



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

Item No.7.1
North West Community Council
Halifax and West Community Council
April 14, 2021

TO: Chair and Members of North West Community Council
Chair and Members of Halifax and West Community Council

SUBMITTED BY: *Original Signed*

Kelly Denty, Executive Director of Planning and Development

DATE: March 29, 2021

SUBJECT: **Case 22450: Amendments to the Existing Development Agreement for Bedford West, Sub Area 9, Bedford and Halifax**

SUPPLEMENTARY REPORT

ORIGIN

- Application by Cresco Holdings Limited: Planning Application Case 22450;
- On November 26, 2020, North West Community Council and Halifax and West Community Council refused the proposed Amending Development Agreement to allow the reallocation of commercial density to residential density in Bedford West, Sub Area 9;
- On December 7, 2020 Cresco Holdings Limited filed an appeal of Council's decision to refuse the Development Agreement to the Nova Scotia Utility and Review Board;
- On February 4, 2021, the Nova Scotia Utility and Review Board held a Hearing to consider the appeal of Council's decision; and
- On March 23, 2021, the Nova Scotia Utility and Review Board directed that Halifax and West Community Council approve the Amending Development Agreement to allow the reallocation of commercial density to residential density in Bedford West, Sub Area 9.

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

It is recommended that North West Community Council:

1. Approve the proposed amending agreement, which shall be substantially of the same form as set out in Attachment A; and

2. Require the amending 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.

It is recommended that Halifax and West Community Council:

1. Approve the proposed amending agreement, which shall be substantially of the same form as set out in Attachment A; and
2. Require the amending 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 November 26, 2020, Halifax and West Community Council held a joint virtual public hearing with North West Community Council to consider substantive amendments to an existing development agreement to allow for the redistribution of up to 162 persons from the maximum permitted commercial population to the maximum permitted residential population within Bedford West, Sub Area 9. Policies BW-21D and BW-39C of the Bedford West Secondary Planning Strategy (SPS) enable the redistribution of population within the Sub Area.

North West Community Council and Halifax and West Community Council each refused to approve the amending development agreement. North West Community Council expressed concerns around traffic, stormwater management, and the lack of transit and active transportation. Halifax and West Community Council stated the development lacks active transportation and is not transit or pedestrian friendly. They also expressed traffic and environmental concerns, including increased greenhouse gas emissions and the impact on Kearney Lake. The Council also noted that it was unclear how the reduction of commercial density would occur.

Proposal Details

The applicant has proposed to amend the existing development agreement for Bedford West, Sub Area 9 to allow for the reallocation of density from the commercial population to the residential population. Specifically, the applicant has requested an additional 72 multi-unit residential units for a maximum total of 272 units in Sub Area 9 while keeping the existing overall maximum population of 1,210.5 persons. To accommodate the additional residential units, the proposed amendment enables a transfer of 162 persons from the commercial lands to the residential lands thereby reducing commercial development intensity by an amount equivalent to the proposed increase in residential intensity.

For more information, please see the staff report (Attachment A) which was tabled at North West Community Council on September 14, 2020 and at Halifax and West Community Council on September 24, 2020.

Appeal, UARB Decision and Order

The refusal of the development agreement was subsequently appealed by the applicant to the Nova Scotia Utility and Review Board (the Board). Pursuant to section 22(1) of the *Utility and Review Board Act*, and section 262 of the *HRM Charter*, the Board has exclusive jurisdiction to hear appeals from decisions of Council relating approval or denial of development agreements. The Board heard the appeal on February 4, 2021 (2021 NSUARB 34 - M09924) and the appeal was allowed. Consequently, North West Community

Council and Halifax and West Community Council have been directed to approve the development agreement by the Order of the Board.

Through their process, the Board must not interfere with the decision of Council unless it determines Council's decision does not reasonably carry out the intent of the Municipal Planning Strategy (MPS). If the appellant can show, on the balance of probabilities, 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 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 2021-2022 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 Nova Scotia 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 report provided to North West Community Council and Halifax and West Community Council as contained in Attachment A.

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, postcards mailed to property owners within the notification area, a public information meeting held on November 24, 2019, and a public hearing held on November 26, 2020. No further engagement has been performed subsequent to the Board Order. An action order provided by the Board is not appealable to the 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

Attachment A: Staff Report and Amending Development Agreement
Attachment B: Nova Scotia Utility and Review Board Order of March 23, 2021
Attachment C: Nova Scotia Utility and Review Board Decision of March 23, 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: Meaghan Maund, Planner II, Current Planning, 902.233.0726

Attachment A: Staff Report and Amending Development Agreement



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

Item No. 4.1.1
North West Community Council
September 14, 2020 First Reading
and
Halifax and West Community Council
September 24, 2020 First Reading
Joint Public Hearing November 26, 2020

TO: Chair and Members of North West Community Council
Chair and Members of Halifax and West Community Council

- Original Signed -

SUBMITTED BY: _____
Kelly Denty, Director of Planning and Development

DATE: July 22, 2020

SUBJECT: **Case 22450: Amendments to the Existing Development Agreement for Bedford West, Sub Area 9, Bedford and Halifax.**

ORIGIN

Application by Cresco Holdings Limited.

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 amending agreement, as set out in Attachment A, to allow the reallocation of commercial density to residential density in Bedford West, Sub Area 9 and schedule a public hearing to be held concurrently with the North West Community Council;
2. Approve the proposed amending agreement, which shall be substantially of the same form as set out in Attachment A; and
3. Require the amending 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.

It is recommended that North West Community Council:

1. Give notice of motion to consider the proposed amending agreement, as set out in Attachment A, to allow the reallocation of commercial density to residential density in Bedford West, Sub Area 9 and schedule a public hearing to be held concurrently with the Halifax and West Community Council;
2. Approve the proposed amending agreement, which shall be substantially of the same form as set out in Attachment A; and
3. Require the amending 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

Cresco Holdings Limited has requested substantive amendments to an existing development agreement to allow for the transfer of density of up to 162 persons from the maximum permitted commercial population to the maximum permitted residential population within Sub Area 9 of Bedford West. This proposed amendment would not only affect lands owned Cresco Holdings Limited, but one other property owner. The existing agreement is written such that all development within the Sub Area draws from one shared pool of potential density. As the subject property and the existing development agreement spans two Community Council areas, approval by both the Halifax and West and the North West Community Councils is required.

Subject Site	Portions of Bedford West, Sub Area 9 on Hogan Court, Bedford
Location	The intersection of Larry Uteck Boulevard, Hogan Court, and Highway 102
Regional Plan Designation	Urban Settlement (US)
Community Plan Designation (Map 1)	Bedford West Secondary Planning Strategy (BWSPS) within the Bedford Municipal Planning Strategy and the Halifax Municipal Planning Strategy
Zoning (Map 2)	Bedford West Comprehensive Development District (BWCCD) within the Bedford Land Use By-law and the Halifax Land Use By-law
Size of Site	Sub Area 9 is approximately 36 acres and the lands affected by this application are approximately 83,300 square metres
Current Land Use(s)	Construction is underway for a new 200-unit multi-unit dwelling, a new grocery store, and a new 110-unit hotel with convention centre. The rest of the affected lands are currently vacant.
Surrounding Use(s)	West of Sub Area 9 is low density residential, institutional, and Kearney Lake. Lands to the south are vacant. To the east, on the other side of Highway 102, is commercial and high-rise residential. To the north and north-west is high-rise residential development that transitions to low rise residential development.

Proposal Details

The applicant has proposed to amend the existing development agreement for Bedford West, Sub Area 9 to allow for the reallocation of density from the commercial population to the residential population. Specifically, the applicant has requested an additional 72 multi-unit residential units for a maximum total of 272 units in Sub Area 9 while keeping the existing overall maximum population of 1,210.5 persons. To accommodate the additional residential units, the proposed amendment enables a transfer of 162 persons from the commercial lands to the residential lands thereby reducing commercial development intensity by an amount equivalent to the proposed increase in residential intensity.

Existing Development Agreement

In 2012, North West Community Council and Chebucto Community Council approved a development agreement to allow for a mixed-use development with Sub Area 9 of Bedford West (Case 16666). The agreement generally:

- allows for a mixed-use development containing residential and commercial uses;
- provides general commercial and residential building design criteria; and
- establishes a transportation plan for the area, including a road network and trail plan.

The agreement for this Sub Area established a maximum permitted population density of 1,476 persons, of which up to 715.5 persons could be allocated for residential purposes. These 715.5 persons are equivalent to 318 multiple unit dwelling units. Reallocation of density within the Sub Area is considered a substantive amendment to the existing development agreement.

In 2015, Halifax and West Community Council and North West Community Council approved an amendment to the existing agreement to allow for the transfer of 118 dwelling units from Sub Area 9 of Bedford West to the Wentworth lands to the east of Highway 102 (Case 18514). This amendment reduced the maximum permitted multi-unit residential units from 318 to 200 and the overall population from 1476 persons to 1210.5 persons in Sub Area 9.

In 2017, Halifax and West Community Council and North West Community Council approved the second amendment to the agreement for Sub Area 9 to permit hotel/motel/guest house uses within the general commercial areas of the development (Case 20996).

Enabling Policy and LUB Context

The existing development agreement is enabled under policies BW-38A, BW-39, and BW-40A of the Bedford West Secondary Planning Strategy (SPS). These policies allow for a mixed-use development containing a range of commercial activities, with emphasis on highway commercial uses and medium to high-density residential uses. The policies provide direction on landscaping, pedestrian access, building design, and density.

Joint Decision of Community Councils

The subject site falls within the jurisdictional boundary of both the Halifax and West Community Council and the North West Community Council. As such, the decision about the proposed amending agreement is a joint decision between the two Community Councils.

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, postcards mailed to property owners within the notification area, and a public information meeting held on October 24, 2019.

The HRM website had 2001 page views, of which 1221 were unique page views, and the average time on the webpage was 2 minutes and 58 seconds. Postcards were sent to approximately 648 unique addresses.

Approximately 15 members of the public attended the public information meeting. Attachment C contains a summary of the meeting. In addition to the public who attended the public information meeting, five people called, and one emailed about this application. The comments received include the following topics:

- Clarification of what could be built on the lands;
- Clarification of the permitted population density and proposed changes to this density;

- Concerns about the amount of traffic that will be generated from the development and that it will further aggravate the high volume of vehicular traffic in the neighbourhood; and
- Clarification of whether there would be changes to the existing road infrastructure (i.e., will Hogan Court be widened or extended to Kearney Lake Road?).

A public hearing must be held by Halifax and West Community Council and North West Community Council before they can consider approval of the proposed development agreement. Should the Community Councils 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 local residents and property owners.

North West Planning Advisory Committee

On November 13, 2019, the North West Planning Advisory Committee (PAC) recommended that the application be approved. A report from the PAC to Community Council will be provided under separate cover.

DISCUSSION

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

Proposed Development Agreement

Attachment A contains the proposed amendments to the existing development agreement for the subject site and the conditions under which the development may occur. The proposed amending agreement will permit up to 272 multiple unit dwelling units within Bedford West Sub Area 9, an increase of 72 units, and maintains the existing maximum population of 1,210.5 persons. Of the matters addressed by the proposed amending agreement to satisfy the Bedford West SPS criteria as shown in Attachment B, the following have been identified for detailed discussion.

Population Density

Policies BW-16A and BW-16B of the Bedford West SPS cap the population for Sub Area 9 at 1,476 persons. Other policies control the maximum persons per acre for a given land use and enable density to be transferred throughout the Sub Area. For the purposes of calculation, population density is based on “assumed occupancies” of 3.35 persons per single unit, two-unit or townhouse dwelling and 2.25 persons per unit in each multiple unit dwelling; or varying persons per acre for general commercial, mixed use business campus uses, local commercial, community facility and institutional uses. Accordingly, some calculations result in densities which equate to a “fraction” of a person.

The first amending agreement transferred 118 dwelling units out of the Sub Area, effectively reducing the maximum population to 1,210.5 persons. However, the policies in the Bedford West SPS were not revised to reflect the reduced density. The proposed third amending agreement respects the maximum population of 1,210.5 persons and the maximum persons per acre for a given land use and is overall reasonably consistent with the intent of the Bedford West SPS.

The existing agreement is written such that all development in the Sub Area draws from a shared pool of density. There are multiple land owners in the Sub Area and by the applicant asking to have the ability to have additional residential units while keeping the maximum population the same, the pool of commercial population density shared by the other land owners is effectively reduced. The applicant has indicated it is their intention to reduce the commercial density in exchange for the additional residential density on their lands only. If Council approves the amending agreement, the other land owner will also need to sign the

amending agreement. The applicant for this proposal is aware of this requirement, and it is staff's understanding that they have been in communication with these other land owners concerning this matter.

Development Agreement Execution

The COVID-19 pandemic has resulted in difficulties in having legal agreements signed by multiple parties in short periods of time. To recognize this difficulty these unusual circumstances present, staff are recommending extending the signing period for agreements following a Council approval and completion of the required appeal period. While normally agreements are required to be signed within 120 days, staff recommend doubling this time period to 240 days. This extension would have no impact on the development rights held within the agreement, and the agreement could be executed in a shorter period of time if the situation permits.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise the proposal is reasonably consistent with the intent of the Bedford West SPS. The policy prescribes a maximum population density for the Sub Area but permits the redistribution of this population density within the Sub Area. The maximum permitted population density will not change as a result of this proposal, only the ability to have additional residential units at the expense of less commercial density. Therefore, staff recommend that the Halifax and West Community Council and North West Community Council approve the proposed amending development agreement.

FINANCIAL IMPLICATIONS

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this proposed development agreement. The administration of the proposed development agreement can be carried out within the approved 2020-2021 budget and with existing resources.

RISK CONSIDERATION

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

ENVIRONMENTAL IMPLICATIONS

No environmental implications are identified.

ALTERNATIVES

1. The Halifax and West Community Council and North 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 another 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. The Halifax and West Community Council and North 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

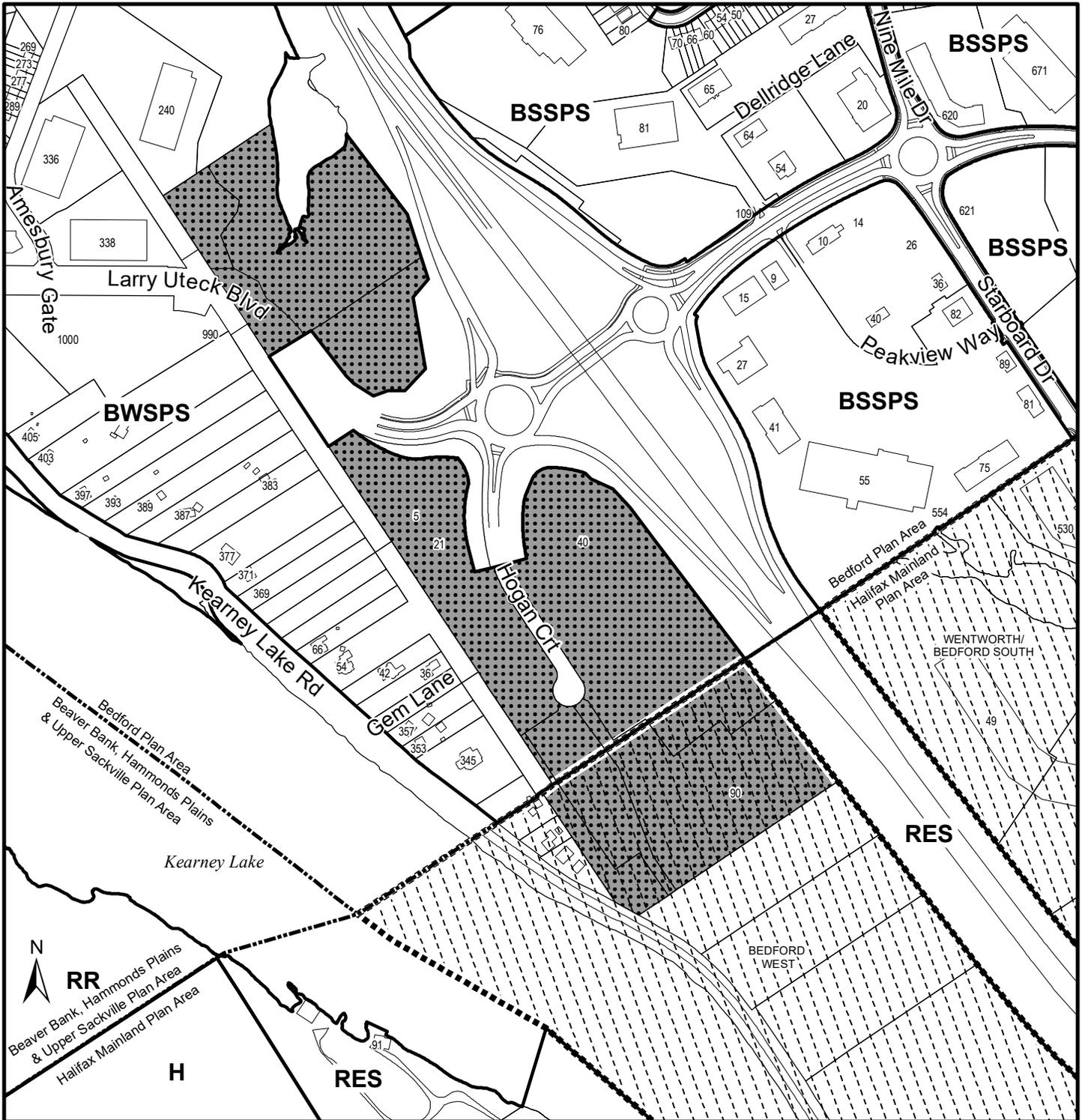
to refuse the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning and Notification Area
Attachment A	Proposed Amending Development Agreement
Attachment B	Review of Relevant MPS Policies
Attachment C	Summary of Public Information Meeting

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: Meaghan Maund, Planner II, Current Planning, 902.233.0726



Map 1 - Generalized Future Land Use

Bedford West Sub Area 9
Hogan Court, Bedford

-  Subject Lands
-  Plan Area Boundary
-  Detail Area Plan

Halifax Plan Area
Bedford Plan Area
Bedford West Secondary Plan Area

Bedford Designation

- BSSPS Bedford South Secondary Planning Strategy
- BWSPS Bedford West Secondary Planning Strategy

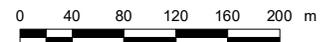
Halifax Mainland Zones

- H Holding Area
- RES Residential Environments

Beaver Bank, Hammonds Plains and Upper Sackville Zones

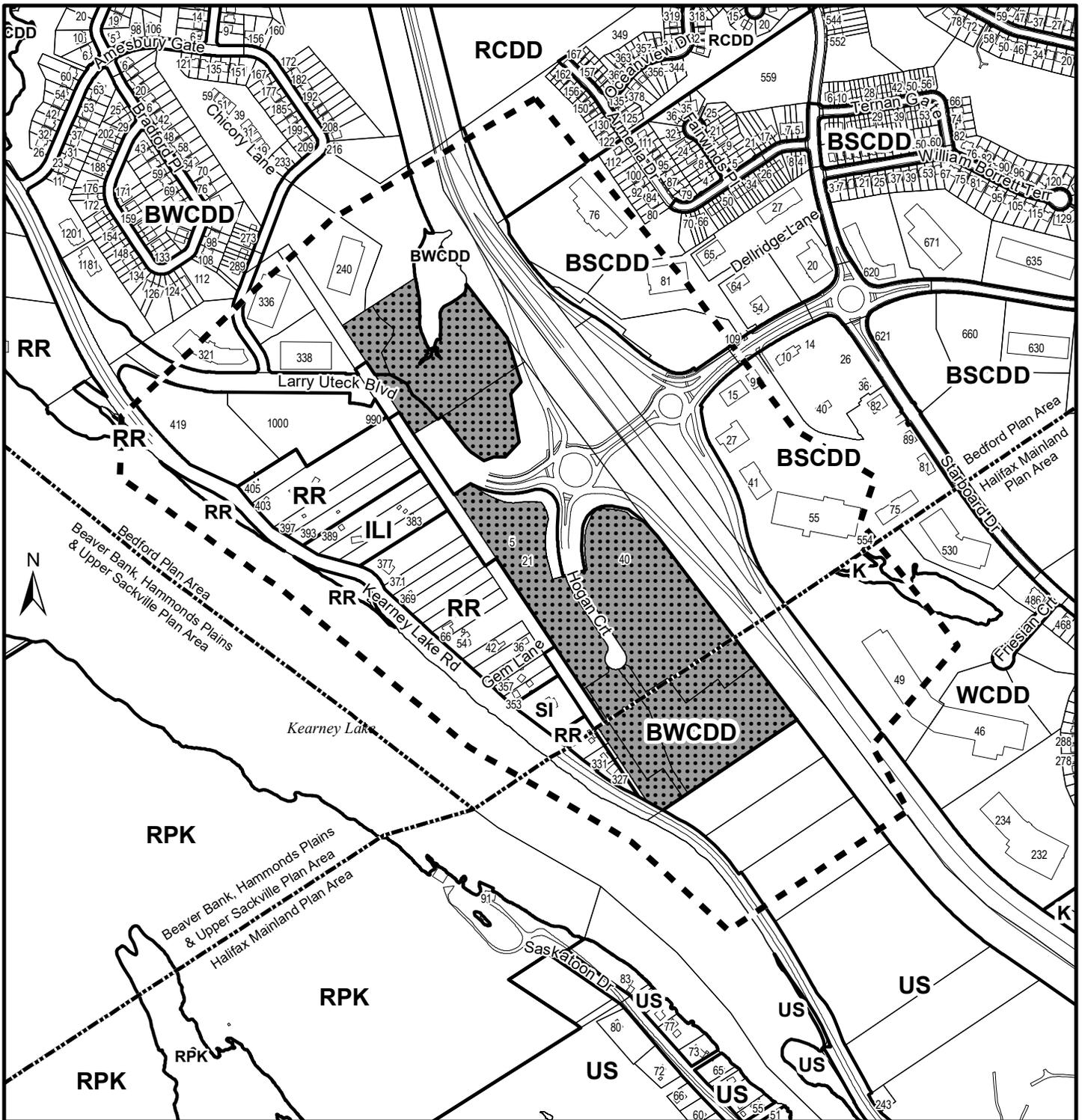
- RR Residential Reserve

HALIFAX



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

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



Map 2 - Zoning and Notification

Bedford West Sub Area 9,
Hogan Court, Bedford

Amendment to Existing
Development Agreement

Area of Notification

Plan Area Boundary

Bedford & Halifax Mainland
Land Use By-Law Area

Bedford Zones

RR	Residential Reserve
ILI	Light Industrial
RCDD	Residential Comprehensive Development District
BWCCD	Bedford West Comprehensive Development District
BSCDD	Bedford South Comprehensive Development District
SI	Institutional

Halifax Mainland Zones

US	Urban Settlement
WCCD	Wentworth Comprehensive Development District
BWCCD	Bedford West Comprehensive Development District
RPK	Regional Park
K	Schedule K

Beaver Bank, Hammonds Plains and Upper Sackville Zones

RPK	Regional Park
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HALIFAX



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

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

Attachment A: Proposed Amending Development Agreement

THIS THIRD AMENDING AGREEMENT made this day of **[Insert Month]**, 20___,

BETWEEN:

CRESCO HOLDINGS LIMITED

a body corporate, in the Province of Nova Scotia

- and –

HOGAN COURT DEVELOPMENTS LTD.

a [body corporate or individual], in the Province of Nova Scotia

OF THE FIRST PART

(hereinafter collectively called the “Developer”)

-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 Hogan Court and Highway 102 in Bedford and Halifax and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the North West Community Council and the former Chebucto Community Council approved an application to enter into a Development Agreement for Bedford West Sub Area 9 to allow for a mixed-use subdivision on the Lands (municipal case 16666), which said Development Agreement was registered at the Land Registration Office in Halifax on May 8, 2012 as Document Number 100634063 (hereinafter called the “Original Agreement”), and which applies to the Lands;

AND WHEREAS the North West Community Council and the Halifax and West Community Council approved an application to amend the Original Agreement to allow for the transfer of 118 dwelling units from Bedford West Sub Area 9 to Cresco’s Wentworth Lands (municipal case 18514), which said Development Agreement was registered the Land Registration Office in Halifax on January 29, 2016 as Document Number 108457111 (hereinafter called the “First Amending Agreement”), and which applies to the Lands;

AND WHEREAS the North West Community Council and the Halifax and West Community Council approved an application to amend the Original Agreement to allow for hotel/motel/guest house uses on the Lands (municipal case 20996), which said Development Agreement was registered at the Land Registration Office in Halifax on November 3, 2017 as Document Number 111682812 (hereinafter called the “Second Amending Agreement”), and which applies to the Lands;

AND WHEREAS the Original Agreement, First Amending Agreement, and the Second Amending Agreement together comprise the Existing Development Agreement (hereinafter called “the Existing Agreement”);

AND WHEREAS the Developer has requested that further amendments to the Existing Agreement to allow for the reallocation of density from the commercial population to the residential population on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy BW-39C of the Bedford Municipal Planning Strategy, Policy BW-21D of the Halifax Municipal Planning Strategy, Part 10B 1) of the Bedford Land Use By-law, and Section 62AD of the Halifax Mainland Land Use By-law;

AND WHEREAS the North West Community Council and Halifax and West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as municipal case 22450;

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

-
1. Except where specifically varied by this Third Amending Agreement, all other conditions and provisions of the Existing Agreement as amended shall remain in effect.
 2. The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Third Amending Agreement and the Existing Agreement.
 3. Section 3.1 of the Existing Agreement shall be amended by deleting the text shown in ~~strikeout~~ and inserting the text shown in **bold**, as follows:

Schedule A	Development Area Sub-Area 9
Schedule A-1	Legal Description of the Land(s)
Schedule B	Land Use Plan
Schedule B1	Land Use Plan
Schedule C	Sanitary Service Plan
Schedule D	Stormwater Servicing Plan
Schedule E	Waterline Plan
Schedule F	Slope Map & Riparian Buffer Areas
Schedule G	General Commercial Design Guidelines
Schedule H1	General Commercial Land Uses
Schedule I	Design Criteria for Multi-Unit Dwellings
Schedule J	Bedford West Trunk Sanitary Servicing
Schedule K	Concept Master Plan
Schedule K1	Concept Master Plan
Schedule L	Density Plan
Schedule M	Easement Plan
Schedule N	Trail & Transportation Plan
Schedule O	Water Quality Monitoring Plan
Schedule P	Block CMR-1
Schedule P1	Conceptual Layout Block CMR-1

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

Schedule B	Land Use Plan
Schedule K	Concept Master Plan
Schedule L	Density Plan
Schedule P	Block CMR-1

And inserting the following Schedules, which are attached to this Third Amending Agreement:

Schedule B1	Land Use Plan
Schedule K1	Concept Master Plan
Schedule P1	Concept Plan for Block CMR-1

5. The Existing Agreement shall be amended by:
- (a) deleting all text references to "Schedule B" and replacing each with a reference to "Schedule B1";
 - (b) deleting all text references to "Schedule K" and replacing each with a reference to "Schedule K1";
 - (c) deleting all text references to "Schedule P" and replacing each with a reference to "Schedule P1".
6. Section 3.3.2 of the Existing Agreement shall be amended by deleting the text shown in ~~strikeout~~, and inserting the text shown in **bold** as follows:
- 3.3.2 The number of multiple unit dwelling units within Sub Area 9 as identified on Schedule B and K shall not exceed ~~200 units~~ **272 units**.

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

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Registered Owner Name)

Witness

Per: _____

Per: _____

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Registered Owner Name)

Witness

Per: _____

Per: _____

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

HALIFAX REGIONAL MUNICIPALITY

Witness

Per: _____
MAYOR

Witness

Per: _____
MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

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

A Commissioner of the Supreme Court
of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

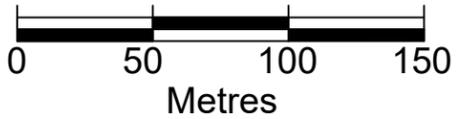
On this ____ day of _____, A.D. 20____, before me, personally came and appeared _____, the subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that Mike Savage, Mayor and Sheryll Murphy, Clerk of the Halifax Regional Municipality, signed the same and affixed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

A Commissioner of the Supreme Court
of Nova Scotia

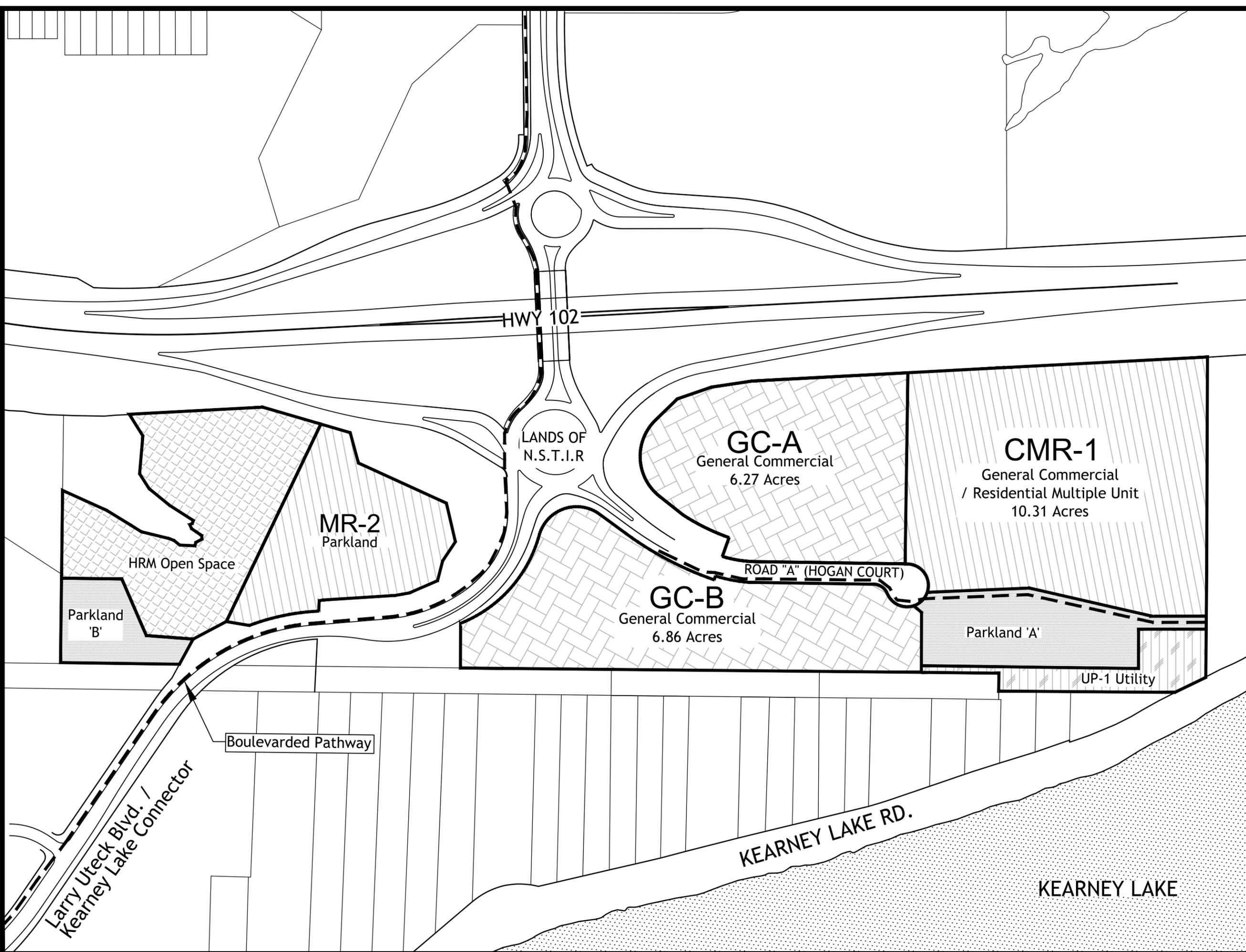


Land Use Plan

Sub-Area 9

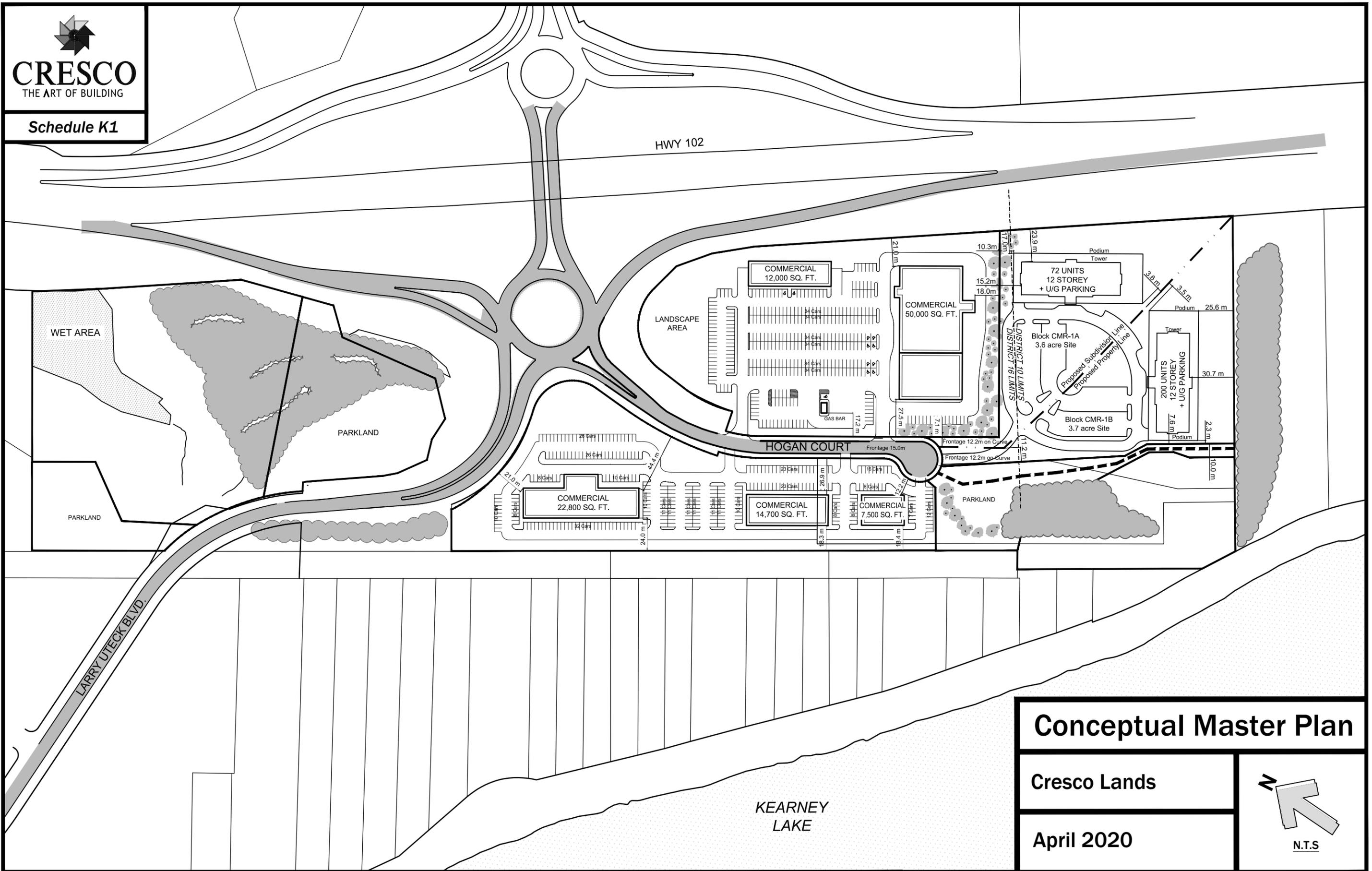


- All acreage and boundaries are subject to final survey.
- Lands allocated as general commercial shall have a maximum density coefficient of 50 persons per acre.
- Lands allocated as residential shall have a density coefficient of 2.25 persons per multi-unit.
- The number of multiple-unit dwelling units shall not exceed 272.
- Overall density cannot exceed 1210.5 persons





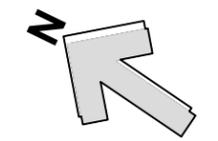
Schedule K1



Conceptual Master Plan

Cresco Lands

April 2020

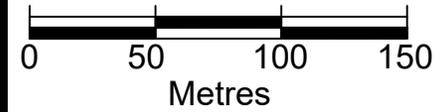


N.T.S

Schedule P1

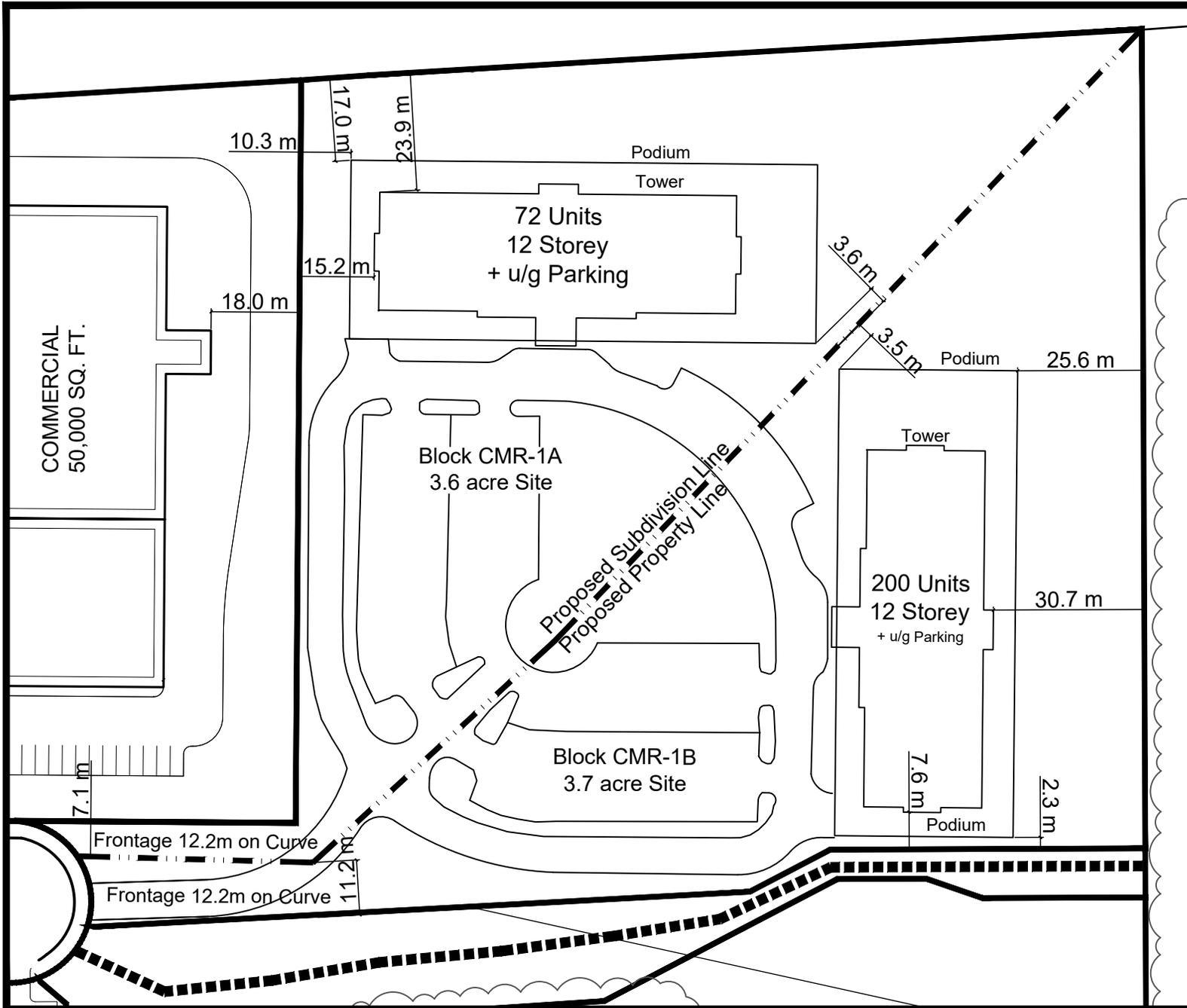


CRESCO
THE ART OF BUILDING



Conceptual Layout
Block CMR-1
2 Multiple Unit Residential
Buildings - 12 Storey + u/g Parking

April 2020



Attachment B: Review of Relevant MPS Policies

Bedford Municipal Planning Strategy - Bedford West Secondary Planning Strategy	
Policy	Comment
<p>Policy BW-15: <i>The sanitary sewer system shall be designed in conformity with the schematics illustrated on Schedule BW-4 and in accordance with the Municipality shall be based on an assumed occupancy of 3.35 persons per single unit, two-unit or townhouse dwelling and 2.25 persons per unit in each multiple unit dwelling; 50 persons per acre for general commercial uses within the Community Commercial Centre shown on Schedule BW-7 or proposed within Sub-Area 9; and 40 persons per acre for mixed use business campus uses; and 30 persons per acre for local commercial, community facility and institutional uses.</i></p>	<p>This policy was addressed and satisfied under the original development agreement. The population density for the Sub Area was determined using these values and the overall population density will not be changing under this application. The reallocation of commercial density to residential density is within the parameters of these values.</p>
<p>Policy BW-16: <i>Based on the assumed occupancies under policy BW-15 and the phasing plan illustrated on schedule BW-6, the sanitary sewer system shall be designed to satisfy the following conditions:</i></p> <ul style="list-style-type: none"> a) <i>a maximum density of 40 persons per acre shall be permitted for all lands to be developed as a mixed use business campus within Sub-Area 3;</i> b) <i>a maximum density of 50 persons per acre shall be permitted for all lands designated community commercial centre within Sub Areas 2, 6, 7 and 8 as illustrated on schedule BW-7 or proposed for general commercial uses within Sub-Area 9 and 12;</i> c) <i>for all other Sub-Areas or part thereof, a maximum density of 20 person per acre shall be permitted; and</i> d) <i>the temporary pumping station and forcemain, illustrated as "PS (TEMP)" and "FORCEMAIN (TEMP)" on schedule BW-4, shall be permitted to service a maximum of 6,100 persons where upon the permanent pumping station and forcemain along the Kearney Lake Road must be designed and constructed to service all lands intended to flow to the Halifax Sewage Treatment Plant (as illustrated on schedule BW-4). This requirement may be waived if:</i> <ul style="list-style-type: none"> i. <i>the financing for the construction for the permanent pumping station and forcemain has been secured by the Municipality and a time frame for construction agreed upon; and</i> 	<p>The maximum density for this sub area was determined using these values. The population density is not increasing under this application, and will remain at 1210.5 persons.</p>

<p>ii. <i>there is sufficient capacity remaining in the temporary pumping station and forcemain to allow for additional sewage discharge to the Mill Cove Sewage Treatment Plant.</i></p>	
<p>Policy BW-16A: <i>The maximum permitted population for Sub Area 9 (including portions within the Halifax Municipal Planning Strategy) shall not exceed 1476 persons.</i></p>	<p>In 2015, Council approved an amendment to transfer 265.5 persons (equivalent to 118 dwelling units) from Sub Area 9 to the Bedford South side of the Larry Uteck Boulevard interchange (Case 18514). This amendment reduced the maximum permitted population for Sub Area 9 to 1210.5, but the MPS policies were not updated accordingly.</p> <p>There will be no change to the maximum permitted population proposed under this application.</p>
<p>Policy BW-23: <i>The Community Concept Plan, presented as Schedule BW-7, shall form the framework for land use allocation within the master plan area and all policies and actions taken by the Municipality shall conform with the intent of this plan. A comprehensive development district zone shall be applied to all lands within the community concept plan area and any development of the land shall be subject to approval of a development agreement. In the event that the lands allocated for the proposed Highway 113 right-of-way are not required by the Province for a highway, then the lands may be used for development permitted within the abutting land use designation.</i></p>	<p>No changes to the land use allocation are proposed under this amendment. The original development agreement addressed and satisfied this policy.</p>
<p>Policy BW-39: <i>A comprehensive development district zone shall be applied to larger undeveloped parcels within Sub-Area 9. Commercial uses may be considered on lands in the vicinity of the proposed interchange with consideration given to the criteria of policy BW-38A. Residential uses may be permitted on the remaining lands with consideration given to the criteria of policy BW-32. No development agreement application shall be considered for approval unless a public participation program has been undertaken to identify development opportunities and constraints and to facilitate collaboration in preparing a conceptual community design for the Sub-Area.</i></p>	<p>This policy was addressed and satisfied under the original development agreement and no changes are proposed under this agreement that would change that.</p>
<p>Policy BW-39A: <i>A public participation program was undertaken to identify development opportunities and constraints and to facilitate collaboration in preparing a conceptual community design for larger undeveloped parcels within Sub-Area 9. Schedule BW-7 shall form the framework for land use allocation within these portions of Sub-Area 9 and all policies and action taken by the Municipality shall conform to the intent of this plan.</i></p>	<p>Under Schedule BW-7 the subjects lands are identified as General Commercial. This amendment does not change or differ from that. Residential uses are permitted as per Policy BW-39B.</p>

<p>Policy BW-39B: <i>Further to Schedule BW-7, Sub Area 9 may be comprised of medium or higher density residential land uses on the northwest side of the site, and general commercial uses south of the interchange. On the south-east portion of the Sub-Area, general commercial or higher density residential land uses may be permitted.</i></p>	<p>This policy was addressed and satisfied under the original development agreement. No changes to land uses or the location of these uses has been proposed under this agreement.</p>
<p>Policy BW-39C: <i>Within the Sub Area, population assigned under BW-16A may be redistributed throughout the Sub Area covered by development agreement provided the intent of the all policies is maintained.</i></p>	<p>The population assigned under BW-16A is remaining the same under this agreement. The intent of the policies is maintained under this density transfer.</p>
<p>Policy BW-40A: Within the Sub Area 9 and the adjacent Bedford South/Wentworth Secondary Planning Strategy areas it shall be the intention to establish a land use node as identified in Schedule BW-8. Land uses within this node shall be established by existing policies however the densities or allotment of land uses may be redistributed throughout the Larry Uteck interchange node subject to the following:</p> <ul style="list-style-type: none"> a) the proposed land use to be relocated must be enabled within the Bedford West Secondary Planning Strategy portion of the node and the Bedford South/Wentworth portion of the node; b) the collection of infrastructure charges; c) the impact on major road networks, specifically Larry Uteck Boulevard and the completion of Starboard Drive (Bedford South/Wentworth); d) the impact on water and sewer infrastructure; e) that the proposed increase of density does not exceed that transferred out from the Bedford South and/or Wentworth Secondary Planning Strategies. 	<p>The density being transferred is staying within the Bedford West Secondary Planning Strategy and not being moved to another secondary plan area (Bedford South or Wentworth).</p>

<p>Halifax Municipal Planning Strategy – Section XV: Bedford West Secondary Planning Strategy</p>	
<p>Policy</p>	<p>Staff Comment</p>
<p>Policy BW-15 <i>The sanitary sewer system shall be designed in conformity with the schematics illustrated on Schedule BW-4 and in accordance with the Municipality's Service Systems Specifications, as amended from time to time. Sewage flow calculations, shall be based on an assumed occupancy of 3.35 persons per single unit, two-unit or townhouse dwelling and 2.25 persons per unit in each multiple unit dwelling; 50 persons per acre for general commercial uses within the Community Commercial Centre shown on Schedule BW-7 or proposed within Sub-Area 9;</i></p>	<p>This policy was addressed and satisfied under the original development agreement. The population density for the Sub Area was determined using these values and the overall population density will not be changing under this application. The reallocation of commercial density to residential density is within the parameters of these values.</p>

<p><i>and 40 persons per acre for mixed use business campus uses; and 30 persons per acre for local commercial, community facility and institutional uses.</i></p>	
<p>Policy BW-16 <i>Based on the assumed occupancies under policy BW-15 and the phasing plan illustrated on schedule BW-6, the sanitary sewer system shall be designed for a maximum density of 50 persons per acre for general commercial uses and a maximum density of 20 person per acre shall be permitted for all residential uses.</i></p>	<p>The maximum density for this sub area was determined using these values. The population density is not increasing under this application. It will remain at 1210.5 persons.</p>
<p>Policy BW-16B <i>The maximum permitted population for Sub-Area 9 (including portions within the Bedford Municipal Planning Strategy) shall not exceed 1476 persons.</i></p>	<p>In 2015, Council approved an amendment to transfer 265.5 persons (equivalent to 118 dwelling units) from Sub Area 9 to the Bedford South side of the Larry Uteck Boulevard interchange (Case 18514). This amendment reduced the maximum permitted population for Sub Area 9 to 1210.5, but the MPS policies were not updated accordingly.</p> <p>There will be no change to the maximum permitted population proposed under this application.</p>
<p>Policy BW-21A <i>A public participation program was undertaken to identify development opportunities and constraints and to facilitate collaboration in preparing a conceptual community design for larger undeveloped parcels within Sub-Area 9. Schedule BW-7 shall form the framework for land use allocation within these portions of Sub-Area 9 and all policies and action taken by the Municipality shall conform to the intent of this plan.</i></p>	<p>Under Schedule BW-7 the subjects lands are identified as General Commercial. This amendment does not change or differ from that. Residential uses are permitted as per Policy BW-21C.</p>
<p>Policy BW-21B: <i>A comprehensive development district zone shall be applied to larger undeveloped parcels within Sub-Area 9. Commercial uses may be considered on lands in the vicinity of the proposed interchange with consideration given to the criteria of policy BW-21E, except that clause 1 shall not apply. Residential uses may be permitted on the remaining lands with consideration given to the criteria of policy BW-28, except that clause (a) shall not apply.</i></p>	<p>This policy was addressed and satisfied under the original development agreement and no changes are proposed under this agreement that would change that.</p>
<p>Policy BW-21C: <i>Further to Schedule BW-7, Sub-Area 9 may be comprised of medium or higher density residential land uses on the northwest side of the site, and general commercial uses in the center portion of the Sub-Area, south of the interchange. On the south-east portion of the Sub-Area, general commercial or higher density residential land uses may be permitted.</i></p>	<p>This policy was addressed and satisfied under the original development agreement. No changes to land uses or the location of these uses has been proposed under this agreement.</p>
<p>Policy BW-21D: <i>Within the Sub Area, population assigned under BW-16B may be redistributed throughout the Sub Area covered by development</i></p>	<p>The population assigned under BW-1BA is remaining the same under this agreement. The intent of the policies is maintained under this density transfer.</p>

<p><i>agreement provided the intent of the all policies is maintained.</i></p>	
<p>Policy BW-21E: <i>A range of general and highway commercial, medium and higher density residential, institutional, and recreational uses may be permitted within the General Commercial Centre Designation shown on Schedule BW-7 subject to consideration of the following matters:</i></p> <ul style="list-style-type: none"> <i>a) natural vegetation, landscaping or screening is employed around parking areas and measures are employed to provide safe and convenient pedestrian access to the buildings they are intended to serve;</i> <i>b) sidewalks and/or plazas are provided so as to encourage a secure and inviting walking environment throughout the commercial centre and to neighbouring residential neighbourhoods;</i> <i>c) provisions are made for the storage of bicycles;</i> <i>d) exterior materials, street furniture; trees, lighting and landscaping measures are incorporated in buildings to foster an interesting and secure environment;</i> <i>e) the windows, exterior features and materials and signs employed in any building create a sense of interest from public streets;</i> <i>f) the massing, height of buildings and architectural detail contribute to a pedestrian oriented environment; and the proposal conforms with all applicable provisions and requirements adopted under this Secondary Planning Strategy regarding environmental protection, the community transportation system and municipal services.</i> 	<p>This policy was addressed and satisfied under the original development agreement and no changes are proposed under this agreement that would change that.</p>
<p>Policy BW-21G: <i>Within the Bedford West Secondary Planning Strategy and the adjacent Bedford South and Wentworth Secondary Planning Strategy areas it shall be the intention to establish a land use node as identified in Schedule BW-8. Land uses within this node shall be established by existing policies however the densities or allotment of land uses may be redistributed throughout the Larry Uteck interchange node subject to the following:</i></p> <ul style="list-style-type: none"> <i>a) the proposed land use to be relocated must be enabled within the Bedford West portion of the node and the Bedford South and Wentworth Secondary Planning Strategy portions of the node;</i> <i>b) the collection of infrastructure charges;</i> <i>c) the impact on major road networks, specifically Larry Uteck Boulevard and the</i> 	<p>The density being transferred is staying within the Bedford West Secondary Planning Strategy and not being moved to another secondary plan area (Bedford South or Wentworth).</p>

<p><i>completion of Starboard Drive (Bedford South/Wentworth);</i></p> <p><i>d) the impact on water and sewer infrastructure;</i></p> <p><i>e) the proposed increase of density does not exceed that transferred out from the Bedford South and/or Wentworth Secondary Planning Strategies.</i></p>	
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HALIFAX REGIONAL MUNICIPALITY
Public Information Meeting
Case 22450

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

Thursday, October 24, 2019

7:00 p.m.

École du Sommet, Larry Uteck Boulevard, Halifax

STAFF IN

ATTENDANCE: Meaghan Maund, Planner, HRM Planning and Development
Cara McFarlane, Planning Controller, HRM Planning and Development

ALSO IN

ATTENDANCE: Councillor Russell Walker, District 10
Councillor Tim Outhit, District 16
Farhang Fotovat, Cresco Holdings Limited
Joseph Daniels, General Manager, Cresco Holdings Limited

PUBLIC IN

ATTENDANCE: Approximately 15

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

1. Call to order, purpose of meeting – Meaghan Maund

M. Maund is the Planner and Facilitator for the application and introduced the area Councillors, HRM Staff members and the Applicant.

Case 22450 - Cresco Holdings Limited is requesting a substantive amendment to an existing development agreement to allow for the transfer of up to 72 multiple unit dwelling units (162 persons) from their commercial allowable population to their residential allowable population on lands on Hogan Court, Bedford.

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

- Identify the proposal site, highlight the proposal and explain the process;
- 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 – Meaghan Maund

M. Maund gave a brief presentation of the proposal for the subject lands on Hogan Court in Bedford West, Sub-Area 9 in Bedford, outlining the status of the application, the Applicant's request for an amendment to the existing development agreement (density transfer from commercial to residential to allow for flexibility), site context of the subject land, the land designation [BWSPS (Bedford West Secondary Planning Strategy)] and enabling Planning Policies (BW-21D and BW-39C) within the Halifax and Bedford Municipal Planning Strategies

(MPSs) and the Zoning [BWCCD (Bedford West Comprehensive Development District) Zone] within the Halifax Mainland and Bedford Land Use By-laws (LUBs).

3. Questions and Comments

One resident asked for a copy of the PIM presentation. **M. Maund** will upload it to the website under the Case Details page for this application.

Brian Doyle, Friesian Court is concerned that there is one access point for a large amount of density on Hogan Court. Will the already approved park area remain? **M. Maund** – There is not a second access proposed. The numbers are based on sewer capacity which has already been approved. The park areas will remain as originally proposed.

A resident from Friesian Court asked if a Superstore would be constructed. **M. Maund** said that the area is zoned commercial and a permit has been issued for a hotel in the area. **Joseph Daniel** pointed out where the business would be located and explained that something is in the works but nothing has been finalized at this point. Two hotels are intended for the site labelled GBC and the GCA labelled area is for a commercial development. There is a permit to construct a 200-unit residential building in the area labelled CMR-1. Density has been paid for through infrastructure. Cresco Holdings is asking for the flexibility to convert potentially unused commercial density to residential.

Ralph, Friesian Court is concerned about the roundabout at Hogan Court. **Councillor Outhit** explained that the roundabout close to the Sobeys is municipally-owned but the other two near Highway 102 are provincially-owned and encouraged Ralph to contact MLA, Kelly Regan. HRM is working to improve signage, crosswalk lights, etc. on their roundabout and Councillor Outhit hopes to encourage the Province to do the same.

Brian Murray, Friesian Court asked if the density for the proposal includes the numbers for the two hotels? This is concern because of increase in traffic and Hogan Court is already difficult to exit not to mention it is accessed by a roundabout. **J. Daniel** clarified that the density does include the hotels and is already approved. The infrastructure that has been engineered and built to date allows for present and future approved construction. Density is allocated based on many factors. **M. Maund** explained that commercial density (50 persons/acre) is based on sewer capacity. HRM engineers and Halifax Water review the application to make sure it meets capacity.

Aileen Mair, Amesbury Gate – Generally, traffic in Halifax is dangerous and on Larry Uteck Boulevard it is dreadful. Emergency vehicles already have difficulty navigating the roads in the area due to traffic. Roundabouts are not used properly which causes a safety issue. Hogan Court should not be accessed by way of the roundabout.

Janice Zed, Friesian Court would like HRM and the developers to look at what is above ground when considering density as opposed to underground (e.g., sewer). Traffic is horrific and is very treacherous for school children trying to cross Friesian Court onto Starboard Drive.

Roger Hamshaw, Kearney Lake Road is concerned that Hogan Court (currently a dead-end road) will eventually be connected to Kearney Lake Road. Also, when this project originally began, the maximum building height was four-storeys but currently there are two seven-storey buildings and density is getting too heavy. What will be the height of the two buildings on Hogan Court? **J. Daniel** said Hogan Court will not be extended. The apartment buildings are permitted to be up to 12 storeys.

John Mader, Friesian Court – Have there been studies done on people coming to and going from Hogan Court based on the density transfer from commercial to residential? Where would the

other the 72 units be? **M. Maund** – The Traffic Impact Statement (TIS) (available on the website) concluded that there would be a slight increase at peak time but not significant. The increase would be at peak times. **J. Daniel** showed the locations of where the buildings would be constructed if this application was or was not approved. If not approved, the other building would become office/retail or another type of commercial building. If approved, there is no guarantee that the density transfer would need to take place, they are looking to have flexibility to do so.

B. Doyle wondered if there is a possibility that the 12-storey building may become 14-storeys. **J. Daniel** – there is a maximum height limit of 12-storeys and any change would require a public process.

J. Zed asked when the TIS was conducted. **M. Maund** – The original was 2012. Another was done in 2015 (to be confirmed) and the most current in June 2019.

Mike Kerman, Friesian Court asked why Cresco is asking for this amendment. **J. Daniel** – Things change over time. The commercial component doesn't use all the density and therefore, instead of trying to put in more commercial, the developer would like the opportunity and flexibility to put that density into residential.

J. Zed wondered if the existing infrastructure (access to Hogan Court) will remain in the same location. Will there be any widening? **J. Daniel** – The TIS shows that everything will work with the current infrastructure.

Chester Robinson, Kearney Lake Road is opposed to the proposal due to many reasons already mentioned. If a proposal is approved, it should be built to that original plan without amendments. Everyone should voice their opinions, but C. Robinson doesn't feel that it makes a difference. **M. Maund** – The developers, in this case, do have the ability to ask for the amendment and through public feedback and Staff's recommendation, Council will decide whether to approve or deny the application.

R. Hamshaw realizes that the density will remain the same but envisions in a few years down the road that Hogan Court will be opened up to Kearney Lake Road. **J. Daniel** made a verbal commitment that they wouldn't apply to have Hogan Court extended beyond its current boundary. **Councillor Outhit** mentioned that the dilemma in many areas is to either build roads to alleviate traffic or don't build to protect sensitive areas forcing residents to put up with traffic.

B. Murray feels there is too much density for Hogan Court.

B. Doyle would like to see the developer stay with the original plan or not use all of the permitted density. **Farhang Fotovat** explained that the infrastructure is already there and a lot of it is based on property taxes.

M. Lynas, Friesian Court is not opposed to the construction, but the residents seem to be worried about the access to and from Hogan Court at the roundabout.

4. Closing Comments

M. Maund thanked everyone for coming and expressing their comments.

5. Adjournment

The meeting adjourned at approximately 7:53 p.m.

ORDER

M09924

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL by **Cresco Holdings Limited** from a decision of Halifax and West Community Council and North West Community Council to deny the amendment of a development agreement for property located at Hogan Court, Bedford, Nova Scotia

Original Init.

BEFORE: Stephen T. McGrath, LL. B., Panel Chair
Original Initialed Roberta J. Clarke, Q.C., Member
Original Initialed Richard J. Melanson, LL. B., Member

ORDER

The Board issued its decision on March 23, 2021.

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

DATED at Halifax, Nova Scotia, this 23rd day of March, 2021.

Original Signed

Clerk of the Board

DECISION

**2021 NSUARB 34
M09924**

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL by **CRESCO HOLDINGS LIMITED** from a decision of Halifax and West Community Council and North West Community Council to refuse to amend a development agreement for property at Hogan Court, Bedford, Nova Scotia

BEFORE: Stephen T. McGrath, LL.B., Panel Chair
Roberta J. Clarke, Q.C., Member
Richard J. Melanson, LL.B., Member

APPELLANT: **CRESCO HOLDINGS LIMITED**
Robert G. Grant, Q.C.

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

HEARING DATE: February 4, 2021

FINAL SUBMISSIONS: February 4, 2021

DECISION DATE: **March 23, 2021**

DECISION: **The appeal is allowed.**

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1.0 INTRODUCTION

[1] Cresco Holdings Limited is appealing decisions of the North West Community Council and the Halifax and West Community Council refusing to amend a development agreement between Cresco and the Halifax Regional Municipality dated March 2, 2012. Cresco needed the approval of both Community Councils because the lands being developed, which are on Hogan Court, straddle the boundary between the former Town of Bedford and former City of Halifax.

[2] Development under the terms of the agreement is ongoing, with buildings under construction. Plans for the lands covered by the development agreement include one or more hotels, a supermarket, gas bar, fast-food restaurant, commercial plaza, and a 200-unit multi-residential building.

[3] The development agreement has already been amended twice since 2012. It currently limits the maximum population density of development to 1210.5 persons and the number of multiple unit dwelling units that may be developed to no more than 200. Based on development plans to date, Cresco determined it can also build a five-storey office building within the existing population density available to it under the agreement.

[4] Cresco would prefer to build a 72-unit multi-residential building instead of the office building but requires an amendment to do so. The residential building would be within the population density limit under the agreement. However, the 200-unit limit on multi-unit dwellings has already been reached. The amendment Cresco requested was to increase the current limit on multi-unit dwelling units from 200 to 272.

[5] Cresco's amendment application was considered by HRM planning staff who concluded the proposal met all relevant policy criteria and was reasonably consistent

with the intent of the HRM's Municipal Planning Strategy (MPS). Staff recommended the Community Councils approve the amendment.

[6] Despite the staff recommendation, the Community Councils refused the amendment, citing reasons including a lack of active transportation; traffic concerns; transit and pedestrian concerns; environmental concerns, including increased greenhouse gas emissions and the impact on Kearney Lake; and stormwater management concerns. While many of these are concerns that arise generally when dealing with planning matters, the task before the Community Councils was to consider the specific application before it and to exercise its authority guided by the relevant policies in the MPS. In this case, the reasons provided by the Community Councils made no attempt to connect the general concerns they identified to specific policies in HRM's MPS or the existing development agreement.

[7] The reasons provided by the Community Councils also appear disconnected from the limited scope of the amendment requested by Cresco. No evidence was presented to the Board in this appeal to reasonably conclude the proposed change to the development agreement would result in impacts touching upon the identified concerns that were materially different than they would be for development already allowed under the current development agreement.

[8] The Board finds the Community Council decisions do not reasonably carry out the intent of HRM's MPS. The appeal is allowed, and the Community Councils are ordered to approve the proposed amendment to the development agreement.

2.0 ISSUE

[9] In this case, the Board must determine whether Cresco has shown, on a balance of probabilities, that the Community Council decisions refusing to amend the development agreement to increase the maximum number of multiple-unit dwelling units from 200 to 272 did not reasonably carry out the intent of the MPS.

3.0 BACKGROUND

3.1 Board Jurisdiction

[10] The Board notes that the *HRM Charter* establishes that the Municipality has the primary authority for planning (s. 208). Under s. 31 of the *HRM Charter*, a community council stands in the place of HRM Council where the MPS provides for development by agreement, and Part VII - Planning and Development - of the *Charter* applies to decisions of the community council.

[11] An applicant for the approval of an amendment to a development agreement may appeal the refusal by a community council to the Board (s. 262(2)). The Board's jurisdiction in an appeal of a community council's decision to refuse to amend a development agreement is set out in s. 265(1)(c) of the *HRM Charter*:

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

...

(c) the refusal 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 and the intent of the development agreement. [Emphasis added]

[12] The Board's remedial powers, and the restrictions on the exercise of these powers, are prescribed by s. 267 of the *HRM Charter* which provides:

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. [Emphasis added]

[13] Thus, the Board must not interfere with the decision of the community council unless the Board determines that the decision does not reasonably carry out the intent of the MPS. In this appeal, as s. 265(1)(c) of the *HRM Charter* refers to the intent of the development agreement as part of the grounds for an appeal, the Board concludes it must also consider the intent of the development agreement.

[14] In appeals under the *HRM Charter*, the burden of proof is on the appellant. To be successful, the appellant must establish, on the balance of probabilities, that the decision of council does not reasonably carry out the intent of the MPS. If the appellant fails, then the Board must defer to the decision of council.

[15] Most planning decisions of the Board over many years have set out the history of the decisions of the Court of Appeal surrounding the standards by which the Board should review a council's decision. The Board notes that these standards or principles are condensed and set out most succinctly in the decision of Fichaud, J.A., in *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27, which is the most recent comprehensive statement of the Court of Appeal. The Board notes that the Court of Appeal implicitly endorsed these principles most recently in *Cape Breton (Regional*

Municipality v. Nova Scotia (Attorney General), 2019 NSCA 77, which affirmed the Board's decision in *Re MacInnis*, 2019 NSUARB 9.

[16] In *Archibald*, Fichaud, J.A. said:

[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.

[17] Clearly, the Board is not permitted to substitute its own decision for that of council but must review the decision of council to determine if the decision of council can be said to reasonably carry out the intent of the MPS. In determining the intent of the MPS (and in this case, the development agreement), the Board considers it should apply the principles of statutory interpretation which have been adopted by the Court of Appeal, as well as the provisions of s. 9(1) and s. 9(5) of the *Interpretation Act*, R.S.N.S. 1989, c. 235.

3.2 Witnesses

[18] Cresco called two witnesses to testify at the appeal hearing. Its first witness was Joseph Daniel. Mr. Daniel has been Cresco's General Manager since 2003. Mr. Daniel provided the Board with evidence about the development, its history and the requested amendment to the development agreement.

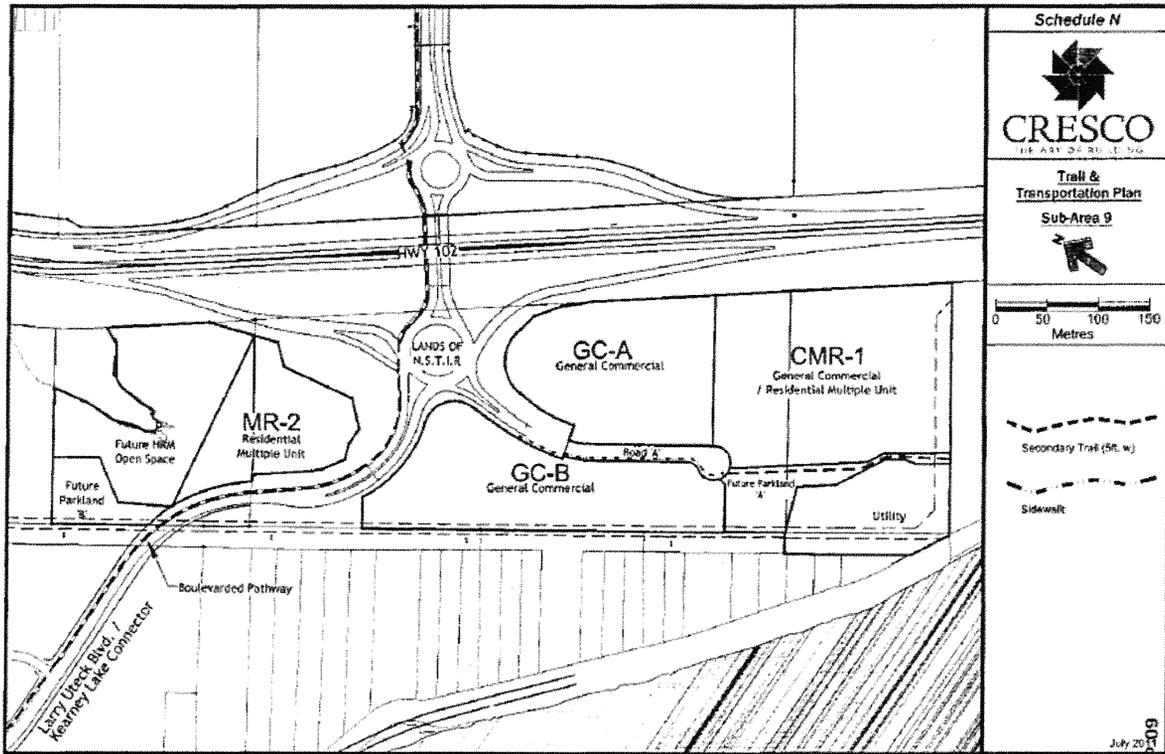
[19] Cresco also called Michael MacDonald, P. Eng., Senior Transportation Engineer and Principal, Harbourside Transportation Consultants. Mr. MacDonald was

called as an expert witness in the appeal and qualified to provide opinion evidence with respect to transportation planning, traffic engineering, and municipal street design, including traffic impact studies and statements addressing the ability of transportation infrastructure to adequately handle traffic generated or projected to be generated from existing and new development.

[20] HRM elected to call no witnesses and did not cross-examine Cresco's witnesses. HRM's submissions addressed the Board's jurisdiction in planning appeals and emphasized the Board could only allow the appeal if it determined the decision of the Community Councils did not reasonably carry out the intent of the MPS and that the burden was on the appellant to establish this, based on a balance of probabilities.

3.3 Land References

[21] The area of land included under the original development agreement is approximately 36-38 acres. To assist with references to the land in this decision, Schedule N to the original development agreement is reproduced below:



[Exhibit C-2, p. 60]

[22] Development is not taking place on the parkland, open space or utility areas. The Board also notes the block of land identified as MR-2 posed technical challenges to develop. Cresco ultimately chose not to develop this area and transferred it to the Province. Active development on the site is in the areas identified as GC-A, GC-B and CMR-1.

[23] In this decision, GC-A, GC-B and CMR-1 are used to distinguish the different areas being developed under the current development agreement. The use of these designations is purely for convenience and ease of understanding. The Board recognizes these designations do not necessarily correspond to distinct legal parcels and understands that subdivision of the land has occurred to reflect the more recent plans for developing the site.

3.4 The Development

[24] The original development agreement between HRM and Cresco, dated March 2, 2012, allowed for a commercial and residential subdivision on lands in an area known as Bedford West Sub Area 9. In that area, development is only permitted by development agreement. The area is partly under the Bedford MPS and partly under the Halifax MPS.

[25] The development agreement provided for the land uses in Section 3.3 as follows:

3.3 General Description of Land Use

3.3.1 The use(s) of the Lands permitted by this Agreement are the following:

- (a) A mixed use development as enabled by this Agreement and as generally illustrated on the Schedules;
- (b) Use of the Lands in the development shall be limited to the following as defined in the Bedford Land Use By-Law and this agreement, where applicable:
 - i) multiple unit dwellings;
 - ii) general commercial uses;
 - iii) parkland and open space uses;
 - iv) home occupations in multi-unit dwellings subject to the requirements of the Land Use By-Law for Bedford, Part 5, Section 8 (a) through l) as amended from time to time; and
 - v) day care facilities, nursery schools, early learning centres, and after school care in multi-unit dwellings subject to the requirements of the Land Use By-Law for Bedford, Part 5, Section 9 a) through i) as amended from time to time.

3.3.2 The number of multiple unit dwelling units within Sub Area 9 as identified on Schedule B and K shall not exceed 318 units.

3.3.3 The location of land uses shall comply with Schedule B and K. For further clarity, lands identified as CMR-1 may be developed as either Multiple Unit Dwellings or as General Commercial Land Uses. Notwithstanding, the previous statement, the Development Officer may permit minor modifications to the location of land uses.

...

[Exhibit C-2, pp. 14-15]

[26] The development agreement also provided:

Permitted Population Density

4.4.4 The maximum population permitted by this agreement shall be 1476 persons. Density may be transferred from lot to lot as required.

4.4.5 Nothing in this agreement shall preclude the transfer of unused density from this agreement to other Sub-Areas of Bedford West; however, an amendment to this agreement will be required for a transfer of density into areas covered by this agreement. Should the transfer of density to another Sub-Area be permitted by another development agreement, the developer shall provide an update density table for this development to the Development Officer which provides an updated density at the subdivision stage. The Development Officer shall not issue permits under this agreement for density transferred to another Sub-Area. Transfers of density in to this agreement which affect the collection of Capital Cost Charges will be considered a substantive amendment. Transfers of density into this agreement which do not affect the collection of Capital Cost Charges will be considered a non-substantive amendment.

4.4.6 The transfer of density shall be subject to a review of the impact on infrastructure charges. Any change which will have a negative impact may be declined by the Municipality. The developer may transfer density between multiple unit dwellings provided other provisions of this agreement are met.

4.4.7 For the purposes of calculating sewer allocation, the following conversion factors shall be used:

Land Use Type	Equivalent per Unit
Multiple Unit Dwellings	2.25 persons per unit
General Commercial	50 persons per acre
Other	As determined by the Development Engineer

[Exhibit C-2, p. 29]

[27] The development agreement was amended on January 27, 2016, to permit the transfer of 118 dwelling units from Sub Area 9 to other lands owned by Cresco. This reduced the number of units under s. 3.3.2 of the original development agreement from 318 to 200. This amendment also confirmed that "mixed use, residential and commercial developments" could be established on CMR-1. The amendment also provided in s. 13 that the remaining population permitted under the original agreement in s. 4.4.4. was

reduced from 1476 to 1210.5 persons. This represented a reduction of 265.5 persons, the equivalent of 118 multiple unit dwelling units.

[28] Section 13 of the amending agreement also provided that “Density may be transferred from lot to lot as required within the bounds of this agreement.”

[29] A further amending agreement, dated October 26, 2017, amended the Schedule of General Commercial Land Uses to add “Hotel/Motel/Guest House” as a permitted use.

[30] The land on the west side of Hogan Court (GC-B) is now owned by a company other than Cresco and is the site of a hotel under construction. The land nearest Larry Uteck Boulevard on the east side of Hogan Court is being developed with a large supermarket, and a proposed gas bar and fast-food outlet, as well as a retail plaza. The land at the end of Hogan Court is under development with a multi-unit residential apartment building with 200 units. Space near that building had been proposed for an office building.

[31] Cresco is now seeking to further amend the development agreement to allow a multi-unit apartment building with 72 units instead of the proposed office building. This would occur by changing the density from commercial use to multi-unit residential use. The total number of residential units would then be 272.

3.5 The Municipal Planning Strategy

[32] Cresco’s development site straddles the boundary between the former Town of Bedford and the former City of Halifax. HRM’s Municipal Planning Strategy for Bedford (Bedford MPS) applies to the part of the site in the former Town and its Municipal

Planning Strategy for Halifax (Halifax MPS) applies to the part of the site in the former City.

[33] The Bedford MPS and the Halifax MPS each include a Bedford West Secondary Planning Strategy that applies to Cresco's development. These secondary strategies were developed following a master planning study for Bedford West. The Bedford West Secondary Planning Strategies in both the Bedford MPS and the Halifax MPS provide the following background:

In 2002, Regional Council directed that a master planning study be undertaken on lands on the west side of the Bicentennial Highway, in the vicinity of Hammonds Plains Road and Kearney Lake Road. The study was initiated in response to requests from two property owners to allow for development on municipal sewer and water services. Annapolis Group Ltd. owned approximately 1,200 acres and proposed to develop a comprehensively planned community while several family members requested municipal approvals to allow for a further 40 acre expansion of Peerless Subdivision with single unit dwellings.

In 2003, Council approved a study area boundary, study terms of reference and a public participation program. The study area boundaries, encompassing a total area of approximately 2,600 acres, are illustrated on Schedule BW-1. The terms of reference were to prepare conceptual community plans which:

- anticipate future community needs having regard for trends in demographics, housing affordability, building technologies, economics and social issues with specific consideration given to how the community proposed could fulfill a role in responding to needs within a regional context;
- integrate design with established neighbouring communities in terms of the natural and man made environment;
- reduce travel time and energy requirements, encourage the use of public transit, pedestrian and cycling facilities and enhance public safety through innovative integration of land use components with the transportation and open space systems;
- preserve sensitive environmental areas and unique cultural features and respond to the opportunities and constraints imposed by the environment;
- maintain adequate service levels for municipal infrastructure (sanitary sewer, storm drainage, potable water and road systems) both within the area of new development and off-site while minimizing costs to all parties;
- allow for design flexibility in recognition of future changes to external circumstances/market conditions;
- minimize future demands on the Municipality's fiscal resources (capital and operating budgets) and provide fair and predictable cost-sharing of community

infrastructure costs between the Municipality and individual property owners in terms of division and timing in accordance with the Municipality's Capital Cost Contribution Policy;

- provide policy guidance for more detailed negotiations with property owners/developers with specific consideration given to phasing of development with associated community infrastructure and the responsibilities of each party (property owners/developers and the Municipality).

A public participation committee was appointed with citizen representatives from Bedford, Hammonds Plains, and Prince's Lodge/Clayton Park. The committee's mandate was to ensure the public had opportunities to express opinions; collaborate with staff and developers in preparation of a plan; provide advice on policy and regulatory documents proposed; and confer with the Regional Planning Advisory Committee (the RPC).

The Bedford West master planning study was undertaken while a regional planning program that was being prepared under the supervision of the RPC. This secondary planning strategy has therefore been prepared in accordance with the master plan study terms of reference established by Council and in conformity with all relevant regional plan policies being proposed.

[Exhibit C-3, pp. 105-106 (Bedford MPS, pp. 97-96) and Exhibit C-4, pp. 257-258 (Halifax MPS, pp. 244-243) (footnotes omitted)]

[34] Schedule BW-6 in the Bedford West Secondary Planning Strategies divides the secondary planning area into Sub Areas. Cresco's development site is in Sub Area 9. A comprehensive development district zone was applied to the larger undeveloped areas of Sub Area 9, and development in this area may only be undertaken by development agreement. Sub Area 9 also includes some smaller properties closer to Kearney Lake, many of which have been developed with residences serviced by well and septic systems. These were not included in the comprehensive development district zone. Aside from these properties, the entirety of Sub Area 9 is covered by Cresco's development agreement.

[35] The Bedford West Secondary Planning Strategies include policies evidencing that consideration was given to ensuring development in the planning area does not exceed the capacity of municipal infrastructure, particularly wastewater

treatment plants. This is also specifically noted in background information in the secondary strategies:

Bedford West could be connected to either the municipal sanitary collection sewer system which is discharged to Mill Cove treatment plant or to the system which will discharge to the new Halifax treatment plant. In both instances, sewage would have to be pumped to existing gravity mains in the Hammonds Plains Road (discharging to Mill Cove) or in Kearney Lake Road (Halifax system). Careful consideration was given to available capacities for new development when allocating sewage flow from Bedford West to each of these systems.

[Exhibit C-3, p. 110 (Bedford MPS, p. 102) and Exhibit C-4, p. 263 (Halifax MPS, p. 250)]

[36] Policies BW-15 and BW-16 in the Bedford MPS discuss the design and capacity of the sewer systems and treatment plants to service Bedford West, and Policy BW-16A establishes a maximum permitted population for Sub Area 9. These policies state:

Policy BW-15:

The sanitary sewer system shall be designed in conformity with the schematics illustrated on Schedule BW-4 and in accordance with the Municipality'll [sic] be based on an assumed occupancy of 3.35 persons per single unit, two-unit or townhouse dwelling and 2.25 persons per unit in each multiple unit dwelling; 50 persons per acre for general commercial uses within the Community Commercial Centre shown on Schedule BW-7 or proposed within Sub-Area 9; and 40 persons per acre for mixed use business campus uses; and 30 persons per acre for local commercial, community facility and institutional uses.

Policy BW-16:

Based on the assumed occupancies under policy BW-15 and the phasing plan illustrated on schedule BW-6, the sanitary sewer system shall be designed to satisfy the following conditions:

- a) a maximum density of 40 persons per acre shall be permitted for all lands to be developed as a mixed use business campus within Sub-Area 3;
- b) a maximum density of 50 persons per acre shall be permitted for all lands designated community commercial centre within Sub-Areas 2, 6, 7 and 8 as illustrated on schedule BW-7 or proposed for general commercial uses within Sub-Area 9 and 12;
- c) for all other Sub-Areas or part thereof, a maximum density of 20 person per acre shall be permitted; and
- d) the temporary pumping station and forcemain, illustrated as "PS (TEMP)" and "FORCEMAIN (TEMP)" on schedule BW-4, shall be permitted to service a maximum of 6,100 persons where upon the permanent pumping station and forcemain along the Kearney Lake Road must be designed and constructed to

service all lands intended to flow to the Halifax Sewage Treatment Plant (as illustrated on schedule BW-4). This requirement may be waived if:

- i) the financing for the construction for the permanent pumping station and forcemain has been secured by the Municipality and a time frame for construction agreed upon; and
- ii) there is sufficient capacity remaining in the temporary pumping station and forcemain to allow for additional sewage discharge to the Mill Cove Sewage Treatment Plant.

In the event that any Sub-Area is not developed to the maximum permitted density, the Municipality may consider allowing the difference to be allocated to another Sub-Area provided that the development proposal conforms will all other policies established under this secondary planning strategy.

Policy BW-16A:

The maximum permitted population for Sub-Area 9 (including portions within the Halifax Municipal Planning Strategy) shall not exceed 1476 persons. (RC-Mar 15/11; E-May 28/11)

[Exhibit C-3, pp. 111-112 (Bedford MPS, pp. 103-104) (footnotes omitted)]

[37] Policies BW-15, BW-16, BW-16A and BW-16B in the Halifax MPS are similar. Policy BW-16B includes the same maximum permitted population of 1476 persons. Policy BW-39C in the Bedford MPS and Policy BW-21D in the Halifax MPS allow the maximum permitted population within Sub Area 9 to “be redistributed throughout the Sub Area covered by development agreement provided the intent of the all [sic] policies is maintained.”

[38] Cresco’s application to amend its existing development agreement was reviewed by HRM’s planning staff who prepared a report about the application for the Community Councils. In their report, dated July 22, 2020, HRM planning staff evaluated the proposed development agreement against the relevant policies in the secondary planning strategies and provided their assessment in a matrix included as Attachment B to the report. That analysis, which considers policies in both the Bedford MPS and the Halifax MPS, is reproduced below:

Attachment B: Review of Relevant MPS Policies

Bedford Municipal Planning Strategy - Bedford West Secondary Planning Strategy	
Policy	Comment
<p>Policy BW-15: <i>The sanitary sewer system shall be designed in conformity with the schematics illustrated on Schedule BW-4 and in accordance with the Municipality shall be based on an assumed occupancy of 3.35 persons per single unit, two-unit or townhouse dwelling and 2.25 persons per unit in each multiple unit dwelling; 50 persons per acre for general commercial uses within the Community Commercial Centre shown on Schedule BW-7 or proposed within Sub-Area 9; and 40 persons per acre for mixed use business campus uses; and 30 persons per acre for local commercial, community facility and institutional uses.</i></p>	<p>This policy was addressed and satisfied under the original development agreement. The population density for the Sub Area was determined using these values and the overall population density will not be changing under this application. The reallocation of commercial density to residential density is within the parameters of these values.</p>
<p>Policy BW-16: <i>Based on the assumed occupancies under policy BW-15 and the phasing plan illustrated on schedule BW-6, the sanitary sewer system shall be designed to satisfy the following conditions:</i></p> <ul style="list-style-type: none"> a) <i>a maximum density of 40 persons per acre shall be permitted for all lands to be developed as a mixed use business campus within Sub-Area 3;</i> b) <i>a maximum density of 50 persons per acre shall be permitted for all lands designated community commercial centre within Sub Areas 2, 6, 7 and 8 as illustrated on schedule BW-7 or proposed for general commercial uses within Sub-Area 9 and 12;</i> c) <i>for all other Sub-Areas or part thereof, a maximum density of 20 person per acre shall be permitted, and</i> d) <i>the temporary pumping station and forcemain, illustrated as "PS (TEMP)" and "FORCEMAIN (TEMP)" on schedule BW-4, shall be permitted to service a maximum of 6,100 persons where upon the permanent pumping station and forcemain along the Kearney Lake Road must be designed and constructed to service all lands intended to flow to the Halifax Sewage Treatment Plant (as illustrated on schedule BW-4). This requirement may be waived if:</i> <ul style="list-style-type: none"> i. <i>the financing for the construction for the permanent pumping station and forcemain has been secured by the Municipality and a time frame for construction agreed upon; and</i> ii. <i>there is sufficient capacity remaining in the temporary pumping station and forcemain to allow for additional sewage discharge to the Mill Cove Sewage Treatment Plant.</i> 	<p>The maximum density for this sub area was determined using these values. The population density is not increasing under this application, and will remain at 1210.5 persons.</p>

<p>Policy BW-16A: <i>The maximum permitted population for Sub Area 9 (including portions within the Halifax Municipal Planning Strategy) shall not exceed 1476 persons.</i></p>	<p>In 2015, Council approved an amendment to transfer 265.5 persons (equivalent to 118 dwelling units) from Sub Area 9 to the Bedford South side of the Larry Uteck Boulevard interchange (Case 18514). This amendment reduced the maximum permitted population for Sub Area 9 to 1210.5, but the MPS policies were not updated accordingly.</p> <p>There will be no change to the maximum permitted population proposed under this application.</p>
<p>Policy BW-23: <i>The Community Concept Plan, presented as Schedule BW-7, shall form the framework for land use allocation within the master plan area and all policies and actions taken by the Municipality shall conform with the intent of this plan. A comprehensive development district zone shall be applied to all lands within the community concept plan area and any development of the land shall be subject to approval of a development agreement. In the event that the lands allocated for the proposed Highway 113 right-of-way are not required by the Province for a highway, then the lands may be used for development permitted within the abutting land use designation.</i></p>	<p>No changes to the land use allocation are proposed under this amendment. The original development agreement addressed and satisfied this policy.</p>
<p>Policy BW-39: <i>A comprehensive development district zone shall be applied to larger undeveloped parcels within Sub-Area 9. Commercial uses may be considered on lands in the vicinity of the proposed interchange with consideration given to the criteria of policy BW-38A. Residential uses may be permitted on the remaining lands with consideration given to the criteria of policy BW-32. No development agreement application shall be considered for approval unless a public participation program has been undertaken to identify development opportunities and constraints and to facilitate collaboration in preparing a conceptual community design for the Sub-Area.</i></p>	<p>This policy was addressed and satisfied under the original development agreement and no changes are proposed under this agreement that would change that.</p>
<p>Policy BW-39A: <i>A public participation program was undertaken to identify development opportunities and constraints and to facilitate collaboration in preparing a conceptual community design for larger undeveloped parcels within Sub-Area 9. Schedule BW-7 shall form the framework for land use allocation within these portions of Sub-Area 9 and all policies and action taken by the Municipality shall conform to the intent of this plan.</i></p>	<p>Under Schedule BW-7 the subjects lands are identified as General Commercial. This amendment does not change or differ from that. Residential uses are permitted as per Policy BW-39B.</p>

<p>Policy BW-39B: <i>Further to Schedule BW-7, Sub Area 9 may be comprised of medium or higher density residential land uses on the northwest side of the site, and general commercial uses south of the interchange. On the south-east portion of the Sub-Area, general commercial or higher density residential land uses may be permitted.</i></p>	<p>This policy was addressed and satisfied under the original development agreement. No changes to land uses or the location of these uses has been proposed under this agreement.</p>
<p>Policy BW-39C: <i>Within the Sub Area, population assigned under BW-16A may be redistributed throughout the Sub Area covered by development agreement provided the intent of the all policies is maintained.</i></p>	<p>The population assigned under BW-16A is remaining the same under this agreement. The intent of the policies is maintained under this density transfer.</p>
<p>Policy BW-40A: Within the Sub Area 9 and the adjacent Bedford South/Wentworth Secondary Planning Strategy areas it shall be the intention to establish a land use node as identified in Schedule BW-8. Land uses within this node shall be established by existing policies however the densities or allotment of land uses may be redistributed throughout the Larry Uteck interchange node subject to the following:</p> <ul style="list-style-type: none"> a) the proposed land use to be relocated must be enabled within the Bedford West Secondary Planning Strategy portion of the node and the Bedford South/Wentworth portion of the node; b) the collection of infrastructure charges; c) the impact on major road networks, specifically Larry Uteck Boulevard and the completion of Starboard Drive (Bedford South/Wentworth); d) the impact on water and sewer infrastructure; e) that the proposed increase of density does not exceed that transferred out from the Bedford South and/or Wentworth Secondary Planning Strategies. 	<p>The density being transferred is staying within the Bedford West Secondary Planning Strategy and not being moved to another secondary plan area (Bedford South or Wentworth).</p>

Halifax Municipal Planning Strategy – Section XV: Bedford West Secondary Planning Strategy	
Policy	Staff Comment
<p>Policy BW-15 <i>The sanitary sewer system shall be designed in conformity with the schematics illustrated on Schedule BW-4 and in accordance with the Municipality's Service Systems Specifications, as amended from time to time. Sewage flow calculations, shall be based on an assumed occupancy of 3.35 persons per single unit, two-unit or townhouse dwelling and 2.25 persons per unit in each multiple unit dwelling; 50 persons per acre for general commercial uses within the Community Commercial Centre shown on Schedule BW-7 or proposed within Sub-Area 9; and 40 persons per acre for mixed use business campus uses; and 30 persons per acre for local commercial, community facility and institutional uses.</i></p>	<p>This policy was addressed and satisfied under the original development agreement. The population density for the Sub Area was determined using these values and the overall population density will not be changing under this application. The reallocation of commercial density to residential density is within the parameters of these values.</p>
<p>Policy BW-16 <i>Based on the assumed occupancies under policy BW-15 and the phasing plan illustrated on schedule BW-6, the sanitary sewer system shall be designed for a maximum density of 50 persons per acre for general commercial uses and a maximum density of 20 person per acre shall be permitted for all residential uses.</i></p>	<p>The maximum density for this sub area was determined using these values. The population density is not increasing under this application. It will remain at 1210.5 persons.</p>
<p>Policy BW-16B <i>The maximum permitted population for Sub-Area 9 (including portions within the Bedford Municipal Planning Strategy) shall not exceed 1476 persons.</i></p>	<p>In 2015, Council approved an amendment to transfer 265.5 persons (equivalent to 118 dwelling units) from Sub Area 9 to the Bedford South side of the Larry Uteck Boulevard interchange (Case 18514). This amendment reduced the maximum permitted population for Sub Area 9 to 1210.5, but the MPS policies were not updated accordingly.</p> <p>There will be no change to the maximum permitted population proposed under this application.</p>
<p>Policy BW-21A <i>A public participation program was undertaken to identify development opportunities and constraints and to facilitate collaboration in preparing a conceptual community design for larger undeveloped parcels within Sub-Area 9. Schedule BW-7 shall form the framework for land use allocation within these portions of Sub-Area 9 and all policies and action taken by the Municipality shall conform to the intent of this plan.</i></p>	<p>Under Schedule BW-7 the subjects lands are identified as General Commercial. This amendment does not change or differ from that. Residential uses are permitted as per Policy BW-21C.</p>
<p>Policy BW-21B: <i>A comprehensive development district zone shall be applied to larger undeveloped parcels within Sub-Area 9. Commercial uses may be considered on lands in the vicinity of the proposed interchange with consideration given to the criteria of policy BW-21E, except that clause 1 shall not apply. Residential uses may be permitted on the remaining lands with consideration given to the criteria of policy BW-28, except that clause (a) shall not apply.</i></p>	<p>This policy was addressed and satisfied under the original development agreement and no changes are proposed under this agreement that would change that.</p>
<p>Policy BW-21C: <i>Further to Schedule BW-7, Sub-Area 9 may be comprised of medium or higher density residential land uses on the northwest side of the site, and general commercial uses in the center portion of the Sub-Area, south of the interchange. On the south-east portion of the Sub-Area, general commercial or higher density residential land uses may be permitted.</i></p>	<p>This policy was addressed and satisfied under the original development agreement. No changes to land uses or the location of these uses has been proposed under this agreement.</p>

<p>Policy BW-21D: <i>Within the Sub Area, population assigned under BW-16B may be redistributed throughout the Sub Area covered by development agreement provided the intent of the all policies is maintained.</i></p>	<p>The population assigned under BW-1BA is remaining the same under this agreement. The intent of the policies is maintained under this density transfer.</p>
<p>Policy BW-21E: <i>A range of general and highway commercial, medium and higher density residential, institutional, and recreational uses may be permitted within the General Commercial Centre Designation shown on Schedule BW-7 subject to consideration of the following matters:</i></p> <ul style="list-style-type: none"> a) <i>natural vegetation, landscaping or screening is employed around parking areas and measures are employed to provide safe and convenient pedestrian access to the buildings they are intended to serve;</i> b) <i>sidewalks and/or plazas are provided so as to encourage a secure and inviting walking environment throughout the commercial centre and to neighbouring residential neighbourhoods;</i> c) <i>provisions are made for the storage of bicycles;</i> d) <i>exterior materials, street furniture, trees, lighting and landscaping measures are incorporated in buildings to foster an interesting and secure environment;</i> e) <i>the windows, exterior features and materials and signs employed in any building create a sense of interest from public streets;</i> f) <i>the massing, height of buildings and architectural detail contribute to a pedestrian oriented environment; and the proposal conforms with all applicable provisions and requirements adopted under this Secondary Planning Strategy regarding environmental protection, the community transportation system and municipal services.</i> 	<p>This policy was addressed and satisfied under the original development agreement and no changes are proposed under this agreement that would change that.</p>
<p>Policy BW-21G: <i>Within the Bedford West Secondary Planning Strategy and the adjacent Bedford South and Wentworth Secondary Planning Strategy areas it shall be the intention to establish a land use node as identified in Schedule BW-8. Land uses within this node shall be established by existing policies however the densities or allotment of land uses may be redistributed throughout the Larry Uteck interchange node subject to the following:</i></p> <ul style="list-style-type: none"> a) <i>the proposed land use to be relocated must be enabled within the Bedford West portion of the node and the Bedford South and Wentworth Secondary Planning Strategy portions of the node;</i> b) <i>the collection of infrastructure charges;</i> c) <i>the impact on major road networks, specifically Larry Uteck Boulevard and the completion of Starboard Drive (Bedford South/Wentworth);</i> d) <i>the impact on water and sewer infrastructure;</i> e) <i>the proposed increase of density does not exceed that transferred out from the Bedford South and/or Wentworth Secondary Planning Strategies.</i> 	<p>The density being transferred is staying within the Bedford West Secondary Planning Strategy and not being moved to another secondary plan area (Bedford South or Wentworth).</p>

[Exhibit C-2, pp. 266-271]

[39] Based on their analysis, planning staff recommended to the Community Councils that they consider a proposed amending agreement, schedule a public hearing and, ultimately, approve the proposed amending agreement in substantially the same form as was attached to the report. Staff concluded:

Staff have reviewed the proposal in terms of all relevant policy criteria and advise the proposal is reasonably consistent with the intent of the Bedford West SPS. The policy prescribes a maximum population density for the Sub Area but permits the redistribution of this population density within the Sub Area. The maximum permitted population density will not change as a result of this proposal, only the ability to have additional residential units at the expense of less commercial density. Therefore, staff recommend that the Halifax and West Community Council and North West Community Council approve the proposed amending development agreement.

[Exhibit C-2, p. 254]

3.6 Site Visit

[40] With the agreement, but in the absence, of Counsel, the Board undertook a site visit in the late morning of Friday, February 5, 2021. The Board approached the site by car from the roundabout exit to Hogan Court just before Larry Uteck Boulevard intersects with Kearney Lake Road. The site is on the west side of Highway 102.

[41] On the right or west side of Hogan Court, the Board observed the first hotel which is under construction on the lot designated GC-B. On the left or east side, the Board observed the large supermarket which appeared substantially complete on the exterior, with a large parking lot. This is on the lot designated GC-A. The gas bar and fast-food outlet will be on the same lot.

[42] The Board also viewed a somewhat higher and levelled area where the proposed strip mall is to be located.

[43] At the end of the Hogan Court cul-de-sac, there is a paved driveway leading to the 200-unit apartment building under construction on the lot designated CMR-1. To the left side of, and at a right angle to, this building, and near the highway, the Board

observed a large hole where the proposed building, either a 72-unit apartment building, or an 88,000 sq. ft. office building is to be located on the same lot. That area is reached by a driveway where one would turn left just before the end of the cul-de-sac. It is below the level of the highway.

[44] On the west side of the cul-de-sac, past the lot designated GC-B, the Board saw a grassed park area with benches and a trail. It was possible to see the rear of properties below on the east side of Kearney Lake Road, and to see Kearney Lake in the distance from various points on the lots. There is a sidewalk along the west side of Hogan Court to the roundabout and a sidewalk along Larry Uteck Boulevard. The Board also saw a Metro Transit bus stop near Amesbury Gate, which leads into the Waterberry Park subdivision, on the north side of the Boulevard.

[45] The Board observed the late morning traffic to be moderate. The Board was also able to observe the exit ramp at the northbound side of Highway 102 used to access the roundabouts west across Larry Uteck Boulevard and to access the eastbound traffic lane on to Larry Uteck Boulevard.

[46] The Board's observations of the site were consistent with the evidence of Mr. Joseph and Mr. MacDonald.

4.0 ANALYSIS AND FINDINGS

4.1 Nature of the Amendment

[47] As noted above, s. 4.4.4 of the 2012 development agreement permitted development up to a maximum population of 1476 persons, matching the maximum population permitted under Policy BW-16A in the Bedford MPS and Policy BW-16B in the Halifax MPS. The 2016 development agreement amendment reduced the maximum

population in s. 4.4.4 to 1210.5 persons. Section 4.4.4 also allows the developer to transfer density from lot to lot as required, which is contemplated by Policy BW-39C in the Bedford MPS and Policy BW-21D in the Halifax Municipal Planning Strategy.

[48] As also noted above, s. 3.3.2 of the 2012 development agreement limited the development to no more than 318 multiple unit dwelling units, but this was reduced to 200 in the 2016 amendments to the development agreement. However, unlike the population limitation in s. 4.4.4, this restriction cannot be specifically connected to a policy in the Bedford West Secondary Planning Strategies. At the appeal hearing, counsel were not able to refer the Board to any policy basis in the strategies for this limitation. In response to a question from the Board at the appeal hearing, Cresco's counsel agreed the limitation on multi-residential appeared to have been created by the development agreement. HRM's counsel confirmed she was unable to find any residential cap in the planning strategies. While there was presumably some reason to have inserted the cap in the 2012 development agreement, HRM was not able to shed light on the reason for that despite enquiries made of planning staff.

[49] Cresco's recently proposed amendment, which was refused by both Community Councils, was to increase the current multi-unit residential cap in s. 3.3.2 of the development agreement. Cresco was not asking to increase the permitted maximum population. Under the existing agreement, Cresco is already able to transfer density as required.

[50] In 2016 or 2017, Cresco sold the part of the development site west of Hogan Court (GC-B) to a third party. As noted above, a hotel is currently under development in that area and there are plans for other development as well. The remaining lands

intended to be developed on the east side of Hogan Court are owned by Cresco (CG-A and CMR-1). The land nearest Larry Uteck Boulevard, where the supermarket is under development and there is planned development for a gas bar, fast-food outlet and retail plaza, is being commercially developed by another party under a lease from Cresco. Cresco is developing the multi-unit residential building on its land at the end of Hogan Court (CMR-1).

[51] Accounting for the capacity associated with the land it sold and its own residential development, and based on its assessment of potential commercial development on the land it leased, Cresco initially determined there was 46 persons' worth of additional capacity for it to use for further development. To develop the land to its full potential, Cresco explored the possibility of developing a 25,000 sq. ft. office building adjacent to the multi-unit residential building it was constructing. Cresco thought it might move its own offices into that space.

[52] When plans for the commercial development on the leased area became better defined, Cresco realized it would actually be left with more capacity than it had anticipated (162 persons rather than 46 persons). With this additional capacity, Cresco said it could build, as-of-right, an 88,000 sq. ft. five-storey office building. But Cresco is concerned about the feasibility of that plan. This was addressed by Mr. Daniel in his direct examination at the hearing:

Q. Right. Mr. Daniel, what is the rationale for Cresco seeking residential multi-unit building at that location?

A. The market. To try to put commercial retail in that area, it wouldn't work. It's hidden in behind the major development next door. To go full office in this current environment when people are actually starting to move away from the office doesn't make sense, and when you consider the housing crisis that Halifax is currently experiencing, it would just...it would be illogical to (inaudible feedback). In addition to that, that's what we do, so we get a little bit of office, (inaudible feedback)...so we've been very successful at residential, and with

a 200-unit residential (inaudible feedback), it made sense to put another residential building beside it.

[Transcript, pp. 18-19]

[53] The amendment to the development agreement proposed by Cresco was simply to permit it to develop a 72-unit residential building instead of a five-storey office building. Both alternatives would meet the capacity limitations in the development agreement and the secondary planning strategies, but the current agreement only allows 200 residential units to be constructed and that allotment is already being used by Cresco. As such, the requested amendment was to increase the number of multiple unit dwelling units permitted under the current development agreement from 200 to 272.

[54] The Board finds the requested change was quite narrow in scope. As discussed below, this narrow change to the development agreement, particularly when compared to the development approved by Council in 2012 and what the developer can currently develop as-of-right, is not reasonably connected to the reasons provided by Council for refusing the amendment. Council's reasons focused on matters that had previously been determined and the requested amendment has no discernable impact on these matters.

4.2 Council Reasons

[55] Contrary to Staff's recommendation, the Halifax and West and North West Community Councils voted not to approve the proposed amendments to the development agreement. This decision was communicated to Cresco by a letter signed by HRM's municipal clerk dated November 30, 2020. The following were the stated reasons for the decision to deny the application:

Halifax and West Community Council members explained that the development lacks active transportation and was not transit or pedestrian friendly. Members expressed traffic

and environmental concerns, including increased greenhouse gas emissions and the impact on Kearney Lake. It was also unclear how the reduction of commercial density would occur.

North West Community Council members expressed concerns around traffic, stormwater management and the lack of transit and active transportation.

[Exhibit C-2, Appeal Record, p. 317]

[56] The decision does not indicate which MPS Policies, or which provisions of the development agreement, the expressed concerns were meant to address in the context of the amendments requested in Cresco's application. These amendments were limited to transferring, or reallocating, a portion of the allowed and approved commercial density, so as to increase the total allowed residential density under the development agreement. Cresco did not seek to increase the total combined allowed population density in Sub Area 9.

[57] Cresco filed a video of the Community Councils' deliberations to provide context in relation to the stated reasons for denying its application. In the end, the Community Councils' deliberations were not discussed at any length during the hearing before the Board. A few days prior to the hearing, the Board released its decision in *Hatchet Lake Plaza Ltd (Re)*, 2021 NSUARB 11. Mr. Grant referred to the *Hatchet Lake* decision in his oral argument, indicating he would not make detailed submissions related to the statements and rationales of individual members of Council.

[58] In *Hatchet Lake*, a planning expert included references to several comments made by Council members in her report to illustrate the rationale behind Council's decision. She used these comments to support her contention that members of Council were influenced by irrelevant factors. The Board made the following comments, at para. [57], in relation to the use which could be made of this type of evidence:

[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.

[59] The Board continues to be of the view that, as a general proposition, the comments of individual members of a council are of limited assistance in the task of applying the statutory test to the written reasons provided by a municipal council. Council meetings are not courtrooms, and while councils perform a type of adjudicative role when determining applications, they are not courts. As *Archibald* stresses, the written reasons are important in framing the issues before the Board so that it respects its appellate role. That said, council members do not sit as a panel to formulate written reasons. They may disagree with one another and may have different reasons for approving or rejecting a particular application. Therefore, as discussed in *Hatchet Lake*, the Board considers that a council speaks with one voice and generally does not parse the comments of individual members of council.

[60] Despite the foregoing, some of the comments made during these deliberations, in the particular circumstances of this case, provide some insight into the concerns expressed in HRM's decision letter. They provide context for the ultimate reasons provided in the written decision under appeal. The overall impression left with the Board is that those opposed to the amendments were generally opposed to the type of development already authorized, by the MPS and the development agreement, in Sub Area 9. This was then reflected in the written reasons, which were primarily expressed

as broad concerns which shed no light on how the proposed narrow amendments would provide cause for the concerns raised.

[61] What was before the Community Councils was not whether the approved development was consistent with the MPS. That was determined when the original development was approved. The history related to the creation of the relevant Bedford and Halifax planning documents, as discussed by Mr. Daniel, and detailed by Mr. Grant in his closing argument, show the close relationship between the development of the plan for Sub Area 9 and the development agreement itself, which was ultimately approved for these lands. As described by Mr. Daniel, infrastructure was put in place, and construction initiated, in Sub Area 9 in accordance and consistent with the development agreement.

[62] The issue before the Community Councils was the impact, if any, the proposed amendments related to the reallocation or transfer of density from commercial to residential would have when assessed against the relevant MPS policies. Staff's presentation appropriately focused on this issue. The Community Councils' deliberations appear to have gone considerably beyond the matter before it. While, as expressed in *Hatchet Lake*, this Board does not act as a court reviewing a council's process, the foregoing might explain why the Community Councils ended up making the decision they did. As Mr. Grant observed, it would have been somewhat difficult for Cresco to respond to the points raised in the denial letter without addressing some of the comments made during the Council deliberations.

[63] HRM provided no evidence, expert or otherwise, in support of the proposition that the two Community Councils' reasons were consistent with the intent of the MPS or the development agreement. HRM did not challenge or contradict the

evidence introduced by Cresco to show that the decision was inconsistent with the intent of the MPS. As indicated by Mr. Grant, this was essentially an uncontested appeal. While the Board must still apply the statutory test in making a determination in this appeal, the fact-finding mission discussed in *Archibald* did not uncover facts or opinion evidence supporting the reasons provided in the denial letter or the rationales expressed during the deliberations which could be tied to relevant MPS policies.

4.3 Reduction of Commercial Density

[64] Halifax and West Community Council expressed a concern that it was unclear how the reduction in commercial density would occur. Any confusion which may have existed before the two Community Councils was clarified during the hearing before the Board. Mr. Daniel provided evidence on this point which was not contested by HRM. Mr. Daniel testified the available pool of 1476 in population density was calculated at the time the original development agreement was negotiated. It was based on the amount of acreage which it was anticipated could be developed. Section 4.4.4 of the development agreement, in its current form, allows for a maximum total population density of 1210.5 persons in the area being developed under the development agreement. Section 3.3.2 limits the residential component of the allowed population density to 200 units, or 450 persons, based on a coefficient of 2.25 persons per unit. A 200-unit apartment building is under construction on CMR-1 and, as described above, was observed by the Board during its site visit.

[65] When the residential density allotment is accounted for, it leaves 760.5 persons of commercial density available in Sub Area 9. Mr. Grant took Mr. Daniel through calculations derived by Strum Consulting in a letter in the Appeal Record dated July 4,

2019. These calculations indicate that, after excluding the hotel development, which accounts for 297.5 persons of the commercial density, there would be 463 persons of commercial density remaining. Strum Consulting calculated that only 301 persons of commercial density was required to complete the development of the leased portion of Cresco's lands. Therefore, there would be 162 persons of remaining allowed commercial density.

[66] As briefly discussed by planning staff during the meeting of the two Community Councils, the calculation of the amount of density allocated to any particular project under the development agreement is determined by HRM Engineering staff and Halifax Water staff at the time of permitting. While the formula originally used to calculate the maximum amount of density for general commercial and multi-unit residential developments is spelled out in s. 4.4.7 of the development agreement, other uses are based on HRM engineering calculations. Mr. Daniel explained that the density calculation to establish how much of the maximum allowed density has been used for particular parts of the development is an engineering calculation based on the specific use and the space which is actually used for a particular development. As well, the schedules attached to the development agreement are concept plans, and not the detailed plans for what will actually be built. During the Council meeting, staff indicated this calculation could be complex and was best left to the engineering experts.

[67] The commercial components of the development of Sub Area 9 are reaching an advanced stage, and as previously discussed, significant construction has taken place. Building permits have been issued for the supermarket, hotel and strip mall plaza. As a result, based on the commercial allocations to date, as discussed above, it

became apparent to Cresco, in consultation with Strum Consulting, that 162 persons of commercial population density will be available in Sub Area 9, under the terms of the development agreement, after all the existing contemplated commercial development is completed. This evidence was not contested by HRM. It is this remaining commercial density allocation which Cresco wishes to use for residential purposes. Therefore, the availability of commercial density is as a result of the fact that less density was required to develop the commercial projects, keeping in mind the total commercial density was available for all commercial projects in Sub Area 9.

[68] That said, the proposal does not involve moving the location of a proposed commercial building from GC-A to CMR-1 and converting it to a residential complex. There is currently space for a building on CMR-1. There is a hole in the ground on CMR-1 where the proposed building is slated to be constructed. This was observed by the Board during the site visit. Pursuant to s. 3.3.3. of the development agreement, CMR-1 may be developed as multiple unit dwellings, such as apartment buildings, or General Commercial Land Uses, which includes office complexes. Given the available space and design parameters, there would be enough available population density left, as discussed above, after taking into consideration all committed development in Sub Area 9, to build either an 88,000 sq. ft. office complex or a 72-unit apartment complex, at the location observed by the Board, but for the cap on residential density.

[69] Due to market conditions, for commercial reasons, Cresco wishes to build an apartment building, rather than an office building, at the location on CMR-1 observed by the Board. The company wishes to convert the commercial density available under the development agreement to residential density to accomplish this. The residential

allocation has already been used up by a 200-unit apartment complex which is currently being constructed on CMR-1. Therefore, despite the available space, and the appropriate permitted land use pursuant to the development agreement, a 72-unit residential complex cannot currently be constructed on CMR-1.

[70] Policy BW-39C in the Bedford MPS and Policy BW-21D in the Halifax MPS say the population within Sub Area 9 can “be redistributed throughout the Sub Area covered by development agreement provided the intent of the all [sic] policies is maintained.” Subject to the issue of the residential cap, there is nothing in the development agreement that would prohibit such a redistribution. While there was some discussion about the distinction between a “reallocation” and a “transfer” in the end, the Board is satisfied the word “redistribution” used in the relevant Halifax and Bedford planning documents can apply to both a transfer from lot to lot and a reallocation or transfer of density between residential and commercial components of the development. Therefore, under the terms of both the MPS provisions and the development agreement, Cresco would be able to transfer density as required for its purposes, but for the residential density cap, provided HRM staff was satisfied there were no material impacts contrary to the intent of the relevant MPS provisions. That said, as the cap of 200 residential units had been reached, the matter had to be brought before the Community Councils.

[71] The manner in which the required commercial density would be available and utilized was explained to the Board. The Board finds there is no uncertainty surrounding how the reduction in the commercial density was derived and how Cresco proposes to use it, whether it is converted to residential density or not. The relevant MPS

and development agreement mechanisms and processes were also explained to the Board. The foregoing was not contested by HRM. Therefore, uncertainty surrounding this issue cannot form a basis for denying the proposed amendment, as from the Board's perspective, on a factual basis, there is none.

4.4 Traffic

[72] Traffic was a concern raised in the reasons provided by both Community Councils for refusing the proposed amendment to the development agreement. Cresco's development is on Hogan Court, which is accessed by a roundabout that also connects Larry Uteck Boulevard and an on-ramp and off-ramp for southbound traffic on Highway 102. Across a bridge on Larry Uteck Boulevard over Highway 102, another roundabout connects the ramps for northbound traffic on Highway 102 to Larry Uteck Boulevard.

[73] Traffic was also a focus of public comments during HRM's review of the application and in the single letter of comment the Board received during the appeal (Exhibit C-8). Public concerns about traffic included existing traffic volumes on Larry Uteck Boulevard; concerns about the roundabouts at the Highway 102-Larry Uteck Interchange; the fact that Hogan Court is accessed off one of these roundabouts; and, difficulties exiting Hogan Court. Cresco provided HRM with a series of traffic impact statements prepared by Mr. MacDonald to support its application for an amended development agreement.

[74] Mr. MacDonald's reports compared the traffic generated from the proposed development to traffic from the development site predicted in earlier studies. As these studies were somewhat dated, some of the reported differences in traffic generation were

associated with changes in the assumptions about the commercial development on the site as plans became better understood.

[75] The most recent of these reports, dated March 5, 2020, also considered the performance of roundabouts at the intersection of Larry Uteck Boulevard and Highway 102. In his testimony, Mr. MacDonald explained this analysis was not sought by HRM. He said it was requested by the Nova Scotia Department of Transportation and Infrastructure Renewal because that department had previous concerns about queueing problems on the Highway 102 northbound off-ramp during the afternoon peak. Mr. MacDonald said the Department wanted additional data for their review of this issue, and although the request was somewhat unconventional, he complied to provide the Department with additional data to help in their analysis of the situation.

[76] It was also Mr. MacDonald's opinion the queueing problem would not really be impacted by development at the Cresco site. He noted this problem was associated with vehicles turning right on Larry Uteck (away from the Cresco development site) and most of the traffic associated with the issue would be heading to residential and commercial areas on the opposite side of Highway 102 from the development. Mr. MacDonald also explained there was a right-turn bypass at this location and separate lanes entering the roundabout.

[77] Despite the observed queueing problem, the report concluded the "roundabouts operate at acceptable levels of service during the peak hours." Overall, the report predicted a minor increase in traffic volumes on Hogan Court that could be accommodated at the Highway 102 interchange. The report was found to be acceptable

by HRM's development engineering staff and staff at the Nova Scotia Department of Transportation and Infrastructure Renewal.

[78] Mr. MacDonald also provided the Board with an additional analysis comparing traffic from Cresco's development assuming an 88,000 sq. ft. five-storey commercial office building was built under the existing development agreement and assuming a 72-unit multi-residential building was constructed instead based on the requested amended development agreement (Exhibit C-9). This additional analysis showed total traffic generation was lower for the multi-unit residential building with modest increases in traffic leaving the development in the peak morning hour (18 vehicles) and entering the development in the peak afternoon hour (12 vehicles).

[79] At the end of his direct examination, Mr. MacDonald said traffic volumes under either scenario in Exhibit C-9 were in line with what was assumed in the original 2008 study for the Highway 102-Larry Uteck Interchange and were within the capacity of the nearby roundabouts.

[80] The Board accepts Mr. MacDonald's evidence that traffic related to the Cresco development is consistent with earlier studies and any differences are insignificant. HRM did not cross-examine Mr. MacDonald to challenge the opinions he expressed in his reports and did not provide any additional evidence about traffic relating to the Cresco development.

[81] Moreover, the Board finds the very modest increases in traffic leaving the development over the morning peak hour and entering the site over the afternoon peak hour if the residential building were constructed instead of the office building is not a reasonable basis for concern. This is especially so given Mr. MacDonald's analysis

shows that, overall, the residential building would have less traffic associated with it than the office building.

[82] It is not clear what policies the Community Councils were relying upon when they refused to approve the requested amendment to the development agreement because of traffic concerns. It is clear there is public concern about traffic in the area. There may very well be merit in these concerns, but they are not relevant to the proposed amendment. Cresco is entitled to develop the site under its nearly ten-year-old development agreement with HRM (as already amended). Compared to what it can build now, overall traffic from the development site is predicted to be less if it is permitted to build another residential building under the proposed amendment. As such, the Community Council decisions to refuse the amendment because of traffic concerns do not reasonably carry out the intent of HRM's Municipal Planning Strategy.

4.5 Active Transportation and Transit

[83] Members of both Community Councils expressed a concern that the development lacked active transportation and transit. The Halifax and West Community Council was concerned the development was not pedestrian friendly. Addressing the pedestrian aspect, Mr. Daniel described the non-vehicular network of walking trails, including associated parkland, a multi-use trail for jogging, cycling and walking, together with sidewalks leading to and adjacent to the development. These all linked the Hogan Court development with other areas in Bedford West. The foregoing was as contemplated by Schedule BW-5: Bedford West-Transportation System, which is a map attached to the Bedford MPS. This evidence was not contested or challenged by HRM

during the hearing. As previously discussed, the portions of this network adjacent to the Hogan Court development were also visible to the Board.

[84] Mr. Daniel also addressed HRM transit service in the Hogan Court area. He indicated that ultimately the availability of transit is determined by HRM and not the developer. He said it makes sense that there is not yet transit service directly along Hogan Court, since construction is not completed. That said, he indicated there was currently a transit bus stop servicing the residents of Waterberry Park, which was a walk of some four or five minutes from Hogan Court. Mr. MacDonald's report dated June 20, 2019, indicated this bus stop was approximately 550 meters west of Hogan Court. The location of this bus stop was confirmed by the Board during its site visit. Mr. Daniel fully expected transit service to be provided directly to Hogan Court once the development was completed. The foregoing evidence was not contested nor challenged during the hearing.

[85] As discussed in *Archibald*, the factual basis used to assess development agreement provisions and MPS policies is important. As pointed out by Mr. Daniel, the original development agreement contemplated two 134-unit apartment buildings on CMR-1 on Hogan Court, for a total of 268 units. This was in the context of an overall density of 1476 persons in Sub Area 9. The remaining residential population density in the original development agreement was slated elsewhere in Sub Area 9. The current proposal would allow 272 residential units on CMR-1 on Hogan Court, but less commercial density. It is difficult to understand how the addition of four residential units, in comparison to the original agreement, where there would be a significant reduction in the commercial

density, would in any way negatively impact on active transportation components of the MPS.

[86] The fact is the active transportation system in the area surrounding Hogan Court is as envisaged in the Bedford and Halifax MPS for the subject area when the original development agreement was approved. There is no evidence to support that the proposed amendment would in any way change this situation. The decision under appeal is therefore not supported by the evidence.

4.6 Stormwater Management

[87] North West Community Council expressed concerns with stormwater management. The development agreement had detailed provisions in s. 4.4 addressing the sanitary sewer system and the stormwater management system, which had to be built to HRM specifications. Sections 2.2; 3.9.5; 4.4.8; 5.3.1; 5.5.1; and, Schedule D of the development agreement expressly incorporated the *Master Stormwater Management Plan for Bedford West Sub Area 5 and 9*. Mr. Daniel testified the stormwater system was built in accordance with the specifications set out in the development agreement. There was no evidence to the contrary.

[88] In accordance with the original development agreement, the evidence before the Board is that the stormwater and wastewater infrastructure could accommodate a population density of 1476 persons. A residential population to a maximum of 318 multi-unit dwelling units could be accommodated. Of these 318 units, the original development agreement contemplated two apartment buildings on CMR-1 on Hogan Court, with a total of 268 multi-unit dwelling units. The current proposal would have a population density of 1210.5 persons, of which 272 multi-unit dwelling units are

proposed for the residential component on CMR-1. As discussed above, because of the transfer of residential density to another area, the current residential cap is 200 multi-unit dwelling units, all of which is slated for CMR-1. If one looks at the current version of the development agreement, for comparison purposes, based on the remaining available population density, the difference can also be expressed as being between an 88,000 sq. ft. office building, which can currently be built as-of-right, and the proposed 72-unit apartment building.

[89] Looking at the comparisons described above, while there were public concerns raised during the review before the two Community Councils, no reliable evidence has been presented to the Board, of a factual nature or in the form of expert opinion, to show that the proposed amendments will have any negative impacts on the stormwater system. It was designed with a higher contemplated residential population and a higher total population in mind. HRM did not point to any policies, or any provisions of the Master Stormwater Management Plan, with which Cresco has failed to comply, or which would be impacted by the proposed amendments, which would support the North West Community Council's decision. The Board has not ascertained any such policies or provisions which would support this decision.

[90] This is not a case where there are judgment calls to be made with respect to ambiguous MPS provisions or the exercise of discretion pursuant to such policies. This is a case where there is no evidentiary basis to support the North West Community Council's ultimate decision. Where Cresco has shown that the requested amendments will comply with the development agreement and the MPS, and there is no evidence to

establish that they will not, the Board finds the decision to deny the application on the basis of stormwater concerns is contrary to the intent of the MPS.

[91] Finally, while wastewater is not directly addressed in the denial letter, the Board is further satisfied there is no evidence that the proposed amendments would have negative impacts on the sanitary sewer system. This was the opinion provided by Strum Consultants in the letter dated July 4, 2019. The background to this letter was discussed by Mr. Daniel during the hearing. As well, staff indicated sanitary sewer issues had been addressed as part of the original development approval and this application would remain compliant with this aspect of the relevant MPS policies. In fact, the maximum population density of 1476 persons for Sub Area 9 expressed in s. 4.4.4 of the development agreement appears to be directly tied to sanitary sewer allocations in the Bedford and Halifax MPS. The development agreement has detailed provisions related to construction of the sanitary sewer system in this context, which would be compliant with HRM specifications.

[92] No evidence contrary to that provided by Cresco, or the policy review undertaken by staff, was offered by HRM during the hearing. As with stormwater, there is no evidentiary basis for finding that the proposed amendments are contrary to the MPS. There are also no facts, opinions, or legal arguments to sustain the proposition that a denial of the application by either Community Council, based on wastewater considerations, would be consistent with the MPS.

4.7 Environmental Concerns

[93] Halifax and West Community Council expressed concerns related to environmental impacts, including greenhouse gas issues and issues related to any impact

on Kearney Lake. The development agreement contains a series of environmental measures related to watercourse and wetland alteration (s. 3.2.1(i)); parklands (s. 3.6.2); riparian buffers (s. 3.8.1); with anticipated reviews by the Development Engineer (s. 4.4.11); and, environmental protection provisions related to stormwater and wastewater (Part 5). No environmental implications related to the proposed amendments were identified in a July 22, 2020 report to Council from Kelly Denty, HRM's Director of Planning and Development. Environmental concerns are not reported as a policy issue in the HRM staff's review of the relevant MPS provisions raised by Cresco's application. Public comments did raise some concerns before the two Community Councils. For example, a letter in the Appeal Record discusses "carbon and noise pollution from cars" and potential impacts on Kearney Lake. That said, no additional evidence related to environmental concerns was presented, by HRM or otherwise, during the hearing before the Board.

[94] Mr. Daniel indicated Cresco had fulfilled all the environmental requirements of the development agreement, including, as previously discussed, in relation to stormwater and wastewater management. He was not aware of any environmental issues. In fact, he said Cresco had done water monitoring of Kearney Lake for some ten years without any anomalies detected. As a general proposition, Mr. Daniel made the following comment:

In the general sense I'm going to say we meet all levels of government's requirements for development. So I don't know, like, they've thrown out a lot of general comments, but nothing specific. I don't know where the increase in greenhouse gas emissions comment, like, what that's based on. I don't understand what their environmental concerns are. Again, the development is done and we're talking about an office building or a residential building. The difference is all that should really be at hand here, and there's no difference, or there should be no difference in any of these items, regardless of which building is built.

[Transcript, p. 37]

[95] Mr. Daniel's comments express, in plain language, the Board's assessment of the matter. The stormwater/wastewater issue has already been addressed. The same type of analysis is equally applicable to the environmental concerns raised by the Halifax and West Community Council. The topic of carbon emissions is complicated when looking at comprehensive overall impacts. There is no evidence that a 72-unit apartment building will generate more greenhouse gases than an 88,000 sq. ft. office building, keeping in mind the limited impact on vehicular trips discussed in the traffic section of this Decision. There is, in fact, no data on carbon emissions at all. Similarly, there is also no evidence before the Board to substantiate additional impacts with respect to Kearney Lake, whether it be of an environmental nature or potential increased usage, when comparing the originally approved development agreement, the current version, and the proposed amendments.

[96] The Board finds that there is no factual evidence before it, or expert opinion evidence, to substantiate that the proposed amendments will generate environmental concerns, or increased stresses on Kearney Lake. As such, the Board concludes that the proposed amendments are consistent with the MPS and the current development agreement. There was no evidence presented by HRM, and no legal arguments were raised, or discovered in the Board's own review, to establish the contrary proposition. Again, this is not a case of resolving ambiguous language, or conflicting or discretionary policies. Therefore, the Board finds the decision to deny the application, based on environmental concerns, or concerns related to Kearney Lake, is not consistent with the MPS.

5.0 CONCLUSION

[97] The Board is persuaded the Appellant met the burden upon it and finds the Community Council decisions do not reasonably carry out the intent of HRM's MPS. The appeal is allowed, and the Community Councils are ordered to approve the proposed amendment to the development agreement.

[98] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 23rd day of March, 2021.

Original Signed

Stephen T. McGrath

Original Signed

Roberta J. Clarke

Original Signed

Richard J. Melanson