



## WEST HANTS REGIONAL MUNICIPALITY REPORT

Information <input checked="" type="checkbox"/>	Recommendation <input type="checkbox"/>	Decision Request <input type="checkbox"/>	Councillor Activity <input type="checkbox"/>
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**To:** Members of Planning and Heritage Advisory Committee (PAC/HAC)

**Submitted by:** \_\_\_\_\_  
Sara Poirier, Director of Planning and Development

**Date:** 2023-05-11

**Subject:** WMPS and WLUB Amendments: 368 Nesbitt Street, PID 45056447; File #23-02

### LEGISLATIVE AUTHORITY

Municipal Government Act Section 205 & 219

### RECOMMENDATION or DECISION REQUEST

This report is being provided for information purposes only.

### 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"/>
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A completed application was received from Jenifer Tsang of Sunrose Land Use Consulting on behalf of the property owner, 3321153 NOVA SCOTIA LIMITED / United Gulf Developments Ltd. on April 13, 2023 to request Windsor Municipal Planning Strategy (WMPS) and Windsor Land Use By-law (WLUB) amendments for 368 Nesbitt Street, PID 45056447 to permit:

- a mixed-use, multi-unit building with commercial uses on the ground floor, 2 floors of office space and 16 residential floors, for a total of up to 19 floors and 164 residential units;
- commercial uses to include: offices, museum, general retail and services, and café;
- restaurant in a separate building;
- outdoor commercial recreation space; and
- specific considerations for: signage and illumination, parking requirements, size and design of building, and buffering.

## **DISCUSSION**

### ***Site Context***

The 5.0-acre subject lot is located north of Highway 101, with approximately 550 ft. (167 m.) of frontage on Colonial Road and approximately 15 ft. (4.5 ft.) of frontage on Nesbitt Street and may be known as the former textile mill site. The textile mill was built in the 1880's and was a major industry in Windsor until it closed in 2005. A development agreement was registered on the property in 2007 that permitted commercial and residential redevelopment, but these aspects were not completed by previous owners. The building has sat vacant since then. In August 2021 a demolition permit was issued for a portion of the building which left approximately half of the original textile mill building remaining.

The lot is designated Industrial on the Generalized Future Land Use Map of the WMPS (Figure 1) and is within the Commercial Development District (Figure 2). Part 10.0 of the WMPS contains the overall intention for Industrial areas in Windsor and Part 7.7 outlines the intent of the Commercial Development District.

The subject lot is zoned Light Industrial (LI-1) on the Zoning Map of the WLUB (Figure 3). Portions of the lot are within the Environmental Constraints area (Figure 4).

The existing development agreement registered on the property from 2007, permits up to 20,000 sq. ft. commercial floor area and two-thirds of the building to be used for residential purposes. The commercial uses permitted are limited to microbreweries and associated pubs, retail stores, farm markets, restaurants, offices, museums and art galleries, bakeries, personal service shops. It is likely that this development agreement will need to be discharged through this application process.

The subject lot abuts properties designated Residential and zoned High Density Residential (R-4) and Highway Commercial (HC). Single unit dwellings are the main residential type surrounding the subject lot.

### ***Proposal***

The application letter describes the proposal as a mixed-use, multi-unit development and hockey themed tourism destination, which promotes the historical nature of the textile mill and Windsor as the birthplace of hockey. Further details in the letter include:

- Preserving and repurposing the remainder of the former textile mill building for commercial uses on the ground floor and a museum on the second and third floor;
- A new mixed-use, multi-unit apartment building which is connected to the former textile mill building on the ground floor and contains commercial uses, two floors of commercial office space, and 16 floors of residential uses for a total of 164 apartment units;
- The first three floors of the mixed-use, multi-unit apartment building is proposed to have a similar architectural style as the remainder of the former textile mill building, including window shape and façade using similar exterior materials. The 16 floors of residential uses will be modern in design;
- Commercial uses to include offices, general retail, museum, cafes and hockey inspired retail and services;
- A hockey puck shaped restaurant to be constructed in a separate building;
- Outdoor recreational space including seasonal composite artificial ice surfaces, hockey inspired sculptures, outdoor seating areas and green space; and
- A large hockey stick that will be back lit and visible from Highway 101 to be positioned near the hockey puck shaped restaurant.

The applicant has requested Council consider WMPS and WLUB amendments to create a site-specific policy for the property to create a new tourism destination, mixed-use designation and zone. They request that the zone allow for a range of commercial, residential, and recreation uses and that the new zone allow flexibility in building size, site design, signage, and parking layout. They note that this will encourage a timelier development.

### ***Policy***

Section 9.0 of the WMPS outlines the intention for Council to consider permitting mixed use developments. The background for this section states the following (underlining emphasis added by staff).

“There has been some interest in providing mixed residential/commercial development in Windsor. In many cases, these developments target retired people and provide housing plus personal service uses such as hairdressing or barber shops, small convenience and drug stores, medical and dental offices, and even restaurants where residents may get all or some of their meals. At this time, the Kingsway Gardens Enriched Housing Complex, which includes a restaurant, lounge, hairdresser and meeting facility, as well as apartments, is the only development of this type in Windsor.

Council would like to encourage mixed use development in other suitable locations. For example, with the 2005 closure of the Nova Scotia Textiles mill on Nesbit's Island and the resulting developer interest in the site, Council feels this property may have potential for redevelopment including a broad range of commercial, light industrial and recreational uses in combination with residential. Built in 1884, the mill is an excellent example of a late 19th century industrial building and its highly visible location adjacent to Highway 101 makes it a landmark. Where possible, any redevelopment of the Nova Scotia Textiles mill should retain the architectural elements which contribute to the public façades on both Nesbit Street and Colonial Road, as well as to the view from Highway 101. These elements include the brick façade and the number, size, shape and location of windows.”

Policy 9.2.1 would allow Council to consider the proposed mixed use, multiple unit residential development on the subject lot by development agreement, however the criteria restrict the scale and density of the development.

Policy 16.1.1 of the WMPS states that “It shall be the policy of Council to review and make amendments to this Strategy: ...(c) when Council deems it necessary because of a change in policy intentions or the development environment.” This proposal would be considered a major change in the development environment for the subject lot and would be consistent with this policy for when Council would consider amendments to the WMPS.

### ***Initial Review of the Application***

Staff view this development as a one-of-a-kind proposal for the community of Windsor due to the visibility, scale and location of the subject lot adjacent to Highway 101 and the potential for repurposing of the remainder of the former textile mill building. The background statements and policy option in Section 9.0 of the WMPS show that Council had intended to consider redevelopment of this lot through the development agreement process, however, the applicant has requested Council consider amending the policies of the WMPS and regulations in the WLUB to change the designation and zoning of the lot to allow the requested uses as-of-right.

The amendments proposed by the applicant would change the general intent of the planning documents in relation to the subject lot. Therefore, staff have prepared an overview of policy options in relation to this application and request that the PAC/HAC provide feedback on the application and options available. Feedback received will help staff discuss the application with the public at an upcoming Public Information Meeting.

### Options

#### *Map Amendments*

WMPS and WLUB map amendments could be considered to change the designation and zone of the subject lot on both the Generalized Future Land Use Map and the Zoning Map. For example, instead of the lot being designated Industrial and zoned Light Industrial (LI-1), the designation and zoning could be amended to a new mixed-use designation and zone. Changing the designation and concurrently the zoning of a property would indicate to staff, the property owner and the public that Council has changed its overall intent for the property from industrial to mixed-use. Staff have no initial concerns with considering map amendments in association with this application.

Text Amendments

In addition to any WMPS and WLUB map amendments, text amendments to the documents would also be made based on how the PAC/HAC and Council would like to consider this proposal. The options for text amendments are outlined in the chart below.

<p><b>As-of-right</b></p>	<p>The applicant has requested that Council consider amending the text of the WMPS and WLUB to permit the proposed uses as-of-right. As-of-right means that the proposed uses meet all policies of the Municipal Planning Strategy and regulations within the Land Use By-law and can be issued a development permit without any further public input or Council approval. In this case a new zone would most likely be created outlining the maximum height permitted, minimum yard setbacks, recreational space requirements, landscaping, and parking requirements, among other items.</p> <p>Most zones in the current planning documents for the community of Windsor currently limit the height of buildings to maximum of 35 ft. or 3 storeys. In the residential designation the policies of the WMPS allows Council to consider allowing up to 8 storeys by development agreement. With this proposal including a mixed-use, multi-unit building up to 19 storeys (approx. 266 ft. or 81 m.) in height, should Council consider this being allowed to be built as-of-right?</p>
<p><b>Site Plan Approval</b></p>	<p>Site Plan Approval is an option that is more restrictive than permitting a use as-of-right but requires less process for the developer than requesting Council consider the use by development agreement. The Nova Scotia Government website provides a process chart for site plan approval (Attachment A). The appeal of the issuance or refusal to issue a site plan approval is made to Council.</p> <p>The enforcement of a site plan approval is similar to that of the enforcement of a development agreement. A site plan runs with the</p>

property which means if the property is sold to a new owner the site plan remains in place until it is discharged by the Development Officer, with the concurrence of the property owner.

The planning documents can specify when a site plan approval is required. The Municipal Government Act (MGA) outlines that a site plan approval may deal with:

- the location of structures on the lot;
- the location of off-street loading and parking facilities;
- the location, number and width of driveway accesses to streets;
- the type, location and height of walls, fences, hedges, trees, shrubs, ground cover or other landscaping elements necessary to protect and minimize the land-use impact on adjoining lands;
- the retention of existing vegetation;
- the location of walkways, including the type of surfacing material, and all other means of pedestrian access;
- the type and location of outdoor lighting;
- the location of facilities for the storage of solid waste;
- the location of easements;
- the grading or alteration in elevation or contour of the land and provision for the management of storm and surface water;
- the type, location, number and size of signs or sign structures; and
- provisions for the maintenance of any of the items referred to in this subsection.

The current Windsor planning documents only use site plan approval in the Waterfront Development District (WDD) for new main buildings, additions in excess of 1,000 sq. ft. (92.9 sq. m.) of floor area, or accessory structures in excess of 500 sq. ft. (46.5 sq. m.), and in the Wentworth Road Commercial (WR-C) zone for large format retail stores that do not exceed 50,000 sq. ft. (4,645 sq. m.).

The WLUB outlines the specific items that the applicant must provide to the Development Officer for review prior to being able to approve the site plan and issue a development permit for the developments

listed above in the Waterfront Development District (WDD). These items include:

- A topographic survey by a surveying engineer who is a member of Association of Professional Engineers of Nova Scotia (APENS);
- A site plan drawn to an appropriate scale by a landscape architect who is a member of the Atlantic Provinces Association of Landscape Architects (APALA) showing: the items required to be shown in the application for a building permit, a construction mitigation plan demonstrating how any new structures will minimize negative impacts on the surrounding properties including noise, dust, fumes, lighting, shadows, stormwater and erosion control, or other nuisances or inconveniences during and after construction, and any additional information related to the site, buildings, or adjoining properties as may be required by the Development Officer.
- Architectural plans prepared by an Architect who is a member of the Nova Scotia Association of Architects (NSAA), indicating compliance with the specific design requirements of the By-law including the siting of building utilities, vehicle access, parking, lighting and signage.
- A servicing schematic prepared by a civil engineer who is a member of APENS.
- A Traffic Impact Statement by a transportation engineer who is a member of APENS.

The WLUB outlines the specific items that the Development Officer must review and be satisfied that the application meets to be able to approve the site plan and issue a development permit for large format retail stores in the Wentworth Road Commercial (WR-C) zone. These items include:

- a landscaped area being provided along the front property line to act as a buffer between the development and the public street;
- landscaped islands being provided within parking lots containing 24 or more spaces to avoid the appearance of large, unbroken expanses of asphalt;

- safe, continuous and clearly defined pedestrian walkways are provided from the street to the primary building entrance;
- the location, number and width of driveway accesses adequately address any traffic problems identified by the Traffic Authority;
- parking and loading facilities are located so as to minimize congestion within the parking lot and prevent conflicts between pedestrians or passenger vehicles and transport trucks;
- easements required for services or access are suitably identified on the plan;
- site grading and storm water management plans adequately address the disposal of surface water on the site;
- facilities for the storage of solid waste shall be located so as to minimize impacts on adjacent properties and the view from the street, or shall be screened from view through landscaping or fencing;
- gas bars or other structures accessory to the large format retail store may be located in the front yard provided the landscaped area is maintained as a buffer between the structure and the public street;
- the type and location of outdoor lighting provides safety and security for the structure, driveways and any pedestrian access, but is designed to ensure there is no light spilling, glare or light cast over adjacent uses and the street;
- the location, number and size of signs is appropriate to the scale of the development, contributes to an attractive and pedestrian-friendly environment and does not create visual clutter; and
- the above-listed items are adequately maintained.

Staff reviewed the Halifax Regional Municipality (HRM) website to see what documentation is required for site plan approval within their municipality. The website states that the following items are required for all site plan approval applications:

- Architectural rendering of streetline (not mandatory for Downtown Halifax);

	<ul style="list-style-type: none"> <li>• Building design variance illustration (not mandatory for Downtown Halifax);</li> <li>• Design rationale prepared by the project architect (mandatory for Regional Centre and Downtown Halifax, not mandatory for other site plans);</li> <li>• Elevations;</li> <li>• Site Plan; and</li> <li>• Site Servicing Plan (Mandatory for Downtown Halifax, not mandatory other places).</li> </ul> <p>Other documents that may be required to be provided by HRM include:</p> <ul style="list-style-type: none"> <li>• Design of private shared driveway;</li> <li>• Heritage impact statement where a registered heritage property is part of the development site;</li> <li>• Land suitability analysis;</li> <li>• Plan of survey by a Surveyor;</li> <li>• Preliminary landscape plan;</li> <li>• Public consultation summary;</li> <li>• Shadow study;</li> <li>• Stormwater management, erosion and sedimentation control;</li> <li>• Traffic impact statement/study;</li> <li>• View/sight line statement;</li> <li>• Wind impact analysis with mitigation; and</li> <li>• Wind impact assessment.</li> </ul> <p>The items listed in the WLUB and required by HRM provide a good example of the breadth of potential items that could be required for this proposal if it were to be considered through site plan approval.</p> <p>If there are particular items that Council determines should be reviewed in greater detail in relation to this proposal these could be listed as requirements for site plan approval. The Development Officer would then ensure the application meets these requirements prior to issuing site plan approval and any development permits for the proposed uses.</p>
<p><b>Development Agreement</b></p>	<p>A development agreement is the most restrictive and requires the most process for the developer of the options.</p>

A development agreement is a contract between Council and a property owner to permit a specific use of land not permitted in the underlying zone. There is room for negotiation which enables Council to develop restrictions on a case-by-case basis, but the restrictions are limited by the MGA and policy within the WMPS. Most of the development restrictions that can be applied by development agreement can also be applied to a specific zone, except hours of operation. To consider a development agreement there must be a policy in the WMPS and an enabling section in the WLUB. There can be specific criteria listed in the WMPS policy that must be met for Council to approve an application. The criteria are used by staff to negotiate the agreement with the applicant and ensure Council's intentions are met.

A development agreement provides Council an opportunity to address concerns specific to the site. However, the process to approve a development agreement can be lengthy as staff negotiate the agreement with the applicant and then the application follows Council's approval process.

The appeal of the approval or refusal of a development is made to the Nova Scotia Utility and Review Board.

The agreement is registered to the property which means if the property is sold to a new owner the agreement remains in place until it is discharged by Council. If the property owner wishes to change any of the development restrictions in the development agreement, they must apply for an amendment to the agreement and that process would follow the same Council approval process. Limiting the substantive content of an agreement could reduce the time required for amendments.

The Development Officer administers the agreement and performs an annual review of the property to ensure the property owner meets the requirements of the agreement.

The MGA outlines the items a development agreement may deal with including:

- matters that a land-use by-law may contain;
- hours of operation;
- maintenance of the development;

- easements for the construction, maintenance or improvement of watercourses, ditches, land drainage works, stormwater systems, wastewater facilities, water systems and other utilities;
- grading or alteration in elevation or contour of the land and provision for the disposal of storm and surface water;
- the construction, in whole or in part, of a stormwater system, wastewater facilities and water system;
- the subdivision of land;
- security or performance bonding.

A development agreement may also:

- identify matters which are not substantive or, alternatively, identify matters that are substantive;
- identify if the variance provisions are to apply to the development agreement;
- provide for the time when and conditions under which the development agreement may be discharged with or without the concurrence of the property owner;
- provide that upon the completion of the development or phases of the development, the development agreement, or portions of it, may be discharged by council;
- provide that if the development does not commence or is not completed within the time specified in the development agreement, the development agreement or portions of it may be discharged by council without the concurrence of the property owner.

If this proposal were to be considered by development agreement, the criteria listed could be similar to the criteria required for site plan approval, with the addition of being able to limit hours of operation of the commercial uses, if desired.

If there are particular items that Council determines should be reviewed in greater detail in relation to this proposal these could be listed as criteria to be considered upon review of a development agreement application. Council would ultimately decide if the proposal meets these criteria at the end of a public application process. Only then, once the development agreement is registered,

	could the Development Officer issue a development permit for the proposed uses.
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**MUNICIPAL CLIMATE CHANGE ACTION PLAN**

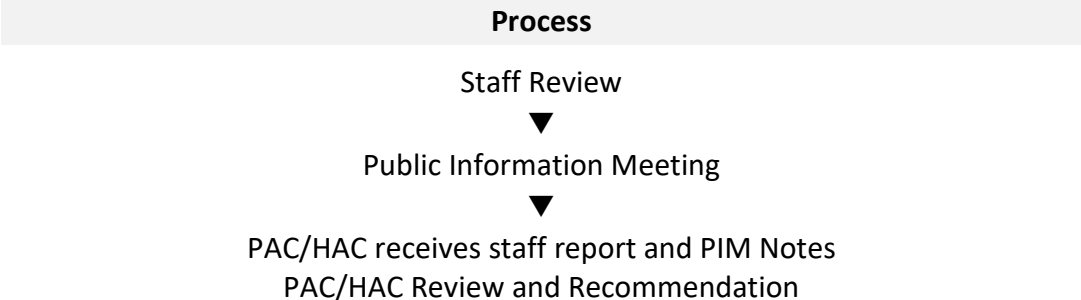
The Municipal Climate Change Action Plan (MCCAP) for Windsor (2014) highlights two simulated flooding scenarios. The first scenario is based on a storm surge that occurred in 1997, which shows the expected damage is to occur along the coastline. The second scenario shows the simulated flooding extent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

Portions of the lot are within the Environmental Constraints area which means that it has been identified as marshland, specifically within the Tregothic Marsh. Properties within the Environmental Constraints area have to meet more stringent requirements including completing an environmental study before being issued a development permit for any new building.

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. Any new construction on site would have to meet the requirements of Section 27.0 of the WLUB and any other requirements of the Regional Municipality.

**NEXT STEPS**

Staff will prepare options to be considered at a Public Information Meeting based on the feedback from PAC/HAC. The process for the WMPS and WLUB amendments as part of this application would be as follows:





**FINANCIAL IMPLICATIONS**

There are no financial implications to the Municipality or residents with regard to the filing of this report.

**ALTERNATIVES**

In response to this report, the PAC/HAC may:

- allow staff to follow the anticipated process for this file including scheduling a Public Information Meeting to gather public feedback; or
- provide alternative direction such as requesting further information on a specific topic.

**ATTACHMENTS**

Figure 1	GFLUM Extract
Figure 2	Commercial Development District Extract
Figure 3	Zoning Map Extract
Figure 4	Environmental Constraints Extract
Attachment A	Site Plan Approval Process

Report Prepared by: \_\_\_\_\_

Sara Poirier, Director of Planning and Development

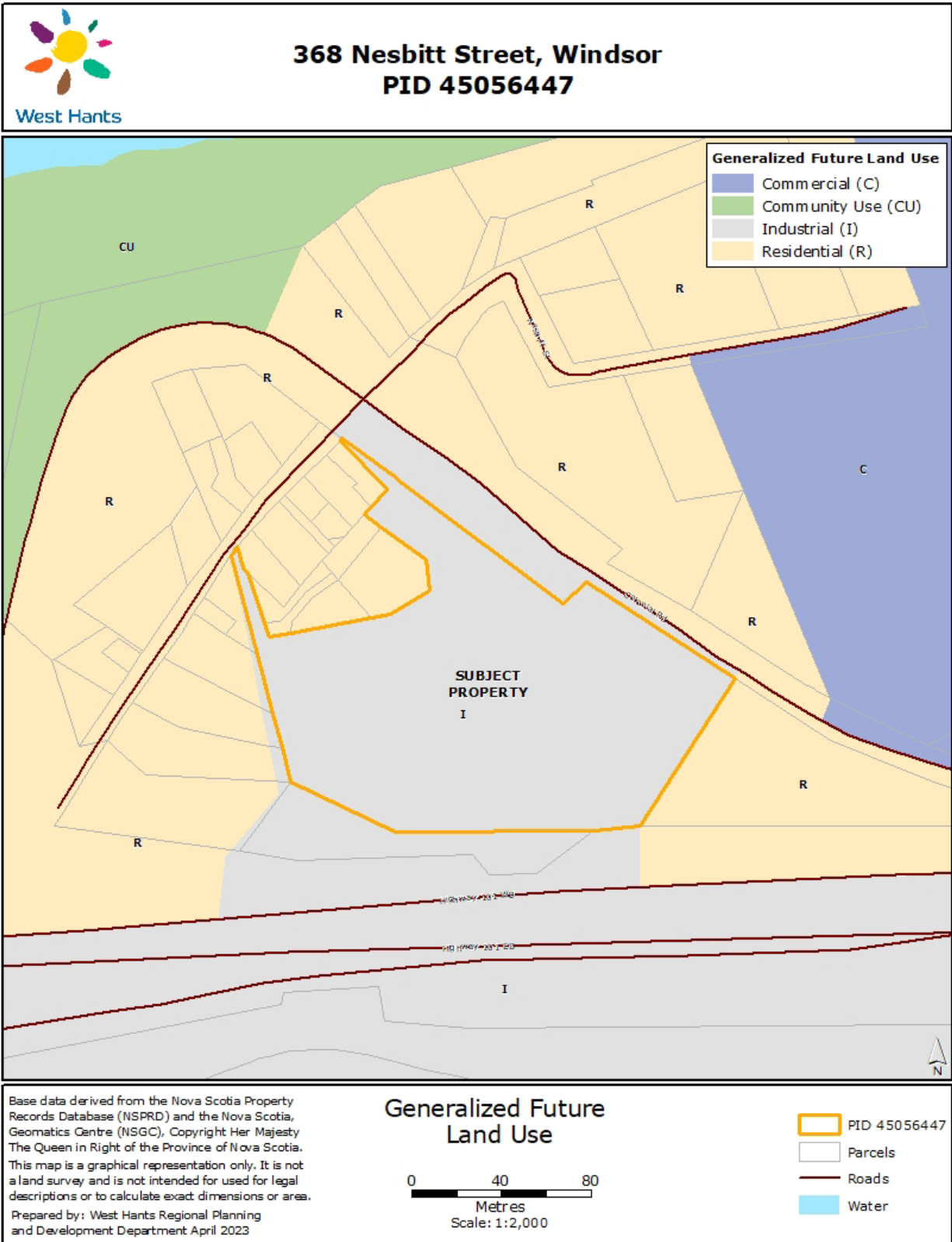
Report Reviewed by: \_\_\_\_\_

Alex Dunphy, Planner

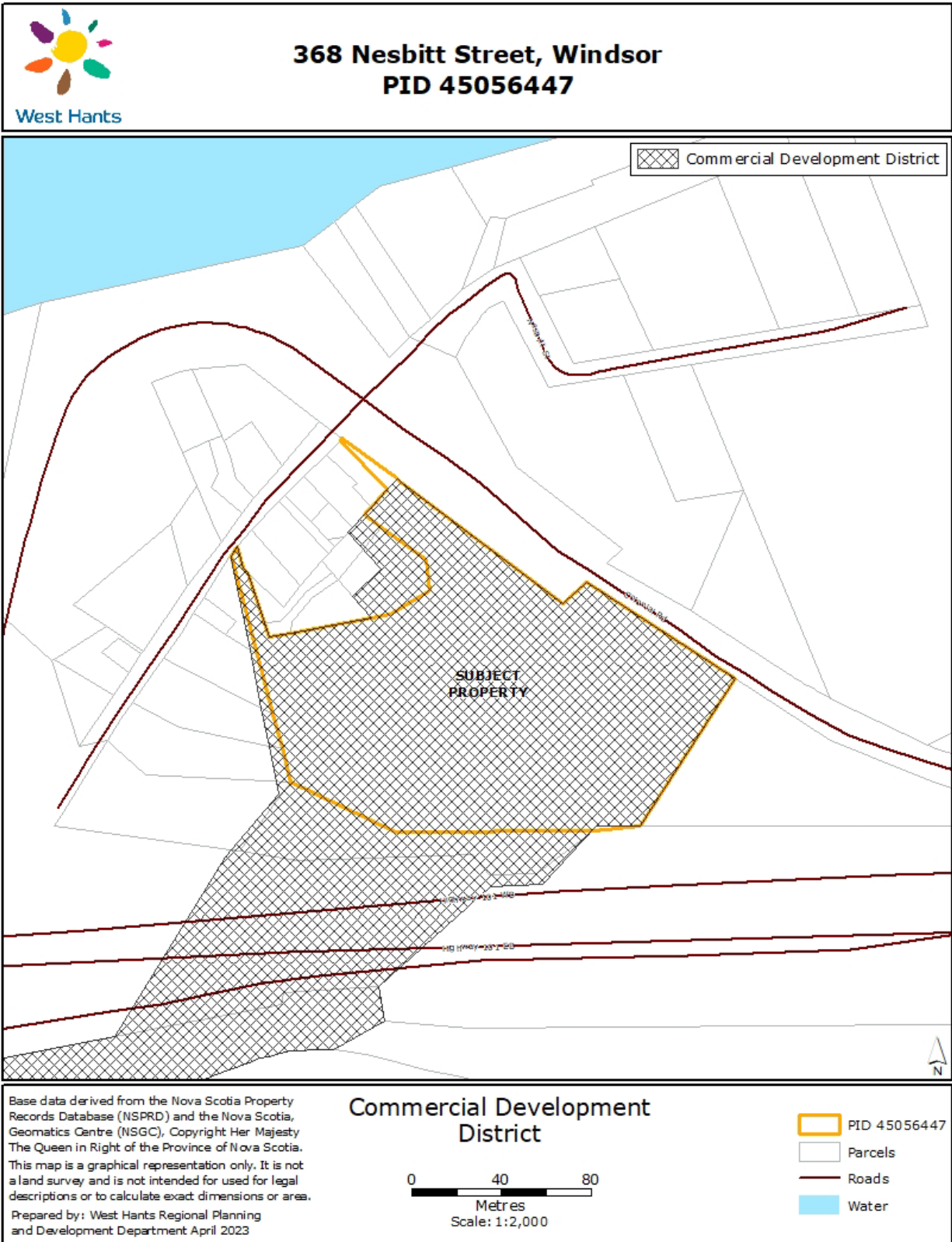
Report Reviewed by: \_\_\_\_\_

Mark Fredericks, Senior Planner

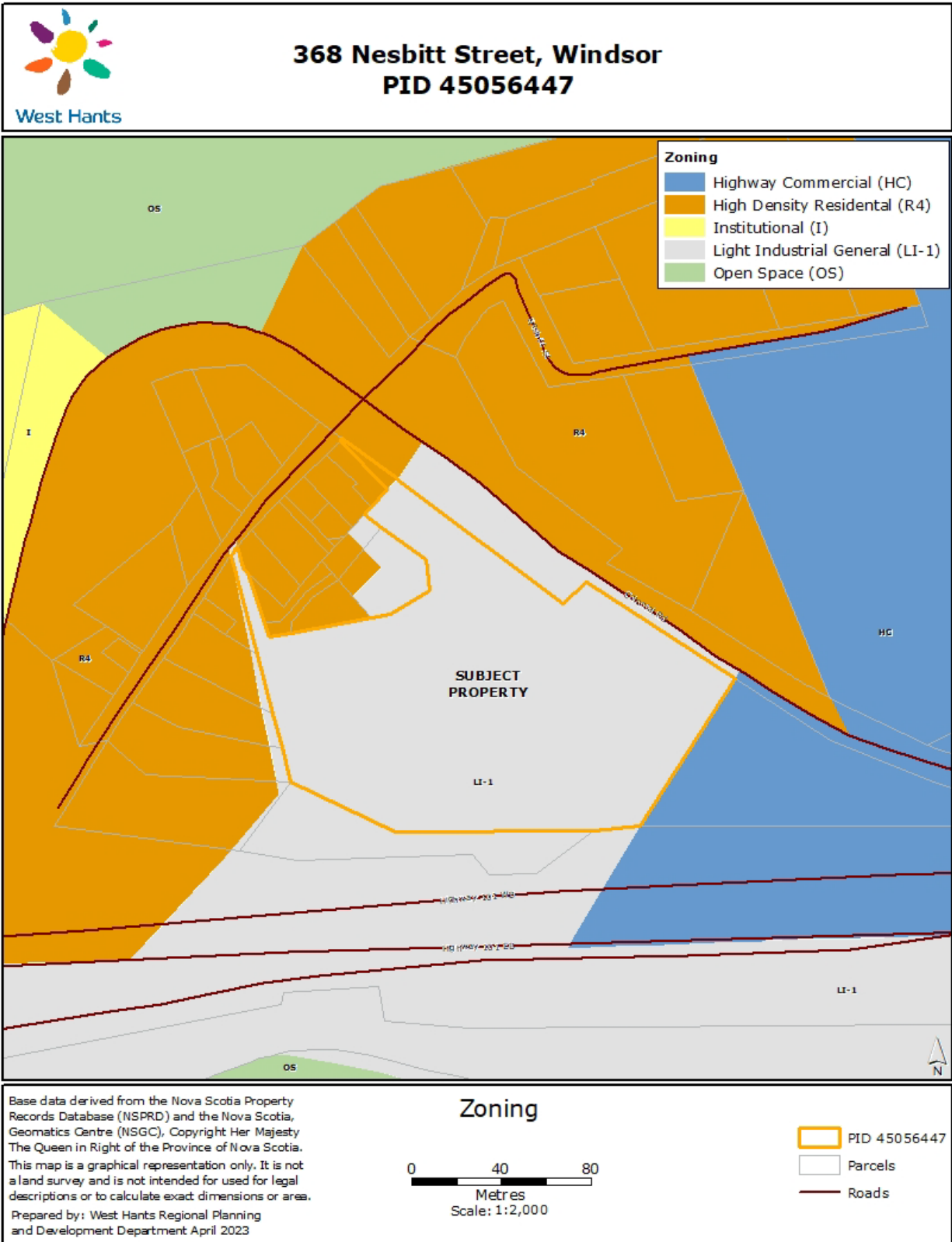
Figure 1  
GFLUM Extract



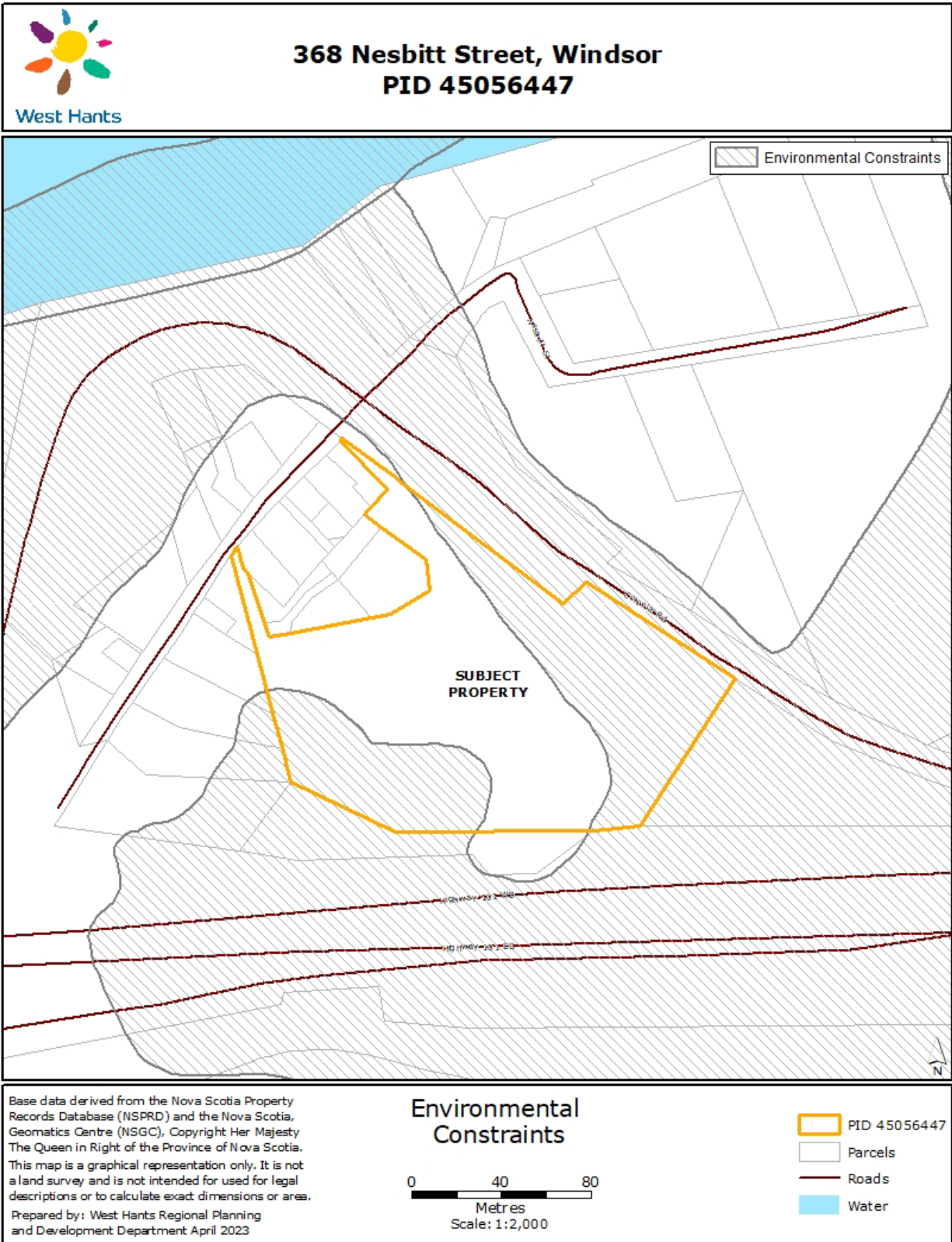
**Figure 2**  
**Commercial Development District Extract**



**Figure 3**  
**Zoning Map Extract**

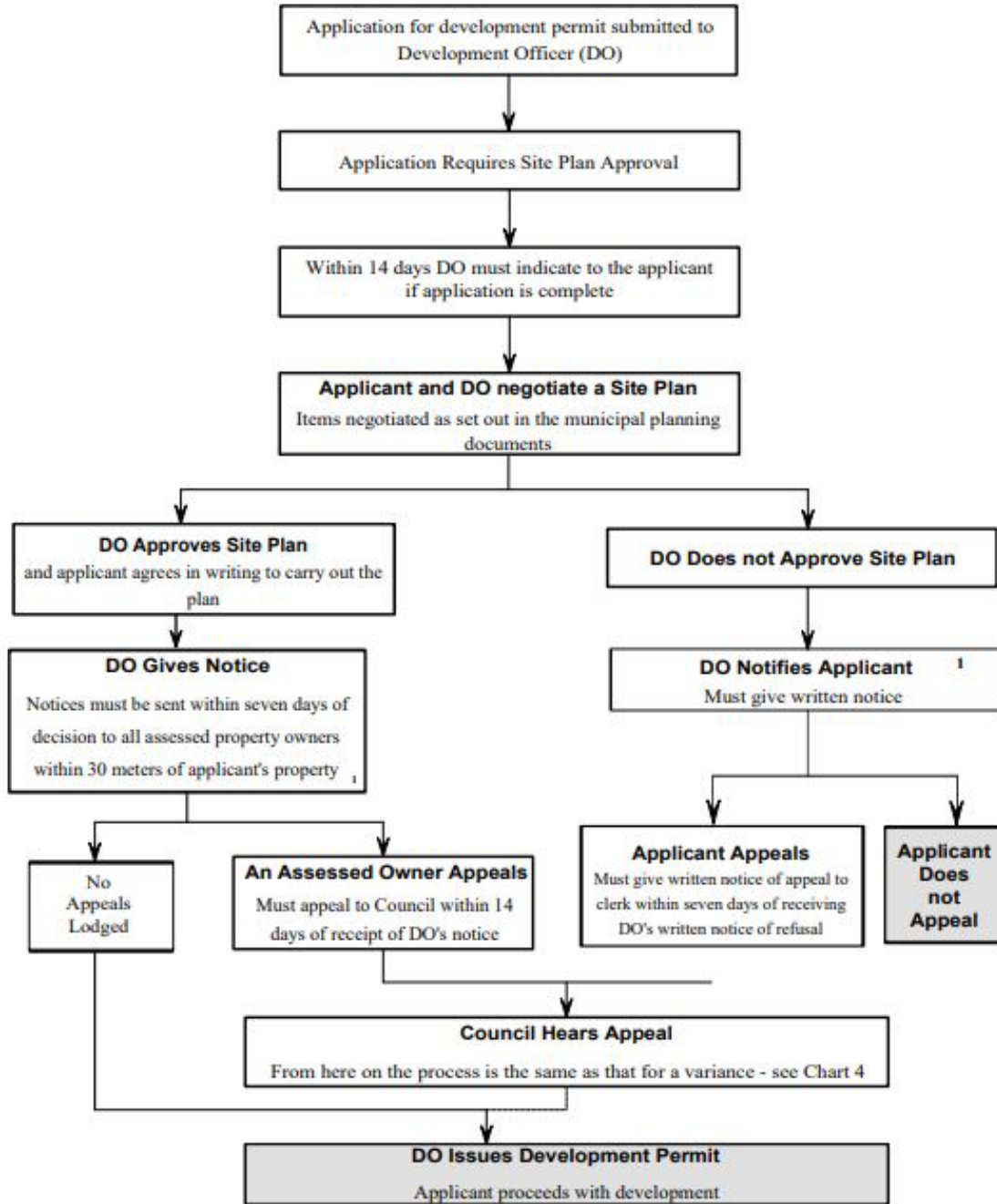


**Figure 4**  
**Environmental Constraints Extract**



Attachment A

**Chart 5 - Site Plan Approval Process**



<sup>1</sup> See Chart X - Variance Process for detailed information on notices, appeals and hearings.  
Shaded boxes indicate that the process has come to an end.  
Sources: (MGA sections 231, 232, 233 and 234.) (HRM chapter 246, 247, 248 and 249.)

February, 1999  
Revised: September, 2020