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Non-Substantive Amendment to a Development Agreement

TO: Development Officer

DATE: June 1, 2022

SUBJECT: **Case 23935: Non-Substantive Amendment to a Development Agreement for 1380 Cole Harbour Road, Cole Harbour**

LEGISLATIVE AUTHORITY

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

Adoption or amendment of development agreement by Section 245

(3A) Notwithstanding subsections (1) to (3), a development officer may approve non-substantive amendments to a development agreement without holding a public hearing.

(3B) Subsection (3A) does not apply where amendments to a development agreement are a combination of substantive and non-substantive amendments.

RECOMMENDATION

It is recommended that the Development Officer:

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

BACKGROUND

Atlantic Commercial Properties Inc. is applying to amend the existing development agreement for 1380 Cole Harbour Rd, Cole Harbour to change the permitted uses from “manufacturing of doors and windows” to “general warehousing and light manufacturing”. The purpose of this application is to improve the marketability of the subject property by allowing a broader range of similar uses within the same general scope of light industrial land use.

Subject Site	1380 Cole Harbour Road (PID 40591273)
Location	South side of Cole Harbour Road, East of Bissett Road
Regional Plan Designation	RC (Rural Commuter)
Community Plan Designation (Map 1)	UR (Urban Residential)
Zoning (Map 2)	I-1 and R-2
Size of Site	3032 square metres (32,636 square feet)
Street Frontage	77 metres (252.4 feet)
Current Land Use(s)	Light Industrial
Surrounding Use(s)	Light Industrial, residential, commercial, community facility

Proposal Details

The applicant is proposing a non-substantive amendment to the development agreement for 1380 Cole Harbour Road, to replace the permitted use, “manufacturing of doors and windows” with, “general warehousing and light manufacturing”. No other aspects of the development agreement are proposed to be changed.

History/Existing Development Agreement

- October 7th 1991, Cole Harbour/Westphal Community Council of the Halifax County Municipality approved a development agreement to allow the manufacturing of doors, windows, and siding on the property at 1380 Cole Harbour Road. The Lands at that time had been consolidated to include the dwelling to the west, Civic 1376, as part of the development agreement.
- September 17th, 1992 The original agreement was amended by the Cole Harbour/Westphal Community Council to allow the re-siting and reconstruction of the main commercial/industrial building on the property.
- April 6th 2000, Harbour East Community Council approved a second amending agreement to allow the Lands to be re-subdivided into two parcels: one containing the dwelling and the second the commercial/industrial building. Through this second amending agreement, the Lands containing the dwelling were discharged from the development agreement.

The manufacturing of doors, windows, and siding was an active use on the property for a number of years but the building on the subject property has recently been vacant since the business closed. Section 10.2 of the development agreement allows a change in use as a non-substantive amendment provided the use is not obnoxious and does not involve open storage and outdoor display.

Enabling Policy and LUB Context

The subject property is designated UR (Urban Residential) under the Cole Harbour/Westphal Municipal Planning Strategy (MPS) and zoned I-1 (Light Industry) and R-2 (Two-Unit Dwelling) under the Cole Harbour/Westphal Land Use By-law (LUB). The I-1 zone permits a range of light industrial uses. Policy UR-19 of the Cole Harbour/Westphal MPS enables the expansion of existing light industrial uses through the development agreement planning process.

The purpose of the existing development agreement is to allow I-1 uses throughout the subject property, including the portion of the property zoned R-2, which contains a portion of the existing main building. Without the development agreement, I-1 uses would not be permitted within the full extent of the main building. The development agreement allows uses permitted within the I-1 zone to be added to the development agreement as a non-substantive amendment, provided the use is not obnoxious and does not involve open storage and outdoor display. General warehousing and light manufacturing are both uses permitted under the I-1 zone which can be conducted in a manner that is not obnoxious and without outdoor display, and therefore they are a permitted change in use as a non-substantive amendment to the agreement.

DISCUSSION

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

Proposed Non-Substantive Amendment to the Development Agreement

Attachment A contains the proposed non-substantive amendment to the development agreement for the subject site and the conditions under which development may occur. The existing development agreement addresses the following matters:

- Permitted uses,
- Building location, design, and gross floor area,
- Parking, circulation, and access,
- Landscaping, lighting, and maintenance,
- Signage, and
- Non-substantive amendments, which include (a) a change of use to uses permitted under the I-1 zone, provided the use is not obnoxious and does not involve open storage and outdoor display; and (b) the reconstruction or replacement of the existing principal structure, subject to Part 7 of the agreement, provided such reconstruction or replacement does not result in the further reduction of any required yard

The proposed amending development agreement (Attachment A) will permit light manufacturing and general warehousing, subject to the controls identified above. Of the matters addressed by the proposed non-substantive amendment to the development agreement to satisfy the MPS criteria as shown in Attachment B, the following have been identified for detailed discussion.

Land Use Compatibility

Policy UR-19 (f) requires that consideration be given to the compatibility of the proposed land use with surrounding land uses. The proposal is to change the land use within the existing building from one form of industrial use (manufacturing of doors, windows, and siding) to another (light manufacturing and general warehousing). No building expansions are proposed at this time; the proposed land use will continue to be internal to the existing building and will be subject to the same development controls as exist today. Aspects such as connection to municipal services, parking, and access/egress to the site are already present and capable of supporting the change in land use.

Servicing Capability

Policy IM-11 (b) (ii) requires that the subject site be adequately serviced either on-site or through municipal connections. Although this property is outside the serviceable boundary, municipal laterals were extended to this property in the past, therefore this property is fully serviced with municipal sewer and water.

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, and letters mailed to property owners within the notification area shown on Map 2, which included a Fact Sheet about the application. There were no public comments received.

Conclusion

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is reasonably consistent with the intent of the MPS. The proposed change in land use is to uses that are permitted within the I-1 zone and are not obnoxious nor involve open storage and outdoor display. The site is adequate in terms of existing parking, access, egress, and municipal servicing under the provisions of the development agreement. The proposed change in land use will be subject to the same development controls as the previous land use through the development agreement. Therefore, staff recommend that the Development Officer approve the proposed amending development agreement.

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

Report Prepared by: Claire Tusz, Planner II, 902.430.0645

Development Officer's Decision

<p>HALIFAX REGIONAL MUNICIPALITY Non-Substantive Amendment to the Development Agreement is APPROVED as set out in Attachment A</p> <p>DATE: <u>June 7, 2022</u></p> <p>Original Signed <small>endorsed by Development Officer Name</small></p>

Or Refused – outline the reasons for decision

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

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

BETWEEN:

ATLANTIC COMMERCIAL PROPERTIES INC.
a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 1380 Cole Harbour Road, Cole Harbour, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS on October 7th, 1991 the Halifax County Municipality approved an application to enter into a development agreement to allow for an expansion of an existing industrial use on the Lands, and which said development agreement was registered at the Land Registration Office on November 14, 1991 as Document Number 48164, book 5158, pages 1114-1120 (hereinafter called the "Original Agreement");

AND WHEREAS on September 17th, 1992 the Cole Harbour/Westphal Community Council of the Halifax County Municipality approved an amendment to the Original Agreement to allow for the reconstruction and re-siting of a building on the property; and which said amending agreement was registered at the Land Registration Office on September 30th, 1992 as Document Number 42534, book 5301, and pages 344-346 (hereinafter called the "1st Amending Agreement");

AND WHEREAS on April 6th, 2000 the Harbour East Community Council of the Halifax County Municipality approved an amendment to the Original Agreement to allow for the Lands to be re-subdivided into two parcels: one containing the dwelling and the second the manufacturing plant/showroom; and which said amending agreement was registered at the Land Registration Office on May 31st, 2000 as Document Number 15640, book 6567, and pages 912-916 (hereinafter called the "2nd Amending Agreement");

AND WHEREAS the Original Agreement, the 1st Amending Agreement, and the 2nd Amending Agreement together comprise the Existing Development Agreement (hereinafter called the "Existing Agreement");

AND WHEREAS the Developer has requested amendments to the Existing Agreement to allow a change in use to light manufacturing and general warehousing on the Lands pursuant

to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies UR-19 and IM-11 of the Cole Harbour/Westphal Municipal Planning Strategy; and

AND WHEREAS the Development Officer for the Municipality approved this request at a meeting held on [**Insert - Date**], referenced as Municipal Case Number 23935.

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 within PART 3: PERMITTED USES of the Existing Agreement shall be deleted and replaced with the following:
 - 3.1 The use of the Building shall be limited to light manufacturing and general warehousing and includes offices in conjunction with the main use.**
4. Section 3.3 within PART 3: PERMITTED USES of the Existing Agreement shall be amended by deleting the text as shown in the strikeout, as follows:
 - ~~3.3 The use of the existing dwelling on the Property shall be limited to its use as a single unit dwelling and to accessory offices and showrooms subject to the provisions of Section 4.3~~

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

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Registered Owner Name)

Witness

Per: _____

HALIFAX REGIONAL MUNICIPALITY

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

Witness

Per: _____

MAYOR

Witness

Per: _____

MUNICIPAL CLERK

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

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

A Commissioner of the Supreme Court
of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

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

A Commissioner of the Supreme Court
of Nova Scotia

**Attachment B:
Review of Relevant MPS Policies**

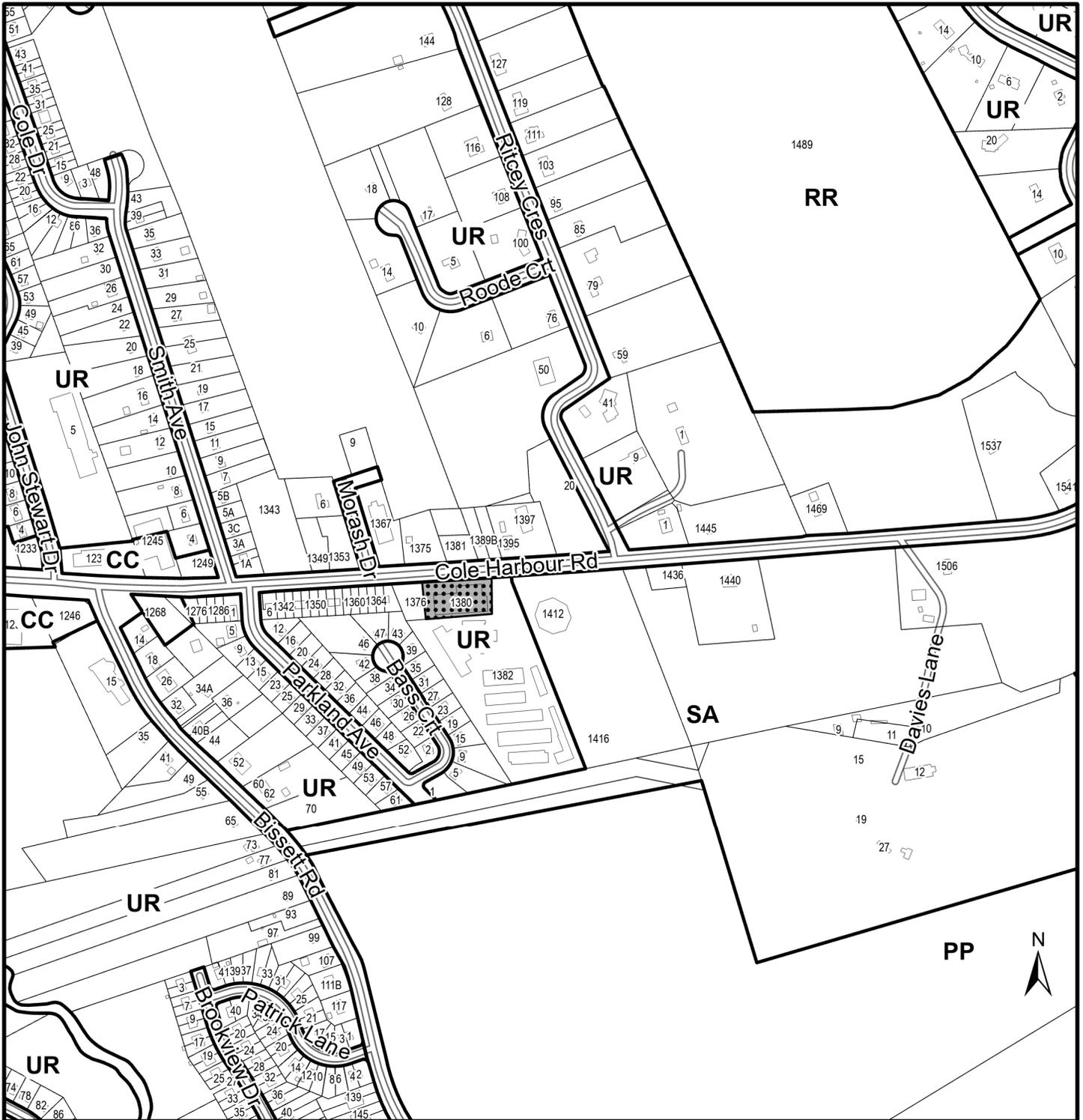
Cole Harbour/Westphal Municipal Planning Strategy

Policy Provision	Staff Comment
<p><i>UR-19 In support of existing light industrial uses within the Urban Residential Designation, particularly in the vicinity of the Ross Road, it shall be the intention of Council to establish a light industry zone. The zone shall permit the continued operation and expansion of existing uses and permit changes of use within appropriate limits. It shall be the intention of Council that this light industry zone shall not be extended to additional properties by amendment to the land use by-law.</i></p> <p><i>Council may, however, consider any proposed expansion of such uses onto adjacent, non-industrially zoned properties in accordance with the development agreement provisions of the Planning Act. In considering such agreements, Council shall have regard to the following:</i></p>	<p>See below</p>
<p><i>(a) that the proposed use is related to an existing industrial use;</i></p>	<p>The proposed use is general warehousing and light manufacturing, which are both listed in the I-1 (Light Industrial) Zone of the Cole Harbour/Westphal Land Use By-Law and relate to the existing use, which is manufacturing of doors and windows. Section 10.2(a) of the agreement permits non-substantial amendments to the agreement to allow a change of use, provided that the use is a use permitted under the Light Industrial Zone of the Cole Harbour/Westphal Land Use By-Law.</p>
<p><i>(b) the extent and location of open storage and outdoor display with respect to abutting properties;</i></p>	<p>Open storage and outdoor display are not proposed under this application. The existing development agreement does not permit open storage nor outdoor display on the property and the proposed amendment does not change this provision.</p>

<p><i>(c) the adequacy of separation distances, landscaping and screening from adjacent residential and community facility uses;</i></p>	<p>The development agreement regulates building location, size, siting, landscaping, driveway and parking areas, and treed areas. These provisions will continue to be enforced through the development agreement.</p>
<p><i>(d) the adequacy of transportation facilities serving the use, including entrance to and access from the site;</i></p>	<p>The proposed amendment is to allow general warehousing and light manufacturing rather than the specific land use of manufacturing of doors and windows. Entrance to and access from the site is already established, therefore adequate transportation facilities exist.</p>
<p><i>(e) an assessment of environmental concerns related to the proposed expansion and in particular, potential effects on watercourses;</i></p>	<p>No expansions are proposed through this amendment to the development agreement, therefore an assessment of environmental concerns is not required.</p>
<p><i>(f) the compatibility of the proposed expansion with surrounding land uses by virtue of its nature, scale and hours of operation; and</i></p>	<p>No expansions are proposed through this amendment to the development agreement. The proposal is to change the land use within the existing building from one form of an industrial use to another, therefore the proposed amendment is compatible with surrounding land uses.</p>
<p><i>(g) the provisions of Policy IM-11.</i></p>	<p>See below.</p>
<p><i>IM-11 In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, Cole Harbour/Westphal Community Council shall have appropriate regard to the following matters:</i></p>	<p>See below.</p>
<p><i>(a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;</i></p>	<p>Policy UR-19 of the Cole Harbour/Westphal MPS enables the continued operation and expansion of existing uses and permits changes of use within appropriate limits. Section 10.2(a) of the agreement permits non-substantial amendments to the agreement to allow a change of use, provided that the use is a use permitted under the Light Industrial Zone of the Cole Harbour/Westphal Land Use By-Law.</p>
<p><i>(b) that the proposal is not premature or inappropriate by reason of:</i></p>	<p>See below.</p>

<i>(i) the financial capability of the Municipality to absorb any costs relating to the development;</i>	The proposed development does not impose any costs to the Municipality.
<i>(ii) the adequacy of sewer and water services;</i>	The existing building is serviced with municipal sewer and water.
<i>(iii) the adequacy or proximity of school, recreation and other community facilities;</i>	The proposal does not pose any demand for surrounding community facilities and schools.
<i>(iv) the adequacy of road networks leading or adjacent to or within the development; and</i>	The road networks were deemed adequate at the time of approval of the existing development agreement. The proposed change in use is not anticipated to create a greater demand on local road networks adjacent to or within the development.
<i>(v) the potential for damage to or destruction of designated historic buildings and sites.</i>	N/A
<i>(c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</i>	See below.
<i>(i) type of use;</i>	The warehousing and light manufacturing use will continue to be controlled through the existing development agreement.
<i>(ii) height, bulk and lot coverage of any proposed building;</i>	The building is existing and no changes with respect to height, bulk and lot coverage are proposed through this amendment to the development agreement.
<i>(iii) traffic generation, access to and egress from the site, and parking;</i>	Increases to traffic generation are not anticipated, nor are conflicts with parking, access to or egress from the site.
<i>(iv) open storage;</i>	Open storage and outdoor display are not proposed under this application. The existing development agreement does not permit open storage nor outdoor display on the property.
<i>(v) signs; and</i>	No signage is proposed at this time. Future signage will be subject to the signage requirements of the Cole Harbour/Westphal Land Use By-Law.
<i>(vi) any other relevant matter of planning concern.</i>	No other concerns are identified at this time.
<i>(d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of</i>	There are no proposed changes to lot grading at this time. Future building permit applications will be required to meet the

<p><i>watercourses, potable water supplies, marshes or bogs and susceptibility to flooding; and</i></p>	<p><i>requirements of the G-200 Respecting Grade Alteration and Stormwater Management Associated with Land Development By-Law.</i></p>
<p><i>(e) any other relevant matter of planning concern</i></p>	<p>N/A</p>
<p><i>(f) Within any designation, where a holding zone has been established pursuant to “Infrastructure Charges - Policy IC-6”, Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the “Infrastructure Charges” Policies of this MPS. (RC-Jul 2/02;E-Aug 17/02)</i></p>	<p>N/A</p>



Map 1 - Generalized Future Land Use

1380 Cole Harbour Rd.,
Cole Harbour

 Subject Property

Designation

- UR Urban Residential
- RR Rural Residential
- CC Community Commercial
- PP Provincial Park
- SA Special Area

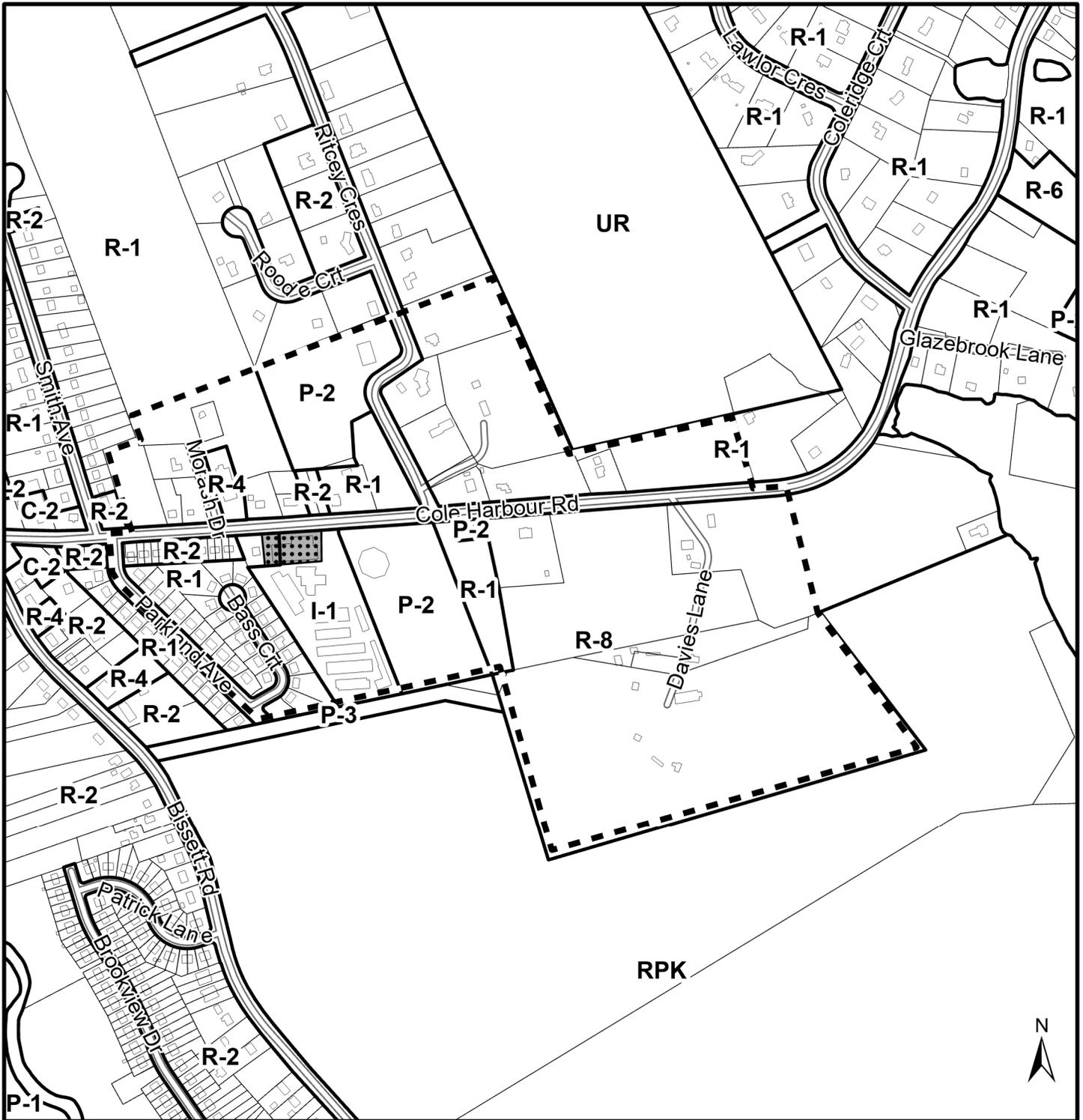


This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.

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

Cole Harbour/Westphal Plan Area

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Map 2 - Zoning and Notification Area

1380 Cole Harbour Rd.,
Cole Harbour

-  Subject Property
-  Area of Notification

Cole Harbour/Westphal
Land Use By-Law Area

Zone	
R-1	Single Unit Dwelling
R-2	Two Unit Dwelling
R-4	Multiple Unit Dwelling
R-6	Rural Residential
R-8	Special Area
C-2	General Business
I-1	Light Industry
P-2	Community Facility
P-3	Provincial Park
UR	Urban Reserve
RPK	Regional Park

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