to cause any operational difficulties on Prospect Road. This portion of Prospect Road is owned and maintained by the Nova Scotia Department of Transportation and Infrastructure Renewal (NSTIR) who have participated in the review of this application and accepted the findings.

In addition to a TIS, a road access design and truck turning template was submitted by the applicant. The proposed development will have one access point on Prospect Road as shown on Schedule B of Attachment A. The current access design onto the site will be upgraded to serve the proposed development. NSTIR has reviewed the proposal and advised that the access to the site and Prospect Road will need to be widened to accommodate dedicated turning lanes. The access design and trucking turning template have been reviewed by the NSTIR and have also been deemed suitable. Further detailed access design requirements will be reviewed prior to municipal building permits and provincial right-of way permits.

Pedestrian Circulation

With respect to pedestrian circulation, the proposed use being an auto-centric land use is not anticipated to generate material volumes of pedestrian traffic. However, Sections 3.6.4 and 3.6.5 of the proposed development agreement require a signed dedicated pedestrian walkway from the proposed building to the adjacent site that has a building permit for an as-of right commercial plaza. Where the required walkway crosses the queueing lane for the drive-through restaurant, signage and pavement markings are required to reduce pedestrian-vehicular conflict.

Proximity to other service stations in the area

Throughout this Planning Application process the public has expressed concern with the number of existing and proposed service stations along the Prospect Road. It is important to note that MPS does not contain any policies which would allow the number of service stations in the area be a reason for refusing the request. For information, there are two other existing service stations along Prospect Road. A third proposal adjacent to 1300 Prospect Road recently held a public hearing at Community Council for a time extension for its development agreement. The most recently built gas station is at 180 Prospect Road at the Exhibition Park. This development is almost 6km from the subject site. The other more established service station on Prospect Road is within 4.5 km or a 5-minute drive from the proposed site. The applicant is fully aware of these service stations, yet through market analysis the applicant has determined there is still enough business from residents and tourists along Prospect Road that warrant another service station. However, to allow flexibility for the applicant, should the service station proposal not be developed, the development agreement will allow the as-of right uses permitted in the underlying I-1 (Light Industry) Zone.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria for a development agreement for a service station and advise that it is reasonably consistent with the intent of the MPS (Attachment B). The development includes architectural features to reinforce the character of the area, controlled site access and vehicular and pedestrian provisions to promote efficient on-site circulation, and landscaped buffering to provide wetland protection and a visual barrier. Therefore, staff recommend that the Halifax and West Community Council approve the proposed development agreement as set out in Attachment A.

FINANCIAL IMPLICATIONS

There are no financial 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 development agreement can be carried out within the approved 2020-2021 operating budget of Planning and Development.

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 development agreement are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No additional concerns were identified beyond those raised in this report.

ALTERNATIVES

1. Halifax and West Community Council may choose to approve the proposed 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 development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Halifax and West Community Council may choose to refuse the proposed 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 development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

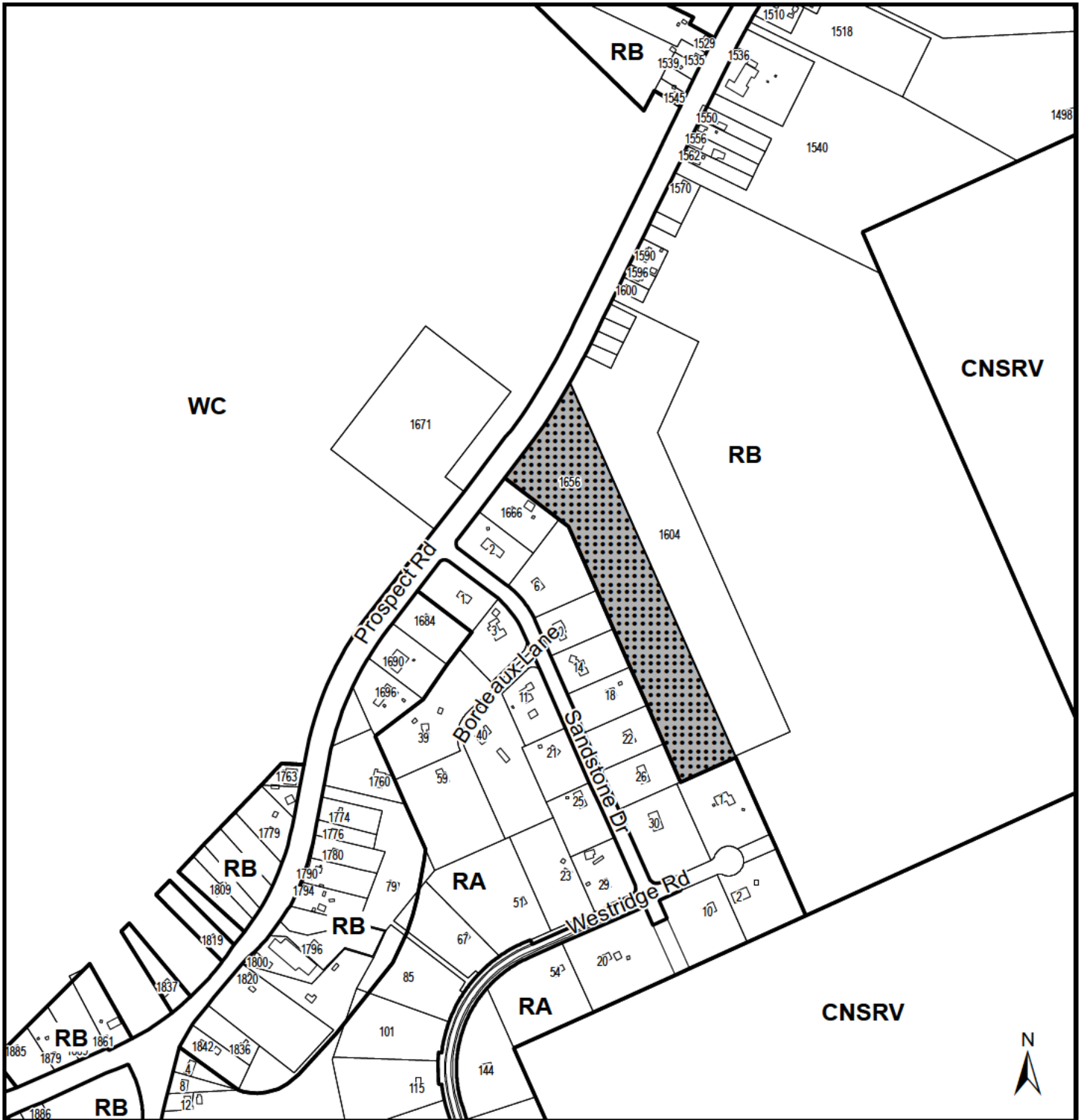
ATTACHMENTS

Map 1:	Generalized Future Land Use
Map 2:	Zoning and Notification
Map 3:	Site Plan
Attachment A	Proposed Development Agreement
Attachment B	Review of Relevant Policies from the Municipal Planning Strategy for Planning District 4
Attachment C	Public Information Meeting – Summary

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Maria Jacobs, Planner II, Current Planning, 902.490.4911


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



Map 1 - Generalized Future Land Use

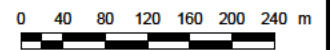
1656 Prospect Road,
Hatchet Lake

HALIFAX

 Subject Property

Designation

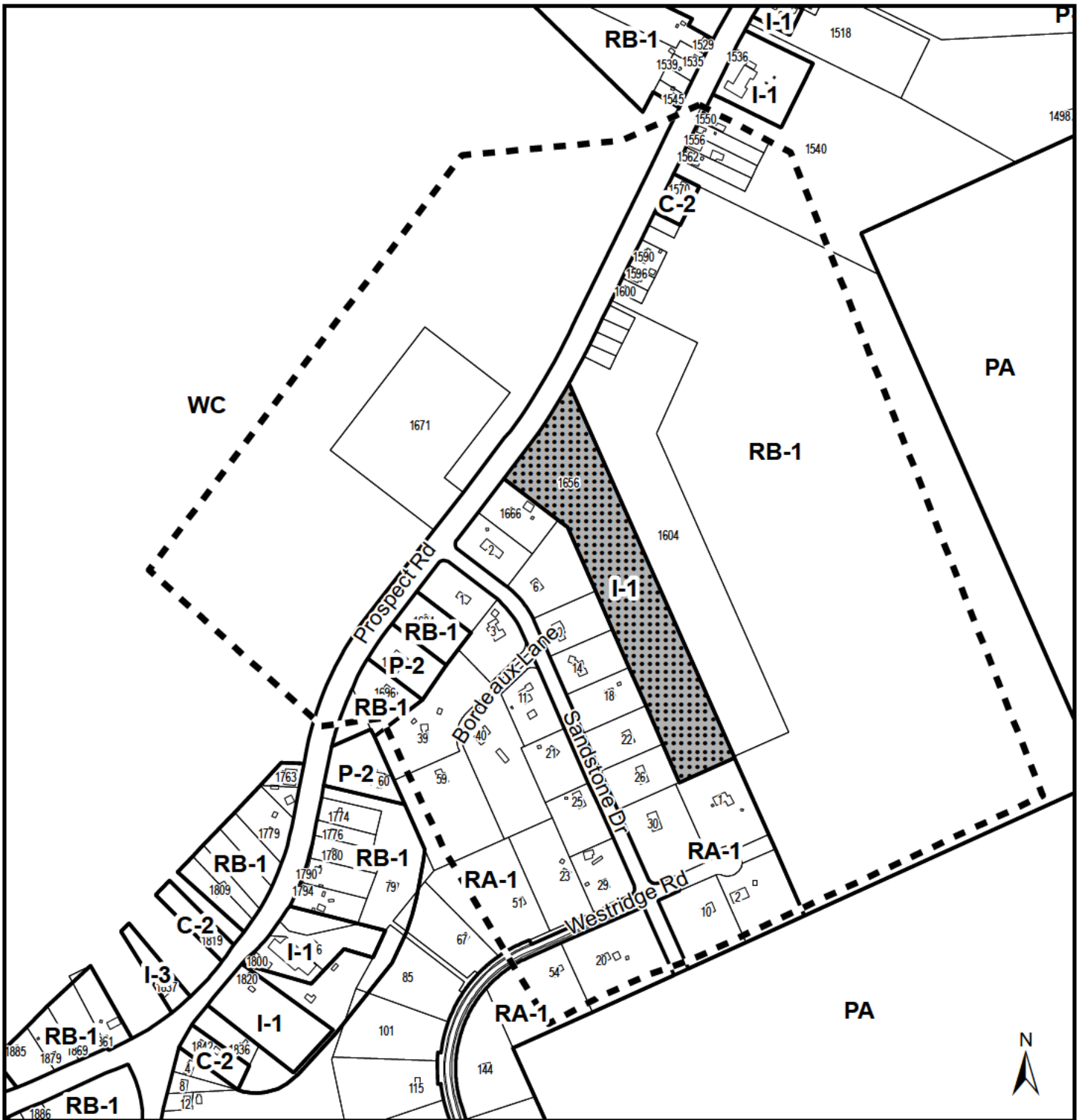
- RA Residential A
- RB Residential B
- CNSRV Conservation
- WC Western Common



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.



Planning District 4
(Prospect) Plan Area



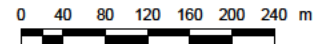
Map 2 - Zoning and Notification

1656 Prospect Road,
Hatchet Lake

HALIFAX

-  Subject Property
-  Area of Notification

Zone	
RA-1	Residential A-1
RB-1	Residential B-1
C-2	General Business
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P-2	Community Facility
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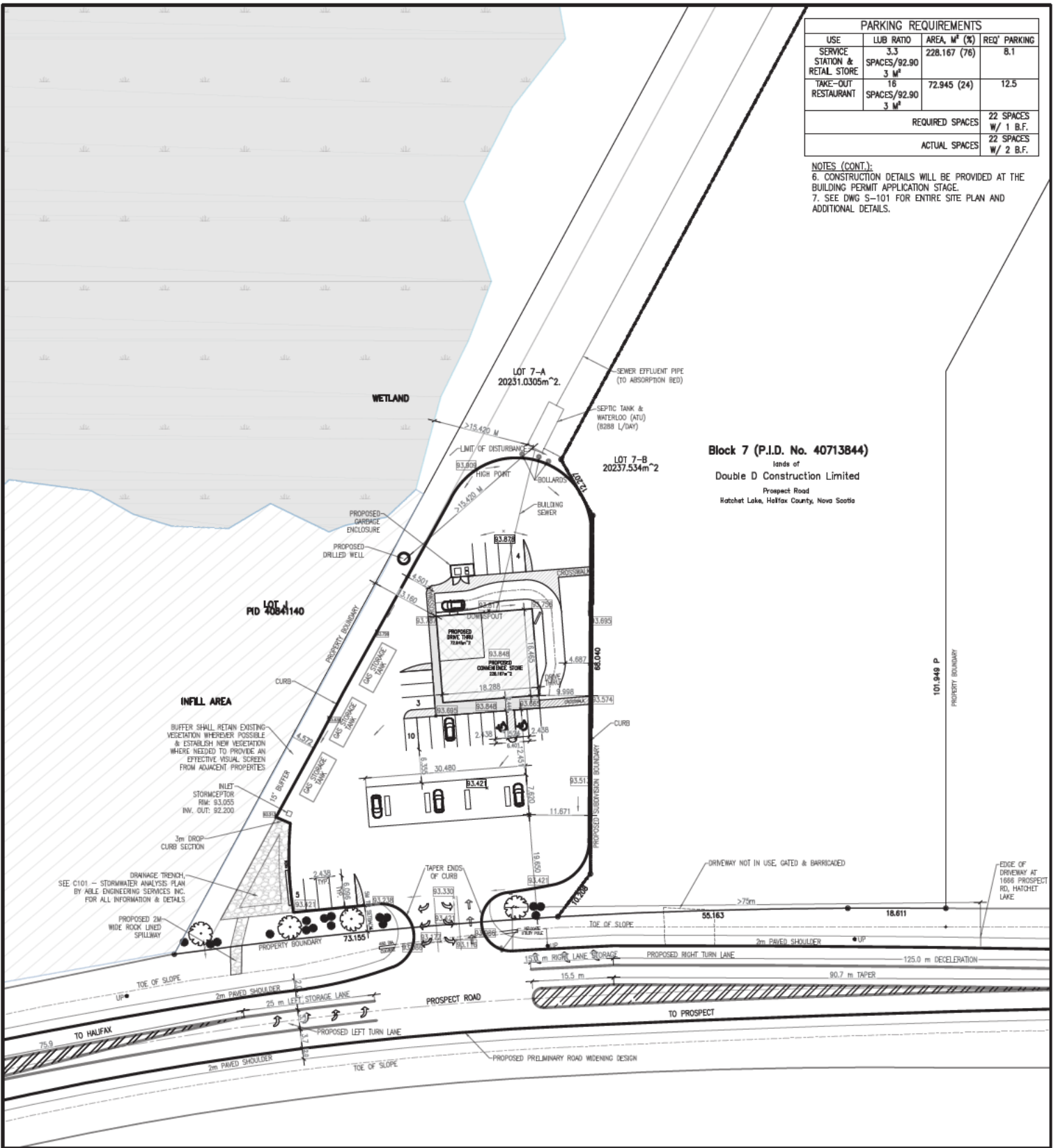
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Planning District 4
(Prospect) Plan Area

Map 3: Site Plan

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TAKE-OUT RESTAURANT	16	72.945 (24)	12.5
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Block 7 (P.I.D. No. 40713844)
 lands of
Double D Construction Limited
 Prospect Road
 Hatcher Lake, Halifax County, Nova Scotia

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STAMP:

REVISIONS		
NO	DESCRIPTION	BY DATE
1	ISSUED FOR REVIEW	
2	ISSUED FOR DEV. PERMIT	JW JUNE 19/20
3	REVISED	
4	REVISED	
5	ISSUED FOR BUILDING PERMIT	
6	ISSUED FOR CONSTRUCTION	

TITLE:
**PROPOSED GAS STATION
 1656 PROSPECT RD, HATCHET LAKE, NS**

DRAWING:
MAP 3 SITE PLAN

DRAWING NO.:
S-102

DRAWN BY:
 J. WHITE

SCALE:
 1:1000 METRIC

DATE:
 2020-06-19

**Attachment A
Proposed Development Agreement**

THIS DEVELOPMENT AGREEMENT made this day of **[Insert Month]**, 20__,

BETWEEN:

Property owner name to be inserted when executed

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 1656 Prospect Road, Hatchet Lake PID **XXXXXX** (to be inserted when parcel is created) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow for a service station with accompanying take out/drive-through restaurant and convenience store on the lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies RB-10 and IM-11 of the Planning District 4 of the Municipal Planning Strategy and Section 3.16 (b)(v) of the Planning District 4 Land Use By-law;

AND WHEREAS the Halifax and West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 22051.

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

- 1.1.1 The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law and Subdivision By-law

- 1.2.1 Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Planning District 4 and the Regional Subdivision By-law, as may be amended from time to time.
- 1.2.2 Variances to the requirements of the Land Use By-law for Planning District 4 shall not be permitted for the land use described in Section 3.3.1 (a) of this Agreement.

1.3 Applicability of Other By-laws, Statutes and Regulations

- 1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.
- 1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

- 1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.
- 1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

- 1.5.1 The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

- 1.6.1 The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

- 2.1.2 All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

- 3.1.1 The Developer shall develop and use the Lands in a manner, which, in the opinion of the Development Officer, generally conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 22051:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan - Entire Property
Schedule C	Detailed Site Plan
Schedule D	Preliminary Stormwater Management Plan

3.2 Requirements Prior to Approval

- 3.2.1 Prior to the commencement of any site work on the Lands, the Developer shall consider appropriate stormwater management throughout the construction and in the final design by providing the following to the Development Officer:
- (a) A Site Disturbance Plan prepared by a Professional Engineer in accordance with this Agreement;
 - (b) A detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer in accordance with this Agreement; and
 - (c) A detailed Stormwater Management Plan prepared by a Professional Engineer in accordance with this Agreement.
- 3.2.2 Prior to the issuance of a Development Permit on the Lands, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer as per the terms of this Agreement:
- (a) Nova Scotia Department of Transportation and Infrastructure approval of the site access in accordance with this Agreement;
 - (b) Nova Scotia Department of Transportation and Infrastructure approval of the Stormwater Management Plan in accordance with this Agreement;
 - (c) Nova Scotia Environment approval of on-site sewage treatment facilities in accordance with this Agreement;
 - (d) A detailed Landscape Plan prepared by a Landscape Architect in accordance with this Agreement; and
 - (e) Lighting in accordance with this Agreement.
- 3.2.3 Prior to the issuance of the first Municipal Occupancy Permit, the Developer shall provide the following to the Development Officer:

- (a) Certification from a member in good standing of the Canadian Society of Landscape Architects indicating that the Developer has complied with the landscaping provisions of this Agreement, or the posting of security in accordance with this Agreement; and
- (b) Confirmation from Nova Scotia Transportation and Infrastructure Renewal of the completion of the required upgrades to Prospect Road Right of Way in accordance with this Agreement including any drainage trench structures.

3.2.4 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.3 General Description of Land Use

3.3.1 The uses(s) of the Lands permitted by this Agreement are a Service Station containing a maximum of four (4) fuel pumps with associated pump island canopy, and a Convenience Store and Drive-in Restaurant.

3.3.2 Notwithstanding 3.3.1, the developer may use the property for any use permitted by the land use by-law, in accordance with the provision of the underlying I-1 zone.

3.4 Detailed Provisions for Land Use

3.4.1 The Service Station with a Convenience Store and Drive-in Restaurant shall be as generally shown on Schedule C.

3.4.2 No more than four (4) fuel pumps that can provide fuel for a total of eight (8) vehicles at one time shall be permitted on the lot.

3.4.3 No portion of any pump island, including a pump island canopy, shall be located closer than 6.1 m (20 ft) from any street line.

3.4.4 No more than one (1) drive-through window for the Drive-in Restaurant shall be permitted on the lot and not located on any facade facing a public street.

3.4.5 The queuing area for the drive-through windows of the restaurant are located as generally shown on Schedule C and are not located between a building and the public street, and where visible from the public street, screening through a fence and or landscape buffer is provided.

3.4.6 The gross floor area of the main building shall be as generally shown on Schedule C and shall not exceed the maximum floor area of 418 square metres (4,500 square feet).

3.4.7 The maximum height of any building used for the purpose of the Service Station shall be in accordance with the requirement of C-2 General Business Zone of the applicable Land Use By-law as amended from time to time.

3.5 Architectural Requirements

3.5.1 The exterior design of the main building associated with the Service Station shall include no less than three (3) of the following architectural elements:

- (a) recesses/projections;

- (b) cornices and parapets;
- (c) peaked roof forms;
- (d) overhangs;
- (e) architectural details such as tile or stone work, and decorative moldings; or
- (f) any other similar architectural treatment deemed to be an acceptable equivalent.

3.5.2 The predominant roof slope shall be pitched with a minimum slope of approximately 2/12. The structure shall be articulated with a roof design that incorporates features such as dormers, parapets, peak roof forms, or other architectural treatment considered to be acceptable.

3.5.3 Building materials shall not include vinyl siding.

3.5.4 All vents, down spouts, flashing, electrical conduits, meters, service connections, and other functional elements shall be treated as integral parts of the design. Where appropriate, these elements shall be painted to match the colour of the adjacent surface, except where used expressly as an accent.

3.6 Parking, Circulation and Access

3.6.1 Vehicle parking shall be provided as generally shown on Schedule C and shall have a hard-finished surface such as asphalt, concrete, interlocking precast paver stones, or an acceptable equivalent in the opinion of the Development Officer.

3.6.2 Parking spaces shall be located as generally shown on Schedule C, however the parking spaces may be reallocated at the time of permits if required for improving vehicle circulation. At least two parking spaces must be allocated as accessible parking spaces.

3.6.3 Parking spaces, stop bars, pedestrian circulation (walkways and on-site crosswalks) and access shall be generally as shown on Schedule C.

3.6.4 A designated pedestrian pathway connecting the main building on the subject land to the adjacent lot to the south east as shown on Schedule B. The designated pedestrian walkway shall have a finished hard surface such as poured in place concrete, interlocking paving stones, or an acceptable equivalent in the opinion of the Development Officer. On-site crosswalks associated with the designated pedestrian pathway are shown as dashed lines on Schedule C and shall be demarcated with signs and pavement markings. The on-site crosswalks may be finished with an alternative hard surface, such as asphalt.

3.6.5 In consultation with NSTIR and the Municipal Engineer, the Development Officer may vary the requirements of the design, orientation, and size of the vehicle access and egress points.

3.7 Landscaping

3.7.1 Prior to the issuance of a Development Permit, the Developer agrees to provide a detailed Landscape Plan which shall provide details of the landscaped areas shown on Schedule C along Prospect Road. The Developer may provide additional plantings and landscaping features than shown on Schedule C. The Landscape Plan shall be prepared by a Landscape Architect, who shall be a member in good standing with the Canadian Society of Landscape Architects, and comply with all provisions of this section.

3.7.2 Landscaping required by Section 3.7.1 shall include the following:

- (a) a 4.6 metre (15 feet) wide landscaping strip along the public street frontage, exclusive of driveways. The landscape strip shall be sodded and include a minimum of one (1) tree

(minimum of 60 mm caliper) and three (3) shrubs per 7.6 metres (25 feet) of street frontage. The incorporation of trees and shrubs into the landscaped strip may be provided in the form of groupings, provided a minimum ratio of one (1) tree and three (3) shrubs are provided per 7.6 metres (25 feet) of street frontage.

- (b) Notwithstanding Section 3.7.2(a), existing trees may be substituted where trees and shrubs are required; and
 - (c) All other landscaped areas shall be grassed, or alternatively, natural ground covers such as water features, stone (washed or flat), mulch, perennials, and annuals may be utilized.
 - (d) As required by Section 26.4 of the Planning District 4 LUB, an effective 4.6 metre (15 feet) landscaped barrier is required along the northeast property line. This buffer as shown on Schedule C is to provide a visible and environmental barrier between the commercial use of the subject lands and the adjacent vacant residential property and the wetland. This buffer may consist of either existing vegetation, newly established vegetation or a combination of both. The following species are recommended for consideration: Speckled Alder, Red Maple, Red Elderberry, Pin Cherry, Willow, Balsam Fir and Grey Birch.
- 3.7.3 Planting details for each type of plant material proposed on the detailed Landscape Plan shall be provided, including a species list with quantities, size of material, and common and botanical names (species and variety).
- 3.7.4 Plant material shall be primarily comprised of native species and conform to the Canadian Nursery Trades Association's Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.
- 3.7.5 Construction Details for all tree protection hoarding, benches, light standards and luminaries, trash receptacles, bike racks, tree grates and guards, planter seating wall, wood arbour, outdoor garbage enclosure, railings, and fencing shall be provided to the Development Officer with the Landscape Plan.
- 3.7.6 Prior to issuance of the first Occupancy Permit the Developer shall submit to the Development Officer a letter prepared by a member in good standing of the Canadian Society of Landscape Architects certifying that all landscaping has been completed according to the terms of this Development Agreement.
- 3.7.7 Notwithstanding Section 3.7.6, the Occupancy Permit may be issued provided that the weather and time of year does not allow the completion of the outstanding landscape works and that the Developer supplies a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The cost estimate is to be prepared by a member in good standing of the Canadian Society of Landscape Architects. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer. Should the Developer not complete the landscaping within twelve months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

3.8 Signs

- 3.8.1 Signage shall be subject to the requirements of the applicable Land Use By-law and the following additional requirements:
- (a) A pump island canopy associated with a Service Station may include one (1) sign, provided the sign is not backlit and no larger than thirty (30) square feet.

- (b) Signage associated with vehicle circulation and drive-through is permitted as per the Land Use By-law.

3.9 Solid Waste Facilities

- 3.9.1 All refuse and recycling materials shall be contained within a building, or within suitable containers which are fully screened from view from any street. Further consideration shall be given to locating all refuse and recycling material to ensure minimal effect on abutting property owners by means of opaque fencing or masonry walls or suitable landscaping.
- 3.9.2 Notwithstanding Section 3.9.1 of this Agreement, small waste receptacles are permitted throughout the development and are to be considered as part of the landscaping for the development.

3.10 Screening

- 3.10.1 Propane tanks, and electrical transformers shall be located on the Lands in such a way to ensure minimal visual impact from the public street. These facilities shall be secured in accordance with the applicable approval agencies and screened by means of opaque fencing, masonry walls or suitable landscaping.
- 3.10.2 Rooftop equipment, including, but not limited to, satellite and other telecommunication equipment, air handling units, elevator equipment, cooling towers and exhaust fans shall be screened (visually) from the public street and adjacent properties. The screening shall include but not limited to parapets and enclosures. Building screens shall be part of the architectural design with similar detailing and materials and not appear as add-ons.

3.11 Outdoor Lighting

- 3.11.1 Outdoor lighting shall be subject to the requirements of the Land Use By-law for Planning District 4 and the following additional requirements:
 - (a) Lighting on the Lands shall be sufficient to promote the safety and security of all users;
 - (b) Lighting shall be directed to driveways, parking areas, loading areas, building entrances and walkways, and shall be arranged so as to divert the light away from streets, adjacent lots and buildings;
 - (c) No portion of pump island canopy shall be backlit. Notwithstanding, a pump island canopy may be used as an anchor to direct light immediately beneath the canopy;
 - (d) Freestanding security lighting shall not exceed 5.5 metres (18 feet) in height; and
 - (e) All exterior lighting shall be directed downward, with luminaries shielded to prevent unnecessary glare.

3.12 Temporary Construction Structure

- 3.12.1 A temporary structure shall be permitted on the Lands for the purpose of housing equipment, materials and office related matters relating to the construction of the development in accordance with this Agreement. The temporary structure shall be located no less than ten (10) feet from any watercourse buffer required by the Land Use By-law and shall be removed from the Lands prior to the issuance of the last Occupancy Permit.

3.13 Maintenance

- 3.13.1 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, parking areas and driveways, drainage trenches and the maintenance of all landscaping including the

replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting or sanding of paved walkways and driveways.

PART 4: STREETS AND SERVICES

4.1 General Provisions

- 4.1.1 All design and construction of primary and secondary service systems shall satisfy the most current edition of the Municipal Design Guidelines unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineering prior to undertaking the work.

4.2. Off-Site Disturbance

- 4.2.1 Prior to the issuance of a Building Permit, the Developer agrees to provide to the Development Officer a "Work Within Highway Right-of-Way Permit" approved by Nova Scotia Transportation and Infrastructure Renewal. Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, turning lanes, street trees, landscaped areas and utilities, drainage trenches shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by Nova Scotia Transportation and Infrastructure Renewal.

4.3 On-Site Sewage System

- 4.3.1 The Lands shall be serviced through privately owned and operated on-site sewage disposal systems and treatment facilities. The Developer agrees to have prepared by a qualified professional and submitted to the Municipality and Nova Scotia Environment, a design for all private sewage disposal system(s). In accordance with Section 3.2.2(c), no Development Permit shall be issued prior to the Development Officer receiving a copy of all permits, licences, and approvals required by Nova Scotia Environment respecting the design, installation, construction of the on-site sewage system.

4.4 On-Site Water System

- 4.4.1 The Lands shall be serviced through a privately owned and operated on-site water distribution system.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Stormwater Management Plans and Erosion and Sedimentation Control Plans

- 5.1.1 Prior to the commencement of any site work on the Lands, including earth movement or tree removal other than that required for preliminary survey purposes, or associated off-site works, the Developer shall:
- (a) Submit to the Development Officer a detailed Site Disturbance Plan, prepared by a Professional Engineer indicating the sequence and phasing of construction and the areas to be disturbed or undisturbed;
 - (b) Submit to the Development Officer a detailed Erosion and Sedimentation Control Plan prepared by a Professional Engineer in accordance with the Erosion and Sedimentation Control Handbook for Construction Sites as prepared and revised from time to time by Nova Scotia Environment. Notwithstanding other sections of this Agreement, no work is permitted on the Lands until the requirements of this clause have been met and implemented. The Erosion and Sedimentation Control Plan shall 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; and
- (c) Submit to the Development Officer a detailed Site Grading and Stormwater Management Plan prepared by a Professional Engineer.
- 5.1.2 The Developer agrees to construct, at their own expense, the Stormwater Management System as generally shown on Schedule D, the preliminary Stormwater Management Plan for the development which conforms to the design submitted to the Development Officer and reviewed by the Nova Scotia Transportation and Infrastructure Renewal. The Developer shall provide certification from a Professional Engineer that the system, or any phase thereof, has been constructed in accordance with the approved design.
- 5.1.3 The Developer agrees, at its own expense, to maintain in good order all stormwater facilities on the Lands.

PART 6: AMENDMENTS

6.1 Non-Substantive Amendments

- 6.1.1 The following items are considered by both parties to be non-substantive and may be amended by resolution of Council.
- (a) Changes to the location of the landscaped areas which, in the opinion of the Development Officer, do not conform with Schedule C or Section 3.7 of this Agreement;
 - (b) Changes to the exterior design of the main buildings as detailed in Section 3.5.1;
 - (c) Minor expansions to the main buildings not exceeding ten per cent (10%) of the gross floor area of the building permitted by this Agreement;
 - (d) Changes to the requirements related to signage as identified in Section 3.8 of this Agreement;
 - (e) The granting of an extension to the date of commencement of development as identified in Section 7.3 of this Agreement; and
 - (f) The length of time for the completion of the development as identified in Section 7.4 of this Agreement.

6.2 Substantive Amendments

- 6.2.1 Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 7: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

7.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia, and the Developer shall incur all costs in recording such documents.

7.2 Subsequent Owners

- 7.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.

7.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

7.3 Commencement of Development

7.3.1 In the event that development on the Lands has not commenced within five (5) years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Lands shall conform with the provisions of the Land Use By-law.

7.3.2 For the purpose of this section, commencement of development shall mean the issuance of a Building Permit.

7.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

7.4. Completion of Development

7.4.1 If the Developer fails to complete the development after seven (7) years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement.
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant the Municipal Planning Strategy and Land Use By-law for Planning District 4, as may be amended from time to time.

7.4.2 For the purpose of this section, completion of development shall mean the issuance of the first Occupancy Permit.

7.4.3 For the purpose of this section, Council may consider granting an extension of the completion of development time period through a resolution under Section 6.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the completion of development time period.

7.5 Discharge of Agreement

7.5.1 Upon the completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement; or
- (c) discharge this Agreement.

PART 8: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

8.1 Enforcement

8.1.1 The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer

agrees to allow for such an inspection during any reasonable hour within twenty-four hours of receiving such a request.

8.2 Failure to Comply

8.2.1 If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defence based upon the allegation that damages would be an adequate remedy;
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) The Municipality may by resolution discharge this Agreement whereupon this 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; or,
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

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

PARKING REQUIREMENTS			
USE	LUB. RATIO	AREA, SF (X)	REQ'D PARKING
SERVICE STATION & RETAIL STORE	3:1	228,167 (76)	8:1
TAKE-OUT RESTAURANT	16 SPACES/92.90 SQ. FT.	72,945 (24)	12.5
	3:1		
		REQUIRED SPACES	22 SPACES W/ 1 B.F.
		ACTUAL SPACES	22 SPACES W/ 2 B.F.

NOTES (CONT.)
 6. CONSTRUCTION DETAILS WILL BE PROVIDED AT THE BUILDING FRONT APPLICATION STAGE.
 7. SEE DWG 5-101 FOR ENTIRE SITE PLAN AND ADDITIONAL DETAILS.

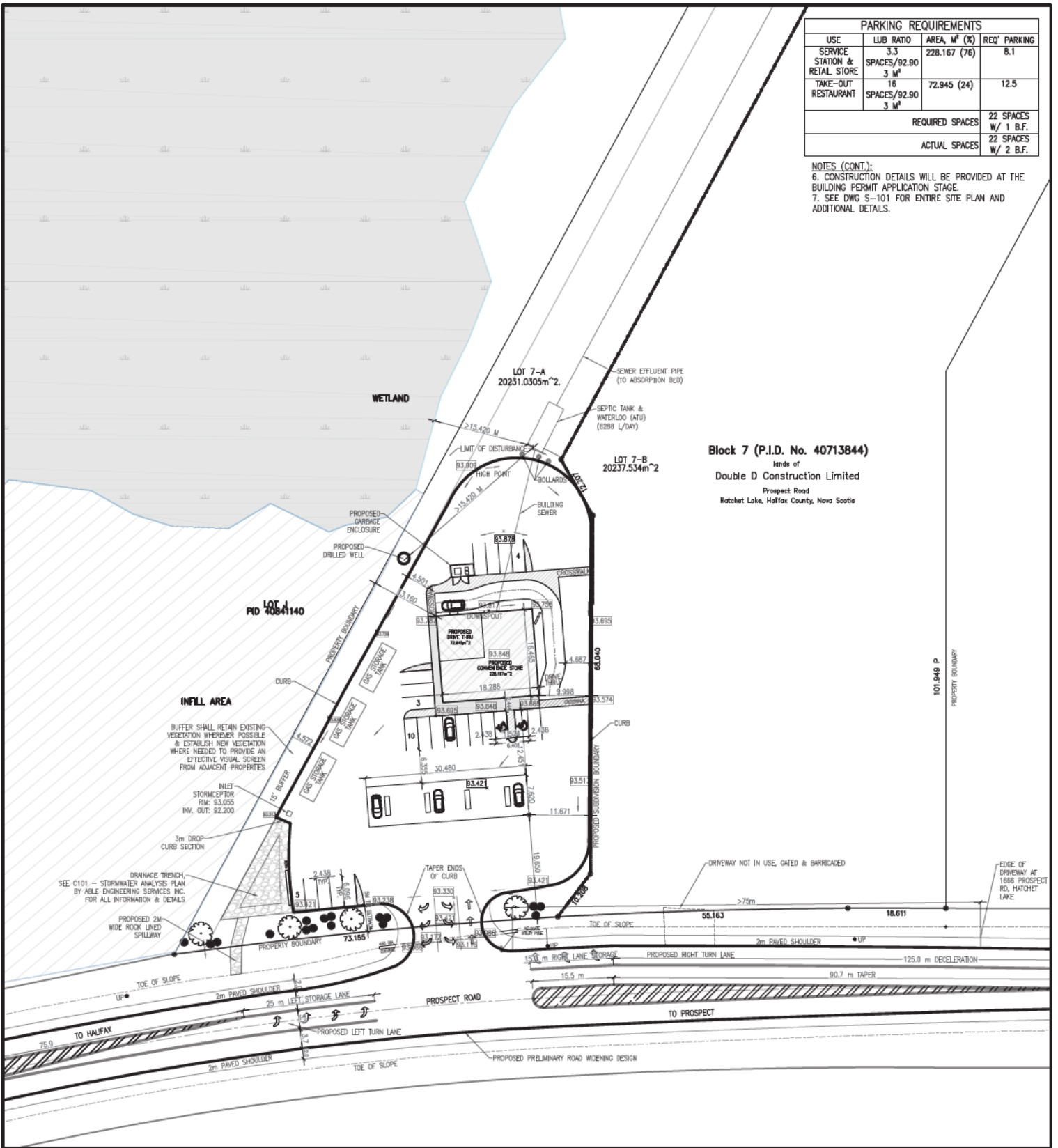


1. DRAWING IS FOR DEVELOPMENT AGREEMENT ONLY. DRAWINGS ISSUED FOR CONSTRUCTION MUST BE PROVIDED AND APPROVED TO ALL REQUIRED DEPARTMENTS PRIOR TO CONSTRUCTION.
2. ALL WORK/CONSTRUCTION TO BE IN ACCORDANCE WITH CURRENT FEDERAL, PROVINCIAL & MUNICIPAL BYLAWS, CODES & REGULATIONS.
3. ALL SITE CONDITIONS & DIMENSIONS TO BE CONFIRMED ON-SITE BY CONTRACTOR. ANY DISCREPANCIES TO BE REPORTED TO ENGINEER & RESOLVED PRIOR TO PROCEEDING.
4. GRADES TO BE DETERMINED ON-SITE BY PROJECT MANAGER & IN COMPLIANCE WITH CURRENT LOT GRADING BYLAWS, CODES & REGULATIONS.
5. DRAWINGS ARE THE INTELLECTUAL PROPERTY OF SHEPHERD ENTERPRISES AND MAY NOT BE REPRODUCED IN PART OR IN WHOLE WITHOUT THE WRITTEN CONSENT FROM OWNER.
6. DRAWINGS INVALID FOR DEVELOPMENT AGREEMENT UNLESS STAMPED & SIGNED BY ENGINEER.

	Y		B	Y	0
					0

PARKING REQUIREMENTS			
USE	LUB RATIO	AREA, M ² (%)	REQ' PARKING
SERVICE STATION & RETAIL STORE	3.3	228.167 (76)	8.1
	SPACES/92.90		
TAKE-OUT RESTAURANT	16	72.945 (24)	12.5
	SPACES/92.90		
REQUIRED SPACES			22 SPACES W/ 1 B.F.
ACTUAL SPACES			22 SPACES W/ 2 B.F.

NOTES (CONT.):
 6. CONSTRUCTION DETAILS WILL BE PROVIDED AT THE BUILDING PERMIT APPLICATION STAGE.
 7. SEE DWG S-101 FOR ENTIRE SITE PLAN AND ADDITIONAL DETAILS.



Block 7 (P.I.D. No. 40713844)
 lands of
Double D Construction Limited
 Prospect Road
 Hatcher Lake, Halifax County, Nova Scotia

NOTES:
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 2. ALL WORK/CONSTRUCTION TO BE IN ACCORDANCE WITH CURRENT FEDERAL, PROVINCIAL & MUNICIPAL BYLAWS, CODES & REGULATIONS.
 2. ALL SITE CONDITIONS & DIMENSIONS TO BE CONFIRMED ONSITE BY CONTRACTOR. ANY DISCREPANCIES TO BE REPORTED TO ENGINEER & RECTIFIED PRIOR TO PROCEEDING.
 3. GRADES TO BE DETERMINED ONSITE BY PROJECT MANAGER & IN COMPLIANCE WITH CURRENT LOT GRADING BYLAWS, CODES & REGULATIONS.
 4. DRAWINGS ARE THE INTELLECTUAL PROPERTY OF SHERWOOD ENTERPRISES AND MAY NOT BE REPRODUCED IN PART OR IN WHOLE WITHOUT THE WRITTEN CONSENT FROM OWNER.
 5. DRAWINGS INVALID FOR DEVELOPMENT AGREEMENT UNLESS STAMPED & SIGNED BY ENGINEER.

OWNER

CYGNET PROPERTIES LIMITED

CONSULTANT: Sherwood Enterprises Inc.
 38 Dillon Cres
 Halifax, NS B3M 4A8
 (902) 443-3020
 sherwoodinc@eastlink.ca

STAMP

REVISIONS		
NO	DESCRIPTION	BY DATE
1	ISSUED FOR REVIEW	
2	ISSUED FOR DEV. PERMIT	JW JUNE 19/20
3	REVISED	
4	REVISED	
5	ISSUED FOR BUILDING PERMIT	
6	ISSUED FOR CONSTRUCTION	

TITLE:
**PROPOSED GAS STATION
 1656 PROSPECT RD, HATCHET LAKE, NS**

DRAWING:
**SCHEDULE C
 DETAILED SITE PLAN**

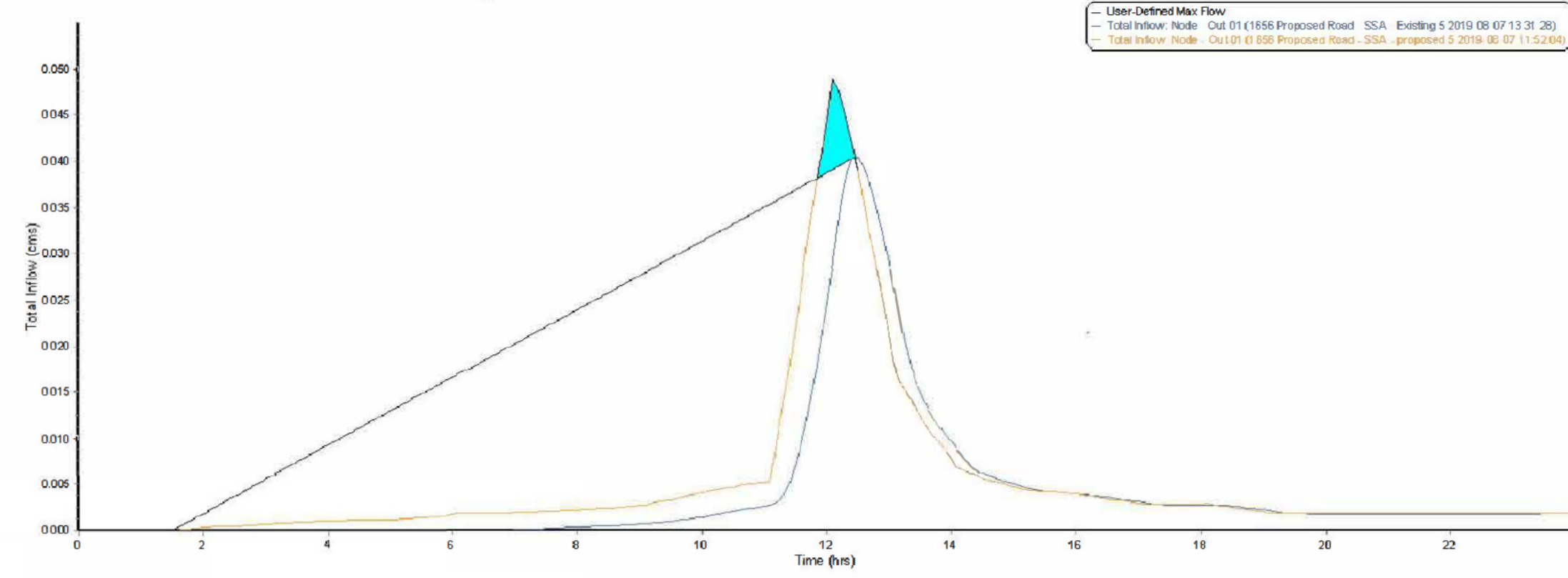
DRAWING NO.:
S-102

DRAWN BY:
 J. WHITE

SCALE:
 1:1000 METRIC

DATE:
 2020-06-19

5 YEAR STORM EVENT HYDROGRAPH COMPARISON



Legend:
 - User-Defined Max Flow
 - Total Inflow: Node - C101 (1556 Proposed Road - SSA - Existing 5 2019 08 07 13:20)
 - Total Inflow: Node - C101 (1556 Proposed Road - SSA - Proposed 5 2019 08 07 11:52:45)



KEYPLAN

LEGEND

EXISTING		PROPOSED
●	GATE/BUTTERFLY VALVE	●
○/○→	STREET SIGN	○/○→
○/○→	POWER POLE/LIGHT POLE	○/○→
●/■	CATCHBASIN	●/■
○	CULVERT	○
158.5	ELEVATION	158.5
○	HYDRANT	○
---	PROPERTY BOUNDARY	---
---	OVERHEAD LINE	---
SA-□-SA	SANITARY MANHOLE & PIPE	SA-□-SA
ST-○-ST	STORM MANHOLE & PIPE	ST-○-ST
WM-	WATERMAIN	WM-
WM-○-WM	WATER SERVICE	WM-○-WM
FM-	FORCEMAIN	FM-
C-	UNDERGROUND CONDUIT	C-
□	CONCRETE THRUST BLOCK	□
---	CURB AND DRIVEWAY CUT	---
---	SIDEWALK	---
---	STREET LINE	---
→	DRAINAGE DIRECTION	→
→	SWALE FLOW	→
346	CONTOUR LINES	346
GAS-GAS	GAS LINE	GAS-GAS
○	TREE	○
---	BOTTOM OF SLOPE	---
---	TOP OF SLOPE	---
---	GUARD RAIL	---
---	SILT FENCE	---

- NOTES:
1. PLAN IS IN METRIC UNITS OF METERS UNLESS OTHERWISE STATED.
 2. PROPERTY BOUNDARIES SHOWN ARE APPROXIMATE ONLY.
 3. SEE GRADING PLAN FOR ELEVATION GRADES.
 4. GRADES SHOWN FOR REVIEW PURPOSES ONLY. THIS IS NOT A GRADING PLAN.
 5. SEE ARCHITECTURAL PLANS FOR BUILDING DETAILS.
 6. STORM CALCULATIONS COMPLETED USING THE SCS TR 20 HYDROLOGY METHOD AND SCS TR-55 FOR THE TIME OF CONCENTRATION METHOD. STORM EVENTS MODELED USING MODIFIED CHICAGO STORM WITH LOCAL RAINFALL AMOUNTS.

STORM WATER STORAGE:
 EXISTING 5 YEAR STORM EVENT RUNOFF VOLUME = 335.5m³
 PROPOSED 5 YEAR STORM EVENT RUNOFF VOLUME = 427.5m³
 PROPOSED STORAGE = 41.9m³
 PROPOSED ROCK FILL VOLUME STORAGE 15.2m³ @ 30% VOID RATIO
 PROPOSED FREE STORAGE ABOVE = 26.7m³
 THE ESTIMATED STORAGE REQUIREMENTS TO REDUCE THE PEAK FLOW DURING A 5 YEAR STORM EVENT FROM 0.052cms TO 0.040cms WERE CALCULATED USING AUTODESK STORM AND SANITARY ANALYSIS SOFTWARE. THE ESTIMATED STORAGE IS SHOWN ON THE ATTACHED 5 YEAR PRE/POST COMPARISON HYDROGRAPH.
 THE ROCK DRAINAGE TRENCH (STORAGE AREA) IS DESIGNED TO STORE A 5 YEAR STORM EVENT, DURING 100 YEAR STORM EVENTS OR FLOOD CONDITIONS THE ROCK DRAINAGE TRENCH IS DESIGNED TO OVERFLOW VIA THE ROCK LINED SPILLWAY

No.	Date	Revision	Description	App'd
4	08/01/20	ISSUED FOR PERMIT		
3	08/08/19	ISSUED FOR PERMIT		
2	08/03/19	REVISED FOR NSTIR REVIEW		
1	06/11/18	ISSUED FOR REVIEW		

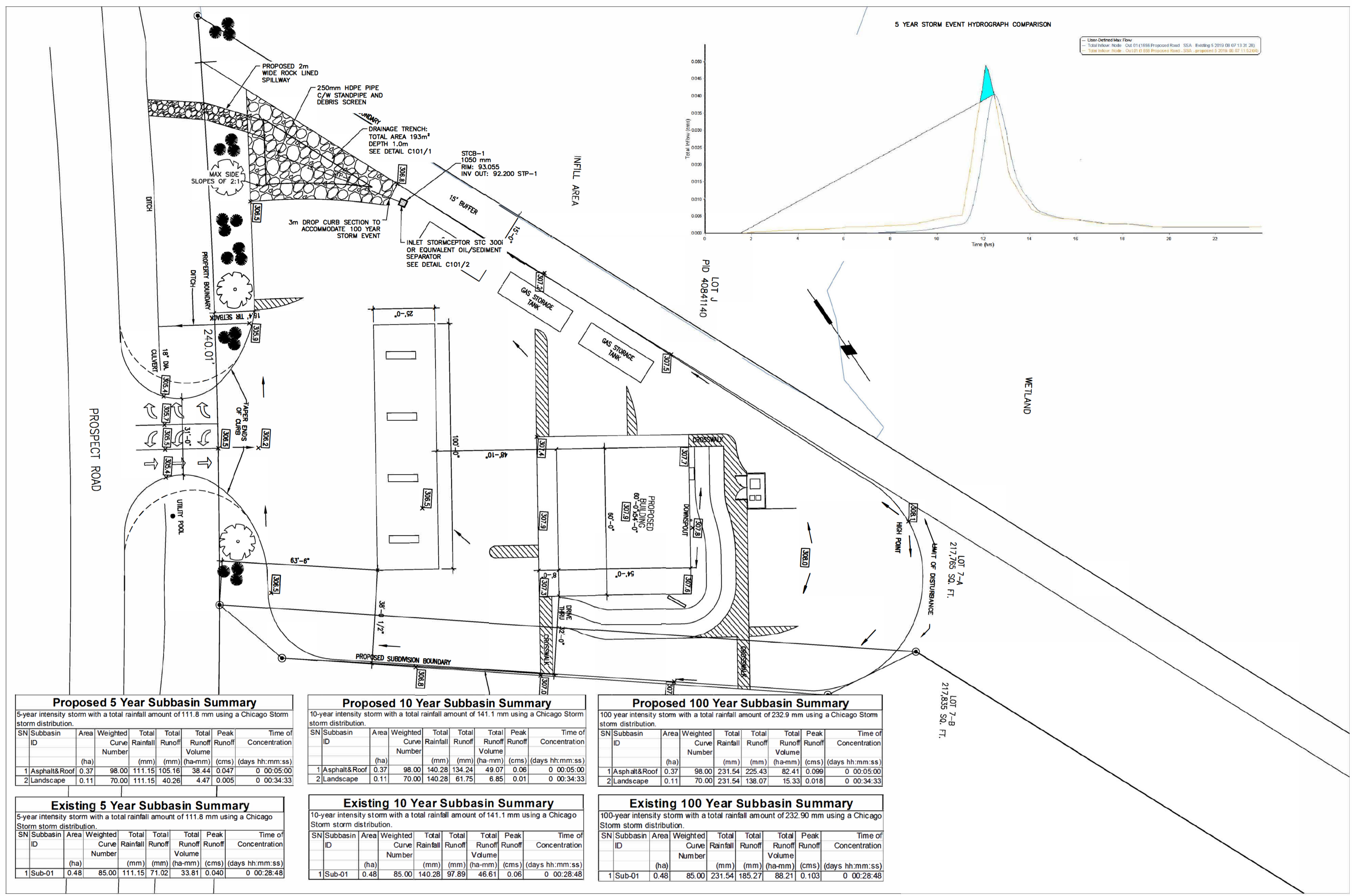
Seal: **ABLE** ENGINEERING SERVICES INC
 4073 HIGHWAY 3, CHESTER, NS B0J 1J0
 TEL: 902-273-3050 FAX: 902-273-3072
 civil@ableinc.ca www.ableinc.ca

SCALE: 1:250
 0m 5m 10m 15m 20m 25m

1556 PROSPECT ROAD
 HATCHET LAKE, NS

SCHEDULE D Preliminary STORMWATER ANALYSIS PLAN

Date	NOVEMBER 1, 2018	Drawn	J.KEEPING	Project No.	181101-02
Scale	1:250	Engineer	J.PINHEY	Plan No.	C101



Proposed 5 Year Subbasin Summary
 5-year intensity storm with a total rainfall amount of 111.8 mm using a Chicago Storm storm distribution.

SN	Subbasin ID	Area (ha)	Weighted Curve Number	Total Rainfall (mm)	Total Runoff (mm)	Total Runoff Volume (ha-mm)	Peak Runoff (cms)	Time of Concentration (days hh:mm:ss)
1	Asphalt&Roof	0.37	98.00	111.15	105.16	38.44	0.047	0 00:05:00
2	Landscape	0.11	70.00	111.15	40.26	4.47	0.005	0 00:34:33

Proposed 10 Year Subbasin Summary
 10-year intensity storm with a total rainfall amount of 141.1 mm using a Chicago Storm storm distribution.

SN	Subbasin ID	Area (ha)	Weighted Curve Number	Total Rainfall (mm)	Total Runoff (mm)	Total Runoff Volume (ha-mm)	Peak Runoff (cms)	Time of Concentration (days hh:mm:ss)
1	Asphalt&Roof	0.37	98.00	140.28	134.24	49.07	0.06	0 00:05:00
2	Landscape	0.11	70.00	140.28	61.75	6.85	0.01	0 00:34:33

Proposed 100 Year Subbasin Summary
 100 year intensity storm with a total rainfall amount of 232.9 mm using a Chicago Storm storm distribution.

SN	Subbasin ID	Area (ha)	Weighted Curve Number	Total Rainfall (mm)	Total Runoff (mm)	Total Runoff Volume (ha-mm)	Peak Runoff (cms)	Time of Concentration (days hh:mm:ss)
1	Asphalt&Roof	0.37	98.00	231.54	225.43	82.41	0.099	0 00:05:00
2	Landscape	0.11	70.00	231.54	138.07	15.33	0.018	0 00:34:33

Existing 5 Year Subbasin Summary
 5-year intensity storm with a total rainfall amount of 111.8 mm using a Chicago Storm storm distribution.

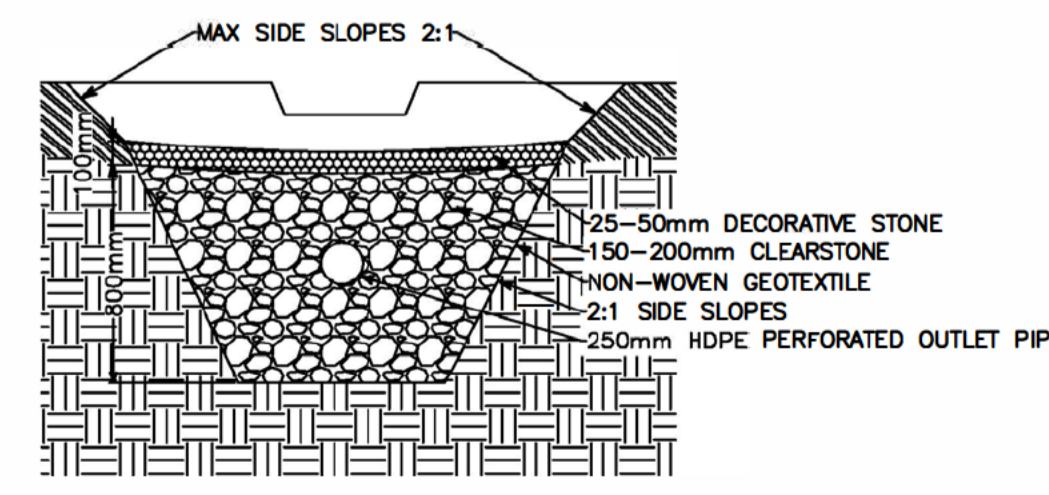
SN	Subbasin ID	Area (ha)	Weighted Curve Number	Total Rainfall (mm)	Total Runoff (mm)	Total Runoff Volume (ha-mm)	Peak Runoff (cms)	Time of Concentration (days hh:mm:ss)
1	Sub-01	0.48	85.00	111.15	71.02	33.81	0.040	0 00:28:48

Existing 10 Year Subbasin Summary
 10-year intensity storm with a total rainfall amount of 141.1 mm using a Chicago Storm storm distribution.

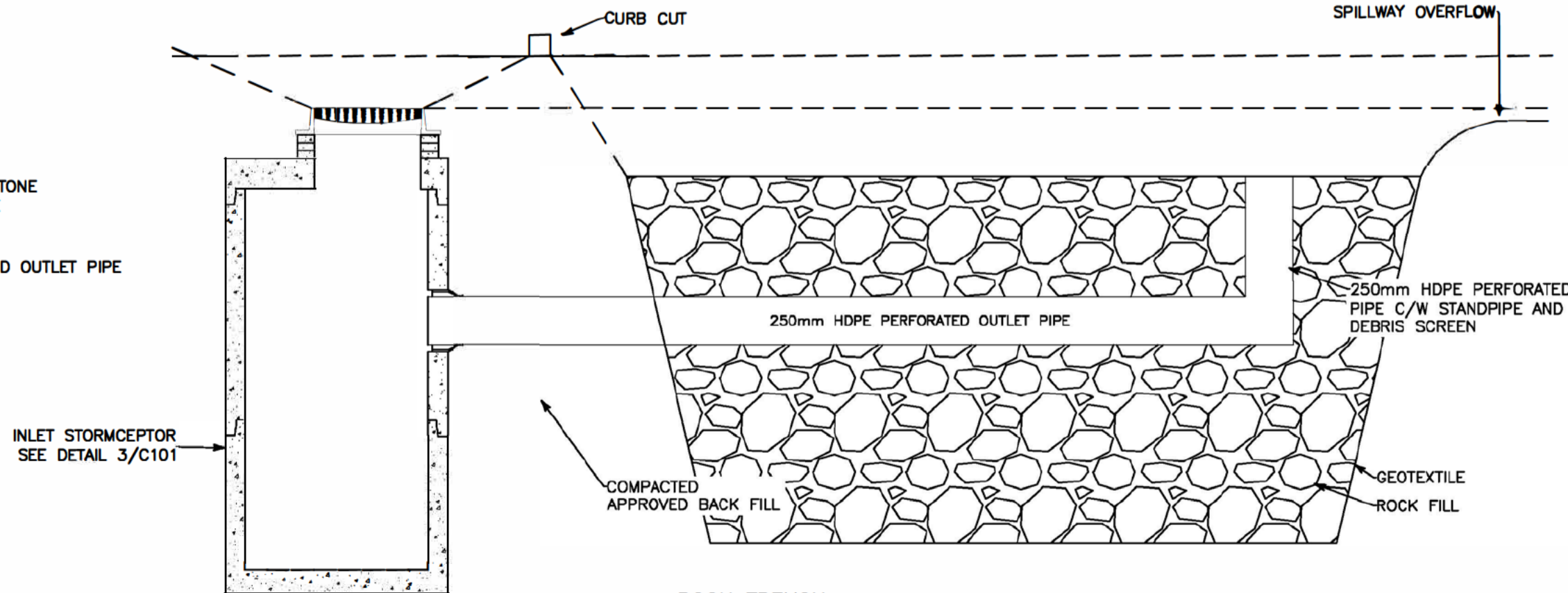
SN	Subbasin ID	Area (ha)	Weighted Curve Number	Total Rainfall (mm)	Total Runoff (mm)	Total Runoff Volume (ha-mm)	Peak Runoff (cms)	Time of Concentration (days hh:mm:ss)
1	Sub-01	0.48	85.00	140.28	97.89	46.61	0.06	0 00:28:48

Existing 100 Year Subbasin Summary
 100-year intensity storm with a total rainfall amount of 232.90 mm using a Chicago Storm storm distribution.

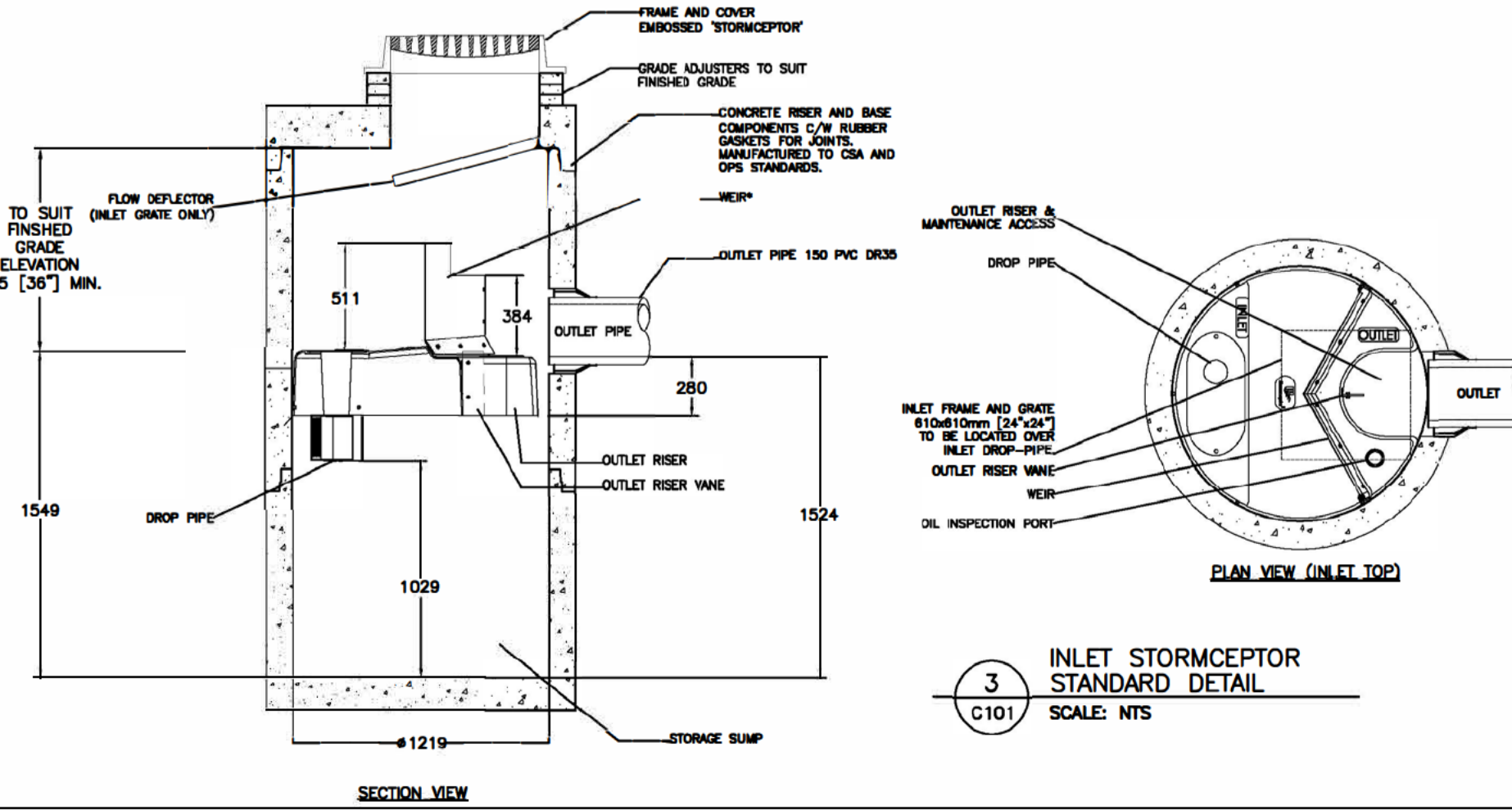
SN	Subbasin ID	Area (ha)	Weighted Curve Number	Total Rainfall (mm)	Total Runoff (mm)	Total Runoff Volume (ha-mm)	Peak Runoff (cms)	Time of Concentration (days hh:mm:ss)
1	Sub-01	0.48	85.00	231.54	185.27	88.21	0.103	0 00:28:48



1 ROCK TRENCH CROSS SECTION SCALE: NTS



2 ROCK TRENCH OUTLET PROFILE SCALE: NTS



3 INLET STORMCEPTOR STANDARD DETAIL SCALE: NTS

Attachment B:
Review of Relevant Policies from the Municipal Planning Strategy for
Planning District 4

It is also recognized that larger scale general commercial operations, service stations, motels, and commercial entertainment uses may be suitably located along Highway No. 333 with minimal impact on the surrounding community. Such operations are required to provide the necessary services to expanding communities and also contribute to the growing tourist industry which is highly valued within Planning District 4. These larger scale activities, however, will have a greater degree of impact on the surrounding area in terms of traffic generation, draw on ground water resources, noise, litter and aesthetics. In order to ensure that these uses are properly integrated within the community, commercial operations which exceed ten percent of the lot area, service stations, motels and commercial entertainment uses shall only be considered by development agreement pursuant to the Planning Act.

<p><i>RB-10 Notwithstanding Policy RB-2 or Policy RB-4, within the Residential B Designation, Council may consider permitting uses permitted in the general business zone, which are in excess of ten (10) percent of lot area, service stations, motels and entertainment uses in accordance with the development agreement provisions of the <u>Planning Act</u>. In considering such agreements, Council shall have regard to the following:</i></p>	
Policy Criteria	Staff Comment
<p>(a) <i>that the architectural design (external appearance) and scale of any structures are compatible with nearby land uses;</i></p>	<p>Architectural design provisions have been included in the proposed development agreement. The site is in close proximity to residential uses therefore a pitched roof, lighting controls, buffering and landscaping requirements are included in order to minimize the impact of architectural integrity of the homes and uses along Prospect Road.</p>
<p>(b) <i>that adequate separation distances are maintained from low density residential developments;</i></p>	<p>There is residential development in close proximity. The closest residential dwelling is approx. 75 metres to the southwest of the site. On both sides of the site there is a vacant lot. A buffer is required along the northeastern property line and a landscaping plan is required for the site.</p>
<p>(c) <i>the provision of landscaping and screening from any adjacent residential development;</i></p>	
<p>(d) <i>the impact of the proposed use on the existing road network in terms of traffic generation and vehicular and pedestrian safety;</i></p>	<p>A Traffic Impact Study (TIS) was submitted in support of this application. The TIS asserts that the majority of traffic using the proposed development will be traffic already using the Prospect Road (pass-by trips) and that the proposed development is not expected to cause any operation related problems on Prospect Road. Prospect Road is a provincial arterial highway which handles volumes of approximately 940 vehicle trips in the am peek and 1,200 vehicles in the pm peek. The Nova Scotia Department of Transportation and Infrastructure Renewal (NSTIR) has reviewed the proposal and advised that the access to the site and the Prospect Road will need to be widened to accommodate dedicated turning lanes. A truck turning design was also submitted which was analyzed for vehicular and pedestrian safety. The proposed use, being an auto-centric land use is not anticipated to generate much pedestrian traffic. The proposed development agreement</p>

	requires a signed dedicated pedestrian pathway from the main proposed building to the adjacent site that has a building permit for a as-of right commercial plaza. This will reduce potential pedestrian and vehicle movement conflicts.
(e) <i>the means by which solid and liquid waste will be treated;</i>	The subject site will be serviced by on-site septic and well services. Permits will be required from NS Environment prior to a Building permit.
(f) <i>the effects of the development on the natural environment and the means for handling stormwater runoff;</i>	The proposed development agreement requires a detailed site grading and stormwater management plan be submitted prior to the commencement of any work on the site.
(g) <i>the general maintenance of the development;</i>	The proposed development agreement addresses the general maintenance of the property.
(h) <i>the hours of operation; and</i>	Given the distance from residential development and the vacant lots discussed above, no restrictions have been placed on the hours of operation of the development.
(i) <i>the provision of Policy IM-11.</i>	See Table Below

IM-11 <i>In considering development agreements or amendments to the land use bylaw, in addition to all other criteria as set out in various policies of this Planning Strategy, Council shall have appropriate regard to the following matters:</i>	
Policy Criteria	Staff Comment
(a) <i>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;</i>	The proposal is consistent with Policy RB-10 (see above table).
(b) <i>that the proposal is not premature or inappropriate by reason of:</i>	...
(i) <i>the financial capability of the Municipality to absorb any costs relating to the development;</i>	The developer will be responsible for all costs associated with the development.
(ii) <i>the adequacy of on-site sewerage and water services;</i>	Please see staff comment on Policy RB-10(e) above.
(iii) <i>the proximity of the proposed development to schools, recreation or other community facilities and the capability of these services to absorb any additional demands;</i>	This proposal would not result in an increase to school age population nor is it anticipated to affect community recreation facilities.
(iv) <i>the adequacy of road networks leading to or within the development; and</i>	As discussed above under policy criteria RB-10(d) the Prospect Road is a provincial arterial highway capable of accommodating the traffic generated by the proposed development.
(v) <i>the potential for damage to or for destruction of designated historic buildings and sites.</i>	No historical buildings or sites have been identified.
(c) <i>that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</i>	...
(i) <i>type of use;</i>	The proposed development agreement enables the use of the lands for a service station and included an associated drive-through restaurant

	and convenience store which is permitted as-of-right. No conflict is anticipated with respect to these uses and the adjacent residential uses.
(ii) <i>height, bulk and lot coverage of any proposed building;</i>	The proposed development agreement requires buildings on the subject site to meet the requirements of the C-2 (General Business) zone.
(iii) <i>traffic generation, access to and egress from the site, and parking;</i>	Further to policy criteria RB-10(d) discussed above, the proposed development must meet the parking requirements for the C-2 zone. The location of parking areas is not anticipated to cause conflict with the abutting uses.
(iv) <i>open storage;</i>	The proposed development agreement requires all refuse and recycling materials to be enclosed within a building or suitable container and screened from the street.
(v) <i>signs; and</i>	The proposed development agreement addresses the requirements for signage. Signs are to be permitted as per Part 5 of the Land Use By-law. Additionally, only one (1) sign on the pump island canopy is permitted.
(vi) <i>any other relevant matter of planning concern.</i>	No other planning issues have been identified.
(d) <i>that the proposed development is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding.</i>	None of these features have been identified on the subject site except for the large wetland on the adjacent property to the northeast of the site. A delineation report was submitted to confirm the location of the wetland and also to recommend vegetative species within the required buffer.
(e) <i>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. (RC-Jul 2/02;E-Aug 17/02)</i>	No holding zone has been established and no additional lots are proposed in conjunction with this application

Attachment C

Public Information Meeting - Summary

HALIFAX REGIONAL MUNICIPALITY
Public Information Meeting
Case 22051

The following does not represent a verbatim record of the proceedings of this meeting.

Wednesday, February 27, 2019
7:00 p.m.
Prospect Road Community Centre

STAFF IN

ATTENDANCE: Maria Jacobs, Planner, HRM Planning and Development
Thea Langille, Principle Planner, HRM Planning and Development
Alden Thurston, Planning Technician, HRM Planning and Development
Cara McFarlane, Planning Controller, HRM Planning and Development

ALSO IN

ATTENDANCE: Jenifer Tsang, Sunrose Land Use Consulting

REGRETS: Councillor Steve Adams, District 11

PUBLIC IN

ATTENDANCE: Approximately 22

The meeting commenced at approximately 7:00 p.m.

1. Call to order, purpose of meeting – Maria Jacobs

Ms. Jacobs is the Planner and Facilitator for the application and introduced the Applicant(s), staff members and passed along the Councillor's regrets.

Case 22051 - Application by Sunrose Land Use Consulting on behalf of Hatchet Lake Plaza Ltd. to enter into a development agreement for service station and associated convenience store and drive thru restaurant at 1656 Prospect Road, Hatchet Lake.

The purpose of the Public Information Meeting (PIM) is to:

- Identify the proposal site and highlight the proposal;
- Give the Applicant an opportunity to present the proposal; and
- Receive public feedback and input regarding the proposal that will be used to prepare the staff report and go forward with this application.

No decisions are made at the PIM or have been made up to this point.

2. Presentation of Proposal – Maria Jacobs

Ms. Jacobs gave a brief presentation of the proposal for the property located at 1656 Prospect Road, Hatchet Lake outlining the status of the application, the Applicant's request, site context of the subject lands, the proposal and concept plan, the land designation [RB (Rural Residential Residential B)] and relevant planning policy (RB-10) within the Planning District 4 (Prospect) Municipal Planning Strategy (MPS) and zoning [I-1 (Light Industrial) Zone] within the Planning

District 4 (Prospect) Land Use By-law (LUB).

Presentation of Proposal – Jenifer Tsang, Sunrose Land Use Consulting

Ms. Tsang presented the proposal outlining the subject property, Preliminary Subdivision Plan, proposal and generic elevation renderings (gas bar, convenience store/drive-thru restaurant).

3. Questions and Comments

A resident wondered why there is a need for another gas station in the area. Why not further down Peggys Cove Road? **Tsang** – Some community members expressed an interest. Marketing research shows there is the capacity for another service station. Otherwise the application would not be made.

Mike Boutilier, Bourdeaux Lane is concerned that the back of the 71.45-acre parcel may be connected to the cul-de-sac via an easement on the property which would allow traffic to funnel through Bourdeaux Lane, Westridge Road and Sandstone Drive. **Tsang** – It won't be possible because the septic field is located at the back of the property.

Mary Hammond, Prospect Bay, agreed with the first speaker regarding the number of service stations in the area and that towards Peggys Cove would be a better option. Residents are concerned about contamination of their wells.

Lesli Chandler, Whites Lake, agrees with the comments about the number of gas stations in the area and would like to hear about the runoff and environmental impacts. Another convenient store is not needed. The community will continue to support the ones currently in the area.

A resident suggested rental buildings instead due to demand in the area.

Gilles Cormier, Sandstone Drive, is concerned about well contamination and who will be held liable. In similar circumstances, the property owner has been held responsible. **Tsang** – There are Provincial petroleum regulations [Department of Environment (DOE)] that need to be adhered to. These have been made more stringent in recent years. The development agreement also provides another layer of protection.

A resident wondered how the community as a whole can stop the application. **Jacobs** – HWCC makes the final decision whether to approve or deny the application. The staff report will be prepared for HWCC with recommendations from staff and include a negotiated, draft development agreement and a copy of the summary notes from this public information meeting.

Phyllis Carroll, Sandstone Drive, would like to have some clarification on what could happen at the back of the subject property in the future. **Tsang** – Showed the zoning map and explained that industrial or commercial uses could go there. The proposal is to subdivide to make two properties. The land at the back is required for the septic field; therefore, it is undevelopable (if this application is approved). The other piece could be used to develop a permitted use under the zone but would have to meet all the requirements of the land use by-law. At this time, there is nothing planned.

Derrick Slaunwhite, Terence Bay, supports another gas station but not at this site (maybe in Whites Lake) but definitely no more convenience stores or restaurants. A coffee shop would be nice.

Heather Richards, Peters Lake Road, is concerned about the environmental impact due to cars

idling in the drive-thru. It doesn't matter where the gas station is placed as the residents down the road will have the same issue with potential well contamination.

Mr. ElAmyouni, Hatchet Lake, opposed the application and is concerned about increased traffic and accidents, well contamination and increased property taxes. The proposal is not needed in the area. **Jacobs** – A restaurant and/or drive-thru is currently permitted as-of-right. The development agreement is required for the gas station only. **Tsang** - A mandatory Traffic Impact Study (TIS) was submitted and concluded that a turning lane is required and most of the traffic visiting the site would be traffic already on the road. HRM Staff will make that study available on the website. Property tax is not listed as a criteria under the MPS for consideration and a commercial use like this is unlikely to have a negative effect.

Tsang reiterated that the proposal is for one building with four gas pump islands. The proposed building will contain a small convenience store and drive-thru restaurant (permitted as-of-right under the current zoning). HWCC will make a decision, following a public hearing, on the development agreement for the gas station.

Tammy Dunlop-Caya, Sandstone Drive, asked how the developer would acquire the property for a turning lane. **Tsang** – Department of Transportation (DOT) has accepted that there is enough room in the right-of-way to accommodate a turning lane. **A resident** asked if a bike lane would be considered to benefit the community. **Tsang** – A bike lane can be taken into consideration but it would not connect to any other bike lanes.

Thea Langille, Team Project Lead - HRM Rural Policy and Applications Team, clarified the rest of the process to the audience and explained what opportunities the community has to voice their concerns if they oppose the application. The timeline for a project of this nature would be several months before it goes to public hearing before HWCC and if approved, then typically two to five years for build-out. The applicant can ask for an amendment to the development agreement to enable an extension and again that is at the discretion of HWCC.

There was a brief discussion on who the developers are for this proposal.

John Larson, Sandstone Drive, wondered if the applicant currently has any agreement with any existing gasoline retailers and if the purpose of this proposal is to make it more appealing to facilitate selling the property to a third party. **Tsang** – There have been discussions with a potential gas operator but no agreement at this time.

A resident wondered what happens with the previous proposal (Case 20750) that included a gas station and a 10,000 square foot building. **Tsang** – The developers had received a development permit but didn't move forward at that time for a building permit. The applicant decided to focus on the gas station proposal first. There are no current plans for that plaza; however, they could come back and apply for a building permit.

Rick Duggan, Shad Bay, commented that in more recent years technology has improved and potential of contamination from gas stations has decreased significantly.

4. Closing Comments – Maria Jacobs

Ms. Jacobs thanked everyone for coming and expressing their comments.

5. Adjournment

The meeting adjourned at approximately 7:55 p.m.

Attachment B: NSUARB Order

ORDER

M09875

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL by **HATCHET LAKE PLAZA LTD.** from a decision of the Halifax and West Community Council on September 24, 2020, respecting property located at 1656 Prospect Road, Hatchet Lake, County of Halifax to refuse an application for a Development Agreement for a Service Station at the property

BEFORE  Roberta J. Clarke, Q.C., Member

ORDER

The Board issued a decision on January 29, 2021.

The Board allows the appeal and orders Council to approve the development agreement.

DATED at Halifax, Nova Scotia, this 29th day of January, 2021.



Clerk of the Board

Attachment C: NSUARB Decision

DECISION

**2021 NSUARB 11
M09875**

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

-and-

IN THE MATTER OF AN APPEAL by **HATCHET LAKE PLAZA LTD.** from a decision of the Halifax and West Community Council on September 24, 2020, respecting property located at 1656 Prospect Road, Hatchet Lake, County of Halifax to refuse an application for a Development Agreement for a Service Station at the property

BEFORE: Roberta J. Clarke, Q.C., Member

APPLICANT: **HATCHET LAKE PLAZA LTD.**
Peter Rogers, Q.C.

RESPONDENT: **HALIFAX REGIONAL MUNICIPALITY**
E. Roxanne MacLaurin, Counsel

HEARING DATE: December 2-3, 2020

DECISION DATE: **January 29, 2021**

DECISION: **Appeal is allowed.**

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I INTRODUCTION

[1] Hatchet Lake Plaza Ltd. owns land on Prospect Road, in Hatchet Lake, which it proposes to subdivide. The company applied to Halifax Regional Municipality (HRM) for approval of a development agreement which would allow the construction of a service station, and a building which would house a convenience store and fast-food drive-through restaurant on one of the subdivided parcels. The parcel, which is zoned I-1 – Light Industry, is located within the Residential B designation under the Municipal Planning Strategy (MPS) for Planning District 4. In its Staff Report, planning staff of HRM recommended approval of the development agreement.

[2] Halifax and West Community Council (HWCC) held a public hearing on the application on September 24, 2020. The Council refused to approve the development agreement. The letter advising the company of the refusal stated the reasons for finding that the proposed development agreement does not reasonably carry out the intent of the MPS as:

- the potential environmental implications and effect on the water table;
- the proximity of the proposed development to residential properties; and
- the lack of adequate buffering between the proposed development and residential properties, wells and wetland.

[Exhibit H-2, p. 430]

[3] The company appealed the decision of Council to the Nova Scotia Utility and Review Board by Notice filed on October 5, 2020. Its ground of appeal stated that the decision of Council failed to reasonably carry out the intent of the MPS, particularly the compliance of the development with MPS Policies RB-10, IM-11, IU-2, as well as “the broad ranges of potentially much more intensive permitted uses” and considered “irrelevant criteria other than those specified in the MPS.”

[4] Section 265(1)(b) of the *Halifax Regional Municipality Charter*, S.N.S 2008, c. 39, as amended (*Charter*) allows an appeal of the refusal to approve a development agreement only “on the grounds that the decision of the Council does not reasonably carry out the intent of the municipal planning strategy.” The Board’s authority is limited by s. 267(1) and s. 276(2) which provide:

Powers of Board on appeal

267 (1) The Board may

(a) confirm the decision appealed from;

(b) allow the appeal by reversing the decision of the Council to amend the land-use by-law or to approve or amend a development agreement;

(c) allow the appeal and order the Council to amend the land-use by-law in the manner prescribed by the Board or order the Council to approve the development agreement, approve the development agreement with the changes required by the Board or amend the development agreement in the manner prescribed by the Board;

...

(2) The Board may not allow an appeal unless it determines that the decision of the Council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law.

[5] The Board heard evidence from two witnesses on behalf of the appellant. One of these witnesses, Jenifer Tsang, was qualified as an expert, able to give opinion evidence on land use planning and development matters. The other witness was Jim Taylor, who is a director and shareholder of Hatchet Lake Plaza Ltd. The Board also heard from speakers at the evening session, and received letters of comment regarding this appeal. The Board had the benefit of the appellant’s expert’s report as well as the complete Appeal Record and relevant planning documents of HRM. Counsel for HRM called no witnesses and chose not to cross-examine the appellant’s witnesses. Closing submissions were made after the conclusion of the evidence by both counsel.

[6] The Board finds that, on the balance of probabilities, the appellant has met its burden of proof. The Board observes that both the convenience store and fast-food drive-through restaurant are uses permitted on the property according to the Land Use By-law (LUB). It is only the service or gas station use which necessitated a development agreement under the MPS. The Board finds that the development agreement which was before Council respects and complies with the intent of the MPS and meets or exceeds the LUB requirements. Thus, the Board finds that the decision of the Council to refuse to approve the development agreement as presented to Council fails to reasonably comply with the MPS. Therefore, the appeal is allowed, and Council is ordered to approve the development agreement.

II ISSUE

[7] The issue in this appeal is whether the decision of Council to refuse to approve the development agreement for a service or gas station, convenience store and fast-food drive-through restaurant reasonably complies with the MPS.

III BACKGROUND

[8] In 2016 and 2017, an application was made to HRM for a development agreement for a gas station, a convenience store including a drive-through restaurant, and a retail plaza on the appellant's property. In support of the application, documentation filed included:

- a Traffic Impact Statement Update by JRL Consulting dated November 2016;
- a Level I Groundwater Assessment by Fracflow Consultants Inc., dated February 12, 2016;

- a Peer Review of the Level I Groundwater Assessment by Pario Engineering and Environmental Science, dated December 2, 2016; and,
- a Wetland Delineation and Assessment Report by McCallum Environmental Ltd., dated January 26, 2016.

[9] On June 27, 2017, a representative of the provincial Department of Transportation and Infrastructure Renewal (TIR) wrote to Jacqueline Belisle, the HRM planner then responsible for the application, advising that TIR could not approve the proposed access to the development. The Appeal Record shows that there was an exchange of emails during April and May, 2018, between Jeff LeBlanc of JRL Consulting and engineers from TIR about the issues which TIR had raised. Other communication came from HRM to Ms. Tsang, who was acting as the representative of the appellant, over the summer and early fall of 2018 about the status of the case, and possible proposed changes.

[10] In late September, Ms. Tsang met with Maria Jacobs, the planner now assigned to the case, to determine what steps were necessary to proceed. Ms. Jacobs subsequently communicated excerpts from the land-use by-law for another area of HRM relating to signage and illumination for service stations as well as pump locations, architectural elements, and drive-up windows.

[11] On November 7, 2018, a revised application was submitted to HRM which did not include the retail plaza portion but only included the service station, convenience store and fast-food restaurant with drive-through. The application form in the Appeal Record indicated the information already received as well as information to be submitted and, in some cases, updated from the original application. This included a preliminary plan of subdivision for the portion of the appellant's property on which the proposed

development was to be located. The original application had proposed using the entire lands.

[12] The new application included an updated Traffic Impact Study by JRL Consulting, dated August 2018. Subsequent submissions included a Wetland Evaluation Update by McCallum Environmental Ltd., dated June 25, 2019, and site plans, truck turning templates and a revised stormwater site plan.

[13] Ms. Jacobs then proceeded to seek comments on the revised proposed development from:

- HRM Engineering and Traffic
- TIR
- HRM Development Services
- HRM Building Services
- HRM Fire
- Civic Addressing
- HRM Police

[14] The results of the review were included in Ms. Jacobs' letter to Ms. Tsang, dated February 19, 2019. Ms. Jacobs noted the next steps were to receive responses to the requested amendments and recommendations, and to hold a Public Information Meeting in the community. This meeting was held on February 27, 2019. The minutes of the meeting show that approximately 22 members of the public were present.

[15] The Appeal Record shows that Ms. Jacobs communicated with the provincial Department of Environment for comments on the proposed development in December 2019, prior to finalizing a draft development agreement.

[16] By August, 2020, a staff report was prepared and submitted to HWCC recommending that Notice of Motion be given to consider the proposed development

agreement. The report recommended approval of the proposed development agreement. Council passed the motion to consider the agreement and schedule a public hearing.

[17] The public hearing was held on September 24, 2020. The minutes of the meeting do not disclose how many members of the public were in attendance; however, five members of the public spoke in opposition to the proposed development after Council had heard from Ms. Jacobs, Thea Langille, Principal Planner, and Ms. Tsang. The motion to approve the development agreement was defeated, and the appellant was advised of this by letter dated September 28, 2020.

[18] The appellant's Notice of Appeal, filed with the Board on October 5, 2020 stated the grounds of appeal as:

Council failed to reasonably carry out the intent of the following Policies of the Municipal Planning Strategy ("MPS") for Planning District #4, when the Policies are interpreted in the context of the MPS and the Land Use Bylaw as a whole:

- RB-10 (including but not restricted to Council's failure to consider the compliance of the development with paragraphs (a), (c) and (f) thereof);
- IM-11 (including but not restricted to Council's failure to consider the compliance of the development with paragraphs (a) (c)(ii) and (d) thereof);
- IU-2 of the MPS (including the broad range of potentially much more intensive permitted land uses than a service station); and
- Failed to reasonably carry out the intent of the MPS by considering irrelevant criteria other than those specified in the MPS as a basis for rejecting the application.

[Exhibit H-1, pp.1-2]

III LETTERS OF COMMENT

[19] The Board received five letters of comment from members of the public. All the writers were opposed to the proposed development. The Board has summarized the concerns expressed in those letters as:

- The impact of a service station, including likely leaks or spills, on wells and water supply and wetlands
- Proximity of the service station septic system to neighbouring properties
- Lack of need for another service station on Prospect Road
- Light pollution from the development
- Inconsistency with the HRM climate strategy (HalifACT 2050)
- Noise and odour from the operations
- Traffic congestion at a dangerous location, increased traffic and potential for accidents.

[20] The Board is also aware from the Appeal Record that several residents of the area expressed similar concerns at the Public Information Meeting and the Council meeting where the proposal was discussed. In addition, the Board notes that there is a petition in the Appeal Record which is purported to be signed by 576 persons in opposition to the development.

IV EVENING SESSION/PUBLIC SPEAKERS

[21] The Board heard from two persons at the evening public session who had registered to speak. The Board understands that both speakers live in Hatchet Lake and had spoken against the development at the Council meeting. Each expressed concern about the impact of the development on wells and wetlands. Both had environmental concerns in general and referred to HalifACT 2050. One speaker said that the environmental assessment was outdated.

[22] Both were concerned about increased traffic and the potential for accidents. One of the speakers said that there is no need for another service station in the area. The other speaker expressed concerns about the failure to have a sign notifying the public about the application at the property. That speaker also questioned why the public is

notified, and public meetings are held, if Council is not to listen to the views of the public in making planning decisions.

V SITE VISIT

[23] With the agreement of both counsel, who chose not to attend, the Board conducted a site visit on the afternoon of December 3, 2020. The Board member drove from downtown Halifax to the Prospect Road (Highway No. 333) and travelled the intersection of Sandstone Drive and Prospect Road which is just past the location of the proposed development as one drives towards Peggy's Cove and about 15 km from downtown Halifax.

[24] Highway No. 333 is a two-lane highway which leads to Peggy's Cove. The speed limit at the beginning near Exhibition Park is 80 km/hr and reduces through Goodwood and Hatchet Lake to 70 km/hr at least to the area of the appellant's property.

[25] Closer to the beginning of Highway No. 333 is the Industrial Park area and Mills Drive, as well as the Ragged Lake Park. The Board observed two service stations along the route, one at Exhibition Park which had a convenience store and a Tim Horton's outlet. The other was further along the route and on the opposite side of the road, and included a convenience store. En route, in addition to considerable wooded areas, there were modest, but well-maintained, homes through Goodwood, and some commercial development, as well as a church. On the property where the development is proposed, there is a small building which Mr. Taylor told the Board was a "clubhouse" for a golf course formerly on the property, where a Christmas tree sales operation was in place.

The closest property on the same side of Prospect Road before reaching the property (driving towards Peggy's Cove) is something less than half a kilometer away.

[26] A private residence is located at the intersection, fronting on Prospect Road, with a garage at the rear. Driving on Sandstone Drive, newer homes, some of which were fairly large, were observed on both sides of the road. Those closest to the proposed development appeared to be closer to Sandstone Drive, and have established treed areas at the rear.

[27] The Board member also travelled in both directions on Westridge Road which is at the end of Sandstone Drive. To the left of the stop sign at that intersection there were two large newer homes on the opposite side of Westridge Road, and apparently at least one property opposite them which could not be seen from the road. That property would be at the rear of the appellant's lands. Those properties would be the closest on Westridge to the proposed development. The Board member also drove onto Bordeaux Crescent which is off Sandstone Drive and further from the proposed development.

[28] The property owned by the appellant appeared consistent with the description offered by Mr. Taylor and the pictures contained in the Appeal Record.

VI SCOPE OF BOARD'S REVIEW

[29] The burden of proof is on the appellant to show, on the balance of probabilities, that Council's decision to refuse to approve the development agreement to allow the service station, convenience store and fast-food drive-through restaurant at the property does not reasonably carry out the intent of the MPS.

[30] Under s. 265(1)(b) of the *Charter*, the grounds for appealing such a decision are limited:

265 (1) An aggrieved person or an applicant may only appeal

...

(b) the approval or refusal of a development agreement or the approval of an amendment to a development agreement, on the grounds that the decision of the Council does not reasonably carry out the intent of the municipal planning strategy;

...

[31] The powers of the Board are similarly limited on such an appeal:

267 (2) The Board may not allow an appeal unless it determines that the decision of council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law.

[32] Thus, the Board must not interfere with the decision of Council unless it determines that Council's refusal does not reasonably carry out the intent of the MPS.

[33] While the appellant asserts that the application for the development agreement met the policy criteria in the MPS, the issue to be addressed by the Board in this appeal is whether Council's decision to refuse the amendment fails to reasonably carry out the intent of the MPS in its entirety. Counsel for HRM agreed in her closing submissions. The Board has no jurisdiction to allow the appeal if Council "interpreted and applied the [MPS] policies in a manner that the language of the policies can reasonably bear": see *Heritage Trust, infra*, at para. 99 of that decision.

[34] If the appellant can show, on the balance of probabilities, that Council's decision does not reasonably carry out the intent of the MPS, the Board must reverse Council's decision to refuse to approve the development agreement. If, however, the appellant fails to meet this standard of proof, the Board must defer to the decision of Council (see for example *Heritage Trust, infra*; *Re MacInnis*, 2019 NSUARB 9, aff'd 2019 NSCA 77).

[35] The Nova Scotia Court of Appeal has considered the standard by which this Board must review a council's decision. The Board is not permitted to substitute its own decision for that of council. The Board's mandate is restricted to the jurisdiction conferred upon it by the relevant statute, here the *HRM Charter*, as noted by Hallett, J.A., in *Kynock v. Bennett et al.* (1994), 131 N.S.R. (2d) 334 (C.A.) and *Heritage Trust of Nova Scotia et al. v. Nova Scotia Utility and Review Board et al.* (1994), 128 N.S.R. (2d) 5 (C.A.) in discussing the predecessor *Planning Act*. The extent of the Board's jurisdiction in planning appeals generally, and in appeals respecting development agreements specifically, was described in *Heritage Trust* at pages 34-35:

[99] A plan is the framework within which municipal councils make decisions. The Board is reviewing a particular decision; it does not interpret the relevant policies or bylaws in a vacuum. *In my opinion the proper approach of the Board to the interpretation of planning policies is to ascertain if the municipal council interpreted and applied the policies in a manner that the language of the policies can reasonably bear. ...*There may be more than one meaning that a policy is reasonably capable of bearing. This is such a case. In my opinion the *Planning Act* dictates that a pragmatic approach, rather than a strict literal approach to interpretation, is the correct approach. The Board should not be confined to looking at the words of the Policy in isolation but should consider the scheme of the relevant legislation and policies that impact on the decision... This approach to interpretation is consistent with the intent of the *Planning Act* to make municipalities primarily responsible for planning; that purpose could be frustrated if the municipalities are not accorded the necessary latitude in planning decisions...

[100] Ascertaining the intent of a municipal planning strategy is inherently a very difficult task. Presumably that is why the Legislature limited the scope of the Board's review of enacting s.78(6) of the *Planning Act*. *The various policies set out in the Plan must be interpreted as part of the whole Plan. The Board, in its interpretation of various policies, must be guided, of course, by the words used in the policies. The words ought to be given a liberal and purposive interpretation rather than a restrictive literal interpretation because the policies are intended to provide a framework in which development decisions are to be made. ...* [Emphasis added]

[36] The Court of Appeal continued at page 52:

[164] ... Planning decisions often involve compromises and choices between competing policies. Such decisions are best left to elected representatives who have the responsibility to weigh the competing interests and factors that impact on such decisions... Neither the Board nor this court should embark on their review duties in a narrow legalistic manner as that would be contrary to the intent of the planning legislation. Policies are to be interpreted reasonably so as to give effect to their intent; there is not necessarily one correct interpretation. This is implicit in the scheme of the *Planning Act* and in particular in the

limitation on the Board's power to interfere with a decision of a municipal council to enter into development agreements...

[37] The approach to be followed by the Board was also described by the Court of Appeal in *Midtown Tavern & Grill Ltd. v. Nova Scotia (Utility and Review Board)*, 2006 NSCA 115. In that decision, the Court reviewed several of its decisions on planning appeals (e.g., *Tsimiklis v. Halifax (Regional Municipality)*, 2003 NSCA 30; *Kynock*, supra; *Mahone Bay Heritage & Cultural Society v. 3012543 Nova Scotia Limited*, 2000 NSCA 93). The Court confirmed that the Board cannot impose its own interpretation of the MPS; that council's decision is entitled to deference as long as it reasonably reflects the intention of the MPS; that there may be more than one reasonable interpretation of the MPS; and that the MPS must be looked at as a whole.

[38] The Court concluded:

[50] Thus, in the end, resort inevitably must be had to specific directions contained in the statute. By doing so, the fundamental question therefore becomes: Can it be said that Council's decision does "not reasonably carry out the intent of the MPS"?

[51] To answer this question, the Board must embark upon a thorough fact-finding mission to determine the exact nature of the proposal in the context of the applicable MPS and corresponding by-laws. As in this case, this may include the reception of evidence as to the intent of the MPS.

[52] However the Board should not then take its body of decided facts and use this work product to conclude how it feels the MPS should be interpreted. In this regard, I agree with the developer. Instead, after completing its factual analysis, the Board should go immediately to Council's conclusion. The Board should then ask itself, based on the facts as determined, have the opponents established that Council's decision did not reasonably carry out the intent of the MPS?

[53] This would be consistent with the approach taken by this court over the years and as first enunciated by Hallett, J.A. in *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board)*, 1994 NSCA 11 (CanLII), [1994] N.S.J. No. 50. [Emphasis added]

[39] In *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, Fichaud, J.A., summarized the applicable principles for the Board's review in appeals from council decisions in planning matters:

[24] The Board then (¶¶ 51-62) recounted the provisions of the *MGA* and passages from decisions of this court that state the principles to govern the Board's treatment of an appealed planning decision. I will summarize my view of the applicable principles:

(1) The Board usually is the first tribunal to hear sworn testimony with cross-examination respecting the proposal. The Board should undertake a thorough factual analysis to determine the nature of the proposal in the context of the MPS and any applicable land use by-law.

(2) The appellant to the Board bears the onus to prove the facts that establish, on a balance of probabilities, that the Council's decision does not reasonably carry out the intent of the MPS.

(3) The premise, stated in s. 190(b) of the *MGA*, for the formulation and application of planning policies is that the municipality be the primary steward of planning, through municipal planning strategies and land use by-laws.

(4) The Board's role is to decide an appeal from the Council's decision. So the Board should not just launch its own detached planning analysis that disregards the Council's view. Rather, the Board should address the Council's conclusion and reasons and ask whether the Council's decision does or does not reasonably carry out the intent of the MPS. Later (¶¶ 30) I will elaborate on the treatment of the Council's reasons.

(5) There may be more than one conclusion that reasonably carries out the intent of the MPS. If so, the consistency of the proposed development with the MPS does not automatically establish the converse proposition, that the Council's refusal is inconsistent with the MPS.

(6) The Board should not interpret the MPS formalistically, but pragmatically and purposively, to make the MPS work as a whole. From this vantage, the Board should gather the MPS' intent on the relevant issue, then determine whether the Council's decision reasonably carries out that intent.

(7) When planning perspectives in the MPS intersect, the elected and democratically accountable Council may be expected to make a value judgment. Accordingly, barring an error of fact or principle, the Board should defer to the Council's compromises of conflicting intentions in the MPS and to the Council's choices on question begging terms such as "appropriate" development or "undue" impact. By this, I do not suggest that the Board should apply a different standard of review for such matters. The Board's statutory mandate remains to determine whether the Council's decision reasonably carries out the intent of the MPS. But the intent of the MPS may be that the Council, and nobody else, choose between conflicting policies that appear in the MPS. This deference to Council's difficult choices between conflicting policies is not a license for Council to make *ad hoc* decisions unguided by principle. As Justice Cromwell said, the "purpose of the MPS is not to confer authority on Council but to provide policy guidance on how Council's authority should be exercised" (*Lewis v. North West Community Council of HRM*, 2001 NSCA 98 (CanLII), ¶¶ 19). So, if the MPS' intent is ascertainable, there is no deep shade for Council to illuminate, and the Board is unconstrained in determining whether the Council's decision reasonably bears that intent.

(8) The intent of the MPS is ascertained primarily from the wording of the written strategy. The search for intent also may be assisted by the enabling

legislation that defines the municipality's mandate in the formulation of planning strategy. For instance, ss. 219(1) and (3) of the MGA direct the municipality to adopt a land use by-law "to carry out the intent of the municipal planning strategy" at "the same time" as the municipality adopts the MPS. The reflexivity between the MPS and a concurrently adopted land use by-law means the contemporaneous land use by-law may assist the Board to deduce the intent of the MPS. A land use by-law enacted after the MPS may offer little to the interpretation of the MPS.

[25] These principles are extracted from the decisions of this court in: *Heritage Trust*, ¶¶ 77-79, 94-103, 164; *Lewis v. North West* ¶¶ 19-21; *Midtown Tavern*, ¶¶ 46-58, 81, 85; *Can-Euro Investments*, ¶¶ 26-28, 88-95; *Kynock v. Bennett* (1994), 1994 NSCA 114 (CanLII), 1994 CanLII 4008 (NS CA), 131 N.S.R. (2d) 334, ¶¶ 37-61; *Tsimiklis v. Halifax (Regional Municipality)*, 2003 NSCA 30 (CanLII) ¶¶ 24-27, 54-59, 63-64; *3012543 Nova Scotia Limited v. Mahone Bay Heritage and Cultural Society*, 2000 NSCA 93 (CanLII), ¶¶ 9-10, 61-64, 66, 84, 86, 89, 91-97; *Bay Haven Beach Villas Inc. v. Halifax (Regional Municipality)*, 2004 NSCA 59 (CanLII), ¶ 26. [Emphasis added]

[40] The role of the Board in discerning the intent of an MPS was further canvassed in the decision of the Nova Scotia Court of Appeal in *Mahone Bay, supra*. The Court in *Mahone Bay*, while affirming the principles in *Kynock* and *Heritage Trust*, cautioned that the principles referred to in *Heritage Trust* "were made in the context of the issues raised by the facts of that appeal," and need not be applied "when the intent of the strategy is clear," as the Court found it to be in *Mahone Bay*.

[41] Section 234 of the *Charter* describes the relationship between an MPS and LUB:

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.

(2) The Council may amend a land-use by-law in accordance with policies contained in the municipal planning strategy on a motion of the Council or on application.

(3) The Council may not adopt or amend a land-use by-law except to carry out the intent of a municipal planning strategy. 2008, c. 39, s. 234.

[42] In *J & A Investments Ltd. v. Halifax (Regional Municipality)*, [2000] N.S.J. 92 (S.C.), where the meaning of an LUB was in issue, Justice Davison reasoned that s.

219(1) of the *Municipal Government Act (MGA)*, which mirrors s. 234 of the *HRM Charter*, means that an MPS may be used to help determine the intent of the LUB.

[43] The language of s. 219(1) of the *MGA*, and thus s. 234 of the *HRM Charter*, is similar, but not identical, to that which appeared in s. 51(1) of the *Planning Act*, which required council to "concurrently" adopt or amend the LUB. Referring to s. 51(1) of the *Planning Act*, the Court of Appeal in *Mahone Bay* stated that a review of the LUB may assist in "throwing light on the intent" of the MPS, and therefore used a provision of Mahone Bay's LUB to assist in interpreting the MPS:

A search for the intent of a municipal planning strategy requires a careful review of the strategy represented by the policies of the municipality and, very often, a review of the By-laws implementing the strategy as the by-laws adopted concurrently with the MPS may assist in throwing light on the intent of the strategy. [para. 95]

[44] Thus, according to Nova Scotia's present case law, the Board considers one may use the MPS to help determine the intent of the LUB (*J & A Investments*), and use the LUB to help determine the intent of the MPS (*Mahone Bay*). In the present case, it is the intent of the MPS which is in issue.

[45] The principles of statutory interpretation apply when interpreting an MPS. In a recent judgment, the Nova Scotia Court of Appeal reiterated the modern principle of statutory interpretation in *Sparks v. Holland*, 2019 NSCA 3. Farrar, J.A., stated:

[27] The Supreme Court of Canada and this Court have affirmed the modern principle of statutory interpretation in many cases that "[t]he words of an *Act* are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at ¶21).

[28] This Court typically asks three questions when applying the modern principle. These questions derive from Professor Ruth Sullivan's text, *Sullivan on the Construction of Statutes*, 6th ed (Markham, On: LexisNexis Canada, 2014) at pp. 9-10.

[29] Ms. Sullivan's questions have been applied in several cases, including *Keizer v. Slaunwhite*, 2012 NSCA 20, and more recently, in *Tibbetts*. In summary, the Sullivan questions are:

1. What is the meaning of the legislative text?
2. What did the Legislature intend?
3. What are the consequences of adopting a proposed interpretation?

(Sullivan, pp. 9-10)
[Sparks, 2019 NSCA 3, paras. 27-29]

[46] The Board has adopted the approach of statutory interpretation as outlined in *Rizzo & Rizzo Shoes*, referred to in *Sparks, supra*, in the interpretation of the provisions of an MPS and an LUB, (See for example recently, *Re Monkman*, 2019 NSUARB 167; *Re Legros*, 2019 NSUARB 148).

[47] The Board must also have regard to the *Interpretation Act*, R.S.N.S. 1989, c. 235, including ss. 9(1) and 9(5):

9(1) The law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning.

9(5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters

- (a) the occasion and necessity for the enactment;
- (b) the circumstances existing at the time it was passed;
- (c) the mischief to be remedied;
- (d) the object to be attained;
- (e) the former law, including other enactments upon the same or similar subjects;
- (f) the consequences of a particular interpretation; and
- (g) the history of legislation on the subject.

IV ANALYSIS AND FINDINGS

[48] The Board's task in an appeal of the refusal to approve a development agreement is to determine whether the Council's decision reasonably carries out the intent of the MPS. The Board's task is not to substitute its own decision for that of Council. In the words of the Court of Appeal in *Archibald*, the Board is not to "launch its own detailed planning analysis that disregards Council's view."

1. Intent of the MPS

[49] To determine the intent of the MPS, the Board must look to the specific policies which apply to the application. Previous decisions of the Court of Appeal and the Board make it clear that the Board must look at the policy provisions and interpret their meaning in a liberal, purposive manner. However, the Board is not to limit itself to specific policies. The Board must look at the MPS as a whole to determine its intent.

[50] Further, the Board may take into consideration the preamble to the MPS policies to provide context, although it must be guided by the policy itself, as stated by Oland, J.A., in *Can-Euro Investments Ltd. v. Nova Scotia (Utility and Review Board)*, 2008 NSCA 123:

[47] Moreover, the statement regarding access upon which Can-Euro relies is not found within Policy H-18 itself, but only in its preamble. A preamble to a policy may provide context for understanding the policy; however, it is the policy itself that guides council. In *Kynock v. Bennett*, 1994 NSCA 114 (CanLII), 1994 CanLII 4008 (NSCA), [1994] N.S.J. No. 238 (Q.L.), 131 N.S.R. (2d) 334 (C.A.), the respondent referred to the preamble to a policy in arguing that the Board failed to consider a factor. This Court stated:

[43] With respect, the council was required to have regard to those matters set out in Policy P-24 in determining whether or not to approve a quarry operation in a mixed use area. The preamble merely identified what problems have given rise to the need for controls but it is Policy P-24 which spells out the matters that Council is to consider. ...

See also *King's (County) v. Lutz*, 2003 NSCA 26 at ¶ 50.

[48] In my view, in determining whether Council's approval of the Agreement reasonably carries out the intent of the MPS, the Board did not commit any error of law in its approach to the weight, if any, to be given to the preamble to Policy H-18.

[51] The Board has accepted this view of a preamble in *Re Rovers*, 2014 NSUARB 59, at paragraph 197.

[52] The Board may also take into account, as an interpretive tool, the provisions of the LUB, which was enacted at the same time as the MPS.

2. Council's Reasons

[53] In one of its grounds of appeal, the appellant said that Council had considered irrelevant criteria in reaching its decision. Ms. Tsang's report stated:

It is worth noting that the official letter of refusal is not a complete representation of the discussion at the HWCC public hearing and meeting, where the actual motion to refuse did not provide specific reasons nor did it align any reasons for the refusal to MPS policy. The comments of the Councilors addressed several matters that are not planning matters or related to MPS policy. These matters included reference to the Halifax "2050 Plan", the ability to make a "qualitative" judgement, the "community's strong opposition" and "the petition".

[Exhibit H-5, p.1]

[54] Ms. Tsang also directed the Board to the video file of the Council meeting, the link for which was included in the Appeal Record, as well as the minutes of the Council meeting. The minutes had an added sentence after the three reasons for the decision which were listed in the refusal letter:

Members also recognized the community's strong opposition to the application and questioned the compatibility of a service station near residential properties, pointing out that other service stations in the community were not located near residential properties.

[Exhibit H-2, p. 427]

[55] Ms. Tsang quoted from several of the comments made by various members of Council in her report. She said she had done this "...because it illustrates the rationale behind Council's refusal..." and that the decision "was influenced by factors that are not planning matters and are not supported in MPS policy."

[56] In discussing Council's reasons in the context of s. 230(6) of the *Municipal Government Act in Archibald*, Justice Fichaud said:

[29] Section 230(6) of the *MGA* requires the municipality to give the applicant written reasons for the refusal to approve a development agreement:

Within seven days after a decision refusing to approve a development agreement or an amendment to a development agreement, the clerk shall notify the applicant in writing, giving reasons for the refusal and setting out the right of appeal.

[30] These reasons are to appear in the notice setting out the right of appeal. So the MGA intends that the municipality's stated reasons be pivotal to the appeal. Section 230(6) invites the appellant to address the Municipality's stated reasons in his grounds of appeal and beckons the Board to address them in the Board's analysis. I do not suggest the Board is confined to those stated reasons. The ultimate question – whether the Council's decision reasonably carried out the intent of the MPS – may propel the Board to other issues. See *Lewis*, ¶ 9, 22; *United Gulf*, ¶ 15, 72-74; *Midtown Tavern*, ¶ 52-53, 79. But the focus on the municipality's written reasons prompts the Board to respect its appellate role that I discussed earlier. [Emphasis added]

[57] The Board has accepted in other decisions that it need not confine itself to the stated reasons of Council. (See for example, *Re FH Construction Limited*, 2017 NSUARB 153.) The Board finds that, having viewed and heard the video recording, which is linked in the Appeal Record, Ms. Tsang accurately reported comments made by members of Council at the September 24, 2020 meeting. However, the Board's role is to determine whether Council's decision reasonably complies with the intent of the MPS. The decision-making process of Council is not a matter for the Board. Any issues regarding the process are for the courts. Individual councillors may make comments during public hearings, but ultimately Council speaks with one voice, i.e., its vote. The Board affords no weight to the comments which were recorded on the video and reported in the minutes. In any event, in this appeal, public support or opposition to a proposed development is not a provision in the MPS policies.

3. MPS Policies

[58] Ms. Tsang focussed her report on Policies RB-1, RB-10, IU-2, and IM-11 of the MPS. She said that Council's stated reasons were most closely aligned with Policy RB-10 (a), (b), (c) and (f), and Policy IM-11 (c (ii)), and (d). Because the Board must look at the MPS policies as a whole, the Board has not confined itself to these policies alone.

[59] In the Plan Area Profile of Planning District 4 in the MPS, it is noted that the development of Highway No. 333 and Prospect Bay Road "...provided the impetus for

development of a mix of land use activities along these roads... ." The Board observes that this type of development is acknowledged in several parts of the MPS.

4. Environmental Concerns

[60] Environmental concerns are addressed in Policies E-1 to E-16A of the MPS. Policies E-5 and E-6 address stormwater management, and E-7 and E-8 address the protection of watercourses. The responsibilities of provincial government departments on both these issues is acknowledged in the MPS. Beginning with the preamble to Policies E-9 and E-10, the MPS sets out "General Setback Requirements from Watercourses":

The setback of buildings and structures from watercourses is necessary when development takes place in these areas because of the potential to damage the natural environment. Inappropriate and careless development near watercourses, including unnecessary and excessive removal of vegetation and mature trees can cause erosion, sedimentation, flooding and other detrimental side effects. In order to alleviate these problems, the land use by-law will, therefore, control the location of new buildings or structures relative to watercourses, except for those that require direct access to water such as fish and boatsheds.

E-9 It shall be the intention of Council, through the land use by-law, to require all new buildings and structures, except those requiring direct access to water to be setback a minimum of twenty-five (25) feet from watercourses and waterbodies within the Plan Area.

E-10 It shall be the intention of Council to encourage people not to cut trees within twenty five (25) feet of watercourses.

[Exhibit H-3, MPS, p.12]

[61] The Appeal Record includes the studies which were filed with the appellant's application, including the Fracflow Level I Groundwater Assessment, the Pario Peer Review, and the McCallum Environmental Wetland Delineation and Assessment Report, and the later update to that report. What is clear from these reports and the evidence at the hearing is:

- There is "...adequate recharge...available within the flow system to support the water demand for the proposed development , as well as the water demand of

other residences and businesses in the area” (Fracflow, Appeal Record, p. 88 – which was based on the original application with more intense use);

- A new well will be required on the site;
- There have been approvals granted in the past by the Department of Environment for on-site sewage disposal;
- Schedule C from the development agreement shows the location of the proposed sewage disposal field at the very rear of the lot on which the development is proposed and distant from the wetland on the adjacent property as well as from the Prospect Road and residential properties;
- Schedule C from the development agreement shows that the building location is more than 25 feet from the property boundary and further from the wetland;
- Schedule C shows the drainage trench and drain spillway for stormwater runoff;
- There are no watercourses on the property;
- The proposed development is not located on the wetland which is on the adjacent property and is not expected to be impacted with appropriate controls (McCallum, Appeal Record, pp. 36-37);
- The wetland does not connect to any linear watercourses and contains no standing water, and thus while no wetland buffer is required, the zoning buffer required under the LUB will reduce indirect impacts to the wetland (McCallum update, Appeal Record, p. 190); and
- The petroleum storage tanks will be required to meet the requirements of the Department of Environment *Petroleum Storage Regulations* to reduce the potential for spills or leaks.

[62] The development agreement requires that any municipal and provincial by-laws must be complied with, which includes provincial environmental legislation. The agreement further provides that before any work is done on the site, a stormwater management plan and related documentation must be provided, as well as the Department of Environment approval of on-site sewage treatment facilities. In addition, a professionally prepared Landscaping Plan is required to include the buffer on the northeast property line 15 feet wide.

[63] Given this evidence, the Board is persuaded that the decision of Council to refuse to approve the development agreement because of “the potential environmental implications and effect on the water table” does not reasonably comply with the MPS and

in particular Policies E-5 to E-10. Further the Board concludes that the decision does not reasonably comply with MPS Policy RB-10(e) and (f) which require Council to have regard to “the means by which solid and liquid waste will be treated” and “ the effects of the development on the natural environment and the means for handling stormwater runoff.”

5. Transportation/Traffic

[64] The MPS preamble to policies regarding transportation notes that recent development of residential subdivisions in the area, which would include Hatchet Lake where the proposed development is located, has resulted in “greatly increased traffic volumes together with the narrow and winding nature of the existing highways” which raised the question of safety for residents and the travelling public. The MPS states that the Municipality has no jurisdiction over driveways located on curves, recognizing the role of the provincial government department, now TIR. However, there are no policies which specifically relate to municipal requirements.

[65] Two traffic impact studies were prepared and appear in the Appeal Record. They concluded that the volume of traffic on Prospect Road is unlikely to increase due to the development. It is anticipated that the users of the highway will be the users of the development en route.

[66] The access to the site in the first study did not satisfy TIR. The Appeal Record reveals that as a result of communication between JRL Consulting, who prepared both studies, and TIR, the concerns were addressed. TIR is also responsible for stormwater issues. While it is clear that the appellant may have to do some further work to satisfy TIR, the development agreement specifically requires both a detailed Stormwater Management Plan approved by TIR, approval by TIR of the site access and

upgrades to the Prospect Road Right of Way before any development permit can be issued.

[67] The development agreement also contains provisions regarding pedestrian safety on the site of the development as well as parking in Section 3.6.

[68] While the reasons of Council did not specifically refer to transportation and traffic issues, the Board finds that the development agreement complies with the provisions of MPS RB-10(d) which requires Council to have regard to “the impact of the proposed use on the existing road network in terms of traffic generation and vehicular and pedestrian safety.”

6. Residential B Designation

[69] The property where the development is proposed is located in the Residential B Designation on the Generalized Future Land Use Map (GFLUM) which covers the communities of Goodwood and Hatchet Lake as well as others which are not as close to the proposed development. The MPS preamble under the heading “Land Use Intent” says:

...These areas contain an existing mix of low density residential, commercial, industrial, resource and community facility uses and have been gradually accommodating a more suburban style of residential development in recent years. This designation is intended to support this continuing residential development while providing support for the traditional mix of land use activities which has occurred. This designation also recognizes the service function which developments located along Highway No. 333 have traditionally delivered and makes provision for the continued development of commercial services in a controlled manner. [Emphasis added]

[Exhibit H-3, MPS, p.39]

[70] The non-residential component and “mix of land use activities, which are interspersed among low density residential uses” is recognized in the preamble to the Residential B Designation policies. Further the preamble recognizes that because Hatchet Lake and Goodwood are closer to the “urban market”, land use activities are

“more diverse.” The MPS notes that where there is greater diversity of uses, there is greater potential for land use conflicts. As a result, while acknowledging the service function of these communities, particularly along Highway No. 333, the policies provide for “gradual integration of commercial development activities under controlled conditions.”

[71] Through MPS Policies RB-2 and RB-3, Residential B-1 and B-2 zones are to be established which will apply to Hatchet Lake and other communities. Policies RB-6 through RB-8 have specific provisions for certain uses within the zones. Policy RB-9 begins with the following preamble before its provisions:

At present, there are numerous commercial outlets located along Highway No. 333 which supply goods and services to residents throughout Planning District 4. This main transportation artery provides convenient access to commuters who travel this route daily. While it is the desire of the residents to provide for the continued development of commercial outlets within the Residential B Designation, it is also recognized that these developments must co-exist with the existing and future residential land uses. In order to minimize future land use conflicts, new commercial developments which are limited in size and type may be considered by amendment to the land use by-law. Existing commercial outlets which have been operating with minimal conflict with adjacent or nearby land uses shall be permitted to extend throughout the entirety of existing structures located on properties identified within the land use by-law, should the floor area exceed the present size limitation.

RB-9 Notwithstanding Policy RB-2 or Policy RB-4, within the Residential B Designation, it shall be the intention of Council to establish a general business zone which permits the development of general commercial uses, excluding service stations, motels and entertainment uses, up to a maximum floor area of ten (10) percent of the lot area. In order to address compatibility concerns, this zone shall place controls on open storage and outdoor display, the location and screening of refuse containers, parking and signage and require screening from existing and future residential developments. This zone shall be applied to existing commercial uses located throughout all of Planning District 4 and special provisions will be made to permit the increased use of existing structures located on lots listed in Sections 26.5 and 26.6 of the land use by-law. In considering amendments to the land use by-law, for new commercial uses, within the Residential B Designation, Council shall have regard to the following:

- (a) that the architectural design (external appearance) and scale of any building is compatible with nearby land uses;
- (b) the impact of the proposed use on the existing road network in terms of traffic generation and vehicular and pedestrian safety; and
- (c) the provisions of Policy IM-11. [Emphasis added]

[Exhibit H-3, MPS, pp.49-50]

[72] While Policy RB-9 excludes service stations, the MPS continues with the following preamble and Policy RB-10, which is the Policy under which the appellant's application is made:

It is also recognized that larger scale general commercial operations, service stations, motels, and commercial entertainment uses may be suitably located along Highway No. 333 with minimal impact on the surrounding community. Such operations are required to provide the necessary services to expanding communities and also contribute to the growing tourist industry which is highly valued within Planning District 4. These larger scale activities, however, will have a greater degree of impact on the surrounding area in terms of traffic generation, draw on ground water resources, noise, litter and aesthetics. In order to ensure that these uses are properly integrated within the community, commercial operations which exceed ten percent of the lot area, service stations, motels and commercial entertainment uses shall only be considered by development agreement pursuant to the Planning Act.

RB-10 Notwithstanding Policy RB-2 or Policy RB-4, within the Residential B Designation, Council may consider permitting uses permitted in the general business zone, which are in excess of ten (10) percent of lot area, service stations, motels and entertainment uses 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 architectural design (external appearance) and scale of any structures are compatible with nearby land uses;

(b) that adequate separation distances are maintained from low density residential developments;

(c) the provision of landscaping and screening from any adjacent residential development;

(d) the impact of the proposed use on the existing road network in terms of traffic generation and vehicular and pedestrian safety;

(e) the means by which solid and liquid waste will be treated;

(f) the effects of the development on the natural environment and the means for handling stormwater runoff;

(g) the general maintenance of the development;

(h) the hours of operation; and

(i) the provision of Policy IM-11. [Emphasis added]

[Exhibit H-3, MPS, pp.50-51]

[73] The Residential B Designation is not a zone, but as Ms. Tsang testified in response to Board questions, it illustrates what is intended for the future. She described

this as "...in essence...a mixed-use kind of residential area. It's not just restricted to just residential." Some commercial development is clearly allowed.

[74] The Board has already discussed Policies RB-10 (d), (e) and (f) as they relate to the proposed development. The Board now turns to Policies RB-10 (a), (b) and (c) in this section of the decision, leaving the provision of Policy IM-11 (RB-10 (i)) for the time being.

[75] Policy RB-10(a) addresses the "architectural design (external appearance) and scale of any structures" which are to be "compatible with nearby land uses." As the evidence discloses, and the Board's site visit confirmed, there is vacant land to the northeast of the proposed development site, for about 300 meters or more, and residential property to the southeast, the closest of which is about 70 meters away. The immediately nearby land uses are currently vacant; however, there are residences in the general area.

[76] From the sketches which appear in the Appeal Record, it is obvious that the service station will not look like a residence. The Residential B Designation recognizes the mixed usage in the Prospect Road area. The policy does not require that the structure be the same or identical, merely compatible. The development agreement provides for the exterior design in Section 3.5 and requires no less than three architectural elements, roof pitch and design requirements, no vinyl siding, and generally matching functional elements. The Appeal Record notes that the Policy Review document from Ms. Jacobs, attached to her letter to Ms. Tsang, dated February 19, 2019, suggested "...in order to integrate the proposal and to be more compatible [sic] with the local architectural style, a pitched roof is required." Further in Section 3.4 of the development agreement, the fuel pumps must be setback from the road; the drive-through window cannot face the road;

the queuing area is to be screened from the road; and, the height of the service station building is required to comply with the C-2 zone requirements.

[77] The Board finds that the development agreement provides for a use which is required to be in external appearance and scale compatible with nearby land uses.

[78] Policy RB-10(b) addresses the separation distances from low density residential developments. Policy RB-10(c) refers to landscaping and screening for any adjacent residential development. The Board sees these two policies as related. Without any questioning about what "adjacent" means, the Board accepts that the term could be broadly interpreted by Council.

[79] The evidence in the Appeal Record and before the Board is that the nearest residences to the northeast are more than 300 meters away, and to the southeast, 70 meters away. There was no definitive measurement before the Board of the distance to residences at the rear of the proposed development, but it was clear both from the site plan and what the Board observed that no residence appeared to directly overlook the site. Further, the service station is proposed to be constructed near the Prospect Road at the front portion of the lot to be subdivided. Between the site and the nearest homes, including those on Sandridge, there is a vacant parcel and at the closest boundary to those homes, a buffer of trees. In fact, the dense buffer is recognized in the discussion of the appellant's property in the preamble to the policies on Industrial Uses which appears in the next section of this decision.

[80] The development agreement contains provisions for a buffer on the northeast in Section 3.7.2(d), in addition to requiring a landscaping plan. The matrix which

appeared in the Staff Report to Council addresses these two policy requirements. The portion of the matrix addressing MPS Policy RB-10 is set out below:

<p><i>RB-10 Notwithstanding Policy RB-2 or Policy RB-4, within the Residential B Designation, Council may consider permitting uses permitted in the general business zone, which are in excess of ten (10) percent of lot area, service stations, motels and entertainment uses in accordance with the development agreement provisions of the <u>Planning Act</u>. In considering such agreements, Council shall have regard to the following:</i></p>	
Policy Criteria	Staff Comment
<p>(a) <i>that the architectural design (external appearance) and scale of any structures are compatible with nearby land uses;</i></p>	<p>Architectural design provisions have been included in the proposed development agreement. The site is in close proximity to residential uses therefore a pitched roof, lighting controls, buffering and landscaping requirements are included in order to minimize the impact of architectural integrity of the homes and uses along Prospect Road.</p>
<p>(b) <i>that adequate separation distances are maintained from low density residential developments;</i></p>	<p>There is residential development in close proximity. The closest residential dwelling is approx. 75 metres to the southwest of the site. On both sides of the site there is a vacant lot. A buffer is required along the northeastern property line and a landscaping plan is required for the site.</p>
<p>(c) <i>the provision of landscaping and screening from any adjacent residential development;</i></p>	
<p>(d) <i>the impact of the proposed use on the existing road network in terms of traffic generation and vehicular and pedestrian safety;</i></p>	<p>A Traffic Impact Study (TIS) was submitted in support of this application. The TIS asserts that the majority of traffic using the proposed development will be traffic already using the Prospect Road (pass-by trips) and that the proposed development is not expected to cause any operation related problems on Prospect Road. Prospect Road is a provincial arterial highway which handles volumes of approximately 940 vehicle trips in the am peek and 1,200 vehicles in the pm peek. The Nova Scotia Department of Transportation and Infrastructure Renewal (NSTIR) has reviewed the proposal and advised that the access to the site and the Prospect Road will need to be widened to accommodate dedicated turning lanes. A truck turning design was also submitted which was analyzed for vehicular and pedestrian safety. The proposed use, being an auto-centric land use is not anticipated to generate much pedestrian traffic. The proposed development agreement</p>

	<p>requires a signed dedicated pedestrian pathway from the main proposed building to the adjacent site that has a building permit for a as-of right commercial plaza. This will reduce potential pedestrian and vehicle movement conflicts.</p>
<p>(e) <i>the means by which solid and liquid waste will be treated;</i></p>	<p>The subject site will be serviced by on-site septic and well services. Permits will be required from NS Environment prior to a Building permit.</p>
<p>(f) <i>the effects of the development on the natural environment and the means for handling stormwater runoff;</i></p>	<p>The proposed development agreement requires a detailed site grading and stormwater management plan be submitted prior to the commencement of any work on the site.</p>
<p>(g) <i>the general maintenance of the development;</i></p>	<p>The proposed development agreement addresses the general maintenance of the property.</p>
<p>(h) <i>the hours of operation; and</i></p>	<p>Given the distance from residential development and the vacant lots discussed above, no restrictions have been placed on the hours of operation of the development.</p>
<p>(i) <i>the provision of Policy IM-11.</i></p>	<p>See Table Below</p>

[Exhibit H-3, MPS, pp.356-357]

[81] The second and third reasons given by Council for refusing to approve the development agreement are “the proximity of the proposed development to residential properties” and “the lack of adequate buffering between the proposed development and residential properties, wells and wetland.” The Board has already addressed the “wells and wetland” above.

[82] The Board observes that the property is zoned I-1 and is in the middle of a Residential B Designation area. The Board considers that the zoning already recognizes that an industrial or commercial use can exist on the property even though there are also residential homes within the Designation. The MPS acknowledges the mixed-use nature of the Prospect Road area. This may be an unusual situation, as Ms. Tsang said. However, as the appellant’s expert witness and counsel suggest, and noted by the Board, more intensive uses would be permitted as of right. Given the location of the proposed development on the property, and the fact that the development agreement addresses buffers and landscaping, the Board cannot conclude that the decision of Council to refuse to approve the development agreement reasonably complies with the MPS.

7. Industrial Uses

[83] The MPS contains a section called “Existing Industrial Uses,” and as Ms. Tsang noted in her report, in the preamble to this section, the property now owned by the appellant which is the proposed location of the service station, convenience store and fast-food drive-through is referred to in the preamble to the policies in this section. The preamble states that the MPS is not intended “to support the future development of industrial uses within the Residential B Designation”; however, the appellant’s property and one other property are exempted from this. The appellant company was formerly

known as Double D. Construction, according to Mr. Taylor's testimony. The preamble continues:

... By special request, these landowners have advanced proposals for the future development of industrial uses which will have minimal impact on surrounding lands. ...

Double D. Construction intends to use its lands for the future development of a shopping centre and warehousing facilities. This parcel of land is separated from surrounding lands by a dense buffer of trees which will screen future development, while providing for the development of services which will benefit the entirety of Planning District 4. The lands of Alvin MacDonald and Double D. Construction will, therefore, be zoned light industrial in accordance with Policy RB-15. [Emphasis added]

[Exhibit H-2, MPS, p.105]

[84] The preamble states that the lands will be zoned light industrial. Policy IU-2 describes the light industrial zone and states that to address compatibility there will be controls for screening from residential uses, and no obnoxious uses will be permitted. Policy IU-3 states that Council does not intend to identify any particular area for industrial development on the GFLUM. Although Policy IU-4 refers to new industrial uses by development agreement, this relates to amendment of the MPS. According to Ms. Tsang, this provision first requires an amendment to the MPS, which she described as "cumbersome", and then an application for a development agreement. She said this provides "a dual approval process for any new industrial locations." As the lands are zoned Light Industrial (I-1), which the Board discusses later in this decision, the Board concludes that it is Policy RB-10 which relates to the proposed use, not Policy IU-4.

8. Implementation Policies

[85] The MPS Implementation policies set out "the basic requirements for proper implementation, including the development of a land use by-law" based on the MPS policies. Under Policy IM-9(b)(v), service stations, among other uses, are only to be considered by development agreement in accordance with Policy RB-10.

[86] MPS Policy RB-10 directs Council to consider the provisions of Policy IM-11 which provides:

IM-11 In considering development agreements or amendments to the land use bylaw, in addition to all other criteria as set out in various policies of this Planning Strategy, 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;
- (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;
 - (ii) the adequacy of on-site sewerage and water services;
 - (iii) the proximity of the proposed development to schools, recreation or other community facilities and the capability of these services to absorb any additional demands;
 - (iv) the adequacy of road networks leading to or within the development; and
 - (v) the potential for damage to or for destruction of designated historic buildings and sites.
- (c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) type of use;
 - (ii) height, bulk and lot coverage of any proposed building;
 - (iii) traffic generation, access to and egress from the site, and parking;
 - (iv) open storage;
 - (v) signs; and
 - (vi) any other relevant matter of planning concern.
- (d) that the proposed development is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding.
- (e) **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. (RC-Jul 2/02;E-Aug 17/02)**

[H-3, MPS, pp. 112-113]

[87] Attachment B to the August 19, 2020 staff report to Council reviewed the relevant policies of IM-11 from the MPS:

IM-11 <i>In considering development agreements or amendments to the land use bylaw, in addition to all other criteria as set out in various policies of this Planning Strategy, Council shall have appropriate regard to the following matters:</i>	
Policy Criteria	Staff Comment
(a) <i>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;</i>	The proposal is consistent with Policy RB-10 (see above table).
(b) <i>that the proposal is not premature or inappropriate by reason of:</i>	...
(i) <i>the financial capability of the Municipality to absorb any costs relating to the development.</i>	The developer will be responsible for all costs associated with the development.
(ii) <i>the adequacy of on-site sewerage and water services;</i>	Please see staff comment on Policy RB-10(e) above.
(iii) <i>the proximity of the proposed development to schools, recreation or other community facilities and the capability of these services to absorb any additional demands;</i>	This proposal would not result in an increase to school age population nor is it anticipated to affect community recreation facilities.
(iv) <i>the adequacy of road networks leading to or within the development; and</i>	As discussed above under policy criteria RB-10(d) the Prospect Road is a provincial arterial highway capable of accommodating the traffic generated by the proposed development.
(v) <i>the potential for damage to or for destruction of designated historic buildings and sites.</i>	No historical buildings or sites have been identified.
(c) <i>that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of</i>	...
(i) <i>type of use;</i>	The proposed development agreement enables the use of the lands for a service station and included an associated drive-through restaurant

	and convenience store which is permitted as-of-right. No conflict is anticipated with respect to these uses and the adjacent residential uses.
(ii) <i>height, bulk and lot coverage of any proposed building;</i>	The proposed development agreement requires buildings on the subject site to meet the requirements of the C-2 (General Business) zone.
(iii) <i>traffic generation, access to and egress from the site, and parking;</i>	Further to policy criteria RB-10(d) discussed above, the proposed development must meet the parking requirements for the C-2 zone. The location of parking areas is not anticipated to cause conflict with the abutting uses.
(iv) <i>open storage;</i>	The proposed development agreement requires all refuse and recycling materials to be enclosed within a building or suitable container and screened from the street.
(v) <i>signs and</i>	The proposed development agreement addresses the requirements for signage. Signs are to be permitted as per Part 5 of the Land Use By-law. Additionally, only one (1) sign on the pump island canopy is permitted.
(vi) <i>any other relevant matter of planning concern.</i>	No other planning issues have been identified.
(d) <i>that the proposed development is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding.</i>	None of these features have been identified on the subject site except for the large wetland on the adjacent property to the northeast of the site. A delineation report was submitted to confirm the location of the wetland and also to recommend vegetative species within the required buffer.
(e) <i>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. (RC-Jul 2/02;E-Aug 17/02)</i>	No holding zone has been established and no additional lots are proposed in conjunction with this application.

[H-3, Attachment B, pp. 357-358]

[88] Some of the criteria in Policy IM-11 is like criteria discussed in the section of this decision dealing with Policy RB-10. Policy IM-11 includes under (b)(ii) “the adequacy of on-site sewerage [sic] and water services”; and (iv) “adequacy of road networks leading to or within the development.” Both issues have been discussed earlier in this decision as they relate to Policy RB-10. The same is true of Policy IM-11(c)(iii) regarding traffic generation, access to and egress from the site and parking. The Board observes that Policy IM-11(c) requires controls on the proposed development “...so as to reduce conflict with any adjacent or nearby land uses” and sets out issues to be addressed.

[89] Ms. Tsang said in her report that the MPS acknowledges that there may be conflict between land uses, but that “The MPS has no intention to eliminate land use conflict and has no requirement to achieve compatibility.” In the Board’s view, the MPS does contain references to “compatibility,” but that is in connection with architectural design and scale, which the Board has already addressed. However, the Board agrees that it is the reduction, and not the elimination, of conflict that Policy IM-11(c) addresses. The Board accepts Ms. Tsang’s evidence on this point. In a community where mixed land uses are recognized such as in the Residential B Designation, the Board finds it is not reasonable to conclude that the proposed development is prohibited. It is, in fact, expressly anticipated by MPS RB-10. The controls which Policy IM-11(c) anticipates are set out in the LUB, especially height, and lot coverage. Open storage signs are addressed in the development agreement.

[90] Based on the foregoing, the Board finds that the requirements of Policy IM-11 have been properly considered in the development agreement, and that Council's decision does not reasonably comply with the intent of the MPS.

9. Land Use Bylaw

[91] The following definitions from the LUB are relevant:

2.10 AUTOMOTIVE REPAIR OUTLET means a building or part of a building or a clearly defined space on a lot used for repair and service of motor vehicles and may include muffler, brake, radiator, engine, tire and glass replacement, wheel alignment, and other specialized activities directly related to the repair or alteration of motor vehicles, but shall not include paint and body repairs, the manufacture or fabrication of motor vehicle parts for the purpose of sale, or the retailing of gasoline or other fuels.

...

2.19 CONVENIENCE STORE means an establishment where food stuffs, tobacco, potent medicines, periodicals and other items of household convenience are kept for retail sale and may include a takeout restaurant and/or video rental as an accessory function.

...

2.62 OBNOXIOUS USE means a use which, by its nature or by method of operation creates a nuisance or is offensive by creating noise or vibration, or by reason of emitting gas, fumes, dust, oil, objectionable odour, or airborne pollutants or by reason of the unsightly storage of goods, wares, merchandise, salvage, refuse matter, waste or other materials and shall include operations which produce wastes which cannot be treated by an onsite sewage disposal system approved pursuant to the Regulations Respecting On-Site Sewerage Disposal Systems or which involves, as the primary function, the processing, production or warehousing of potentially dangerous goods or hazardous materials.

...

2.76 RESTAURANT

(a) Drive-In means a building or part of a building wherein food is prepared and offered for sale to the public for consumption within or outside the building. A drive-in restaurant is characterized by the provision of take-out services at a counter or from a drive through car pick up window. It does not provide the service of delivering to or waiting on tables nor is it licensed to sell alcoholic beverages.

(b) Full Service means a building or part of a building wherein food is prepared and offered for sale to the public primarily for consumption within the building and may include a take-out area which does not exceed 10% of the gross floor area of the full service restaurant. A full service restaurant is characterized by the provision of table service, including buffet service and may also be licensed to serve alcoholic beverages.

(c) Take-Out means a building or part of a building wherein food is prepared and offered for sale to the public primarily for off-premises consumption and may include a take-out window and/or seating area which does not exceed 25% of the gross floor area of the take-out restaurant. A take-out restaurant does not provide the service of delivery to or waiting on tables nor is it licensed to sell alcoholic beverages. Take-out restaurants, however, may provide a home delivery service.

...

2.77 RETAIL STORE means a building or part of a building in which goods, wares, merchandise, substances, articles or things are offered for sale directly to the public at retail value.

...

2.83 SERVICE STATION means a building or part of a building or a clearly defined space on a lot used for the retail sale of lubricating oils and gasolines and may include the sale of automotive accessories and the servicing and general repairing of motorized vehicles and may include washing establishments.

...

2.91 WATERCOURSE means a lake, river, stream, ocean or other natural body of water.
[Emphasis added]

[Exhibit H-3, LUB, pp. 2,5,11, 12-14, and 15]

[92] Section 3.16(b)(v) of the LUB identifies the proposed service station use as only permitted by a development agreement in the Residential B Designation. The LUB contains several provisions which relate to any form of development in Planning District 4, including the following:

- s. 3.3 which requires a development permit to be issued before any development, and only if all LUB provisions are satisfied;
- s. 3.4 which require compliance with the Building by-law and any other by-laws or provincial or municipal statutes and regulations;
- s. 4.1 regarding septic tank and disposal field requirements and noting the Department of Environment regulations apply for installation of a septic tank;
- s. 4.7 regarding road entrance reserves to meet TIR requirements;
- s. 4.19 regarding watercourse setbacks and buffers;
- s. 4.22 which requires illumination to be directed away from adjoining properties;
- s. 4.25 which sets out parking requirements for various uses including, among others, retail stores, drive in and take out restaurants, and any uses which are not specified, and directing reserved spaces for the mobility disabled;
- s. 4.26 which sets out standards for parking lots;
- s. 4.27 which sets out standards for parking spaces for the mobility disabled;
- s. 4.28 which sets out loading space requirements; and,
- s. 4.32 which requires plans showing the location of all wetlands identified on Schedule G to the LUB and prohibits any development within such wetland.

[93] The proposed development must comply with all these provisions. That is also clear from the terms of the development agreement, in addition to those applying to the current zoning of the property.

[94] As noted on the Zoning Map, the appellant's property is zoned I-1, and is surrounded by RA-1 zoning to the south-east, and RB-1 zoning to the north-east. Along Prospect Road, the Zoning Map shows a variety of zoning including other properties zoned I-1, I-3, P-2, and C-2. Part 27 of the LUB identifies the permitted uses in the Light Industry zone, which does not include a service or gas station, but does permit all C-2 uses. It is this proposed use which necessitates a development agreement.

[95] The C-2 (General Business) Zone permitted uses are set out in Part 26 of the LUB. These uses include "Retail stores" which would include the proposed convenience store, and "Restaurants, drive-inns [sic], take-outs and mobile canteens" which would include the fast-food drive-through. These uses are permitted "as of right." The list also includes "Automotive repair outlets", although the proposed service station does not fall within the definition of this use, and the evidence does not indicate that such a use is proposed. Part 26 goes on to list the requirements of the C-2 zone which the proposed development would have to meet:

26.2 C-2 ZONE REQUIREMENTS

In any C-2 Zone, where uses are permitted in accordance with Section 26.2, no development permit shall be issued except in conformity with the following:

Minimum Lot Area	20,000 square feet (1858.1 m ²)
Minimum Frontage	100 feet (30.5 m)
Minimum Front or Flankage Yard	30 feet (9.1 m)
Minimum Rear Yard or Side Yard	15 feet (4.6 m)
Maximum Height of Main Building	35 feet (10.7 m)

26.3 OTHER REQUIREMENTS: COMMERCIAL USES

Where uses are permitted as commercial uses in a C-2 Zone, the following shall apply:

- (a) The gross floor area of the commercial use shall not exceed ten (10) percent of the lot area.
- (b) Any area devoted to open storage shall not exceed fifty (50) percent of the lot area.
- (c) No outdoor storage or display shall be permitted within any required yard except as permitted within clause (e).
- (d) Any area devoted to outdoor display shall be not exceed twenty-five (25) percent of the lot area.
- (e) That any display areas shall be set back a minimum of ten (10) feet (3.0 m) from the street line.
- (f) That all commercial refuse containers shall be located beside or behind the building which it serves, subject to servicing constraints.
- (g) That all commercial refuse containers shall be enclosed by an effective visual screen so as to not be visible from the street and/or highway and from adjacent properties.

26.4 OTHER REQUIREMENTS: COMMERCIAL USES ABUTTING RESIDENTIAL USES OR VACANT LOT

Notwithstanding the provisions of Section 26.2, within a C-2 Zone, where any commercial use abuts any residential use and/or vacant lot(s), the following shall apply:

- (a) The side yard which abuts residential use(s) and/or vacant lot(s) shall consist of the greater of fifteen (15) feet (4.6 m) or five (5) percent of the lot frontage.
- (b) The rear yard which abuts residential use(s) and/or vacant lot(s) shall consist of the greater of fifteen (15) feet (4.6 m) or five (5) percent of the minimum lot depth.
- (c) No parking or driving aisles shall be permitted within the required side and/or rear yard which abuts a residential use(s) and/or vacant lot(s).
- (d) An effective landscaped barrier shall be provided throughout the required rear and/or side yard which abuts a residential use(s) and/or vacant lot(s). This barrier shall consist of either existing vegetation, newly established vegetation or a combination thereof, so long as it provides an effective visual screen.

[Exhibit H-3, LUB, pp.92-93]

[96] The matrix included in the staff report indicates that the development agreement requires the development to meet the requirements of the C-2 zone which are the same as those in the I-1 zone; however, the I-1 zone does not address the maximum height of a building, and the C-2 zone does not address the maximum lot coverage. The development agreement specifically provides that the maximum height is to be in accordance with the C-2 zone in Section 3.4.7.

10. The Development Agreement

[97] The draft development agreement which was provided with the Staff Report to Council provides that the development must comply with its terms as well as all of the LUB (except where modified), all municipal by-laws, and provincial laws and regulations. This offers a means to achieve compliance with the concerns which were raised at the public meetings.

[98] In the view of the Board, a development agreement can be more beneficial in that it is tailored to the concerns which are raised by a particular development and allows Council greater control than it might otherwise have. In this development agreement, there are provisions about the stormwater management, site disturbance, on-site sewage disposal, access from the highway, landscaping, lighting, the configuration of the service station and drive-through. Parking and signage are also addressed, as is solid waste, screening and maintenance. The Board also observes that the agreement contains provisions regarding the number of pumps and illumination and other provisions which the planning staff imported in part from another area of HRM because there were no similar provisions for Planning District 4. Thus, the protections of those provisions are a benefit because without them, there would be no restrictions under the current MPS and LUB for those items.

[99] The provisions of an MPS are implemented through the provisions of the LUB. A development agreement may remove or amend the provisions of the LUB. It is, of course, possible that a development agreement may be refused by Council because it is not consistent with the policies of the MPS. The Board considers that Council may do so when the MPS requires an exercise of Council's discretion, as discussed in *Archibald*.

In this case, the Board finds that there is “no deep shade” to be illuminated, and nothing which requires Council to undertake any balance of interests and exercise its discretion. The development agreement satisfies the provisions of the MPS. Council’s decision here does not reasonably comply with the policies.

[100] The Board notes that in this instance, HRM’s planning staff recommended approval of the development agreement. There is nothing which requires Council to accept the recommendations of planning staff, but as noted in other decisions of the Board (for example, *Re Bona Investments Limited*, 2009 NSUARB 58, and *Re Griff Construction Limited*, 2011 NSUARB 51), there must be good planning reasons to do so. The Board considers that such reasons must be rooted in the MPS. Here, there do not appear to be any good planning reasons for Council to have rejected the staff recommendation. The MPS provided for a service station development if certain requirements were met, and the development agreement addressed those requirements. The zoning of the property was consistent with the recognition of the mixed uses in the planning area.

V CONCLUSION

[101] Even though HRM presented no evidence and did not cross-examine the witnesses for the appellant, the onus remains on the appellant in this appeal. The Board is satisfied that the appellant has met the burden of proof, on a balance of probabilities, based on the evidence filed and the testimony at the hearing, to persuade the Board that Council’s decision to refuse to approve the development agreement to allow the service station, convenience store and fast-food drive-through restaurant does not reasonably

comply with the policies of the MPS for Planning District 4. Council is therefore directed to approve the development agreement.

[102] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 29th day of January, 2021.



Roberta J. Clarke.