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**Item No. 13.1.2**  
**North West Community Council**  
**April 9, 2018**

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

Original Signed

**SUBMITTED BY:** \_\_\_\_\_  
Steven Higgins, Acting Director, Planning and Development

**DATE:** March 28, 2018

**SUBJECT:** **Case 21012: Development Agreement for reduction in Environmental Setback, Damascus Road and Duke Street, Bedford**

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**ORIGIN**

- Application by WSP Canada Inc.
- September 5, 2017, Regional Council approval MPS amendment to enable gas stations in the ILI Zone, Bedford Common Commercial area.

**LEGISLATIVE AUTHORITY**

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

**RECOMMENDATION**

It is recommended that North West Community Council:

1. Give notice of motion to consider the proposed development agreement, as set out in Attachment A of this report, to alter an environmentally sensitive area and to reduce an environmental setback at Damascus Road and Duke Street, Bedford and schedule a public hearing;
2. Approve the proposed development agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
3. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, which is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND**

WSP Canada Inc., on behalf of Banc Developments Limited and Hamton Holdings Limited, has applied to enter in to a development agreement to alter an environmentally sensitive area and to reduce an environmental setback to allow the development of an access driveway, a parking area and a car wash for a commercial development which includes a gas bar and commercial retail units at Damascus Road and Duke Street, Bedford (Attachment H).

<b>Subject Site</b>	PID 41376856 (no civic address assigned)	
<b>Location</b>	Southern Corner of Damascus Road and Duke Street - Bedford	
<b>Regional Plan Designation</b>	Urban Settlement / Industrial Park	
<b>Community Plan Designation (Map 1)</b>	IND –Industrial (Map 1)	
<b>Zoning (Map 2)</b>	ILI – Light Industrial Zone (Map 2)	
<b>Size of Site</b>	9,771.4 sq. m. (105,181 sq. ft. ) in area	
<b>Street Frontage</b>	228 metres (748 feet) of frontage on two streets	
<b>Current Land Use(s)</b>	vacant	
<b>Surrounding Use(s)</b>	North:	Bedford Common commercial centre
	South:	Wetland / Rocky Lake Dome arena
	East:	Bedford Industrial Park including: <ul style="list-style-type: none"><li>• Kel-Ann Organics (Soil Manufacture); and</li><li>• Strescon – Concrete Products</li></ul>
	West	Bedford Common commercial centre <ul style="list-style-type: none"><li>• Multiple tenant commercial building</li></ul>

### **Proposal Details**

The applicant proposes to alter an existing wetland and reduce the environmental setback to create an additional driveway access, additional parking lot aisles, parking spaces and a car wash. The major aspects of the proposal are as follows:

- the partial alteration of a wetland;
- the creation of an underground water retention chamber to maintain stormwater capacity;
- the creation of a new driveway access to Duke Street;
- the creation of parking lot aisles and parking areas
- the construction of a car wash;
- the reestablishment of a new watercourse buffer to create a 50-foot setback with vegetation which enhances the ecological functions of the area, encourages ground water recharge and creates a viable riparian habitat.; and
- a stormwater management plan and an erosion and sedimentation control plan;

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

#### **Provincial Jurisdiction**

The Province of Nova Scotia through the Environment Act and other legislation and regulation controls the alterations of watercourse and wetlands. The Municipality is the successor to any outcomes of such alterations.

The design and operation of service stations (gas bars or gas stations) are stringently regulated by Nova Scotia Environment (NSE) under the Environment Act and through Petroleum Management Regulations.

#### **Municipal Policies and Regulations**

The Regional MPS (Attachment B) and Bedford MPS (Attachment C) acknowledge that the Province of Nova Scotia ultimately controls alterations of wetlands. Further, the Regional MPS includes a policy path that enables development within and adjacent to wetlands by development agreement subject to Provincial approval. Provincial approval to reduce the size of a wetland as proposed in this case are relatively common. Should wetlands and watercourse be made suitable for development through the Provincial approval process, relevant MPS policies and LUB regulations would apply.

**Regional MPS** – The Regional MPS (RMPS) sets high level environmental policy for the Municipality. Policies E-15 and E-16 prohibit development within wetlands 2000 sq. m. or greater and set specific riparian buffers (environmental setbacks). In this instance the Regional MPS acknowledges protection of the wetland until such a time that the Province (NS Environment) determines that it is suitable for development. Further the RMPS and does not require a riparian buffer around the wetland on the subject site.

**Community Plan (Bedford MPS)** – The Bedford MPS requires a 30.5 m (100 feet) setback from watercourses and environmentally sensitive areas and prohibits development in environmentally sensitive areas (including the wetland on the subject site). The Bedford MPS setback requirement takes precedent even though the Regional MPS does not require a riparian buffer. However, wetlands may be developed and/or the environmental setback may be reduced to a minimum of 50 feet by development agreement subject to a determination that there are no negative impacts.

The MPS permits light industrial uses on the subject lands including commercial developments, gas stations and car washes.

**Bedford Land Use By-law (LUB)** - Regional MPS and Bedford MPS policies are implemented through regulations in Part 4, Clause 3 (Development Agreements) and Part 5, Clause 21 (Riparian Buffers) of the Bedford Land Use By-law.

In summary, policies enable the consideration of a development agreement for an alteration of the subject wetland and a reduction in the environmental setback.

## **COMMUNITY ENGAGEMENT**

The community engagement process has been consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website, signage posted on the subject site, letters mailed to property owners within the notification area and a public information meeting held on April 3, 2017. No members of the public attended the meeting. One public comment was received (Attachment F).

A public hearing must be held by North West Community Council before they can consider approval of the proposed development agreement. Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 3 will be notified of the hearing by regular mail.

The proposal will potentially impact local residents and property owners, community or neighbourhood organizations, and businesses.

## **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 and C provides an evaluation of the proposed development agreement in relation to the relevant RMPS and MPS policies.

### **Proposed Development Agreement**

Attachment A contains the proposed development agreement for the subject site and the conditions under which the development may occur. The proposed development agreement addresses the following matters:

- erosion and sedimentation control;
- stormwater management;
- the creation of an underground water retention chamber to create stormwater storage;
- site design including a new driveway access to Duke Street and the creation of parking lot aisles and parking areas, and the construction of a building for a car wash; and

- the reestablishment of a new wetland buffer to create a minimum 50 foot setback with vegetation which enhances the ecological functions of the area, encourages ground water recharge and creates a viable riparian habitat.

The attached development agreement permits the alteration of a portion of the wetland and a reduction of the environmental setback from 100 feet to 50 feet, subject to the controls identified above. Of the matters addressed by the proposed development agreement to satisfy the RMPS and MPS criteria as shown in Attachment B and C, the following have been identified for detailed discussion.

Can the property be reasonably developed without a reduction in the setback and alteration – The proposed site is bounded by two roads Damascus Road and Duke Street. Damascus Road is a two-lane street with a boulevard and Duke Street is a two lane road. The lot frontages on both streets are primarily controlled by Nova Scotia Transportation and Infrastructure Renewal (NSTIR) and all driveways must meet their requirements.

Due to the boulevard in front of the Damascus Road driveway and the proximity to the adjacent traffic signals at Duke Street, only a right-in and right-out driveway movements are possible. Because access at this driveway is limited, a second access is required on Duke Street to allow for a more complete set of traffic turns. Without this second driveway on Duke Street, the site access would be compromised to the point of rendering the site impractical to develop. No other available access options have been identified.

A second Duke Street driveway requires alteration of the wetland to place a driveway at a location acceptable to NSTIR.

Staff believe that without the Duke Street driveway, the site is undevelopable for the light industrial uses permitted in the MPS and the LUB.

Alteration to the Wetland and a reduced setback – NS Environment has issued a permit for the alteration of the wetland on the site to make additional land developable. The permit requires the construction of underground storage chambers to maintain the capacity of the wetland to manage stormwater in this area. Details of the underground storage are provided in Attachment G. Above the underground storage area parking and a driveway area are proposed and a car wash is proposed adjacent to the storage tanks. After construction, Halifax Water will be granted an easement and they will take over responsibility for the maintenance of the underground storage chambers.

The alterations and proposed development meet the requirements of MPS policy and will create a new 50-foot environmental setback. Elements within this setback will:

- be designed by a landscape architect;
- promote infiltration of surface water and to be low maintenance;
- be mulched and planted with woody shrubs and supplemented with perennial low groundcover herbaceous plants. Grasses shall not be permitted; and
- vegetated with native species unless determined to be inappropriate or unavailable;

These requirements were recommended by the applicant's environmental consultant.

Land Uses proposed inside the environmental setback – The land uses proposed inside the required 100 feet environmental setback include a driveway, parking aisle, parking area and a car wash. All uses are permitted by the Light Industrial (ILI) Zone.

Adjacent Land Uses outside the environmental setback – The adjacent proposed land use is a gas bar and retail outlets (to be determined), These land uses are located outside the required 100 feet environmental setback and permitted by the Light Industrial (ILI) Zone. These uses are located outside the 100 feet environmental setback and are not regulated by the development agreement which only impacts activities located within the setback.

Car Wash and Site Drainage – All water used in the car will be treated by an oil and grit separator prior to entering the sanitary sewer system. Carwash water will not be directed towards the storm water system.

All stormwater will be directed away from the wetland with an on-site stormwater collection system and no water will be directly discharged into the wetland.

### **North West Planning Advisory Committee**

On May 3, 2017, the North West Planning Advisory Committee (PAC) recommended that North West Community Council reject the application due to traffic concerns due to a busy intersection on Duke and Damascus and second entrance on Duke Street, environmental impact of infilling the wetland, and concerns over the role of Halifax Water in the ownership and maintenance of the hydro storage water and/or drainage technology.

### **Regional Waters Advisory Board**

On April 12, 2017, the Regional Waters Advisory Board (RWAB) recommended that the application be approved subject to best management construction and sediment control practices being followed by the developer to minimize any negative impacts to the wetland noting that a redesigned buffer enhances the ecological functions of the area, encourages ground water recharge and creates a viable riparian habitat.

### **Conclusion**

Staff have reviewed the proposal in terms of all relevant policy criteria and advise that the proposal is consistent with the intent of the MPS. An environmental study has concluded that no negative impacts are expected if the setback is reduced from 100ft to 50ft. provided the developer follows the applicable guidelines and suggested best practices Further, all proposed land uses are permitted in the existing Light Industrial (ILI) Zone. Therefore, staff recommend that the North West Community Council approve the proposed 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 2018/2019 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 development agreement are contained within the Discussion section of this report.

### **ENVIRONMENTAL IMPLICATIONS**

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

### **ALTERNATIVES**

1. 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. 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  
Map 2                    Zoning Map  
Map 3                    Notification Area  
Map 4                    Schedule C-3 Service Stations as a Permitted Use in the ILI (Light Industrial) Zone

Attachment A          Proposed Development Agreement  
Attachment B          Review of Relevant Regional MPS Policies  
Attachment C          Review of Relevant Bedford MPS Policies  
Attachment D          Relevant Bedford LUB Regulations  
Attachment E          Legislative Authority  
Attachment F          Public Comments Received  
Attachment G          Environmental Impact Study  
Attachment H          Conceptual Renderings

Available Upon Request

[Case 20211 - Initiation Report - June 21, 2016](#)

[Case 20211 – Final Report – July 17, 2017](#)

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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