



WEST HANTS REGIONAL MUNICIPALITY REPORT

Information <input type="checkbox"/>	Recommendation <input checked="" type="checkbox"/>	Decision Request <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
--------------------------------------	--	---	--

To: Mayor Zebian and Members of West Hants Regional Municipality Council

Submitted by: _____

Sara Poirier, Senior Planner

Date: 2021-11-23

Subject: Development Agreement and Discharge: O'Brien St, Windsor, PID 45055902;
File #21-14 C

LEGISLATIVE AUTHORITY

Section 230 of the Municipal Government Act.

RECOMMENDATION

Should Council wish to proceed to Public Hearing, the following motion would be in order:

...that Council gives First Reading and will hold a Public Hearing to consider entering into a development agreement to permit two (2), four (4) storey, 56-unit apartment buildings which include up to 10,000 sq ft of commercial space on the ground floor of one building at PID 45055902 on O'Brien Street, Windsor, in a manner substantively the same as the draft set out in Attachment B to the report #21-14B to the Planning and Heritage Advisory Committee dated November 8, 2021, taking note that this development agreement will discharge and replace the development agreement recorded at the Registry of Deeds on April 9, 2010 as document 9561229.

...that Council requires that the development agreement with Metro Premier Properties Inc. be signed within 120 days from the date of final approval by Council or the date that any appeals have been disposed of; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Property <input checked="" type="checkbox"/>	Public Opinion <input type="checkbox"/>	Environment <input type="checkbox"/>	Social <input type="checkbox"/>	Economic <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
--	--	--------------------------------------	---------------------------------	-----------------------------------	---

A completed application was received on September 1, 2021 from Chrystal Fuller of Brighter Community Planning & Consulting on behalf of the property owner Clark Wilkins. The application is to consider the development of:

- Two (2), four (4) storey, 56-unit apartment buildings;
- 122 parking spaces which include 80 underground parking spaces;
- up to 10,000 sq ft of commercial space on the ground floor of one building; and
- a minimum of 20,000 sq ft of outdoor amenity space.

Several changes to the draft development agreement were requested by the developer on October 29 and a Supplementary report was then prepared for the Nov 8 PAC/HAC meeting.

The applicant provided a memo to Planner Poirier on November 19, 2021. The memo provides justification for the requirement of one (1) parking space per apartment unit in the proposed development agreement (Appendix A). The memo is provided for Councils' information. No additional changes to the development agreement are proposed with this information.

A development agreement registered on the property in 2010 permitted two (2), four (4) storey residential buildings with a maximum of 66 residential units and ground floor commercial in one building to a maximum of 10,000 sq ft. The property owner has requested that development agreement be discharged as part of this application.

DISCUSSION

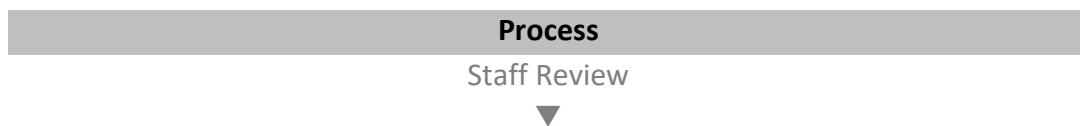
A Public Information Meeting was held on October 14, 2021.

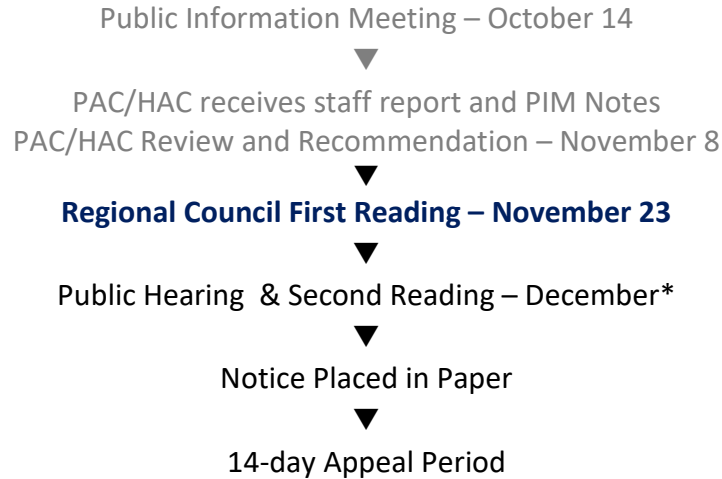
On November 8, 2021 staff presented a supplementary report (Appendix B) and a recommendation report to the Planning and Heritage Advisory Committee (PAC/HAC) (Appendix C).

PAC/HAC recommended in favour of the development agreement on November 8, 2021.

NEXT STEPS

The process for this application is as follows:





*anticipated dates; final dates set by Council

FINANCIAL IMPLICATIONS

There are no anticipated costs to the Municipality in regard to this development.

ALTERNATIVES

In response to the application, Council may decide to:

- hold First Reading and authorize a Public Hearing to approve the development agreement and discharge as drafted or as specifically revised by direction of Council;
- provide alternative direction such as requesting further information on a specific topic.

APPENDICIES

- Appendix A 2021-11-19 Memo from Chrystal Fuller to Planner Poirier re: Parking
- Appendix B 2021-11-08 Supplementary Report - Development Agreement and Discharge: O'Brien St, Windsor, PID 45055902; File #21-14 B
- Appendix C 2021-11-08 Staff Report - Development Agreement and Discharge: O'Brien St, Windsor, PID 45055902; File #21-14

CHIEF ADMINISTRATIVE OFFICER REVIEW

I have participated in the PIM and PAC/HAC meetings when this matter has been reviewed. The development is a positive step towards addressing the housing needs in our area.

I support the recommendation.

Report Prepared by: _____
Sara Poirier, Senior Planner

Report Reviewed by: _____
Madelyn LeMay, Director of Planning and Development

Report Approved by:  _____
Mark Phillips, Chief Administrative Officer



To:	Sara Porier
From:	Chrystal Fuller, LPP, MCIP
Date:	2021-11-19
Re:	Supplementary Information - O'Brien Street DA Application
cc:	Insert cc.

Issue

During a recent PAC meeting where an application by Metro Premier was discussed and referred to Council for First Reading, there were questions regarding onsite parking requirements and if 1 parking spot per unit is sufficient. This memo provides additional information on parking for the O'Brien Street development, where the draft development agreement requires a minimum of 1 parking spaced per unit, plus guest parking and EV parking.

Useful Information on Parking

Over the last several decades, minimum parking requirements have been identified as problematic to the development of towns and cities. To assist Council in its consideration of the recommended parking ratio, the following information is provided.

- The proposed development will provide 1.1 spaces per unit, totalling 122 spaces.
- There is no clear rationale for the typical requirement of between 1.25-1.5 spaces per residential unit. In most bylaws when this number is applied, it is not linked to tenant needs or the size of a particular unit. In fact, this parking ratio has come under increasing criticism as it is seen a creating the kind of development most municipal units don't want encouraged. The main concerns of having too much parking are about encouraging poor urban design, storm water management, discouraging pedestrian and bike activity, cost, reinforcing single occupancy vehicle use and impact on housing affordability.
- Parking spots are expensive to build and maintain. Surface parking is less expensive than underground parking, but the cost for either type of parking depends on the purchase price of the land. Underground parking is estimated to cost more than \$25,000 per spot to construct and has yearly maintenance costs. These costs are passed on to the tenant and impact affordability. (Litman, 2020)
- Surface parking spaces reduce opportunities to create open space and outdoor amenity location on the site.
- The higher level of walkability appears to reduce demand for parking. This means that if a site is close to the things tenants need (grocery stores, post office, pharmacies, shopping) then people will drive less.
- In a study conducted in Sidney, BC, a town of approximately 11000, a parking report found that the parking utilization rate for apartments buildings was 0.97 for condominiums and 0.86 for apartment buildings. (Watt Consulting Group, 2019)

- The Sidney BC study found the following (Watt Consulting Group, 2019):

TABLE 5. VEHICLE PARKING DEMAND BY UNIT TYPE

Unit Type (Bedrooms)	Parked Vehicles Per Unit
Studio units (n=29)	0.56
1-bedroom units (n=219)	0.79
2-bedroom units (n=469)	1.01
3-bedroom units (n=22)	1.22

- Homeowner income is linked to the number of cars owned. Homeowners and condominium owners often have higher parking requirements than renters. The O'Brien Street development will be marketed to downsizing seniors and those looking for a smaller, more affordable option than homeownership.
- Some municipalities in NS link the amount of parking requirements to the number of bedrooms. For example, the Town of Truro ¹provides for the following:

Table 4.6: Downtown Parking Requirements

Land Use	Parking Requirement
Single Detached, Semi Detached, Two Unit Dwelling, Converted Dwelling (two units)	0.5 spaces/bedroom
Multiple Unit Dwelling (three units or more)	up to 2 bedrooms 1.0 spaces/unit
Converted Dwelling (three units or more)	three or more bedrooms 0.5 spaces/unit + 0.5 spaces/bedroom
All other uses (excluding uses exempt in accordance with 4.2.4 (b))	75 percent of parking requirements as set out in Tables 4.2, 4.3, 4.4, or 4.5

- Given the known costs that parking brings to a project, it is not surprising that the Charting a New Course for Housing Affordability report recommended a comprehensive review of development requirements to address housing affordability.² (Nova Scotia Affordable Housing Commission, Spring 2021). Parking is just one of the considerations for housing affordability but the correlation to housing affordability is well documented (Litman, 2020).
- The developer is an experienced landlord, and his experience is that 1 parking spot per unit will be sufficient to meet tenant needs. Truro's example shows that at least one other town within Nova Scotia have adjusted its parking requirements to reflect Mr. Wilkins understanding of the market need in downtown locations. In fact, Truro has reduced its

¹ Town of Truro LUB - Table 4.6 for the Downtown. Separate parking requirements are in place for multi-units outside the downtown.

² Recommendation 8 of [Charting a New Course for Affordable Housing in Nova Scotia](#)

- parking requirement in at least one development in the downtown to 0.72 spaces/unit.³
- By permitting a lower parking to unit ratio, the developer can leave more of the property as open/green space. There is little benefit in creating paved surfaces, which remove area for the tenants to use and enjoy. Paved surfaces also contribute to increased storm water flow rates and create heat islands.⁴

Summary

This information is provided to assist staff and Council in understanding why the reduction in parking from 1.5 to 1 is appropriate and to provide some limited context to the evolving thinking in the planning world about parking minimums.

³ [Walker Street Development](#)

⁴ <https://www.buildings.com/articles/27965/heat-island-effect-what-you-need-know>



Appendix B

WEST HANTS REGIONAL MUNICIPALITY REPORT

Information <input type="checkbox"/>	Recommendation <input checked="" type="checkbox"/>	Decision Request <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
--------------------------------------	--	---	--

To: Members of Planning and Heritage Advisory Committee (PAC/HAC)

Submitted by: _____
Sara Poirier, Senior Planner

Date: 2021-11-08

Subject: Supplementary Report to PAC/HAC - Development Agreement and Discharge:
O'Brien St, Windsor, PID 45055902; File #21-14 B

LEGISLATIVE AUTHORITY

Section 230 of the Municipal Government Act.

RECOMMENDATION

To allow the requested development, staff recommends that PAC/HAC forward a positive recommendation by passing the following motion:

...that PAC/HAC recommends that Council give First Reading and hold a Public Hearing to consider entering into a development agreement to permit two (2), four (4) storey, 56-unit apartment buildings which include up to 10,000 sq ft of commercial space on the ground floor of one building at PID 45055902 on O'Brien Street, Windsor, in a manner substantively the same as the draft set out in Attachment B to the supplementary report #21-14B to the Planning and Heritage Advisory Committee dated November 8, 2021, taking note that this development agreement will discharge and replace the development agreement recorded at the Registry of Deeds on April 9, 2010 as document 9561229.

...that PAC/HAC recommends that Council require that the development agreement with Metro Premier Properties Inc. be signed within 120 days from the date of final approval by Council or the date that any appeals have been disposed of; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Property <input checked="" type="checkbox"/>	Public Opinion <input type="checkbox"/>	Environment <input type="checkbox"/>	Social <input type="checkbox"/>	Economic <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
--	--	--------------------------------------	---------------------------------	-----------------------------------	---

On Friday, October 29, following the submission of the staff report with the agenda package to PAC/HAC, Chrystal Fuller, on behalf of the property owner Clark Wilkins requested changes to the draft development agreement. Staff have outlined the requested changes and staff comments in the discussion section of this report.

Planner Poirier received a letter from a resident Keith AuCoin in the afternoon of October 29 for PAC/HAC to consider (Attachment C). The comment period ended at noon on October 29; but this letter is attached for PAC/HAC's consideration. This was the only response received from the public in relation to the application. On November 1, the Project Engineer for the Public Works Department provided a response to Mr. AuCoin's comments in the discussion section.

DISCUSSION

Applicant Requested Changes

The applicant requested the following changes to the draft development agreement for PID 45055902, O'Brien St, Windsor.

Property Ownership

Mr. Wilkins has advised that the property will be owned by Metro Premier Properties Inc. Clark is the Director of that company. The draft development agreement and motion has been amended to name Metro Premier Properties Inc. as the Owner.

Use

The applicant has requested changes in Section 2.1, Use, of the draft development agreement to clarify that underground and surface parking are permitted uses on the property. Staff find this change acceptable.

Site Plan

The applicant has requested a clause be added the development agreement which would allow the Development Officer to consider changes to the site plan to respond to the requirements of reports generated by clauses 2.9, *Site Drainage*, and 2.11 (c), *Environmental Study*, of the draft development agreement. Section 2.2 (b), *Development Location and Design*, outlines that "The Development Officer may approve minor changes to the location of the main buildings or other aspects of the site plan provided the side yards are not decreased." Staff have added additional wording to this section to ensure the Development Officer can approve changes to the site plan in accordance with the required reports. This section now states "The Development Officer may approve minor changes to the location of the main buildings or other aspects of the site plan

provided the side yards are not decreased. Changes to the site plan may also be approved in accordance with reports generated in Section 2.9, *Site Drainage*, and 2.11 (c), *Environmental Study*, of this agreement provided the side yards are not decreased.”

Height

The applicant has requested a change in Section 2.3, *Site Requirements*, of the draft development agreement to include a maximum building height of 45 feet. This would clarify the maximum building height of 4 storeys. Staff find this change acceptable.

The applicant has also requested a change to Section 2.13, *Variance*, to include “maximum building height” as an item that can be varied by the Development Officer in accordance with the *Municipal Government Act*. Staff do not feel it is appropriate to amend this section of the draft development agreement as the application considered by staff, the public, and the PAC/HAC was for two (2), four (4) storey buildings. Allowing the ability to vary the height of the building would affect other aspects of the development such as density, parking, recreation space, fire protection, water and sewer service, etc. These items have all been considered based on the application for four (4) storeys and not on any additional height being permitted.

Recreation Space

The applicant has requested Section 2.6 (a), *Recreational Space*, be clarified to state “individual balconies” instead of “an individual balcony for each dwelling unit” as the ground floor units of the apartment buildings will not have balconies. Staff find this change acceptable.

Fire Safety

The applicant has requested an addition to Section 2.12 (c), *Fire Safety*, to state “unless otherwise agreed to by the Fire Chief”. Staff find this change acceptable.

Outdoor Storage

The applicant requested clarification on Section 2.15, *Outdoor Storage*, of the draft development agreement as they found it overly restrictive. This section was added to ensure the application met the specific criteria of Policy 9.2.1 (i). This prohibition will remain in the draft development agreement.

Commencement of Development

Section 4.1, *Commencement of Development*, of the draft development agreement currently requires the developer to begin the development on the lot within twenty-four (24) months from the date the agreement is signed. Staff have recommended development to begin within twenty-four (24) months in other development agreements. In the past there have been requests to consider extending this period and Council has agreed to 48 months. The most recent example would be for the Meadows development agreement in Falmouth where the

developer was given 48 months to commence development. Staff recommends that no more than 48 months be given to commence a development permitted by development agreement. This change has been made in the draft development agreement.

Material to be Provided

The applicant requested clarity on Section 4.2 (a), *Material to be Provided*, which requires the owner to “provide record drawings to the Development Officer for any portion of the development for which an engineered design is required, within ten (10) days of completion of any work which requires the engineered design”. During development some construction plans may have to be altered to adapt to site conditions or engineering requirements. Record drawings provide a record of everything that has been constructed on the property following the completion of development. The Public Works Department requires record drawings for any capital works projects and would require the record drawings as part of this development.

To conclude the only requested amendment to the proposed development agreement that staff do not consider advisable would be to allow the Development Officer to vary height of the apartment buildings.

The revised draft development agreement attached to this report as Attachment B incorporates the requested amendments that staff consider appropriate. These proposed changes considered appropriate by staff meet the general and specific criteria of Council to be considered for this proposal.

Letter from Resident

Planner Poirier received a letter from Keith AuCoin on October 29 for PAC/HAC to consider (Attachment C). This was the only response received from the public in relation to the application. The Project Engineer for the Public Works Department was asked to provide comment on Mr. AuCoin’s letter. The Project Engineer stated the following:

“Regarding the concerns from Mr. AuCoin. Currently our intention is to have all stormwater and sanitary sewer separated at the property.

We have provided instruction for the developer to direct all stormwater from the intended O’Brien Street complex towards the Tregothic Creek catchment system, and away from the Cunnabel Creek catchment corridor.

The sanitary sewer would need to tie in at O’Brien Street and would connect to the existing Cunnabel Creek combined sanitary system.

It is our plan to continue efforts to separate sanitary from storm water along the Cunnabel Creek system, and ensure that all new piping is sized appropriate to handle future flows.”

Section 2.9, Site Drainage, of the draft development agreement requires the Owner to provide a stormwater management plan that will satisfy the Municipal Engineer that historical flooding patterns and area drainage systems have been considered and that storm water discharge will not have a negative impact on downstream properties. Staff anticipate that this stormwater management plan and the direction from the Public Works Department to the property owner will ensure the concerns of Mr. AuCoin are addressed.

ALTERNATIVES

In response to the application, PAC/HAC may recommend that Council:

- recommend that Council hold First Reading and authorize a Public Hearing to approve the development agreement and discharge as drafted or as specifically revised by direction of PAC/HAC;
- provide alternative direction such as requesting further information on a specific topic.

ATTACHMENTS

Attachment A	Revised Draft Development Agreement showing changes
Attachment B	Revised Draft Development Agreement
Attachment C	Letter from Resident Keith AuCoin
Attachment D	Staff Report to PAC - Development Agreement and Discharge: O'Brien St, Windsor, PID 45055902; File #21-14

Report Prepared by: _____
Sara Poirier, Senior Planner

Report Reviewed by: _____
Madelyn LeMay, Director of Planning and Development

Attachment A
DEVELOPMENT AGREEMENT

THIS AGREEMENT made this day of , 2022.

BETWEEN:

WEST HANTS REGIONAL MUNICIPALITY, a body corporate pursuant to the *Municipal Government Act*, having its chief place of business at 76 Morison Drive, Wentworth Creek, in the County of Hants, Province of Nova Scotia,

(Hereinafter referred to as the “Municipality”)

OF THE FIRST PART

- and -

~~3331814 NOVA SCOTIA LIMITED~~ **METRO PREMIER PROPERTIES INC.**, a body corporate, with a head office at 424 Caldwell Road, Dartmouth, in the County of Halifax, Province of Nova Scotia,

(Hereinafter referred to as the “Owner”)

OF THE SECOND PART

WHEREAS the Owner is the registered owner of a parcel of land located on O’Brien Street, PID 45055902, hereinafter referred to as the “Property”, which lands are more particularly described in Schedule A attached hereto; and

WHEREAS the Property is designated Commercial on the Generalized Future Land Use Map of the Municipal Planning Strategy and zoned partially General Commercial (GC) and partially Highway Commercial (HC) on the Zoning Map of the Land Use By-law with a portion of the lot in the Environmental Constraints overlay; and

WHEREAS the Owner has requested that the Municipality enter into a development agreement to permit two (2), four (4) storey, 56-unit apartment buildings including up to 10,000 sq ft of commercial space on the ground floor of one building on the Property (the “Development”); and

WHEREAS Policy 9.2.1 of the Municipal Planning Strategy and Section 6.1 (I) of the Land Use By-law enables Council to consider entering into a development agreement to allow mixed use development in the Commercial designation; and

WHEREAS the Council of the Municipality, at a meeting held on **month day, year** approved this request and adopted this Agreement by policy, subject to the execution of this development agreement by the parties hereto;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

PART 1 AGREEMENT CONTEXT

1.1 Schedules

The following attached schedules shall form part of this Agreement:

Schedule A - Legal Description

Schedule B – Site Plan

1.2 Municipal Planning Strategy, Land Use By-law and Subdivision By-law

- (a) *Municipal Planning Strategy* means the Municipal Planning Strategy of the Town of Windsor, approved on August 23, 2005, as amended, or successor by-laws;
- (b) *Land Use By-law* means the Land Use By-law of the Town of Windsor, approved on August 23, 2005, as amended, or successor by-laws;
- (c) *Subdivision By-law* means the Subdivision By-law of the Town of Windsor, approved on January 24, 2012, as amended, or successor by-laws.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Use

- (a) The Parties agree that uses on the Property shall be limited to the following:
 - (i) those uses permitted by the underlying zoning in the Land Use By-law;
 - (ii) residential development consisting of a maximum of 112 dwelling units;
 - (iii) underground and surface parking for the uses within the buildings; and
 - (iv) commercial uses located on the ground floor of Building “2” which shall be limited to:
 - (i) arts and craft studios including photography;
 - (ii) banks and financial institutions;
 - (iii) day care centres, licensed and non-licensed;

- (iv) museums, art galleries and libraries;
- (v) offices;
- (vi) repair and rental establishments;
- (vii) retail stores;
- (viii) personal service shops;

Except as otherwise provided in this Agreement, the provisions of the Land Use By-law and the Subdivision By-law apply to any development undertaken pursuant to this Agreement.

- (b) The total area devoted to commercial use on the Property shall not exceed 10,000 sq ft gross floor area.
- (c) No development permit shall be issued for a commercial use that involves the frequent shipping, loading or unloading of persons, animals or goods.
- (d) Prior to the construction of new buildings as shown on Schedule B attached hereto, all existing buildings shall be demolished, and the materials disposed of in accordance with the requirements established by qualified site professionals.

2.2 Development Location and Design

- (a) The development location and design shall be generally consistent with the site plan shown in Schedule B.
- (b) The Development Officer may approve minor changes to the location of the main buildings or other aspects of the site plan provided the side yards are not decreased. Changes to the site plan may also be approved in accordance with reports generated in Section 2.9, Site Drainage, and 2.11 (c), Environmental Study, of this agreement provided the side yards are not decreased.

2.3 Site Requirements

- (a) The multiple unit residential buildings shall conform to the following site requirements:

Minimum Front Yard	20 ft (6.1 m)
Minimum Rear Yard	20 ft (6.1 m)
Minimum Side Yard	20 ft (6.1 m)
Maximum Height <u>Storey</u> of Main Building	4 storeys
<u>Maximum Building Height</u>	<u>45 feet</u>
Maximum Height of Accessory Building	15 ft (4.57 m)

- (b) Accessory buildings are permitted in accordance with Section 5.1 of the Land Use By-law, *Accessory Buildings and Structures*.

2.4 Access and Egress

- (a) The vehicular entrance and exit for the Property shall be in general conformance with the entrance and exit shown on Schedule B.
- (b) The vehicular entrance and exit shall be clearly demarcated and paved.
- (c) A 5 ft (1.6 m) wide sidewalk, constructed of concrete, asphalt, brick or other hard surface paver, shall be provided from O'Brien Street to the building entrances.

2.5 Parking

- (a) The Owner shall provide a minimum of one (1) parking space per dwelling unit on the Property and a minimum of one (1) parking space for every 300 sq ft gross floor area dedicated to commercial uses on the Property.
- (b) Parking may be provided either underground within the buildings or outside at grade.
- (c) Each parking space shall be a minimum of 9 by 20 feet (2.7 m by 6.1 m) exclusive of driveways and manoeuvring aisles.
- (d) Parking aisles shall be a minimum of 20 feet (6.1 m) wide.
- (e) Parking spaces and aisles shall be constructed of concrete, asphalt, brick or other hard surface paver.
- (f) The number, location and arrangement of parking spaces, aisles and driveways may be varied by the Development Officer.

2.6 Recreational Space

A minimum of 20,000 sq ft of private recreational space shall be provided on the Property ~~as follows~~ and may include:

- (a) ~~an individual balcony~~ individual balconies ~~for each dwelling unit~~; and
- (b) common use landscaped areas in accordance with the Site Plan attached as Schedule B.

2.7 Signs and Lighting

Signage and illumination shall be regulated under Sections 5.18 and 7.0 of the Land Use By-law, *Illumination* and *Signs*, which controls lighting, size, location, and number of signs. Exterior lighting for driveways, parking areas, signs or structures shall be shielded and directed downward to minimize light spilling, glare or light cast over neighbouring properties or the street.

2.8 Maintenance

The Owner shall keep the Property and buildings and any portion thereof clean and in good repair. Any driveways, fences, lawns, trees, shrubs, walkways and other

landscaping elements shall be regularly maintained and kept in a tidy state and free from unkempt materials or matter of any kind.

2.9 Site Drainage

- (a) No development permit shall be issued until the Owner provides a stormwater management plan that will satisfy the Municipal Engineer that historical flooding patterns and area drainage systems have been considered and that storm water discharge will not have a negative impact on downstream properties.
- (b) The Owner shall undertake all construction activities in accordance with an erosion and sedimentation control plan prepared by a Professional Engineer, unless otherwise directed by Nova Scotia Environment, and also agrees to assume sole responsibility for compliance with all regulations of Nova Scotia Environment.

2.10 Site Remediation

No development permit shall be issued until the Owner provides to the Development Officer copies of the Remedial Action Plan and the Certificate of Compliance which have been prepared by a qualified site professional and confirmation that these documents have been accepted by Nova Scotia Environment in accordance with the "Guidelines for Management of Contaminated Sites in Nova Scotia".

2.11 Servicing

(a) Waste Collection

- (i) The Owner shall make provision for private waste collection for the Property.
- (ii) The Owner shall keep any outdoor storage of garbage in an enclosed structure or in some way adequately screened so as not to be visible from nearby properties and abutting roads and it shall not be located closer than 10 ft (3.05 m) from an abutting property.

(b) Water and Sewer Services

The development must connect to Municipal water and sewer service. Detailed design plans of the water and sewer servicing connections and layout shall be in accordance with the Municipal Services Specifications Manual and shall be submitted to the Municipal Engineer for approval prior to construction.

(c) Environmental Study

If any portion of the main buildings shown on Schedule B of this Agreement is intended to be constructed upon lands designated as Environmental Constraints on "Schedule A - Zoning" of the Land Use By-law, the Owner must provide the Development Officer with a completed Environmental Study as outlined in Policy 12.0.2 of the Municipal Planning Strategy prior to a development permit being issued.

2.12 Fire Safety

- (a) No development permit shall be issued until the location and connection design of the fire hydrant(s) to the municipal water supply has been approved by the water utility, in consultation with the district Fire Chief.
- (b) All curbs shall be designed to be mountable by emergency services vehicles.
- (c) All fire lanes shall be kept clear of overhead obstructions and wires and be maintained by the Owner to allow unimpeded access to the property by emergency services vehicles, [unless otherwise agreed to by the Fire Chief](#).

2.13 Variance

In accordance with Section 5.40 of the Land Use By-law, *Variance*, the Development Officer may grant a variance for one or more of the following requirements subject to the requirements of the *Municipal Government Act*:

- (i) minimum required yard dimensions except side yard requirements;
- (ii) number of parking spaces required; and
- (iii) floor area occupied by a home-based business.

2.14 Phasing

- (a) In the event that the Owner chooses to build one building at a time, the following infrastructure required for that building:
 - (i) construction of the paved driveway access from O'Brien Street to the building including the circular driveway as shown on Schedule B;
 - (ii) construction of the sidewalk from O'Brien Street to the entrance of the building;
 - (iii) construction of the parking lot, including paving, to the extent necessary to provide spaces as required by this Agreement for the residential and commercial uses of the building.
- (b) Where the construction of the second building has not commenced within twelve (12) months of the completion of the first building, the area shown on Schedule B covered by the building that has not been constructed shall be graded and landscaped; this may include, grass, shrubs, trees or other appropriate vegetative cover.
- (c) Construction of the first building and all relevant infrastructure and landscaping as outlined in Section 2.14 (a) of this Agreement shall be completed within three (3) years of the commencement of development outlined in Section 4.1 of this Agreement.

- (d) Construction of the second building shall be completed within six (6) years of the commencement of development outlined in Section 4.1 of this Agreement.

2.15 Outdoor Storage

The outdoor storage of merchandise, goods or inventory of any kind, materials, equipment or other items not intended for immediate sale is prohibited.

PART 3 CHANGES AND DISCHARGE

3.1 The Owner shall not vary or change the use of the Property from that provided for in Section 2.1 of this Agreement, *Use*, unless a new agreement is entered into with the Municipality or this Agreement is amended.

3.2 Any matters in this Agreement which are not specified in Subsection 3.3 below are not substantive matters and may be changed with the written consent of Council without a public hearing provided that Council determines that the changes do not significantly alter the intended effect of these aspects of this Agreement.

3.3 The following matters are substantive matters:

- (a) the uses permitted on the Property as listed in Section 2.1, *Use*;
- (b) the requirements for a stormwater management plan to be submitted prior to a development permit being issued as listed in Section 2.9, *Site Drainage*;
- (c) the requirements for the Remedial Action Plan and the Certificate of Compliance to be submitted prior to a development permit being issued as listed in Section 2.10, *Site Remediation*;
- (d) the fire safety requirements listed in Section 2.12, *Fire Safety*.
- (e) the timelines for construction in Section 2.14, *Phasing*.

3.4 Notwithstanding the foregoing, discharge of this Agreement is not a substantive matter and this Agreement may be discharged by Council without a public hearing.

3.5 Notice of Intent to Discharge this Agreement may be given by the Municipality to the Owner following a resolution of Council to give such Notice:

- (a) as provided for in Section 4.1, *Commencement of Development*, of this Agreement;
or
- (b) at the discretion of the Municipality, with or without the concurrence of the Owner, where the Development has, in the reasonable opinion of Council on advice from the Development Officer, ceased operation for a period of at least twenty-four (24) months; or
- (c) at any time upon the written request of the Owner, provided the use of the Property is in accordance with the Land Use By-law or a new Agreement has been entered into.

3.6 Council may discharge this Agreement 30 days after a Notice of Intent to Discharge has been given.

PART 4 IMPLEMENTATION

4.1 Commencement of Development

- (a) The Owner may not commence any construction or use on the Property until the Municipality has issued any development permit, building permit and/or occupancy permit that may be required.
- (b) Development as provided in Part 2 of this Agreement shall commence not later than ~~twenty four (24) months~~ fourty-eight (48) months from the date this Agreement is signed. If, in the opinion of the Development Officer, this time limit has not been met, this Agreement may be discharged at the option of the Municipality by resolution of Council in accordance with Section 229 of the *Municipal Government Act* 30 days after giving Notice of Intent to Discharge to the Owner. Upon the written request of the Owner, the Municipality, by resolution of Council, may grant an extension to the date of commencement of development without such an extension being deemed to be an amendment to this Agreement.
- (c) If the Owner is bona fide delayed from commencing the development for reasons which are beyond the Owner's control, the determination of which shall be at the sole discretion of the Development Officer, then performance by the Owner is excused for the period of the delay and the time period for the Owner to perform their obligations shall be extended by the Development Officer in writing for an equivalent period, without such an extension being deemed to be an amendment to this Agreement.

4.2 Material to be Provided

- (a) The Owner shall provide record drawings to the Development Officer for any portion of the development for which an engineered design is required, within ten (10) days of completion of any work which requires the engineered design.
- (b) The Owner shall, upon written request, provide the Municipality with copies of any documentation, permits or approvals required by Provincial or Federal governments or agencies.

PART 5 ADMINISTRATION and COMPLIANCE

5.1 Compliance with other By-laws and Regulations

- (a) Nothing in this Agreement shall exempt the Owner from complying with Federal, Provincial and Municipal laws, by-laws and regulations in force or from obtaining any Federal, Provincial, or Municipal license, permission, permit, authority, or approval required thereunder.

- (b) Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property (other than the Land Use By-law to the extent varied by this Agreement) or any statute or regulation, the higher or more stringent requirements shall prevail.

5.2 Severability of Provisions

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

5.3 Interpretation

- (a) Where the context requires, the singular shall include the plural and the masculine gender shall include the feminine and neutral gender.
- (b) Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.
- (c) References to particular sections of statutes and bylaws shall be deemed to be references to any successor legislation and bylaws even if the content has been amended, unless the context otherwise requires.

5.4 Municipal Responsibility

- (a) The Municipality does not make any representations to the Owner about the suitability of the Property for the development proposed by this Agreement. The Owner assumes all risks and must ensure that any proposed development complies with this Agreement and all other laws pertaining to the Development.
- (b) Any failure of the Municipality to insist upon a strict performance of any requirements or conditions contained in this Agreement shall not be deemed a waiver of any rights or remedies that the Municipality may have and shall not be deemed a waiver of any subsequent breach or default in the conditions or requirements contained in this Agreement.

5.5 Breach of Terms or Conditions

Upon breach of any term or condition of this Agreement, the Municipality may notify the Owner in writing. In the event that the Owner has not cured any such breach or entered into arrangements with the Municipality related to such breach to the Municipality's satisfaction, acting reasonably, within six (6) months of such notice, then the Municipality may rely upon the remedies contained in Section 264 of the *Municipal Government Act* and may enter the land and perform any of the terms contained in the Development Agreement, or take such remedial action as is considered necessary to correct a breach of the Agreement, including the removal or destruction of anything

that contravenes the terms of the Agreement and including decommissioning the site. It is agreed that all reasonable expenses, whether arising out of the entry on the land or from the performance of the terms are a first lien on the land that is the subject of the Development Agreement.

5.6 Costs

The Owner shall pay all costs associated with registering this Agreement and all costs associated with any amendment thereof.

5.7 Development Agreement Bound to Land

This Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, and shall run with the land which is the subject of this Agreement until such time as it is discharged by the Municipality in accordance with Section 229 of the *Municipal Government Act*.

5.8 Assignment of Agreement

The Owner may, at any time and from time to time, transfer or assign this Agreement and its rights hereunder and may delegate its obligations hereunder to an assign, successor, heir, or purchaser of the land bound by this Agreement.

5.9 Written Notice

- (a) The Municipality may serve notice on the Owner personally or by ordinary mail which shall be deemed to have been received within three (3) business days of mailing, addressed to 424 Caldwell Rd., Dartmouth, NS, CA B2V 1A6, or at any other address provided by the Owner.
- (b) The Owner may serve notice on the Municipality by registered mail addressed to the Chief Administrative Officer, West Hants Regional Municipality, 76 Morison Drive, P.O. Box 3000, Windsor, NS, B0N 2T0, or at any successor address provided by the Municipality to the Owner.

5.10 Full Agreement

This Agreement constitutes the entire agreement and contract entered into by the Municipality and the Owner. No other agreement or representation, oral or written, shall be binding.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto on the day and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of:

Witness

Witness

PREMIER PROPERTIES INC.

Witness

) **WEST HANTS REGIONAL**

) **MUNICIPALITY**

)

)

)

Per: _____

) Abraham Zebian, Mayor

)

) Per: _____

) Deanna Snair, Municipal Clerk

)

)

)

) ~~**3331814 NOVA SCOTIA LIMITED**~~ **METRO**

)

)

)

Per: _____

) Clark Wilkins, President

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2022, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that **WEST HANTS REGIONAL MUNICIPALITY**, one of the parties thereto, caused the same to be executed in its name and on its behalf and its corporate seal to be thereunto affixed in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2022, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that, **Clark Wilkins**, one of the parties thereto, signed, sealed and delivered the same in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**AFFIDAVIT OF CLERK
WEST HANTS REGIONAL MUNICIPALITY**

I, Deanna Snair of _____, Hants County, Nova Scotia make oath and swear that:

1. I am the Clerk of the West Hants Regional Municipality (the "Municipality") and I have personal knowledge of the matters to which I have sworn in this Affidavit.
2. The Municipality is a body corporate pursuant to the *Municipal Government Act*, S.N.S. 1988, c.18, as amended.
3. I acknowledge that the Municipality executed the attached Instrument by its proper designates duly authorized in that regard under seal on the date of this Affidavit pursuant to subsection 13(3) of the *Municipal Government Act*, S.N.S. 1988, c.18, as amended. This acknowledgement is made pursuant to subsection 31(a) of the Registry Act, R.S.N.S. 1989, c.392 and/or clause 79(1)(a) of the Land Registry Act, S.N.S. 2001, c.6, as amended, for the purpose of registering or recording the Instrument.
4. The Municipality is resident in Canada for the purposes of the Income Tax Act (Canada).

Sworn before me at _____, Nova Scotia,
this _____, 20__.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA
Print name/affix seal

Deanna Snair, Clerk

I CERTIFY that on this date Deanna Snair personally came before me and swore under oath the foregoing Affidavit.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA
Print name/affix seal

Canada
Province of Nova Scotia

AFFIDAVIT & PROOF OF EXECUTION (CORPORATE)

I, Clark Wilkins, Nova Scotia, make oath and say that:

1. I am Clark Wilkins of ~~3331814 NOVA SCOTIA LIMITED~~ METRO PREMIER PROPERTIES INC., the "Corporation". Except as otherwise stated I have personal knowledge of the matters to which I have sworn in this Affidavit.
2. I acknowledge that I executed the foregoing instrument on behalf of the Corporation on the date of this affidavit; this acknowledgment is made for the purpose of registering such instrument pursuant to s.31(a) of the Registry Act, R.S.N.S. 1989, c.392 or ss.79 and 83 of the Land Registration Act as the case may be.
3. I verify that I have the authority to execute the foregoing instrument on behalf of the corporation and thereby bind the Corporation.
4. The Corporation is a resident of Canada under the Income Tax Act (Canada).
5. The ownership of a share or an interest in a share of the Corporation does not entitle the owner of such share or interest in such share to occupy a dwelling owned by the Corporation.

I certify that on this _____, 2022 the Deponent came before me, made oath, and swore the foregoing affidavit at _____, Nova Scotia.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA
Print name/affix seal

CLARK WILKINS, President

Schedule A
Legal Description – PID 45055902

Schedule B Site Plan



Attachment B



DEVELOPMENT AGREEMENT

THIS AGREEMENT made this day of , 2022.

BETWEEN:

WEST HANTS REGIONAL MUNICIPALITY, a body corporate pursuant to the *Municipal Government Act*, having its chief place of business at 76 Morison Drive, Wentworth Creek, in the County of Hants, Province of Nova Scotia,

(Hereinafter referred to as the “Municipality”)

OF THE FIRST PART

- and -

METRO PREMIER PROPERTIES INC., a body corporate, with a head office at 424 Caldwell Road, Dartmouth, in the County of Halifax, Province of Nova Scotia,

(Hereinafter referred to as the “Owner”)

OF THE SECOND PART

WHEREAS the Owner is the registered owner of a parcel of land located on O’Brien Street, PID 45055902, hereinafter referred to as the “Property”, which lands are more particularly described in Schedule A attached hereto; and

WHEREAS the Property is designated Commercial on the Generalized Future Land Use Map of the Municipal Planning Strategy and zoned partially General Commercial (GC) and partially Highway Commercial (HC) on the Zoning Map of the Land Use By-law with a portion of the lot in the Environmental Constraints overlay; and

WHEREAS the Owner has requested that the Municipality enter into a development agreement to permit two (2), four (4) storey, 56-unit apartment buildings including up to 10,000 sq ft of commercial space on the ground floor of one building on the Property (the “Development”); and

WHEREAS Policy 9.2.1 of the Municipal Planning Strategy and Section 6.1 (I) of the Land Use By-law enables Council to consider entering into a development agreement to allow mixed use development in the Commercial designation; and

WHEREAS the Council of the Municipality, at a meeting held on **month day, year** approved this request and adopted this Agreement by policy, subject to the execution of this development agreement by the parties hereto;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

PART 1 AGREEMENT CONTEXT

1.1 Schedules

The following attached schedules shall form part of this Agreement:

Schedule A - Legal Description

Schedule B – Site Plan

1.2 Municipal Planning Strategy, Land Use By-law and Subdivision By-law

- (a) *Municipal Planning Strategy* means the Municipal Planning Strategy of the Town of Windsor, approved on August 23, 2005, as amended, or successor by-laws;
- (b) *Land Use By-law* means the Land Use By-law of the Town of Windsor, approved on August 23, 2005, as amended, or successor by-laws;
- (c) *Subdivision By-law* means the Subdivision By-law of the Town of Windsor, approved on January 24, 2012, as amended, or successor by-laws.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Use

- (a) The Parties agree that uses on the Property shall be limited to the following:
 - (i) those uses permitted by the underlying zoning in the Land Use By-law;
 - (ii) residential development consisting of a maximum of 112 dwelling units;

- (iii) underground and surface parking for the uses within the buildings; and
- (iv) commercial uses located on the ground floor of Building “2” which shall be limited to:
 - (i) arts and craft studios including photography;
 - (ii) banks and financial institutions;
 - (iii) day care centres, licensed and non-licensed;
 - (iv) museums, art galleries and libraries;
 - (v) offices;
 - (vi) repair and rental establishments;
 - (vii) retail stores;
 - (viii) personal service shops;

Except as otherwise provided in this Agreement, the provisions of the Land Use By-law and the Subdivision By-law apply to any development undertaken pursuant to this Agreement.

- (b) The total area devoted to commercial use on the Property shall not exceed 10,000 sq ft gross floor area.
- (c) No development permit shall be issued for a commercial use that involves the frequent shipping, loading or unloading of persons, animals or goods.
- (d) Prior to the construction of new buildings as shown on Schedule B attached hereto, all existing buildings shall be demolished, and the materials disposed of in accordance with the requirements established by qualified site professionals.

2.2 Development Location and Design

- (a) The development location and design shall be generally consistent with the site plan shown in Schedule B.
- (b) The Development Officer may approve minor changes to the location of the main buildings or other aspects of the site plan provided the side yards are not decreased. Changes to the site plan may also be approved in accordance with reports generated in Section 2.9, *Site Drainage*, and 2.11 (c), *Environmental Study*, of this agreement provided the side yards are not decreased.

2.3 Site Requirements

- (a) The multiple unit residential buildings shall conform to the following site requirements:

Minimum Front Yard	20 ft (6.1 m)
Minimum Rear Yard	20 ft (6.1 m)

Minimum Side Yard	20 ft (6.1 m)
Maximum Storey of Main Building	4 storeys
Maximum Building Height	45 feet
Maximum Height of Accessory Building	15 ft (4.57 m)

- (b) Accessory buildings are permitted in accordance with Section 5.1 of the Land Use By-law, *Accessory Buildings and Structures*.

2.4 Access and Egress

- (a) The vehicular entrance and exit for the Property shall be in general conformance with the entrance and exit shown on Schedule B.
- (b) The vehicular entrance and exit shall be clearly demarcated and paved.
- (c) A 5 ft (1.6 m) wide sidewalk, constructed of concrete, asphalt, brick or other hard surface paver, shall be provided from O'Brien Street to the building entrances.

2.5 Parking

- (a) The Owner shall provide a minimum of one (1) parking space per dwelling unit on the Property and a minimum of one (1) parking space for every 300 sq ft gross floor area dedicated to commercial uses on the Property.
- (b) Parking may be provided either underground within the buildings or outside at grade.
- (c) Each parking space shall be a minimum of 9 by 20 feet (2.7 m by 6.1 m) exclusive of driveways and manoeuvring aisles.
- (d) Parking aisles shall be a minimum of 20 feet (6.1 m) wide.
- (e) Parking spaces and aisles shall be constructed of concrete, asphalt, brick or other hard surface paver.
- (f) The number, location and arrangement of parking spaces, aisles and driveways may be varied by the Development Officer.

2.6 Recreational Space

A minimum of 20,000 sq ft of private recreational space shall be provided on the Property and may include:

- (a) individual balconies; and
- (b) common use landscaped areas in accordance with the Site Plan attached as Schedule B.

2.7 Signs and Lighting

Signage and illumination shall be regulated under Sections 5.18 and 7.0 of the Land Use By-law, *Illumination* and *Signs*, which controls lighting, size, location, and number of signs. Exterior lighting for driveways, parking areas, signs or structures shall be shielded and directed downward to minimize light spilling, glare or light cast over neighbouring properties or the street.

2.8 Maintenance

The Owner shall keep the Property and buildings and any portion thereof clean and in good repair. Any driveways, fences, lawns, trees, shrubs, walkways and other landscaping elements shall be regularly maintained and kept in a tidy state and free from unkempt materials or matter of any kind.

2.9 Site Drainage

- (a) No development permit shall be issued until the Owner provides a stormwater management plan that will satisfy the Municipal Engineer that historical flooding patterns and area drainage systems have been considered and that storm water discharge will not have a negative impact on downstream properties.
- (b) The Owner shall undertake all construction activities in accordance with an erosion and sedimentation control plan prepared by a Professional Engineer, unless otherwise directed by Nova Scotia Environment, and also agrees to assume sole responsibility for compliance with all regulations of Nova Scotia Environment.

2.10 Site Remediation

No development permit shall be issued until the Owner provides to the Development Officer copies of the Remedial Action Plan and the Certificate of Compliance which have been prepared by a qualified site professional and confirmation that these documents have been accepted by Nova Scotia Environment in accordance with the "Guidelines for Management of Contaminated Sites in Nova Scotia".

2.11 Servicing

(a) Waste Collection

- (i) The Owner shall make provision for private waste collection for the Property.
- (ii) The Owner shall keep any outdoor storage of garbage in an enclosed structure or in some way adequately screened so as not to be visible from nearby properties and abutting roads and it shall not be located closer than 10 ft (3.05 m) from an abutting property.

(b) Water and Sewer Services

The development must connect to Municipal water and sewer service. Detailed design plans of the water and sewer servicing connections and layout shall be in accordance with the Municipal Services Specifications Manual and shall be submitted to the Municipal Engineer for approval prior to construction.

(c) Environmental Study

If any portion of the main buildings shown on Schedule B of this Agreement is intended to be constructed upon lands designated as Environmental Constraints on "Schedule A - Zoning" of the Land Use By-law, the Owner must provide the Development Officer with a completed Environmental Study as outlined in Policy 12.0.2 of the Municipal Planning Strategy prior to a development permit being issued.

2.12 Fire Safety

- (a) No development permit shall be issued until the location and connection design of the fire hydrant(s) to the municipal water supply has been approved by the water utility, in consultation with the district Fire Chief.
- (b) All curbs shall be designed to be mountable by emergency services vehicles.
- (c) All fire lanes shall be kept clear of overhead obstructions and wires and be maintained by the Owner to allow unimpeded access to the property by emergency services vehicles, unless otherwise agreed to by the Fire Chief.

2.13 Variance

In accordance with Section 5.40 of the Land Use By-law, *Variance*, the Development Officer may grant a variance for one or more of the following requirements subject to the requirements of the *Municipal Government Act*:

- (i) minimum required yard dimensions except side yard requirements;
- (ii) number of parking spaces required; and
- (iii) floor area occupied by a home-based business.

2.14 Phasing

- (a) In the event that the Owner chooses to build one building at a time, the following infrastructure required for that building:
 - (i) construction of the paved driveway access from O'Brien Street to the building including the circular driveway as shown on Schedule B;
 - (ii) construction of the sidewalk from O'Brien Street to the entrance of the building;

- (iii) construction of the parking lot, including paving, to the extent necessary to provide spaces as required by this Agreement for the residential and commercial uses of the building.
- (b) Where the construction of the second building has not commenced within twelve (12) months of the completion of the first building, the area shown on Schedule B covered by the building that has not been constructed shall be graded and landscaped; this may include, grass, shrubs, trees or other appropriate vegetative cover.
- (c) Construction of the first building and all relevant infrastructure and landscaping as outlined in Section 2.14 (a) of this Agreement shall be completed within three (3) years of the commencement of development outlined in Section 4.1 of this Agreement.
- (d) Construction of the second building shall be completed within six (6) years of the commencement of development outlined in Section 4.1 of this Agreement.

2.15 Outdoor Storage

The outdoor storage of merchandise, goods or inventory of any kind, materials, equipment or other items not intended for immediate sale is prohibited.

PART 3 CHANGES AND DISCHARGE

- 3.1** The Owner shall not vary or change the use of the Property from that provided for in Section 2.1 of this Agreement, *Use*, unless a new agreement is entered into with the Municipality or this Agreement is amended.
- 3.2** Any matters in this Agreement which are not specified in Subsection 3.3 below are not substantive matters and may be changed with the written consent of Council without a public hearing provided that Council determines that the changes do not significantly alter the intended effect of these aspects of this Agreement.
- 3.3** The following matters are substantive matters:
 - (a) the uses permitted on the Property as listed in Section 2.1, *Use*;
 - (b) the requirements for a stormwater management plan to be submitted prior to a development permit being issued as listed in Section 2.9, *Site Drainage*;
 - (c) the requirements for the Remedial Action Plan and the Certificate of Compliance to be submitted prior to a development permit being issued as listed in Section 2.10, *Site Remediation*;
 - (d) the fire safety requirements listed in Section 2.12, *Fire Safety*.
 - (e) the timelines for construction in Section 2.14, *Phasing*.

- 3.4** Notwithstanding the foregoing, discharge of this Agreement is not a substantive matter and this Agreement may be discharged by Council without a public hearing.
- 3.5** Notice of Intent to Discharge this Agreement may be given by the Municipality to the Owner following a resolution of Council to give such Notice:
- (a) as provided for in Section 4.1, *Commencement of Development*, of this Agreement; or
 - (b) at the discretion of the Municipality, with or without the concurrence of the Owner, where the Development has, in the reasonable opinion of Council on advice from the Development Officer, ceased operation for a period of at least twenty-four (24) months; or
 - (c) at any time upon the written request of the Owner, provided the use of the Property is in accordance with the Land Use By-law or a new Agreement has been entered into.
- 3.6** Council may discharge this Agreement 30 days after a Notice of Intent to Discharge has been given.

PART 4 IMPLEMENTATION

4.1 Commencement of Development

- (a) The Owner may not commence any construction or use on the Property until the Municipality has issued any development permit, building permit and/or occupancy permit that may be required.
- (b) Development as provided in Part 2 of this Agreement shall commence not later than forty-eight (48) months from the date this Agreement is signed. If, in the opinion of the Development Officer, this time limit has not been met, this Agreement may be discharged at the option of the Municipality by resolution of Council in accordance with Section 229 of the *Municipal Government Act* 30 days after giving Notice of Intent to Discharge to the Owner. Upon the written request of the Owner, the Municipality, by resolution of Council, may grant an extension to the date of commencement of development without such an extension being deemed to be an amendment to this Agreement.
- (c) If the Owner is bona fide delayed from commencing the development for reasons which are beyond the Owner's control, the determination of which shall be at the sole discretion of the Development Officer, then performance by the Owner is excused for the period of the delay and the time period for the Owner to perform their obligations shall be extended by the Development Officer in writing for an

equivalent period, without such an extension being deemed to be an amendment to this Agreement.

4.2 Material to be Provided

- (a) The Owner shall provide record drawings to the Development Officer for any portion of the development for which an engineered design is required, within ten (10) days of completion of any work which requires the engineered design.
- (b) The Owner shall, upon written request, provide the Municipality with copies of any documentation, permits or approvals required by Provincial or Federal governments or agencies.

PART 5 ADMINISTRATION and COMPLIANCE

5.1 Compliance with other By-laws and Regulations

- (a) Nothing in this Agreement shall exempt the Owner from complying with Federal, Provincial and Municipal laws, by-laws and regulations in force or from obtaining any Federal, Provincial, or Municipal license, permission, permit, authority, or approval required thereunder.
- (b) Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property (other than the Land Use By-law to the extent varied by this Agreement) or any statute or regulation, the higher or more stringent requirements shall prevail.

5.2 Severability of Provisions

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

5.3 Interpretation

- (a) Where the context requires, the singular shall include the plural and the masculine gender shall include the feminine and neutral gender.
- (b) Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.
- (c) References to particular sections of statutes and bylaws shall be deemed to be references to any successor legislation and bylaws even if the content has been amended, unless the context otherwise requires.

5.4 Municipal Responsibility

- (a) The Municipality does not make any representations to the Owner about the suitability of the Property for the development proposed by this Agreement. The Owner assumes all risks and must ensure that any proposed development complies with this Agreement and all other laws pertaining to the Development.
- (b) Any failure of the Municipality to insist upon a strict performance of any requirements or conditions contained in this Agreement shall not be deemed a waiver of any rights or remedies that the Municipality may have and shall not be deemed a waiver of any subsequent breach or default in the conditions or requirements contained in this Agreement.

5.5 Breach of Terms or Conditions

Upon breach of any term or condition of this Agreement, the Municipality may notify the Owner in writing. In the event that the Owner has not cured any such breach or entered into arrangements with the Municipality related to such breach to the Municipality's satisfaction, acting reasonably, within six (6) months of such notice, then the Municipality may rely upon the remedies contained in Section 264 of the *Municipal Government Act* and may enter the land and perform any of the terms contained in the Development Agreement, or take such remedial action as is considered necessary to correct a breach of the Agreement, including the removal or destruction of anything that contravenes the terms of the Agreement and including decommissioning the site. It is agreed that all reasonable expenses, whether arising out of the entry on the land or from the performance of the terms are a first lien on the land that is the subject of the Development Agreement.

5.6 Costs

The Owner shall pay all costs associated with registering this Agreement and all costs associated with any amendment thereof.

5.7 Development Agreement Bound to Land

This Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, and shall run with the land which is the subject of this Agreement until such time as it is discharged by the Municipality in accordance with Section 229 of the *Municipal Government Act*.

5.8 Assignment of Agreement

The Owner may, at any time and from time to time, transfer or assign this Agreement and its rights hereunder and may delegate its obligations hereunder to an assign, successor, heir, or purchaser of the land bound by this Agreement.

5.9 Written Notice

- (a) The Municipality may serve notice on the Owner personally or by ordinary mail which shall be deemed to have been received within three (3) business days of mailing, addressed to 424 Caldwell Rd., Dartmouth, NS, CA B2V 1A6, or at any other address provided by the Owner.
- (b) The Owner may serve notice on the Municipality by registered mail addressed to the Chief Administrative Officer, West Hants Regional Municipality, 76 Morison Drive, P.O. Box 3000, Windsor, NS, B0N 2T0, or at any successor address provided by the Municipality to the Owner.

5.10 Full Agreement

This Agreement constitutes the entire agreement and contract entered into by the Municipality and the Owner. No other agreement or representation, oral or written, shall be binding.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto on the day and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of:

Witness

Witness

Witness

**) WEST HANTS REGIONAL
) MUNICIPALITY**

)
)
)

Per: _____

) Abraham Zebian, Mayor

)

) Per: _____

) Deanna Snair, Municipal Clerk

)

)

)

) METRO PREMIER PROPERTIES INC.

)

)

)

Per: _____

) Clark Wilkins, President

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2022, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that **WEST HANTS REGIONAL MUNICIPALITY**, one of the parties thereto, caused the same to be executed in its name and on its behalf and its corporate seal to be thereunto affixed in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2022, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that, **Clark Wilkins**, one of the parties thereto, signed, sealed and delivered the same in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**AFFIDAVIT OF CLERK
WEST HANTS REGIONAL MUNICIPALITY**

I, Deanna Snair of _____, Hants County, Nova Scotia make oath and swear that:

1. I am the Clerk of the West Hants Regional Municipality (the “Municipality”) and I have personal knowledge of the matters to which I have sworn in this Affidavit.
2. The Municipality is a body corporate pursuant to the *Municipal Government Act*, S.N.S. 1988, c.18, as amended.
3. I acknowledge that the Municipality executed the attached Instrument by its proper designates duly authorized in that regard under seal on the date of this Affidavit pursuant to subsection 13(3) of the *Municipal Government Act*, S.N.S. 1988, c.18, as amended. This acknowledgement is made pursuant to subsection 31(a) of the Registry Act, R.S.N.S. 1989, c.392 and/or clause 79(1)(a) of the Land Registry Act, S.N.S. 2001, c.6, as amended, for the purpose of registering or recording the Instrument.
4. The Municipality is resident in Canada for the purposes of the Income Tax Act (Canada).

Sworn before me at _____, Nova Scotia,
this _____, 20__.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA
Print name/affix seal

Deanna Snair, Clerk

I CERTIFY that on this date Deanna Snair personally came before me and swore under oath the foregoing Affidavit.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA
Print name/affix seal

Canada
Province of Nova Scotia

AFFIDAVIT & PROOF OF EXECUTION (CORPORATE)

I, Clark Wilkins, Nova Scotia, make oath and say that:

1. I am Clark Wilkins of METRO PREMIER PROPERTIES INC., the "Corporation". Except as otherwise stated I have personal knowledge of the matters to which I have sworn in this Affidavit.
2. I acknowledge that I executed the foregoing instrument on behalf of the Corporation on the date of this affidavit; this acknowledgment is made for the purpose of registering such instrument pursuant to s.31(a) of the Registry Act, R.S.N.S. 1989, c.392 or ss.79 and 83 of the Land Registration Act as the case may be.
3. I verify that I have the authority to execute the foregoing instrument on behalf of the corporation and thereby bind the Corporation.
4. The Corporation is a resident of Canada under the Income Tax Act (Canada).
5. The ownership of a share or an interest in a share of the Corporation does not entitle the owner of such share or interest in such share to occupy a dwelling owned by the Corporation.

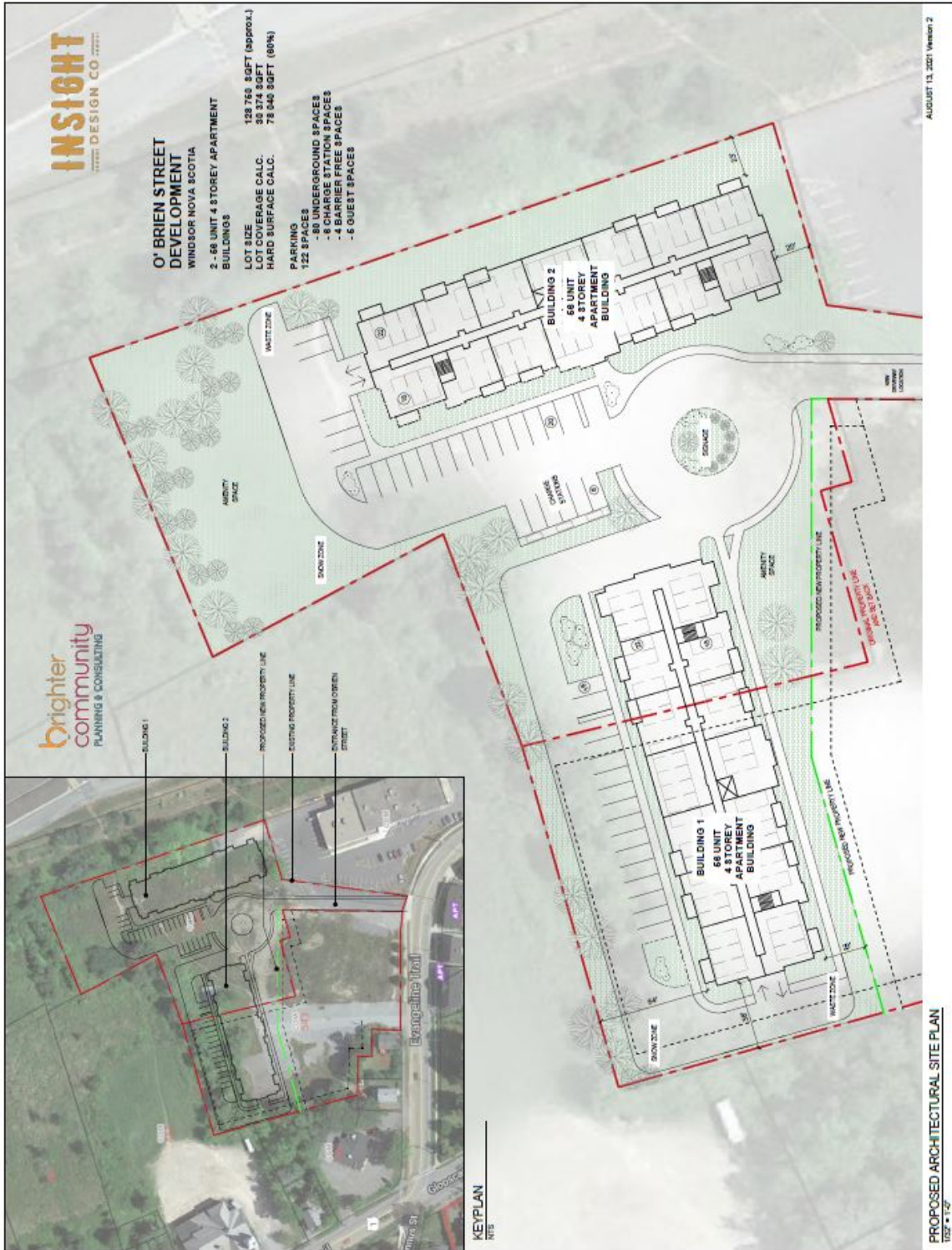
I certify that on this _____, 2022 the Deponent came before me, made oath, and swore the foregoing affidavit at _____, Nova Scotia.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA
Print name/affix seal

CLARK WILKINS, President

Schedule A
Legal Description – PID 45055902

Schedule B Site Plan



Attachment C



Keith P. AuCoin, P.Eng. NSLS, CLS

PO Box 1046, Windsor, NS, B0N 2T0 Ph: (902) 798-2963

E-mail: keith.aucoin@ns.sympatico.ca

To: Sara Poirier, Senior Planner
From: Keith AuCoin
Subject: Apartment Complex on O'Brien St., Windsor
Date: October 29, 2021

In response to your invitation for comments and questions regarding the proposed apartment complex on O'Brien St in Windsor, the following reflect some concerns I have regarding the above noted proposal. Not knowing what the proposal is called, I'll refer to it as Project A.

My main concern at this time relates to the discharge of sewage from Project A, especially the direction of the discharge and the volume to be dealt with. I live on upper Stannus Street and currently have been experiencing issues as a result of flash floods that overwhelm the sewer /storm water discharge system in our area. One question that comes to mind is will the discharge from Project A be routed through Trogthic Creek to the old treatment plant in the industrial park or will it be directed to the existing sewage line on O'Brien St. that connects to the existing line flowing down Stannus St. towards Lake Pisiquid?

During normal weather conditions, the discharge system may be able to handle the extra load of 55-65 new units from this site but this will be in addition to the new 14 units from the old Woodshire Inn, soon to be hooking into the Stannus Street line. The major concern now is how much additional burden will this extra sewage capacity place on a compromised system during emergency storm conditions. You are likely aware of the current flooding issues in the lower reaches of Windsor during such storms and how the down-stream piping is currently unable to handle the extra capacity. Has this major concern been part of the discussion when considering approval for Project A and if so what was the rationalization on how this extra capacity will be managed?

Building additional apartments is certainly a priority for the area but they need to be built in an area that can accommodate them. These over-capacity concerns should be addressed before approval is considered for this site so as not to add extra burden to the current over-taxed discharge line.

Respectively submitted,
Keith P. AuCoin



Appendix C

WEST HANTS REGIONAL MUNICIPALITY REPORT

Information <input type="checkbox"/>	Recommendation <input checked="" type="checkbox"/>	Decision Request <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
--------------------------------------	--	---	--

To: Members of Planning and Heritage Advisory Committee (PAC/HAC)

Submitted by: _____
Sara Poirier, Senior Planner

Date: 2021-11-08

Subject: Development Agreement and Discharge: O'Brien St, Windsor, PID 45055902;
File #21-14

LEGISLATIVE AUTHORITY

Section 230 of the Municipal Government Act.

RECOMMENDATION

To allow the requested development, staff recommends that PAC/HAC forward a positive recommendation by passing the following motion:

...that PAC/HAC recommends that Council give First Reading and hold a Public Hearing to consider entering into a development agreement to permit two (2), four (4) storey, 56-unit apartment buildings which include up to 10,000 sq ft of commercial space on the ground floor of one building at PID 45055902 on O'Brien Street, Windsor, in a manner substantively the same as the draft set out in Attachment C to the report #21-14 to the Planning and Heritage Advisory Committee dated November 8, 2021, taking note that this development agreement will discharge and replace the development agreement recorded at the Registry of Deeds on April 9, 2010 as document 9561229.

...that PAC/HAC recommends that Council require that the development agreement with 3331814 Nova Scotia Limited be signed within 120 days from the date of final approval by Council or the date that any appeals have been disposed of; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

Property <input checked="" type="checkbox"/>	Public Opinion <input type="checkbox"/>	Environment <input type="checkbox"/>	Social <input type="checkbox"/>	Economic <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
--	--	--------------------------------------	---------------------------------	-----------------------------------	---

A completed application was received on September 1, 2021 from Chrystal Fuller from Brighter Community Planning & Consulting on behalf of the property owner Clark Wilkins. The application is to consider the development of:

- Two (2), four (4) storey, 56-unit apartment buildings;
- 122 parking spaces which include 80 underground parking spaces;
- up to 10,000 sq ft of commercial space on the ground floor of one building; and
- a minimum of 20,000 sq ft of outdoor amenity space.

A development agreement registered on the property in 2010 permitted two (2), four (4) storey residential buildings with a maximum of 66 residential units and ground floor commercial in one building to a maximum of 10,000 sq ft. The property owner has requested that development agreement be discharged as part of this application.

The subject lot is owned by 3331814 Nova Scotia Limited; Mr. Wilkins is the Director of that company.

DISCUSSION

The property is currently two separate vacant lots, PID 45055928 and 45055902, which are in the process of being subdivided/consolidated to end up with a lot configuration similar to the proposed parcel shown in Figures 1-3. The Development Officer has advised that the approximately 3 acre proposed subject lot will be known as PID 45055902.

The subject lot is located on O'Brien Street in Windsor. The lot is designated Commercial on the Generalized Future Land Use Map (Figure 1) of the Windsor Municipal Planning Strategy (WMPS) and zoned partially General Commercial (GC) and partially Highway Commercial (HC) on the Zoning Map of the Windsor Land Use By-law (WLUB) (Figure 2). Part 8.0 of the WMPS contains the overall intention for properties designated Commercial in Windsor. Mixed use, multiple unit buildings are not permitted as-of-right in the General Commercial (GC) or Highway Commercial (HC) zone.

The northern portion of the subject lot is located within the Environmental Constraints area and is within the Tregothic Marsh. The Windsor Dykeland's Background Report (2001) specifies that the subject lot, and approximately 40 percent of the properties within the Tregothic Marsh, have been exempted by the Province from the requirements of Section 41 of the Agricultural Marshland Conservation Act. The Agricultural Marshland Conservation Act (2001) protects marshland for agricultural purposes. Being exempt from this portion of the Act means

that the owner would not have to apply to the marsh body to allow any future construction within the designated area of the subject lot.

Properties within the Environmental Constraints designation must meet more stringent requirements including completing an environmental study before being issued a development permit for any new building. The property owner is not proposing any of the buildings to be constructed on the Environmental Constraints area of the subject lot, however if they were the buildings would have to meet Section 27.0 of the WLUB. This is also outlined in Section 2.11 (c), *Environmental Study*, of the draft development agreement.

The subject lot is currently undergoing remediation due to previous contamination on the site. More information on site remediation can be found in the report entitled "Land Use By-law Map Amendment: 543 O'Brien Street, Windsor; PID 45055928" to the Windsor Area Advisory Committee dated October 1, 2020. The property owner will be required to provide the Development Officer copies of the Remedial Action Plan and the Certificate of Compliance which have been prepared by a qualified site professional and confirmation that these documents have been accepted by Nova Scotia Environment in accordance with the "Guidelines for Management of Contaminated Sites in Nova Scotia" prior to a development permit being issued for the site. This is outlined in Section 2.10, *Site Remediation*, of the draft development agreement.

The subject lot directly abuts properties designated Commercial, Community Use, and Residential, and zoned General Commercial (GC), Highway Commercial (HC) and High Density Residential (R-4).

Development Agreement

A development agreement is a legal contract between an owner of land and the Municipality to allow Council to consider a use that is not a listed, permitted use within a zone on a specific lot. The ability for Council to consider a development agreement must be stated in the Land Use Bylaw (LUB) and the Municipal Planning Strategy (MPS) must identify the kinds of uses Council may consider in each area. Uses which Council may consider are those which Council has determined may have sufficient impact on an area that a negotiated process is required to ensure the potential impact is minimized. In the Municipal Planning Strategy Council usually identifies both specific and general criteria which must be considered when making decisions regarding a development agreement.

Current Development Agreement

The current development agreement was approved by Council on February 23, 2010, and registered on the property on April 9, 2010. It was considered by Council using Policy 9.2.1 of the WMPS and permits two (2), four (4) storey buildings, a maximum of 66 residential units, and ground floor commercial in one building to a maximum of 10,000 sq ft. This development

was never constructed due to the site contamination limitations caused by the abutting property which was held in different ownership at the time. The property owner has requested that development agreement be discharged as part of this application.

Proposed Development Agreement

The applicant proposes to develop two (2), four (4) storey, 56-unit apartment buildings which include up to 10,000 sq ft of commercial space on the ground floor of one building. The site will have a minimum of 20,000 sq ft of outdoor amenity space. The permitted uses on the lot are outlined in Section 2.1, *Use*, of the draft development agreement (Attachment C).

The property owner is proposing a total of 122 parking spaces on the lot with 80 of those spaces being located underground, below each building, and six (6) parking spaces containing electric vehicle charging stations. The WLUB currently requires 1.5 parking spaces per dwelling unit at a size of 10 ft by 20 ft. Due to the location of the lot in the community of Windsor and proximity of the lot to surrounding services, staff determined that it would be appropriate to reduce the amount of required parking per dwelling unit. As outlined in Section 2.5, *Parking*, of the draft development agreement, parking will be required at one (1) space per dwelling unit and a minimum of one (1) parking space for every 300 sq ft gross floor area dedicated to commercial uses. The size of each parking space will be 9 ft x 20 ft.

Section 2.4, *Access and Egress*, of the draft development agreement outlines that the developer will be required to construct a 5 ft wide sidewalk from O'Brien Street to the building entrances. This will ensure pedestrian safety and promote active transportation use to surrounding services.

As per the draft development agreement the developer will be required to provide certain plans, studies and certifications to the Development Officer prior to a development permit being issued for the proposed uses. These include:

- a stormwater management plan for the site that satisfies the Municipal Engineer that historical flooding patterns and area drainage systems have been considered and that storm water discharge will not have a negative impact on downstream properties as outlined in Section 2.9, *Site Drainage*;
- copies of the Remedial Action Plan and the Certificate of Compliance which have been prepared by a qualified site professional and confirmation that these documents have been accepted by Nova Scotia Environment in accordance with the "Guidelines for Management of Contaminated Sites in Nova Scotia" as outlined in Section 2.10, *Remediation*;
- design plans of the water and sewer servicing connections and layout including location and connection design of the fire hydrant(s) as outlined in the 2.11 (b), *Water and Sewer Services*, and 2.12 (a), *Fire Safety*;

- an Environmental Study if any portion of the main buildings are intended to be constructed upon lands designated as Environmental Constraints on "Schedule A - Zoning" of the Land Use By-law as outlined in Section 2.11 (c), *Environmental Study*.

These plans, studies and certifications will ensure the site is remediated to Nova Scotia Environment standards for the proposed uses, that the Fire Chief will be able to provide adequate fire protection, and that the stormwater will be managed on site to reduce the impact on surrounding properties.

The WLUB requirements for signs and lighting will be used to regulate signs and illumination on the subject lot, as outlined in Section 2.7, *Signs and Lighting*, of the draft development agreement. Waste collection will be provided privately by the developer (Section 2.11 (b)(i)) and outdoor storage will be prohibited in order to meet criteria 9.2.1 (i) (Section 2.15).

Section 3.3 of the draft development agreement outlines substantive matters of the development agreement. Substantive matters are any items that Council has determined that would significantly alter the intended effect of the development agreement if changed. If a request is received from the developer to change a substantive matter outlined in a development agreement, the request must go through the entire development agreement process including Public Hearing before Council prior to Council making a final decision on the proposed amendment. Staff have determined the following items in this draft development agreement are substantive matters:

- (a) the uses permitted on the Property as listed in Section 2.1, *Use*;
- (b) the requirements for a stormwater management plan to be submitted prior to a development permit being issued as listed in Section 2.9, *Site Drainage*;
- (c) the requirements for the Remedial Action Plan and the Certificate of Compliance to be submitted prior to a development permit being issued as listed in Section 2.10, *Site Remediation*;
- (d) the fire safety requirements listed in Section 2.12, *Fire Safety*; and
- (e) the timelines for construction in Section 2.14, *Phasing*.

Other items such as engineered building design, accessible parking, elevators, sprinkler systems, and barrier free units will be required by the Manager of Building and Fire Inspection Services as per the National Building Code requirements. A full review of the building plans would be conducted when the property owner applies for development and building permits. These items are not listed in the draft development agreement as the National Building Code would take precedence over the development agreement as outlined in Section 5.1, *Compliance with other By-laws and Regulations*, in the draft development agreement.

Land Use By-law

Part 6.0 of the WLUB, Development Agreements, states that “The following developments may be considered only by development agreement in accordance with the Municipal Government Act and the Municipal Planning Strategy:

- (l) mixed use development in the Commercial designation or the Industrial designation outside the industrial parks in accordance with Policy 9.2.1 of the Municipal Planning Strategy;”

Municipal Planning Strategy

Part 8.0 of the WMPS contains the overall intention for properties designated Commercial in Windsor. Part 9.0 of the WMPS contains the policies for mixed use development in Windsor. Policy 9.2.1 establishes Council’s intention to “consider mixed use development by development agreement in the Commercial designation or the Industrial designation outside the industrial parks”. The subject lot is designated Commercial therefore the development agreement can be considered under this policy.

WHMPS Specific Criteria

Policy 9.2.1 establishes Council’s intention to consider entering into a development agreement to permit mixed use development by development agreement in the Commercial designation subject to specific criteria. These criteria are examined in detail in Attachment A. In summary, the criteria are met since:

- the proposed development consists of a combination of residential and commercial uses;
- the location of the proposed development does not adversely affect the existing pattern of development in the surrounding area or restrict existing commercial development patterns;
- adequate parking and safe pedestrian and vehicular access to the site is provided; and
- no outdoor storage is permitted.

WHMPS General Criteria

The proposal meets the general criteria for amendment set out in WMPS Policy 16.3.1. These criteria are examined in detail in Attachment B. In summary:

- the proposal is not premature or inappropriate for the area;
- no municipal costs related to the proposal are anticipated; and
- the Fire Chief, Manager of Building and Fire Inspection Services, Development Officer, and the Public Works Department have no major concerns which were not addressed in the draft development agreement.

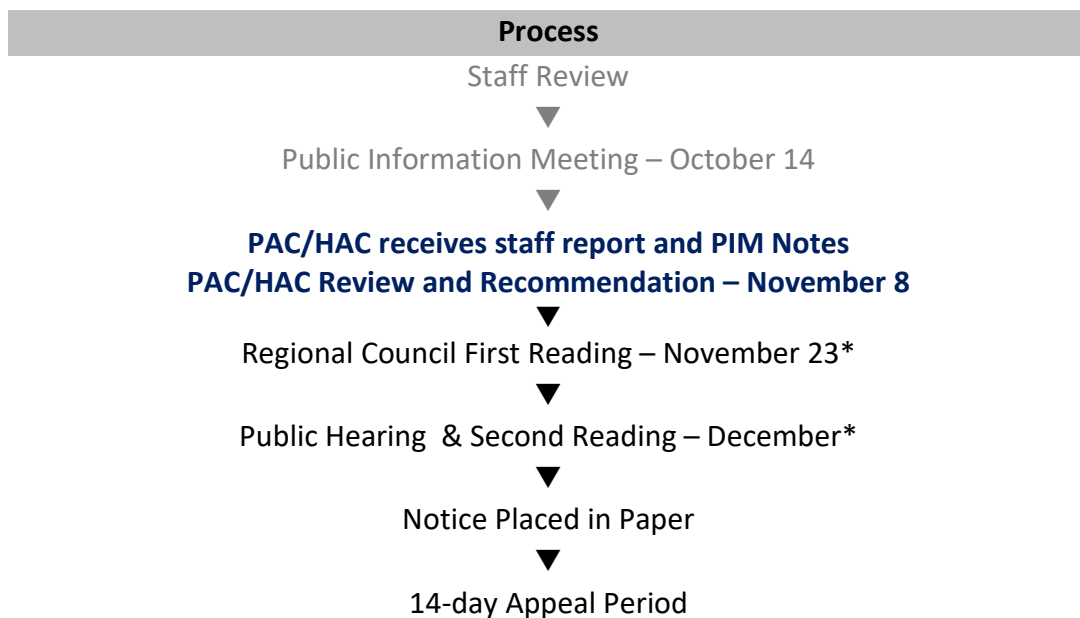
MUNICIPAL CLIMATE CHANGE ACTION PLAN

The Municipal Climate Change Action Plan (MCCAP) for Windsor (2014) highlights two simulated flooding scenarios. The first scenario is based on a storm surge that occurred in 1997, which shows the expected damage is to occur along the coastline. The second scenario shows the simulated flooding extent for probable maximum flood due to climate change. Under this scenario most of the community of Windsor including the subject lot will experience extensive flooding.

The Director of Public Works has requested that a stormwater management plan for the site be required prior to development permits being issued to ensure that historical flooding patterns and area drainage systems have been considered and that storm water discharge will not have a negative impact on downstream properties. This is outlined in Section 2.9 (a), *Site Drainage*, of the draft development agreement.

NEXT STEPS

As noted above, the proposed development agreement has been considered within the context of both the specific and general policies and criteria of the WMPS and is consistent with the intent, objectives and policies of the WMPS. As a result, it is reasonable enter into a development agreement to permit two (2), four (4) storey, 56-unit apartment buildings which includes up to 10,000 sq ft of commercial space on the ground floor of one building at PID 45055902 on O'Brien Street, Windsor.



*anticipated dates; final dates set by Council

FINANCIAL IMPLICATIONS

There are no anticipated costs to the Municipality in regard to this development.

ALTERNATIVES

In response to the application, PAC/HAC may recommend that Council:

- recommend that Council hold First Reading and authorize a Public Hearing to approve the development agreement and discharge as drafted or as specifically revised by direction of PAC/HAC;
- provide alternative direction such as requesting further information on a specific topic.

ATTACHMENTS

Figure 1	Windsor GFLUM Extract
Figure 2	Windsor Zoning Map Extract
Figure 3	Windsor Environmental Constraints Map Extract
Attachment A	Specific Criteria for Amendment
Attachment B	General Criteria for Amendment
Attachment C	Draft Development Agreement
Attachment D	Public Information Meeting Notes

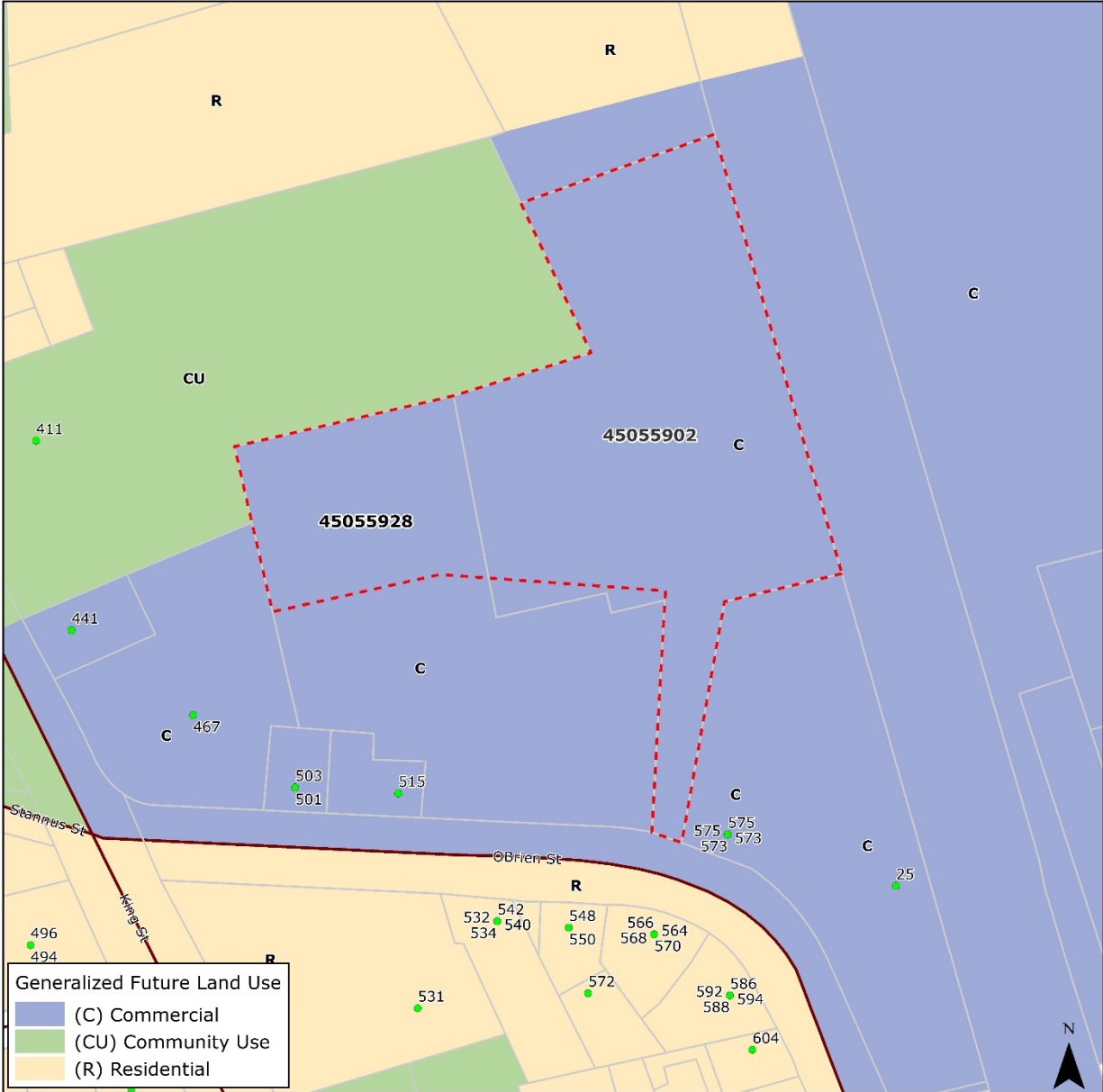
Report Prepared by: _____
Sara Poirier, Senior Planner

Report Reviewed by: _____
Madelyn LeMay, Director of Planning and Development

Figure 1
Windsor GFLUM Extract



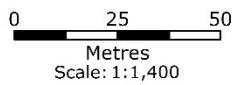
**O'Brien Street, Windsor
PID 45055902 and 45055928**



Generalized Future Land Use
 (C) Commercial
 (CU) Community Use
 (R) Residential

Base data derived from the Nova Scotia Property Records Database (NSPRD) and the Nova Scotia, Geomatics Centre (NSGC), Copyright Her Majesty The Queen in Right of the Province of Nova Scotia. This map is a graphical representation only. It is not a land survey and is not intended for used for legal descriptions or to calculate exact dimensions or area. Prepared by: West Hants Regional Planning and Development Department September, 2021

Generalized Future Land Use



- Proposed Parcel
- Parcels
- Civics
- Roads

Figure 2
Windsor Zoning Map Extract

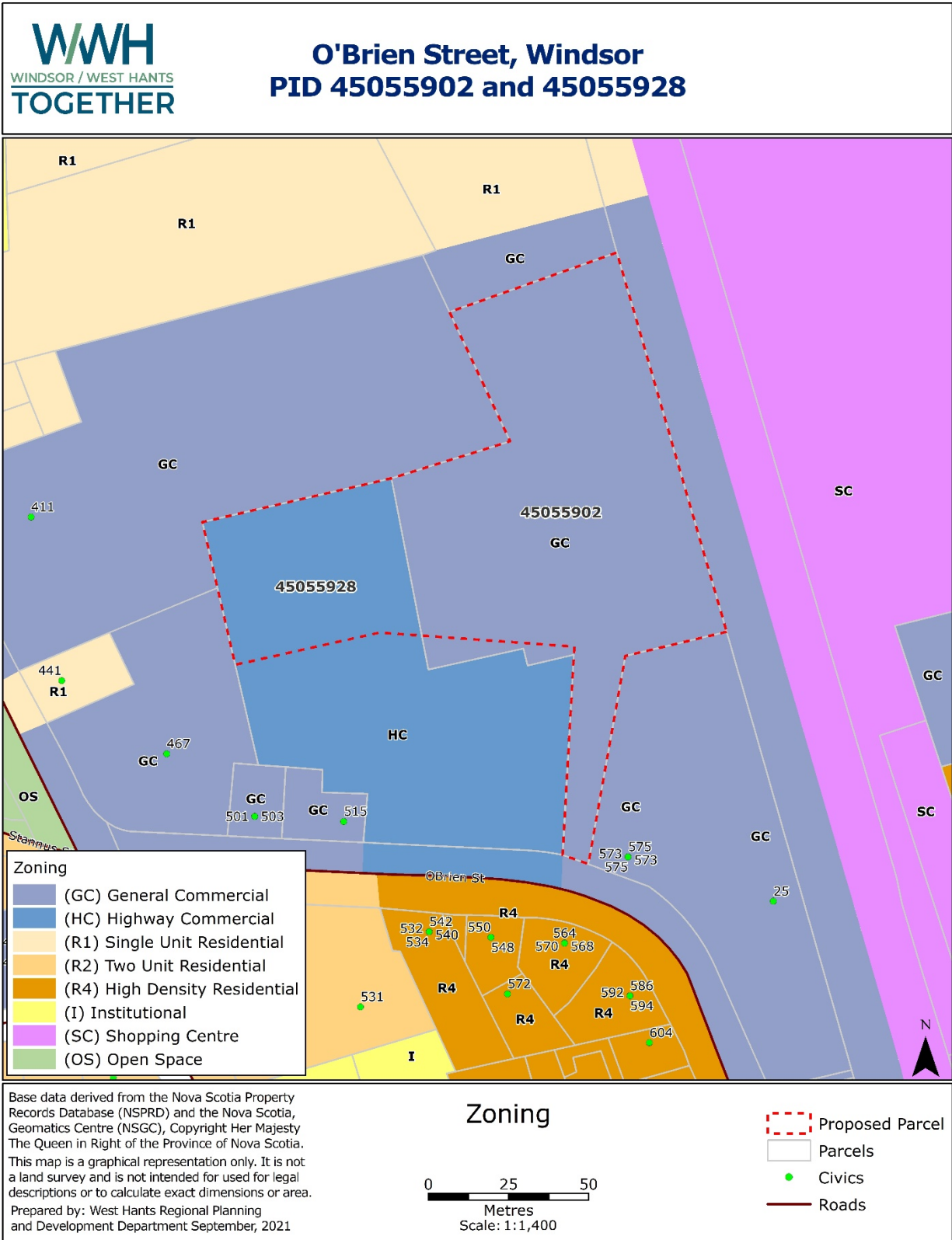
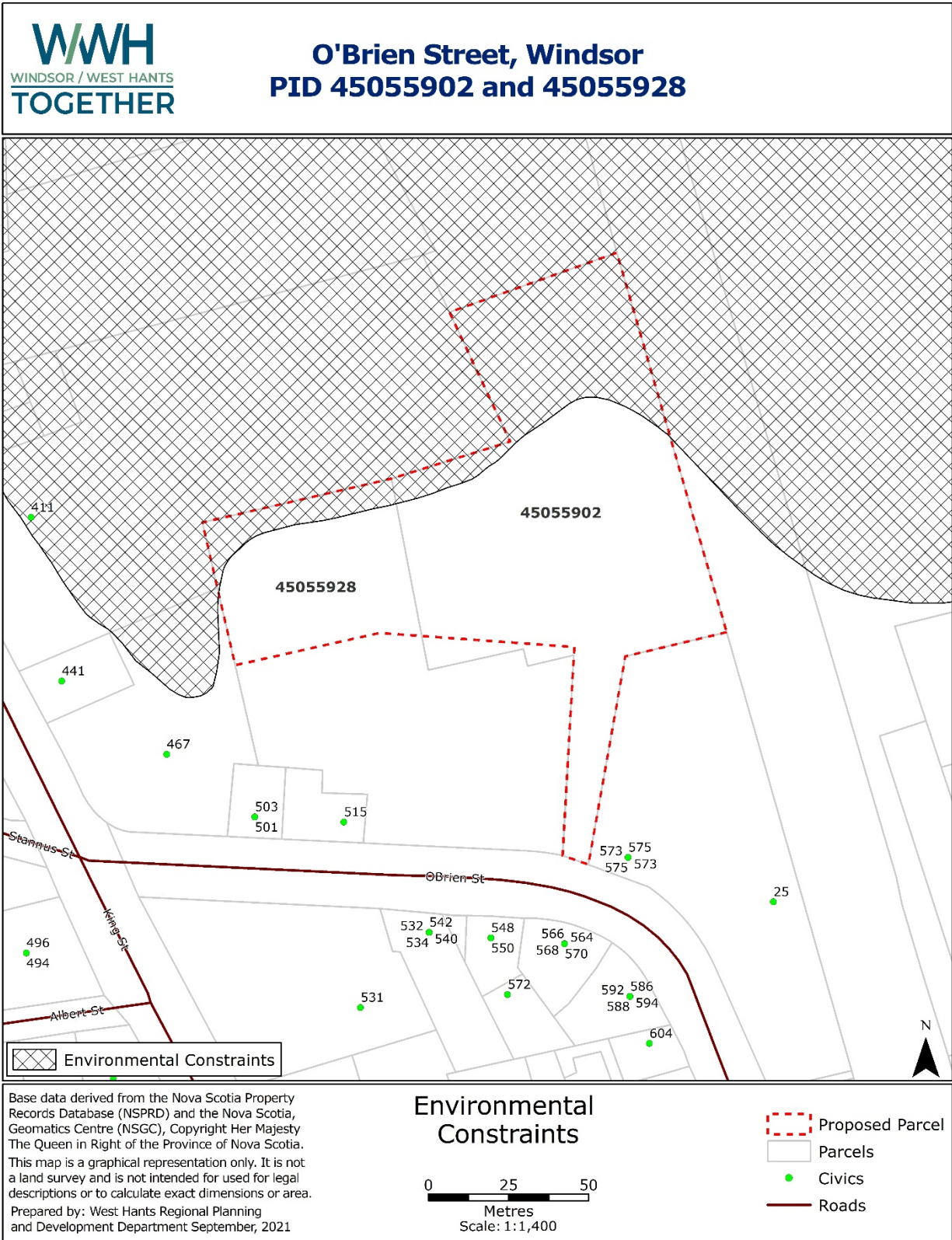


Figure 3
Windsor Environmental Constraints Extract



Attachment A
Specific Criteria for Amendment

Policy 9.2.1

It shall be the intention of Council to consider mixed use development by development agreement in the Commercial designation or the Industrial designation outside the industrial parks, subject to the following:

CRITERIA	COMMENT
<p><i>(a) the proposed development consists of a combination of uses which may include commercial, light industrial, recreational, institutional and residential;</i></p>	<p>The proposed development consists of a combination of residential and commercial uses which include two (2), four (4) storey, 56-unit apartment buildings with up to 10,000 sq ft of commercial space on the ground floor of one building.</p>
<p><i>(b) the architectural design of the development is sensitive to the existing built form and character of the surrounding area, and in particular:</i></p>	<p>The applicant is proposing the apartment buildings to:</p> <ul style="list-style-type: none"> • be four storeys in height with underground parking, • have a flat roof or minimal pitched roof, • be constructed of concrete, • have defined main entry ways, and • have balconies for all apartments. <p>The property owner is proposing four storey buildings which are not common in Windsor. The frontage of the subject lot on O'Brien Street is only wide enough to provide driveway access to the lot, therefore the buildings will be set back at least 150 ft. from O'Brien Street which will reduce the visual impact of the four storey buildings from the street and surrounding properties.</p> <p>The existing built form and character of the surrounding area is varied as the area consists of commercial and residential uses. The residential uses surrounding the property range from two storey single unit dwellings to small scale two and one-half storey apartment buildings. The residential buildings have wood</p>

	<p>or vinyl siding, relatively flat or pitched roofs and rectangular shaped windows. The commercial uses are one or two storey buildings, constructed of brick or concrete, with a defined main entry way and limited windows.</p> <p>Due to the varied nature of the surrounding development and the fact that the subject lot is not located within an architectural control district, staff have not written any aesthetic design requirements into the development agreement.</p>
<p><i>(i) where the proposal involves the redevelopment of an existing building, the heritage of the building is taken into consideration and any significant architectural elements which contribute to the appearance of the public façade(s) are retained; and;</i></p>	<p>Not applicable as the subject lot is currently vacant.</p>
<p><i>(ii) if the proposed development is located in an Architectural Control District, the architectural design of the development is reasonably consistent with the provisions of the Architectural Design Manual;</i></p>	<p>Not applicable as the subject lot is not located in an Architectural Control District.</p>
<p><i>(c) the density and scale of the development are compatible with the surrounding area;</i></p>	<p>The property owner is proposing a total of 112 units on an approximately 3 acre lot; a density of about 37 units per acre. With an average household size of two (2) people per unit as noted in the 2016 census from Statistics Canada, this development would provide housing for an additional 224 people in Windsor, or approximately 75 people per acre.</p>

	<p>If the High Density Residential (R-4) zone is used as a guide, a density of 28 units per acre would be permitted on the subject lot. This would equate to approximately 56 people per acre. However, the High Density Residential (R-4) zone is limited to three storeys in height. With this proposal being for two, four storey buildings, the additional storey on each building increases the number of units and the density on the subject lot.</p> <p>As the building will be set back at least 150 ft. from O'Brien Street and the application is being considered by development agreement and does not have to meet the High Density Residential (R-4) zone requirements, staff feel that the fourth storey which increases the density of the subject lot and increases the housing stock for the community of Windsor would be compatible with the surrounding area.</p>
<p><i>(d) the location of the proposed development does not adversely affect the existing pattern of development in the surrounding area, or restrict existing commercial and/or industrial development patterns;</i></p>	<p>The location of the proposed development is not anticipated to adversely affect or restrict the existing pattern of development. Almost all of the abutting lots are already developed as commercial or residential uses. The subject lot is designated Commercial however has very limited street frontage which would not necessarily be conducive to a commercial use.</p>
<p><i>(e) where a light industrial use is proposed, it is not considered obnoxious or incompatible with the proposed residential or commercial components nor with adjacent land uses;</i></p>	<p>Not applicable as no light industrial uses are being proposed.</p>
<p><i>(f) adequate landscaping, open space and natural or artificial buffering is provided;</i></p>	<p>The applicant is proposing to provide a minimum of 20,000 sq ft of recreational space and a balcony for each apartment unit.</p>

	<p>If the High Density Residential (R-4) requirements are used as a guide they would be required to provide 27,140 sq ft of recreational space based on the number and size of units being proposed.</p> <p>This property is within walking distance to several parks and community amenity spaces therefore staff consider the proposed amenity space being provided for this development to be adequate.</p>
<p><i>(g) adequate parking and safe pedestrian and vehicular access to the site is provided;</i></p>	<p>Under the current Windsor Land Use By-law, 1.5 parking spaces are required per residential unit and 1 parking space is required for every 300 sq ft of commercial floor area. As outlined in Section 2.5, <i>Parking</i>, of the draft development agreement, the developer will be required to provide a minimum of one (1) parking space per dwelling unit and a minimum of one (1) parking space for every 300 sq ft of gross floor area dedicated to commercial uses. The applicant is proposing a total of 122 parking spaces with 80 of those spaces being provided underground to reduce the impermeable surfaces and maximize green spaces on site. Staff feel that this number of parking spaces should be sufficient for the proposed uses based on the location and walkability of the subject lot.</p> <p>Section 2.4 (c), <i>Access and Egress</i>, of the draft development agreement ensures that the developer will construct a 5 ft (1.6m) wide sidewalk from O'Brien Street to the building entrances which would be suitable to ensure safe pedestrian movement on the site. The Manager of Operations has stated that they have no concerns with respect to safe pedestrian and vehicular access to the site.</p>

<p><i>(h) adequate provision is made to minimize conflict with existing residential dwellings with respect to access, parking, noise and hours of operation;</i></p>	<p>There are two existing residential dwellings nearby which abut O'Brien Street and are designated Commercial. It is not anticipated that these properties will be affected by the proposed uses with respect to access, parking, noise, and hours of operation.</p> <p>The access to the property will be from O'Brien Street. The property owner is proposing that the majority of the parking for the lot will be located underground. The anticipated noise will be minimized through minimum setback requirements. The hours of operation were not limited in the draft development agreement as the proposed types and size of commercial floor area are limited in the development agreement.</p>
<p><i>(i) no outdoor storage is permitted;</i></p>	<p>Section 2.15, <i>Outdoor Storage</i>, of the draft development agreement prohibits outdoor storage of merchandise, goods or inventory of any kind, materials, equipment or other items not intended for immediate sale.</p>
<p><i>(j) any other matter which may be addressed by development agreement; and</i></p>	<p>All other matters are addressed elsewhere in this report.</p>
<p><i>(k) the provisions of Policy 16.3.1.</i></p>	<p>Please see Attachment B for further details.</p>

Attachment B
General Criteria for Amendment

Policy 16.3.1

In considering development agreements and amendments to the Town of Windsor Land Use By-law, in addition to the criteria set out in various policies of this Strategy, Council shall consider:

CRITERIA	COMMENT
<i>(a) whether the proposal is considered premature or inappropriate in terms of:</i>	
<i>(i) the adequacy of sewer and water services;</i>	<p>The Manager of Wastewater Treatment and Manager of Water Treatment confirmed that the lot has access to water and sewer services and that they do not foresee any issues with the adequacy of either service for the proposed uses.</p> <p>The Manager of Wastewater Treatment stated “There will be no issue with this added wastewater service addition. The most current AWWA standards shows an average of 2.5 people per household with a wastewater usage of 310 liters per person. This proposed apartment unit(s) would be an additional 87 cubic meters/day. Peak wet weather flow at the facility can see 18,545 cubic meters of wastewater pass through the facility. In 2020 the facility processed 1972 cubic meters of wastewater per day on average. Our wastewater collection and treatment systems can handle the additional capacities associated with this proposed apartment project.”</p> <p>The Manager of Water Treatment stated “I see no problem with the addition of 112 units to the Windsor / Three Mile Plains water distribution system. Based on the AWWA standards of 2.5 people per household with an average daily usage of 415L/Day/Person, this would be an additional 116.2m³/Day demand on the Water Treatment Plant / distribution system. The WTP is currently running at</p>

	roughly 50% capacity so the effects from the additional demand would be minimal.”
<i>(ii) the adequacy of school facilities;</i>	The Director of Operations for the Annapolis Valley Regional Centre for Education stated they do not believe the proposal is inappropriate or premature in terms of the adequacy of school facilities.
<i>(iii) the adequacy of fire protection;</i>	The Manager of Building and Fire Inspection Services noted that the buildings will require sprinkler systems as per the National Building Code requirements. The Windsor Fire Chief has stated that Section 2.12, <i>Fire Safety</i> , of the draft development agreement is sufficient to meet fire protection of the site.
<i>(iv) the adequacy of road networks adjacent to, or leading to the development; and</i>	O’Brien Street is an arterial road as shown on the Transportation Map (Map 2) of the Windsor Municipal Planning Strategy. The definition in the Windsor Land Use By-law of an arterial street is “a street designed to move large volumes of vehicular traffic between major centres”. The Manager of Operations has stated that “no major infrastructure improvement will be needed to support the development. The driveway is sufficient.” They also stated they have no concerns about the impact of the development with respect to the adequacy of road networks adjacent to or leading to the development.
<i>(v) the financial capacity of the Town to absorb any costs relating to the development.</i>	There are no anticipated costs to the Municipality regarding this development.

<p><i>(b) the suitability with any aspect relative to the movement of auto, rail and pedestrian traffic;</i></p>	<p>As noted in 16.3.1 (a) (iv), O'Brien Street would be suitable to handle the anticipated traffic associated with the proposed development. A rail line abuts the subject lot to the east however it is not currently active.</p> <p>There are sidewalks along both sides of O'Brien Street along the frontage of the subject lot. Section 2.4 (c), <i>Access and Egress</i>, of the draft development agreement ensures that the developer will construct a 5 ft (1.6m) wide sidewalk from O'Brien Street to the building entrances which would be suitable to ensure safe pedestrian movement on the site.</p> <p>The Manager of Operations has stated that they have no concerns with respect to the suitability with any respect to the movement of auto and pedestrian traffic.</p>
<p><i>(c) the adequacy of the dimensions and shape of the lot for the intended use;</i></p>	<p>The Development Officer commented that "The applicant has applied to subdivide/consolidate the lots to accommodate the proposed development. The new lot will be approximately 3 acres in size. The lot is a sufficient size to accommodate the proposed development."</p>
<p><i>(d) the pattern of development which the proposal might create;</i></p>	<p>The proposed development is not anticipated to create or change the pattern of development in the area. Almost all of the abutting lots are already developed as commercial or residential uses.</p>
<p><i>(e) the suitability of the area in terms of steepness of grade, soil and geological conditions, location of water courses, marshes or bogs and susceptibility of flooding;</i></p>	<p>The subject lot is relatively flat. There are no watercourses, marshes or bogs identified on the mapping for the site.</p> <p>The northern portion of the lot is within the Environmental Constraints area (Figure 3) and located within the Tregothic Marsh. Any new buildings proposed on that portion of the site</p>

	<p>would be required to meet Section 27.0 of the Windsor Land Use By-law. This is also outlined in Section 2.11 (c), <i>Environmental Study</i>, of the draft development agreement.</p> <p>The Director of Public Works has requested that a stormwater management plan for the site be required prior to development permits being issued to ensure that historical flooding patterns and area drainage systems have been considered and that storm water discharge will not have a negative impact on downstream properties. This is outlined in Section 2.9 (a), <i>Site Drainage</i>, of the draft development agreement.</p> <p>It is the responsibility of the property owner to ensure the site is suitable for the proposed uses.</p>
<p><i>(f) whether the proposal meets the requirements of the appropriate provincial or federal agencies as well as whether it conforms to all other relevant municipal by-laws and regulations; and</i></p>	<p>The property owner is working to ensure the remediation of the site meets the Department of Environment's requirements for the proposed uses. As per Section 2.10, <i>Site Remediation</i>, of the draft development agreement the property owner will have to provide the Development Officer copies of the Remedial Action Plan and the Certificate of Compliance which have been prepared by a qualified site professional and confirm that these documents have been accepted by Nova Scotia Environment in accordance with the "Guidelines for Management of Contaminated Sites in Nova Scotia" prior to development permits being issued.</p> <p>All Municipal, Provincial and Federal regulations will have to be met.</p>
<p><i>(g) any other matter required by relevant policies of this Strategy.</i></p>	<p>All other matters have been addressed elsewhere in this report.</p>

**Attachment C
Draft Development Agreement**



West Hants

DEVELOPMENT AGREEMENT

THIS AGREEMENT made this day of , 2022.

BETWEEN:

WEST HANTS REGIONAL MUNICIPALITY, a body corporate pursuant to the *Municipal Government Act*, having its chief place of business at 76 Morison Drive, Wentworth Creek, in the County of Hants, Province of Nova Scotia,

(Hereinafter referred to as the “Municipality”)

OF THE FIRST PART

- and -

3331814 NOVA SCOTIA LIMITED, a body corporate, with a head office at 424 Caldwell Road, Dartmouth, in the County of Halifax, Province of Nova Scotia,

(Hereinafter referred to as the “Owner”)

OF THE SECOND PART

WHEREAS the Owner is the registered owner of a parcel of land located on O’Brien Street, PID 45055902, hereinafter referred to as the “Property”, which lands are more particularly described in Schedule A attached hereto; and

WHEREAS the Property is designated Commercial on the Generalized Future Land Use Map of the Municipal Planning Strategy and zoned partially General Commercial (GC) and partially Highway Commercial (HC) on the Zoning Map of the Land Use By-law with a portion of the lot in the Environmental Constraints overlay; and

WHEREAS the Owner has requested that the Municipality enter into a development agreement to permit two (2), four (4) storey, 56-unit apartment buildings including up to 10,000 sq ft of commercial space on the ground floor of one building on the Property (the “Development”); and

WHEREAS Policy 9.2.1 of the Municipal Planning Strategy and Section 6.1 (I) of the Land Use By-law enables Council to consider entering into a development agreement to allow mixed use development in the Commercial designation; and

WHEREAS the Council of the Municipality, at a meeting held on **month day, year** approved this request and adopted this Agreement by policy, subject to the execution of this development agreement by the parties hereto;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

PART 1 AGREEMENT CONTEXT

1.1 Schedules

The following attached schedules shall form part of this Agreement:

Schedule A - Legal Description

Schedule B – Site Plan

1.2 Municipal Planning Strategy, Land Use By-law and Subdivision By-law

- (a) *Municipal Planning Strategy* means the Municipal Planning Strategy of the Town of Windsor, approved on August 23, 2005, as amended, or successor by-laws;
- (b) *Land Use By-law* means the Land Use By-law of the Town of Windsor, approved on August 23, 2005, as amended, or successor by-laws;
- (c) *Subdivision By-law* means the Subdivision By-law of the Town of Windsor, approved on January 24, 2012, as amended, or successor by-laws.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Use

- (a) The Parties agree that uses on the Property shall be limited to the following:
 - (i) those uses permitted by the underlying zoning in the Land Use By-law;
 - (ii) residential development consisting of a maximum of 112 dwelling units;

- (iii) underground parking for the uses within the buildings; and
- (iv) commercial uses located on the ground floor of Building “2” which shall be limited to:
 - (i) arts and craft studios including photography;
 - (ii) banks and financial institutions;
 - (iii) day care centres, licensed and non-licensed;
 - (iv) museums, art galleries and libraries;
 - (v) offices;
 - (vi) repair and rental establishments;
 - (vii) retail stores;
 - (viii) personal service shops;

Except as otherwise provided in this Agreement, the provisions of the Land Use By-law and the Subdivision By-law apply to any development undertaken pursuant to this agreement.

- (b) The total area devoted to commercial use on the Property shall not exceed 10,000 sq ft gross floor area.
- (c) No development permit shall be issued for a commercial use that involves the frequent shipping, loading or unloading of persons, animals or goods.
- (d) Prior to the construction of new buildings as shown on Schedule B attached hereto, all existing buildings shall be demolished, and the materials disposed of in accordance with the requirements established by qualified site professionals.

2.2 Development Location and Design

- (a) The development location and design shall be generally consistent with the site plan shown in Schedule B.
- (b) The Development Officer may approve minor changes to the location of the main buildings or other aspects of the site plan provided the side yards are not decreased.

2.3 Site Requirements

- (a) The multiple unit residential buildings shall conform to the following site requirements:

Minimum Front Yard	20 ft (6.1 m)
Minimum Rear Yard	20 ft (6.1 m)
Minimum Side Yard	20 ft (6.1 m)

Maximum Height of Main Building	4 storeys
Maximum Height of Accessory Building	15 ft (4.57 m)

- (b) Accessory buildings are permitted in accordance with Section 5.1 of the Land Use By-law, *Accessory Buildings and Structures*.

2.4 Access and Egress

- (a) The vehicular entrance and exit for the Property shall be in general conformance with the entrance and exit shown on Schedule B.
- (b) The vehicular entrance and exit shall be clearly demarcated and paved.
- (c) A 5 ft (1.6 m) wide sidewalk, constructed of concrete, asphalt, brick or other hard surface paver, shall be provided from O’Brien Street to the building entrances.

2.5 Parking

- (a) The Owner shall provide a minimum of one (1) parking space per dwelling unit on the Property and a minimum of one (1) parking space for every 300 sq ft gross floor area dedicated to commercial uses on the Property.
- (b) Parking may be provided either underground within the buildings or outside at grade.
- (c) Each parking space shall be a minimum of 9 by 20 feet (2.7 m by 6.1 m) exclusive of driveways and manoeuvring aisles.
- (d) Parking aisles shall be a minimum of 20 feet (6.1 m) wide.
- (e) Parking spaces and aisles shall be constructed of concrete, asphalt, brick or other hard surface paver.
- (f) The number, location and arrangement of parking spaces, aisles and driveways may be varied by the Development Officer.

2.6 Recreational Space

A minimum of 20,000 sq ft of private recreational space shall be provided on the Property as follows:

- (a) an individual balcony for each dwelling unit; and
- (b) common use landscaped areas in accordance with the Site Plan attached as Schedule B.

2.7 Signs and Lighting

Signage and illumination shall be regulated under Sections 5.18 and 7.0 of the Land Use By-law, *Illumination and Signs*, which controls lighting, size, location, and number of

signs. Exterior lighting for driveways, parking areas, signs or structures shall be shielded and directed downward to minimize light spilling, glare or light cast over neighbouring properties or the street.

2.8 Maintenance

The Owner shall keep the Property and buildings and any portion thereof clean and in good repair. Any driveways, fences, lawns, trees, shrubs, walkways and other landscaping elements shall be regularly maintained and kept in a tidy state and free from unkempt materials or matter of any kind.

2.9 Site Drainage

- (a) No development permit shall be issued until the Owner provides a stormwater management plan that will satisfy the Municipal Engineer that historical flooding patterns and area drainage systems have been considered and that storm water discharge will not have a negative impact on downstream properties.
- (b) The Owner shall undertake all construction activities in accordance with an erosion and sedimentation control plan prepared by a Professional Engineer, unless otherwise directed by Nova Scotia Environment, and also agrees to assume sole responsibility for compliance with all regulations of Nova Scotia Environment.

2.10 Site Remediation

No development permit shall be issued until the Owner provides to the Development Officer copies of the Remedial Action Plan and the Certificate of Compliance which have been prepared by a qualified site professional and confirmation that these documents have been accepted by Nova Scotia Environment in accordance with the "Guidelines for Management of Contaminated Sites in Nova Scotia".

2.11 Servicing

(a) Waste Collection

- (i) The Owner shall make provision for private waste collection for the Property.
- (ii) The Owner shall keep any outdoor storage of garbage in an enclosed structure or in some way adequately screened so as not to be visible from nearby properties and abutting roads and it shall not be located closer than 10 ft (3.05 m) from an abutting property.

(b) Water and Sewer Services

The development must connect to Municipal water and sewer service. Detailed design plans of the water and sewer servicing connections and layout shall be in

accordance with the Municipal Services Specifications Manual and shall be submitted to the Municipal Engineer for approval prior to construction.

(c) Environmental Study

If any portion of the main buildings shown on Schedule B of this Agreement is intended to be constructed upon lands designated as Environmental Constraints on "Schedule A - Zoning" of the Land Use By-law, the Owner must provide the Development Officer with a completed Environmental Study as outlined in Policy 12.0.2 of the Municipal Planning Strategy prior to a development permit being issued.

2.12 Fire Safety

- (a) No development permit shall be issued until the location and connection design of the fire hydrant(s) to the municipal water supply has been approved by the water utility, in consultation with the district Fire Chief.
- (b) All curbs shall be designed to be mountable by emergency services vehicles.
- (c) All fire lanes shall be kept clear of overhead obstructions and wires and be maintained by the Owner to allow unimpeded access to the property by emergency services vehicles.

2.13 Variance

In accordance with Section 5.40 of the Land Use By-law, *Variance*, the Development Officer may grant a variance for one or more of the following requirements subject to the requirements of the *Municipal Government Act*:

- (i) minimum required yard dimensions except side yard requirements;
- (ii) number of parking spaces required; and
- (iii) floor area occupied by a home-based business.

2.14 Phasing

- (a) In the event that the Owner chooses to build one building at a time, the following infrastructure required for that building:
 - (i) construction of the paved driveway access from O'Brien Street to the building including the circular driveway as shown on Schedule B;
 - (ii) construction of the sidewalk from O'Brien Street to the entrance of the building;

- (iii) construction of the parking lot, including paving, to the extent necessary to provide spaces as required by this agreement for the residential and commercial uses of the building.
- (b) Where the construction of the second building has not commenced within twelve (12) months of the completion of the first building, the area shown on Schedule B covered by the building that has not been constructed shall be graded and landscaped; this may include, grass, shrubs, trees or other appropriate vegetative cover.
- (c) Construction of the first building and all relevant infrastructure and landscaping as outlined in Section 2.14 (a) of this agreement shall be completed within three (3) years of the commencement of development outlined in Section 4.1 of this agreement.
- (d) Construction of the second building shall be completed within six (6) years of the commencement of development outlined in Section 4.1 of this agreement.

2.15 Outdoor Storage

The outdoor storage of merchandise, goods or inventory of any kind, materials, equipment or other items not intended for immediate sale is prohibited.

PART 3 CHANGES AND DISCHARGE

- 3.1** The Owner shall not vary or change the use of the Property from that provided for in Section 2.1 of this Agreement, *Use*, unless a new agreement is entered into with the Municipality or this agreement is amended.
- 3.2** Any matters in this agreement which are not specified in Subsection 3.3 below are not substantive matters and may be changed with the written consent of Council without a public hearing provided that Council determines that the changes do not significantly alter the intended effect of these aspects of this agreement.
- 3.3** The following matters are substantive matters:
 - (a) the uses permitted on the Property as listed in Section 2.1, *Use*;
 - (b) the requirements for a stormwater management plan to be submitted prior to a development permit being issued as listed in Section 2.9, *Site Drainage*;
 - (c) the requirements for the Remedial Action Plan and the Certificate of Compliance to be submitted prior to a development permit being issued as listed in Section 2.10, *Site Remediation*;
 - (d) the fire safety requirements listed in Section 2.12, *Fire Safety*.
 - (e) the timelines for construction in Section 2.14, *Phasing*.

- 3.4** Notwithstanding the foregoing, discharge of this agreement is not a substantive matter and this agreement may be discharged by Council without a public hearing.
- 3.5** Notice of Intent to Discharge this Agreement may be given by the Municipality to the Owner following a resolution of Council to give such Notice:
- (a) as provided for in Section 4.1, *Commencement of Development*, of this Agreement; or
 - (b) at the discretion of the Municipality, with or without the concurrence of the Owner, where the Development has, in the reasonable opinion of Council on advice from the Development Officer, ceased operation for a period of at least twenty-four (24) months; or
 - (c) at any time upon the written request of the Owner, provided the use of the Property is in accordance with the Land Use By-law or a new Agreement has been entered into.
- 3.6** Council may discharge this Agreement 30 days after a Notice of Intent to Discharge has been given.

PART 4 IMPLEMENTATION

4.1 Commencement of Development

- (a) The Owner may not commence any construction or use on the Property until the Municipality has issued any development permit, building permit and/or occupancy permit that may be required.
- (b) Development as provided in Part 2 of this Agreement shall commence not later than twenty-four (24) months from the date this Agreement is signed. If, in the opinion of the Development Officer, this time limit has not been met, this Agreement may be discharged at the option of the Municipality by resolution of Council in accordance with Section 229 of the *Municipal Government Act* 30 days after giving Notice of Intent to Discharge to the Owner. Upon the written request of the Owner, the Municipality, by resolution of Council, may grant an extension to the date of commencement of development without such an extension being deemed to be an amendment to this Agreement.
- (c) If the Owner is bona fide delayed from commencing the development for reasons which are beyond the Owner's control, the determination of which shall be at the sole discretion of the Development Officer, then performance by the Owner is excused for the period of the delay and the time period for the Owner to perform their obligations shall be extended by the Development Officer in writing for an

equivalent period, without such an extension being deemed to be an amendment to this Agreement.

4.2 Material to be Provided

- (a) The Owner shall provide record drawings to the Development Officer for any portion of the development for which an engineered design is required, within ten (10) days of completion of any work which requires the engineered design.
- (b) The Owner shall, upon written request, provide the Municipality with copies of any documentation, permits or approvals required by Provincial or Federal governments or agencies.

PART 5 ADMINISTRATION and COMPLIANCE

5.1 Compliance with other By-laws and Regulations

- (a) Nothing in this Agreement shall exempt the Owner from complying with Federal, Provincial and Municipal laws, by-laws and regulations in force or from obtaining any Federal, Provincial, or Municipal license, permission, permit, authority, or approval required thereunder.
- (b) Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Property (other than the Land Use By-law to the extent varied by this Agreement) or any statute or regulation, the higher or more stringent requirements shall prevail.

5.2 Severability of Provisions

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

5.3 Interpretation

- (a) Where the context requires, the singular shall include the plural and the masculine gender shall include the feminine and neutral gender.
- (b) Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.
- (c) References to particular sections of statutes and bylaws shall be deemed to be references to any successor legislation and bylaws even if the content has been amended, unless the context otherwise requires.

5.4 Municipal Responsibility

- (a) The Municipality does not make any representations to the Owner about the suitability of the Property for the development proposed by this agreement. The Owner assumes all risks and must ensure that any proposed development complies with this Agreement and all other laws pertaining to the Development.
- (b) Any failure of the Municipality to insist upon a strict performance of any requirements or conditions contained in this Agreement shall not be deemed a waiver of any rights or remedies that the Municipality may have and shall not be deemed a waiver of any subsequent breach or default in the conditions or requirements contained in this Agreement.

5.5 Breach of Terms or Conditions

Upon breach of any term or condition of this Agreement, the Municipality may notify the Owner in writing. In the event that the Owner has not cured any such breach or entered into arrangements with the Municipality related to such breach to the Municipality's satisfaction, acting reasonably, within six (6) months of such notice, then the Municipality may rely upon the remedies contained in Section 264 of the *Municipal Government Act* and may enter the land and perform any of the terms contained in the Development Agreement, or take such remedial action as is considered necessary to correct a breach of the Agreement, including the removal or destruction of anything that contravenes the terms of the Agreement and including decommissioning the site. It is agreed that all reasonable expenses, whether arising out of the entry on the land or from the performance of the terms are a first lien on the land that is the subject of the Development Agreement.

5.6 Costs

The Owner shall pay all costs associated with registering this Agreement and all costs associated with any amendment thereof.

5.7 Development Agreement Bound to Land

This Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns, and shall run with the land which is the subject of this Agreement until such time as it is discharged by the Municipality in accordance with Section 229 of the *Municipal Government Act*.

5.8 Assignment of Agreement

The Owner may, at any time and from time to time, transfer or assign this Agreement and its rights hereunder and may delegate its obligations hereunder to an assign, successor, heir, or purchaser of the land bound by this Agreement.

5.9 Written Notice

- (a) The Municipality may serve notice on the Owner personally or by ordinary mail which shall be deemed to have been received within three (3) business days of mailing, addressed to 424 Caldwell Rd., Dartmouth, NS, CA B2V 1A6, or at any other address provided by the Owner.
- (b) The Owner may serve notice on the Municipality by registered mail addressed to the Chief Administrative Officer, West Hants Regional Municipality, 76 Morison Drive, P.O. Box 3000, Windsor, NS, B0N 2T0, or at any successor address provided by the Municipality to the Owner.

5.10 Full Agreement

This agreement constitutes the entire agreement and contract entered into by the Municipality and the Owner. No other agreement or representation, oral or written, shall be binding.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto on the day and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of:

Witness

Witness

Witness

) **WEST HANTS REGIONAL
MUNICIPALITY**

)
)
)

Per: _____

) Abraham Zebian, Mayor

)

) Per: _____

) Deanna Snair, Municipal Clerk

)

)

)

) **3331814 NOVA SCOTIA LIMITED**

)

)

)

Per: _____

) Clark Wilkins, President

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2022, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that **WEST HANTS REGIONAL MUNICIPALITY**, one of the parties thereto, caused the same to be executed in its name and on its behalf and its corporate seal to be thereunto affixed in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**PROVINCE OF NOVA SCOTIA
COUNTY OF HANTS**

ON THIS day of , A.D. 2022, before me, the subscriber, personally came and appeared , a subscribing witness to the foregoing Indenture, who, having been by me duly sworn, made oath and said that, **Clark Wilkins**, one of the parties thereto, signed, sealed and delivered the same in h presence.

A Commissioner of the Supreme Court of Nova Scotia

**AFFIDAVIT OF CLERK
WEST HANTS REGIONAL MUNICIPALITY**

I, Deanna Snair of _____, Hants County, Nova Scotia make oath and swear that:

1. I am the Clerk of the West Hants Regional Municipality (the “Municipality”) and I have personal knowledge of the matters to which I have sworn in this Affidavit.
2. The Municipality is a body corporate pursuant to the *Municipal Government Act*, S.N.S. 1988, c.18, as amended.
3. I acknowledge that the Municipality executed the attached Instrument by its proper designates duly authorized in that regard under seal on the date of this Affidavit pursuant to subsection 13(3) of the *Municipal Government Act*, S.N.S. 1988, c.18, as amended. This acknowledgement is made pursuant to subsection 31(a) of the Registry Act, R.S.N.S. 1989, c.392 and/or clause 79(1)(a) of the Land Registry Act, S.N.S. 2001, c.6, as amended, for the purpose of registering or recording the Instrument.
4. The Municipality is resident in Canada for the purposes of the Income Tax Act (Canada).

Sworn before me at _____, Nova Scotia,
this _____, 20__.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA
Print name/affix seal

Deanna Snair, Clerk

I CERTIFY that on this date Deanna Snair personally came before me and swore under oath the foregoing Affidavit.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA
Print name/affix seal

Canada
Province of Nova Scotia

AFFIDAVIT & PROOF OF EXECUTION (CORPORATE)

I, Clark Wilkins, Nova Scotia, make oath and say that:

1. I am Clark Wilkins of 3331814 NOVA SCOTIA LIMITED, the "Corporation". Except as otherwise stated I have personal knowledge of the matters to which I have sworn in this Affidavit.
2. I acknowledge that I executed the foregoing instrument on behalf of the Corporation on the date of this affidavit; this acknowledgment is made for the purpose of registering such instrument pursuant to s.31(a) of the Registry Act, R.S.N.S. 1989, c.392 or ss.79 and 83 of the Land Registration Act as the case may be.
3. I verify that I have the authority to execute the foregoing instrument on behalf of the corporation and thereby bind the Corporation.
4. The Corporation is a resident of Canada under the Income Tax Act (Canada).
5. The ownership of a share or an interest in a share of the Corporation does not entitle the owner of such share or interest in such share to occupy a dwelling owned by the Corporation.

I certify that on this _____, 2022 the Deponent came before me, made oath, and swore the foregoing affidavit at _____, Nova Scotia.

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA
Print name/affix seal

CLARK WILKINS, President

Schedule A
Legal Description – PID 45055902

Attachment D
Public Information Meeting Notes
October 14 – October 29, 2021
File 21-14
O'Brien St., Windsor PID 45055902

Meeting date and time	A virtual Public Information Meeting was held on October 14, 2021 beginning at 6:01 p.m. The meeting was live broadcast on the Municipal Facebook page.
Attending	<p>In attendance:</p> <p>One (1) Councillor:</p> <ul style="list-style-type: none"> • Councillor Ivey (Chair) <p>Five (5) members of staff:</p> <ul style="list-style-type: none"> • Director LeMay • Senior Planner Poirier • Planner Dunphy • Meeting Secretary Lake • CAO Mark Phillips <p>Applicant:</p> <ul style="list-style-type: none"> • Clark Wilkins, Property Owner / Applicant • Chrystal Fuller, Planning Consultant <p>As this meeting was held virtually there were no members of the public present.</p>
<p>Applicant Clark Wilkins, Property Owner Chrystal Fuller, Brighter Community Planning & Consulting</p> <p>Property O'Brien St, Windsor, PID 45055902</p>	<p>Planner Poirier outlined the development agreement and discharge application to permit two (2), four (4) storey, 56-unit apartment buildings which include up to 10,000 sq ft of commercial space on the ground floor of one building.</p> <p>A formal presentation was not made by the applicant.</p>
Comments	<p>Comments from the public could be submitted to Planner Poirier by mail, e-mail and telephone between October 14 – October 29, 2021.</p> <p>No written or verbal comments were received from the public.</p>
Adjournment	The meeting was adjourned at 6:08 p.m.